

CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY

TEMPERANCE

It is not uncommon that a discussion of some moral problem exposes its author to the accusation of excogitating new sins to be avoided in the pursuit of our eternal destiny. Relatively rare is the writer who manages to coin a new virtue, as does John C. Ford, S.J.,¹ who proposes "pharmacosophrosyne" as expressive of the virtuous temperance to be exercised in relation to the chemical comfort so readily available at present in almost innumerable forms, natural and synthetic. Fr. Ford's approach to the moral problem inherent in the use of energizers, tranquilizers, analgesics, and the like, is characteristically sound and balanced. He deliberately avoids any mere casuistry of sin in a frank appeal to sweet reasonableness in the use of creature comforts which even Christian mortification does not allow us to renounce entirely. As an ascetical treatise on the proper Christian attitude towards sensible pleasures in general, the article is one which will appeal to aspirants to virtue at all levels, including the heroic.

At one point Fr. Ford pauses long enough to consider the basic morality of cigarette smoking in view of strong current indications that there may well be a causal nexus between that habit and the incidence of lung cancer.² Even his fellow nonsmokers should be willing to acknowledge the cogency of the reasons he cites in favor of freedom in this respect. Impressive as the evidence may be that heavy smoking is a factor contributing to the general incidence of cancer, the risk involved for any given individual is not yet established as certain and serious enough to sustain a strict obligation to choose the safer course. Neither is it true that even total abstinence from cigarettes will eliminate all danger of contracting the

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

¹ "Chemical Comfort and Christian Virtue," *American Ecclesiastical Review* 141 (Dec., 1959) 361-79.

² For a most recent report on the subject from the Public Health Service, cf. L. E. Burney, M.D., "Smoking and Lung Cancer," *Journal of the American Medical Association* 171 (Nov. 28, 1959) 1829-37. A later issue of the same *Journal* (171 [Dec. 12, 1959] 2104), editorializing on the report, concludes: "Neither the proponents nor the opponents of the smoking theory have sufficient evidence to warrant the assumption of an all-or-none authoritative position. Until definitive studies are forthcoming, the physician can fulfill his responsibility by watching the situation closely, keeping courant of the facts, and advising his patients on the basis of his appraisal of those facts. The Public Health Service can best meet its obligations by collecting and disseminating data from all sources and making known to the health and medical professions its own evaluations of such data."

disease. While we may talk confidently of the more prudent thing to do in the light of what we presently know about the matter, it would seem unwise as yet to claim an obligation under pain of sin to refrain from smoking because of the cancer risk.

Recognized experts in the field of alcoholic studies will be more than a little unhappy about the pamphlet *Help Your Alcoholic Friend* by William J. Kenneally, C.M.³ Despite the very laudable intent which prompted this publication, it unfortunately cannot help but be the source of certain misunderstandings, especially for those whom it introduces for the first time to the multiple problems of alcoholism. Since these misunderstandings include some which are theological, they could seriously prejudice the excellent research and therapy in which Catholic as well as non-Catholic authorities in the field are engaged. While there still remain many uncertainties with regard to alcoholic addiction, considerable progress has been made toward a truly scientific understanding of the nature, causes, and treatment of that affliction; and it would appear to be highly inadvisable on our part gratuitously to discredit even tentative conclusions which are not incompatible with our faith or moral principles.

Fr. Kenneally rejects absolutely the theory that alcoholism is a disease, for he perceives in that suggestion the total moral exculpation of the alcoholic for his sorry plight. "What strange disease is this," he asks, "that can be cured by an act of the will?" (It is axiomatic among the professionally informed that alcoholism is as yet incurable, but at most—like diabetes—controllable, though not by a mere act of the will.) Nor is compulsion to be admitted, since this term is but the non-Catholic, or even anti-Catholic, equivalent of strong temptation. "The Church," Fr. Kenneally maintains, "has never regarded alcoholics in this light. On the contrary, she holds them responsible for their excessive drinking which the Church regards as a sin against the virtue of temperance."

Despite his original definition of alcoholism, which is very close to that which is generally accepted by recognized authorities, Fr. Kenneally throughout his disquisition seems to be identifying alcoholism with excessive drinking and applying to the former theological principles formulated only for the latter. That there is an essential difference between the two aberrations is now commonly conceded. The currently confirmed alcoholic may well have been formerly a heavy drinker whose subjectively sinful over-indulgence brought him to addiction. But now as an addict he represents a person whose literal inability to stop drinking without outside help is the valid basis for the willingness of many, Catholics as well as non-Catholics,

³ Los Angeles: Borromeo Guild, 1959.

to entertain notions of genuine disease and/or true compulsion, neither of which terms is necessarily inimical to our generic doctrine of moral responsibility. On the matter of his subjective guilt for his continued drinking as an addict, such an appraisal as this is altogether consonant with sound moral theology:

[The alcoholic's] sickness consists in this: that his will-power, no matter how good it is for other things, is powerless over alcohol whenever that compelling fascination for alcohol takes possession of his mind.

The moral responsibility of the alcoholic for the drinking itself is not like that of other people. His responsibility for his excessive drinking is generally diminished to a considerable extent, and sometimes eliminated. But each alcoholic, each drinking episode, and even each act of drinking, must be judged separately.

. . . In the final analysis, after making allowance for the pathological character of his addiction, judgment must be left to a merciful God.⁴

To invoke the "teaching of the Church" in support of any more rigorous an opinion as to the addict's responsibility for his drinking is a less than accurate use of theological fonts and terminology. We do have the traditional teaching of theologians on the objective sin of drunkenness (as well, one might add, as their teaching on the impediments to human liberty, including that of *habitus*), but an adequate treatment of the explicit problem of alcoholism has yet to be incorporated into the standard manuals. An authoritative document of the Church on the latter subject does not to my knowledge exist.

It is also difficult to understand why Fr. Kenneally is so reluctant to recommend Alcoholics Anonymous as an initial refuge for the alcoholic Catholic. Theologically informed members of that organization would be emphatic in their denial that AA poses any practical threat to Catholic faith or morals. Although the movement in its inception owed some very minor debt to Buchmanism, there has never been any formal affiliation or even sympathy with that sect or with its current counterpart, Moral Rearmament. AA neither is nor claims to be a religious organization or a substitute for religion. More correctly it might be called for us an adjunct, even perhaps a necessary one, to the Church's reclamation of the alcoholic Catholic to the effectual practice of Catholicism. The Catholic Church as such does not deliver babies, but depends upon obstetricians to bring into the world her candidates for baptism; confessors do not—at least should

⁴ John C. Ford, S.J., *Man Takes a Drink* (New York: Kenedy, 1955) pp. 101–2. See also George Hagmaier, C.S.P., and Robert Gleason, S.J., *Counselling the Catholic* (New York: Sheed & Ward, 1959) pp. 113–44, 239–46.

not—exorcise the psychologically disturbed, but trust competent psychiatrists to return such penitents as subjects capable of receiving the sacraments. Why should we be any less willing to allow the alcoholic to seek necessary physical, mental, and emotional therapy—which our sacraments are not calculated to provide short of miracle—under the auspices of an organization which has proven itself remarkably willing and able to do precisely that, thus returning to the sacraments subjects who would otherwise be improperly disposed to receive them?

As an additional aid to the rehabilitation of alcoholics, hypnotically induced aversion to alcohol has been employed with some success by M. M. Miller, M.D.⁵ In a preliminary report covering only twenty-four patients, Dr. Miller warns against any misimpression that his treatment will of itself achieve permanent reform. It is his hope, however, confirmed to some degree from his clinical experience, that through hypnosis drinking habits may be controlled to an extent which will encourage the patient to submit to proper remedial treatment and thus facilitate considerably the total program of rehabilitation.

It is Dr. Miller's theory that by means of hypnotic suggestion, usually repeated only once after a week's interval, the therapist can create in the patient a conditioned-reflex aversion to the taste and smell of alcoholic beverages. This is done by inducing the hypnotized subject to relive all the disgust and revulsion of one of his worst hang-overs. Because the aversion reaction is instilled at the unconscious level, it is allegedly more likely to operate effectively in the future at the surface of consciousness than would any revulsion reflex induced by means of emetics administered in conjunction with liquor. Moreover, various disadvantages and dangers connected with chemical nauseants are thereby avoided. Dr. Miller reports that of twenty-four patients so treated by hypnotic suggestion only four have relapsed over an average follow-up period of nine months. The report concludes with several pertinent case histories, presumably from among the more impressive of the doctor's successes.

It is not incumbent upon the theologian to evaluate the psychotherapeutic worth of hypnotic suggestion for the alcoholic. In the event that it should prove effective to any notable degree, there would be no moral objection to its use for this purpose, provided only that the therapist observes faithfully those medical and ethical precautions which theologians in recent

⁵ "Treatment of Chronic Alcoholism by Hypnotic Aversion," *Journal of the American Medical Association* 171 (Nov. 14, 1959) 1492-95.

years have derived from their own principles conjoined with the testimony of competent psychologists and physicians.⁶

Just as temperance in drink for the alcoholic requires no less than complete abstinence from intoxicant beverages, so also does chastity—though for an essentially different reason—demand of the unmarried total abstention from any deliberate indulgence in sexual activity. Nor can there be any doubt that outside of marriage there is no parity of matter in violations of chastity which are directly voluntary. Although it would be impossible to cite any definitive ecclesiastical document which states that proposition in as many words, the mind of the Church is clearly opposed to any milder opinion as being, at least in the practical order, extremely dangerous doctrine.⁷ But when it comes to proposing arguments from reason in substantiation of Catholic teaching on the matter, not all theologians are in agreement as to which is the most conclusive.

In a recent discussion of this question, James Madden⁸ takes as his point of departure the essential ordination of the generative function to the good of the species. For the unmarried, he then continues, there is obviously no complete use of the function which is not a grave disruption of the moral order, in so far as one thereby indulges for his personal satisfaction in an act which of necessity frustrates the God-given purpose of the corresponding faculty, viz., the proper propagation and education of offspring. But since even the slightest sexual activity tends of its nature towards completion, any deliberate incomplete activation of the sexual function betrays implicit approbation of the consummated act and is consequently gravely sinful. By way of confirmation, the Monsignor invokes the further argument, based on the frailty of human nature, to the effect that deliberate indulgence in incomplete sexual pleasure implies the free courting of the proximate occasion of serious sin as represented in the consummated act. Again, he concludes, the one “who freely enters the proximate occasion of grave sin . . . has already given implicit consent to the evil result” which is morally certain to follow.

Msgr. Madden's first line of reasoning represents what might be called the psychological argument. After putting initial emphasis on the undeni-

⁶ Cf. Gerald Kelly, S.J., *Medico-Moral Problems* (St. Louis: Catholic Hospital Assoc., 1958) pp. 288-93; Joseph T. Mangan, S.J., “Hypnosis: A Medico-Moral Evaluation,” *Linacre Quarterly* 26 (May, 1959) 39-48.

⁷ For the cumulative argument from tradition, cf. Zalba, *Theologiae moralis summa* 2 (1958 ed.) § 311.

⁸ “Venial Sin and the Sixth Commandment,” *Australasian Catholic Record* 36 (Oct., 1959) 306-15.

ably grave malice of any complete sexual act for the unmarried, it thereupon invokes the natural tendency of incomplete venereal activity towards ultimate consummation. Because of that ontological proclivity of the incomplete sexual act for its gravely sinful completion, the argument then alleges the psychological impossibility of intending any activation of the venereal function without implicit approbation of the consummated act.

The weakness in the argument as thus stated would seem to lie in that appeal to the intention of the agent apropos of complete sexual pleasure, which is conceived as somehow distinct from the incomplete. If at least implicit approbation of the consummated act is required in order to establish the grave malice of the *actus incompletus*, then the latter is proven to be gravely wrong not *in se* and *ex objecto* but rather *ex intentione*. Furthermore, in the psychological order could not one maintain truthfully that he abhors and effectively excludes from his intention the final consummation of the act whose initiation he nonetheless deliberately undertakes?⁹ In other words, it would appear insufficient to establish merely a natural tendency of the incomplete act towards the complete. The two must rather be identified in the ontological order.

The second proof, which might be termed the experiential argument, is based on common human frailty and adduces the moral impossibility of indulging in incomplete venereal acts without proximate danger of continuing to the point of sexual satiety. In the majority of cases this may well be true, and it would become more emphatically true if the doctrine of *parvitas materiae* were to be admitted. However, this line of reasoning likewise fails to prove the intrinsic malice of the incomplete sexual act, but relegates it to the same category in which we must place such acts as kissing and embracing.¹⁰ In addition, it does not provide for those cases, undeniably possible and undeniably existential, in which individuals are consistently successful in avoiding complete sexual satisfaction even while frequently indulging in some small degree of the incomplete.

The straight metaphysical approach differs from these other two by perhaps no more than a hair's breadth in terms of emphasis.¹¹ After first predicating of the sexual faculty an essential ordination to procreation in the married state, it conceives the operation of that faculty as a single, unified entity, from its inception under initial stimulus up to the ultimate point of its consummation. Accordingly, the incomplete act is only inadequately distinct from the complete, as is part from whole. Hence the deliberate

⁹ Cf. Zalba, *op. cit.*, § 315.

¹⁰ *Ibid.*

¹¹ Cf. Lanza-Palazzini, *Theologia moralis*, "Appendix de castitate et luxuria," pp. 190-91; also Zalba, *op. cit.*, § 314.

activation to any degree of the sexual function can be correctly ordered only if it is conducive to the achievement of the essential purpose of the total function itself. Otherwise it remains (as for the unmarried it must always remain) a serious subversion of the natural moral order.

Or to put it another way: any incomplete venereal act is the beginning and an integral part of the total single process whose essential ordination, to be observed *sub gravi*, is to procreation within marriage. But for the unmarried, even partial activation of the sexual function precludes this proper ordination and diverts the function's use to personal satisfaction. Hence the deliberate incomplete venereal act is no less a subversion of the essential order than is the complete act and must be classified as seriously sinful. Unlike a small theft, for example, which need not be and is not an integral part of a grave theft, any venereal act is necessarily at least a partial exercise of a function whose essential ordination to the good of the species must in its every use be respected under pain of serious sin.

OVERPOPULATION AND POPULATION CONTROL

There are perhaps very few speculative topics more tiresome for today's theologian than that of artificial contraception. But aware though moralists are that the question is theologically a dead issue, and aware also of the futility in most cases of any attempt to impart our convictions on the subject to those who are skeptical of or hostile to our ethical principles, the tedious fact remains that at the popular level the topic is currently so live as to be all but inescapable. Whether insistence on a predicted population explosion is responsible for this preoccupation with birth control, or vice versa, is another hen-or-egg conundrum which will probably remain forever unanswered. In any case we can doubtlessly look forward for some time to a continued flow of articles on either subject in both the popular literature and the technical journals, including the theological.

It is for the demographer and not for the moralist to judge the accuracy of various prognostications either as to the expected increase in world population or as to our technological ability to provide material necessities for future generations. But at least as far as any corollary of artificial contraception is concerned, it makes absolutely no difference what the forecast may be, since even the avoidance of the most dire of world disasters could not justify the use of intrinsically evil means. This does not, of course, imply that the problem of overpopulation, whatever its dimensions may be, is to be disregarded or gratuitously minimized; it merely emphasizes the obvious by excluding a priori artificial contraception as an acceptable partial solution to a situation whose future is as yet by no means definitively predicted.

A number of attempts by Catholics to clarify the demographical state of the question have appeared in the recent periodicals which normally provide the material for these surveys.¹² To one of acknowledged incompetence in that particular field, these articles appear to fall generally into two categories. There is a tendency on the part of some authors to focus on the hyperbole in which certain neo-Malthusian prophets indulge, and to assure us that the "explosion" of our presently estimated 2.8 billion global inhabitants must relatively soon undergo a natural deceleration which will of itself preclude anything resembling the calamitous standing-room-only situation envisioned by the more pessimistic. Meanwhile, these writers insist, the potential of our natural resources and of human skill and ingenuity can more than suffice to supply mankind's increasing material needs and even to improve standards of living on a world-wide basis. One gets somewhat the impression from this approach to the problem that the total answer to overpopulation is the relatively facile one of keeping the technological shoulder to the wheel while depending upon biological laws to prevent any intractable population expansion.

Other commentators take a more somber view, though one which is far from desperate. They concede, first of all, for some areas of the world an already acute problem of inability to provide properly for an ever-increasing population—a situation which will inexorably worsen unless effectual corrective measures are taken. Their proffered solution is a complex one, requiring not only increased productivity but also more equitable sharing of wealth and resources, some fewer restrictions on international trade, more generous provisions for emigration, etc. With like realism these same writers also take into consideration the element of population control as a

¹² Nicholas Dietz, "Food Explosion versus Population Explosion," *Social Justice Review* 52 (Sept., 1959) 147-51; William J. Gibbons, S.J., "Why Catholics Reject 'Artificial Birth Control,'" *U.S. News & World Report* 47 (Dec. 21, 1959) 58-61 (reprinted under the title "The World Population Question," *Linacre Quarterly* 27 [Feb., 1960] 3-11); John L. Thomas, S.J., "The Catholic Position on Population Control," *Daedalus* 88 (Summer, 1959) 444-53 (reprinted in *Catholic Mind* 58 [Jan.-Feb., 1960] 4-11); A. McCormack, "Mr. Huxley and Overpopulation," *Monih* 208 (Aug., 1959) 84-91; A. Perego, S.J., "Infondatezza dell'allarme controllista," *Civiltà cattolica* 110:4 (Dec. 5, 1959) 476-88; C. Mertens, S.J., "Problèmes de population et morale: faisons le point," *Nouvelle revue théologique* 81 (Dec., 1959) 1029-48; P. de Loch, "Limitation des naissances et pression démographique," *Collectanea Mechliniensia* 44 (Nov., 1959) 597-609, and *ibid.* 45 (Jan., 1960) 1926; A. Boschi, S.J., "L'onanismo oggi," *Perfice munus* 34 (July-Aug., 1959) 408-15. In four subsequent instalments of this last article, Fr. Boschi discusses various methods of contraception, the philosophical and theological arguments in proof of its intrinsic malice, and some of the more common specious excuses invoked by those who practice artificial birth control; *ibid.* (Sept.) pp. 495-502; (Oct.) pp. 539-48; (Nov.) pp. 612-28; (Dec.) pp. 668-84.

partial factor in any total resolution of the question. While rejecting as they must all illicit forms of birth prevention, they do not hesitate to admit that "responsible parenthood" may on occasion urge individual married couples freely to resolve upon a more temperate exercise of marital rights in order to provide adequately for the genuine needs of an already extant family.

Of these two attitudes discernible in the Catholic literature on the subject, the latter would appear to be the more realistic and certainly the one more likely to command a respectful hearing from those who do not share our views on contraception.

This correlative topic will always pose a threat to peaceful discussion of overpopulation with those of other faiths; and while we cannot afford either to evade this phase of the question entirely or to compromise our moral principles, neither should we presume that all who oppose our convictions on birth control do so out of conscious malice. Our theology includes the established thesis that revelation and faith are morally necessary for a complete and certain knowledge of natural law.¹⁸ Especially at the present time there is perhaps no other precept of the natural law to which that teaching applies as readily as it does to artificial birth control. Undoubtedly there are non-Catholics who in genuine good faith are persuaded that onanism is not the intrinsically immoral practice we know it to be, and no amount of reasoning of itself will convince them otherwise. With such as these, when occasion arises, our most effective approach would seem to be one of unimpassioned exposition devoid of all polemics. Name-calling does more harm than good. The same would have to be said of those flights of rhetoric which impugn contraception in a series of similes and metaphors which are crude, vulgar, and offensive, whatever may be their content of literal truth. The proselytical approach is in the vast majority of cases a matter of love's labor lost and will most often degenerate into a verbal brawl of mutual recriminations. With sincere non-Catholics the most perhaps which can be accomplished—and it is no mean accomplishment—is to disabuse them of certain misconceptions regarding our doctrine and to provide a clear, accurate, and unemotional explanation of what precisely the Church holds in this regard. Even if only for informational purposes, emphasis should be put on the fact that, in accepting the unmistakable teaching of our Church on artificial birth control, we are not submitting to any arbitrary human precept but are rather complying with God's own law which of necessity obliges every human creature to act always in conformity with his human nature as divinely constituted.

¹⁸ For an excellent summary of this teaching, cf. Gerald Kelly, S.J., *op. cit.* (supra n. 6) pp. 150-53.

Writing for a nonsectarian journal, J. L. Thomas, S.J.,¹⁴ illustrates this technique quite effectively. Briefly and clearly he presents the fundamental teaching of the Church as opposing not the legitimate spacing or avoidance of pregnancies but certain immoral means of achieving that result. His subsequent distinction between contraception and periodic continence thus stands far better chance of being understood and appreciated.¹⁵ Our teleological argument is likewise stated simply and well, but without exaggerated confidence in its appeal to the human emotions.¹⁶ Even though it remains a foregone conclusion that articles such as this will not alone win many converts to our doctrine, it is the expository approach to the question which is best calculated to dissipate certain popular misconceptions which are to some degree responsible for the contempt in which Catholic teaching on the subject is so often held. It would be most difficult, for instance, for a thoughtful reader of whatever religious persuasion to pick a quarrel with Fr. Thomas over his reasoned and reasonable final summation of our position on the population problem.

The situation changes radically, however, when it is one of the faithful who questions the validity of an absolute prohibition against contraception. It is the experiential conviction of many that, if and when the practice must be explained to Catholics in terms of something intrinsically evil in the absolute sense of that term, the reason least likely to be contemned is the theological argument, i.e., unabashed appeal to the Church's divine authority to declare and teach the immutable moral law of God. Even of those with some little training in philosophy, many Catholics remain intellectually unmoved by our metaphysical approach to the subject, and under the emotional stress of various domestic difficulties which are often undeniably

¹⁴ *Art. cit.* (supra n. 12). In the interests only of accuracy, and with no desire to cavil, two minor corrections in this article might be suggested. Fr. Thomas ascribes to *positive* law the obligation to contribute to the preservation of the species which is incumbent upon married couples who choose to exercise their marital rights. In context it is clear that he should rather refer to *affirmative* law in contradistinction to a negative precept, and not to positive legislation as traditionally distinguished from the natural law. Later, when speaking of the indirect sterilization resulting incidentally from medications taken for legitimate therapeutic purposes, Fr. Thomas justifies the unintended sterility by recourse to the principle of totality. This principle will suffice to vindicate necessary mutilation of a corporeal organ, but the principle of double effect is indispensable in order to justify any resultant sterility.

¹⁵ On this distinction, which wholly mystifies any number of the uninstructed, cf. also Paul Hilsdale, S.J., "Birth Control or Rhythm?" *America* 102 (Nov. 21, 1959) 236-38.

¹⁶ For a more detailed review of positive Catholic teaching on the ends of marriage, cf. A. Perego, S.J., "La dottrina tradizionale sulla gerarchia dei fini matrimoniali," *Civiltà cattolica* 110:3 (Aug. 15, 1959) 378-92; and "Discussione teoretica sulla gerarchia dei fini matrimoniali," *ibid.* 110:4 (Oct. 17, 1959) 138-52.

and depressingly real, only strong faith and the habit of obedience will suffice to restrain them from choosing contraception as the practical way out of an otherwise insoluble dilemma. (For the Catholic whose desperate straits have generated a certain hostility towards his Church's intransigence in this respect, the words of Pius XII,¹⁷ though no less uncompromising than the language of *Casti connubii*, are less apt to incite to higher emotionalism.)

Even more of a pastoral challenge, as any experienced confessor will attest, is the task of eliciting from onanists who acknowledge their guilt a resolution of amendment which will justify the words of absolution. R. Carpentier, S.J.,¹⁸ strongly advocates as an initial step that such penitents not be spared the salutary realization of the full extent of their guilt before God, and that from this humble recognition of grievous sin they be led gradually to efficacious repentance under the motivating impetus of true love. What Fr. Carpentier proposes calls for confessors whose own spiritual stature will guarantee both the energetic willingness to exert themselves in behalf of such penitents and the ascetical resources from which to derive effectual motivation of a supernatural kind. Unfortunately, these qualifications are not infused with the sacrament of orders nor are they to be acquired from a textbook knowledge of moral theology. But unless, as Fr. Carpentier maintains, we somehow learn to inspire others to a love of God which will counteract the relentless appeal of one of His most attractive creatures, our influence as confessors upon this type of penitent will be little or none. It would take no ascetical genius to suggest that the beginning of the answer is to be found upon the priestly *prie-dieu*.

Descending somewhat abruptly to the market place, there remains to be reported that the oral contraceptives are apparently behaving more or less according to the fond expectations of the most articulate of their exponents. G. Pincus *et al.*¹⁹ are proud to announce, with appropriate credit lines to G. D. Searle & Co. and to the Planned Parenthood Federation of America, that experiments in Puerto Rico and Haiti justify the conclusion that certain progestational steroids were "contraceptively effective" over a period representing 635 woman-years.²⁰ Significantly absent from among a

¹⁷ Allocution to members of the Congress of the Italian Association of Catholic Midwives: On childbirth, marital duties, and sexual ethics; *AAS* 43 (1951) 843-44.

¹⁸ "Lumières de la charité sur un problème pastoral difficile," *Nouvelle revue théologique* 81 (Nov., 1959) 929-46.

¹⁹ "Effectiveness of an Oral Contraceptive," *Science* 130 (July 10, 1959) 81-83.

²⁰ Recent discussions of the moral aspects of antioviulatory medications include L. L. McReavy's "Oral Contraceptives," *Clergy Review* 44 (July, 1959) 431-35, and J. A. Schockaert's "L'Inhibition de l'ovulation," *Saint-Luc médical (Saint-Lucasblad)* 31 (1959) 231-49.

series of eight questions which the signatories propose to themselves at report's end is one which on sheer grounds of professional integrity should embarrass all nine purported authors, even apart from any of their personal convictions regarding the morality of sterilization and contraception: In view of the medical profession's confessed inability even yet to guarantee against seriously detrimental long-range effects of this "medication," by what professional ethic does one justify the use of uninformed human subjects in an experiment to which certain doctors in this country on their own testimony would not allow their own wives and daughters to submit?

Still another facet of the population problem emerges from the juxtaposed possibility of a Catholic as a presidential candidate in our next national election. If a Catholic should succeed to the Presidency, and if a measure should be proposed to provide financial aid for a birth-control program in a foreign country, might the President licitly sign the bill presented to him by Congress? Certainly all would agree that a Catholic could not instigate or positively support such a measure; and most perhaps would favor the opinion to which John R. Connery, S.J., subscribes (leaving the door open, however, for possible arguments to the contrary) that signing the bill would be the equivalent of approving it.²¹ Fr. Connery suggests that two legitimate alternatives remain: either to veto the bill or, if circumstances were to make that preferable course morally impossible, to allow it to pass by default in accordance with that provision of our Constitution which automatically ratifies as law any measure which the President fails to return to Congress within ten days after receiving it.

On the single score of material co-operation this latter solution would seem to be theoretically sound—and it was in the realm of theory that Fr. Connery conceded it as tenable. The element of scandal, however, would make it considerably more difficult to conceive practical circumstances which would allow a Catholic President of our country any legitimate choice other than outright veto. His mere abstention from the issue would be interpreted by very many, Catholics and non-Catholics alike, as equivalent to approving the proposal's eventual passage into law and to that extent as a compromise of his professed religion. It would seem to me that this kind and degree of scandal by silence would be better avoided in the present circumstances of our American society and form of government. It has already been adequately demonstrated, especially in our current President's strong reaction against speculation of foreign aid for birth-control purposes, that, quite apart from immediate moral considerations, cogent political reasons can be readily adduced against the wisdom of such a move. On the strength of these considerations alone it should not be exceedingly

²¹ "May a Catholic President Sign . . .?", *America* 102 (Dec. 12, 1959) 353-54.

difficult for any President to submit his veto without risking the accusation on the part of responsible citizens that he is jeopardizing the nation's best interests because of personal religious convictions.

The limits within which public officials may legitimately co-operate materially in legislation contrary to natural law are difficult to determine exactly. Even more perilous a venture is the attempt to define the extent of civil authority's right to impose juridical restraint upon violations of natural law on the part of individual private citizens. That there is a distinction between sin and crime is rudimentary jurisprudence, and it is universally admitted that the penal power of the state extends only to those deviations from moral rectitude which affect the public good. But when and where does private sin begin to menace community interests and thus become liable to civil action?

D. J. Bradley, M.D.,²² concedes that statutes which make crimes of abortion and euthanasia, for example, are entirely within the competence of a legislature, since these practices affect public order, in which the state has a proper interest. But in reference to laws such as those in Connecticut and Massachusetts which prohibit the dissemination of contraceptive information and the sale of contraceptive devices, he maintains that "making a public crime out of private sin and requiring police invasion of the bedroom for enforcement makes for a statute which is indefensible as a law."

As far as Massachusetts law is concerned, Dr. Bradley's objection does not appear to be entirely apposite. The statute in that state is not directed immediately against the private individual who might practice contraception, but rather against those who would provide him with contraceptive devices or with written or printed information as to how they may be procured.²³ Whatever might be said in criticism of the law's literal application to private transactions of this nature, it would be difficult to deny the commonwealth's right to proscribe the public advertising or sale of contraceptives. Are we not advocating even stronger legislation of this very kind with respect to obscene literature? In any event, to impugn the Massachusetts law on sole grounds of its being enforceable only by police invasion of the bedroom would seem to be more effective rhetorically than juridically.

²² "Medico-Moral Problems and the American Public," *Catholic World* 189 (Sept., 1959) 417-20.

²³ Chap. 272, § 21: "Whoever sells, lends, gives away, exhibits, or offers to sell, lend or give away . . . any drug, medicine, instrument or article whatever for the prevention of conception . . . or advertises the same, or writes, prints or causes to be written or printed a card, circular, book, pamphlet, advertisement or notice of any kind stating when, where, how, of whom or by what means such article can be purchased or obtained, or manufactures or makes any such article, shall be punished by imprisonment in the state prison for not more than five years or in jail or the house of correction for not more than two and one half years or by a fine of not less than one hundred nor more than one thousand dollars."

No one, of course, is so naive as to imagine that the practice of contraception is in any notable way impeded by the local legislation in either Connecticut or Massachusetts. To that extent the law has failed to achieve what presumably was its ultimate purpose.²⁴ Furthermore, the explicitly proximate purpose of the statute remains essentially unaccomplished. Neither the sale of contraceptive devices nor the communication of contraceptive information has ever been effectively curtailed in either state. Except perhaps to forestall the establishment of public birth-control clinics openly advertised and operating as such, the law has proved meaningless in practical effect. Substantially unenforced and unenforceable, it has become in latter years a periodic source of bitter religious animosity arising out of the realization that, even though Catholics cannot justly be held responsible for having originated the enactment, it has been principally due to the Catholic vote in more recent years that efforts at repeal have failed. To regret that the prohibition was ever incorporated into civil statute would seem altogether consonant with our own juridic principles which determine the essential properties of good law.

Granted, however, the fact of its existence, something of a dilemma arises when one considers the correlative problem of our favoring repeal or amendment of the legislation, even to the minimal extent of simply ignoring the issue when recurring referenda are to appear on the ballot. For here again threatens the possibility of scandal by silence. So identified in popular estimation are the distinct moral and legal phases of the matter that failure on the part of Catholic spokesmen to oppose a change in the civil law might easily imply to many a relaxed attitude towards the moral law. Perhaps the difficulty is not insurmountable, but it does appear to be considerable.

MEDICAL PROBLEMS

At a time when responsible physicians are showing themselves increasingly more willing to deny what once were assumed to be valid medical indications for therapeutic abortion, it is regrettable that certain segments of the legal profession are intent upon broadening the permissive scope of existing abortion laws. In May, 1959, in a session devoted to the formulation of a Model Penal Code, the American Law Institute tentatively approved a statute providing that "an abortion is declared to be justifiable if per-

²⁴ "The inference seems necessary that the moral and social wrongs arising from the prevention of conception appeared to the general court so threatening in 1879, when this section was originally enacted, that absolute and unconditional prohibition against the sale, gift, or loan of contraceptive drugs, medicines, or articles for that end was necessary to meet the conditions." *Com. v. Gardner*, 300 Mass. 372, 15 N.E. (2d) 222.

formed by a licensed physician on the basis of belief that 'there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother or that the child would be born with grave physical or mental defect, or the pregnancy resulted from rape by force, or its equivalent . . . or from incest.'"²⁵ Although even final approbation of this resolution by the Institute would not constitute law, it is with the hope of influencing legislative bodies that recommendations of this kind are made.

Apparently this proposal had not gone entirely unchallenged, for according to a brief report compiled by J. T. Tinnelly, C.M.,²⁶ an early motion was made and seconded that any and all justification for abortion be stricken from the law—a suggestion greeted by “a wave of incredulous laughter.” One member was heard in defense of the unborn child’s right to life, while a second speaker warned against the dangers of founding law on purely emotional considerations and in disregard of ethical and religious principles. Their motion was overwhelmingly defeated and the proposed statute approved. The Institute did concede that “American public opinion is not as yet prepared” to accept abortion as a measure to prevent the birth of an illegitimate child.

In explanation of this obtuseness to moral considerations, Fr. Tinnelly observes that the Institute is wholly composed of legal experts whose professional qualifications are restricted to the field of American and English law. While aware of their lack of competence in other areas of specialty, and quite cognizant of the need to seek consultation with sociologists, economists, psychiatrists, and other such experts when legal involvements require it, the members remain generally oblivious of the pertinence of moral principles to certain of their deliberations or of the competence of moralists to contribute to their discussions. Fr. Tinnelly prefers to believe that this bespeaks oversight rather than malice, and he suggests that the final draft of the proposed Code would benefit considerably if qualified individuals both within and without the legal profession would make their voices heard on those provisions which admit of moral implications.

One such voice was promptly raised by T. Raber Taylor,²⁷ a practicing attorney, who shrewdly argues his case principally from the canons of

²⁵ Quoted in *Linacre Quarterly* 26 (Nov., 1959) 138.

²⁶ “Abortion and Penal Law,” *Catholic Lawyer* 5 (Summer, 1959) 187–91. Fr. Tinnelly promises that future issues of this journal will consider in detail other moral problems posed by the Model Penal Code.

²⁷ “A Lawyer Reviews Plan for Legalized Abortion,” *Linacre Quarterly* 26 (Nov., 1959) 137–40.

good medicine and good law. He cites the fast-growing tendency in the courtrooms of our various states to reject as erroneous the Holmesian dictum that an unborn child, as a part of its mother, is possessed of no personal identity and hence could not, subsequent to birth, maintain a civil action for prenatal injuries. The proposed statute, Mr. Taylor maintains, contradicts the decisions of those courts which in recent years have declared in favor of the unborn child as a human person with corresponding individual rights.²⁸ Moreover, it so distends the legal condonation of therapeutic abortion as to flout reliable medical testimony that good obstetrics does not require the sacrifice of the inviable fetus in the interests of the mother's physical or psychic health.²⁹ For the professional good of both law and medicine, Mr. Taylor recommends the legal repudiation of therapeutic abortion.

More encouraging than ALI's response to a moral challenge was the general attitude of those in attendance at the National Conference on the Legal Environment of Medical Science held in Chicago, May 27-28, 1959, under the joint auspices of the National Society for Medical Research and the University of Chicago. Not only were Catholic moralists invited to contribute to these discussions, but their views received most respectful hearing both in general sessions and in committees on which they served. The Conference's initial preoccupation with legal and medical aspects of experimental medicine eventually yielded to a recognition also of strictly ethical considerations in our sense of that term.

The Conference concentrated on three major aspects of investigative medicine: (1) legal and ethical restrictions on experiments performed on human subjects; (2) use of cadavers, organ transplants, and autopsy procedures; (3) medical experiments involving the use of animals. Of these, the first perhaps represents for the theologian the most provocative problem, since we have yet to define with any degree of exactitude the maximum limits beyond which one may not legitimately go in submitting to experimentation for the benefit of others. On this point especially are conscientious research physicians desirous of information. They already recognize, if only from a legal point of view, certain other conditions which we would attach to investigative procedures in which human subjects are involved. As

²⁸ Since the publication of Mr. Taylor's article, the Supreme Court of New Jersey, according to an NCWC release, returned a unanimous 7-0 decision overruling an eighteen-year-old opinion that "before birth a child is merely part of his mother without separate existence or personality."

²⁹ For a sampling of excellent references to the medical literature in support of this contention, cf. Gerald Kelly, S.J., *op. cit.* (supra n. 6) pp. 75-83.

Irving Ladimer, S.J.D., emphasized in a prepared paper presented in general session:

A basic principle of constitutional and natural law gives to the individual the right to protect his bodily integrity, so that any unauthorized invasion constitutes ground for civil liability. . . . the researcher who employs a person in his research must obtain valid consent. Malpractice cases are replete with illustrations of restraint on physicians where there is no clear, voluntary, competent assent. They have limited the extent to which physicians, especially surgeons, may presume on implied authorization.³⁰

The same emphasis on informed consent was repeated by Nathan Hershey, Health Law Center, University of Pittsburgh, who also added that only those procedures should be employed which give reasonable assurance that all risks of danger to the subject have been reduced to a minimum. "The advantage," he concluded, "to be derived by the public, if considerable, justifies a procedure which carries slight risk or remote danger, provided there be no safer route to acquiring the information."³¹

At one committee meeting during the Conference, discussion centered upon certain ambiguities in the Nuremberg Principles governing experimentation on human subjects.³² It is interesting to note substantially the same doubts raised from abroad by Dr. A. S. Tavares.³³ Though he does not quote Rule One in its totality,³⁴ the doctor complains that it would appear to exclude from any form of experimentation the mentally incompetent or retarded who would themselves be incapable of giving informed consent. Should not explicit provision be made for certain forms of experimentation on such subjects as these as well as upon minor children?

Perhaps the answer lies in certain distinctions which are now commonly

³⁰ *Bulletin for Medical Research* 13 (May-June, July-Aug., 1959) 6.

³¹ *Ibid.*

³² The principles may be found in *Linacre Quarterly* 20 (Nov., 1953) 114-15.

³³ "Experimentação em medicina," *Ação médica* 24 (July-Sept., 1959) 12-23.

³⁴ "The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice without the intervention of any element of force, fraud, deceit, duress, over reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment."

made by moralists who discuss the problems of experimental medicine.³⁶ To the theologian, experimentation in its strict sense implies the use of treatments or procedures as yet not fully established scientifically, not for the sake of any benefit which may accrue to the subject but for the purpose of discovering some truth or of establishing some hypothesis. The notion further presupposes that the subject is thereby exposed to some significant degree of risk or inconvenience; for if this element is lacking, there is little or no moral problem involved. Consequently, when experimentation in this restricted sense is undertaken, the subject at some notable risk to self submits to it in order to serve the common good by co-operating in the advance of medical science.

In a broader sense experimentation is also predicated of the use of uncertain remedies in order to cure or control a present malady for which no sure remedy is available. Understood in this way, the experiment has for its immediate and primary purpose some benefit for the individual patient who would otherwise be beyond help. Common sense and established moral principles would concede the legitimacy of experimentation in this analogous meaning of the term.

Unfortunately, the Nuremberg Code makes no such distinction and supplies no precise definition of experimental medicine; and in civil law also the term remains ambiguous. Although it may be presumed that the tribunal referred to strict experimentation, there is no guarantee as yet for any doctor that a civil court would not take the broader interpretation if the rule were to become law without undergoing further qualification. In its application to minor children and to the mentally deficient the rule as it now reads is simply prohibitive, as it doubtlessly should be for experimentation in its strict meaning when any considerable risk for the subject is entailed. But certainly experimentation in its broader sense can be authorized by parents and guardians acting in behalf of their legitimate charges when there is no other equally effective means available for effecting the cure or control of a malady from which these patients are suffering. And the same proxy consent can also suffice for procedures which are clearly devoid of all significant risk or inconvenience for the subject, but which are em-

³⁶ Cf. Gerald Kelly, S.J., *op. cit.* (supra n. 6) pp. 261-69; Thomas J. O'Donnell, S.J., *Morals in Medicine* (Westminster, Md.: Newman, 1957) pp. 96-104; Jules Paquin, S.J., *Morale et médecine* (Montreal: L'Immaculée Conception, 1957) pp. 363-69; John J. Shinnars, *The Morality of Medical Experimentation on Living Human Subjects in the Light of Recent Papal Pronouncements* (Washington, D.C.; Catholic Univ. of America Press, 1958); E. Tesson, S.J., "Réflexions morales," *Cahiers L'Annec* 12 (June, 1952) 27-39. Fr. Tesson's article is one in a long symposium on the subject of medical experimentation to which the March and June issues of *CL* were that year entirely devoted.

ployed on this class of patient exclusively in the interests of medical research and not as therapy.

If isolated from its context and made a cardinal principle, Rule Two³⁶ might also be open to the misinterpretation which Dr. Tavares fears. This directive's emphasis upon "fruitful results for the good of society" could conceivably suggest a totalitarian concept of the subject's subordination to the common good, although assuredly that was not the philosophy of those who formulated the Code. Since the common good is professedly the primary purpose of experimentation, proper emphasis in the reading of the rule should be placed on "fruitful results," commensurate with the recognized risk willingly assumed by a properly informed subject acting within the limits of his right to put his body and its members at the service of others.

There is apparent in the final clause of Rule Five, however, an obscurity which could represent failure to appreciate fully the highly restricted nature of man's right to dispose of his bodily self: "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." One's own willingness to submit to an experiment does not of itself justify every conceivable risk. As every student of moral theology knows, we are restricted by "the immanent teleology of our nature" in any disposition we may make of our bodies and their members. Dr. Tavares makes no attempt to define the limits beyond which one may not go for experimental purposes, but simply notes the failure of the Nuremberg Code to acknowledge adequately that fact of limitation imposed by our very creaturehood.

As regards our maximum right to submit to experimentation for the benefit of others, one might approach an approximate answer by first marking off the area of uncertainty. When risk of bodily harm is insignificant, there is, of course, no valid reason for forbidding a subject to submit to the procedure. At the other extreme, no one may legitimately consent to a procedure which entails certain death as a necessary means of achieving the experiment's purpose. (Although there is very good reason to suggest that a criminal already justly condemned to death might licitly choose this form of execution, such a possibility represents the sole exception to an otherwise universal absolute.) In the vast intermediate area when hazard to life or health may range from notable to very serious, the maximum limit of

³⁶ "The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature."

permissibility is not as yet sharply defined. But at the present time it seems safe to say that a subject may for the benefit of others authorize and submit to any experimental procedure which will not seriously and permanently impair his functional integrity or cause a very grave risk to his life. Implicit in this concession is the supposition that the procedure has been adequately tested short of human experimentation, that it promises reasonable hope of achieving a good proportionate to the risk, that there is proportionate necessity here and now for employing human subjects, and that all reasonable care is taken to avoid even unintended harm to any who submit to the experiment.

As with the problem of human experimentation, so also with that of organic transplantation from living human donors, the law of charity would appear to be its ultimate justification in any proper defense of the procedure. Though there is little need at this stage to comment on a discussion of the transplantation question by J. Snoek, C.S.S.R.,⁸⁷ attention should be called to its excellence. Fr. Snoek provides a well-ordered presentation of the arguments which have been advanced over the years by the most able proponents of the favorable opinion—arguments, however, which have already been discussed at sufficient length by various authors of these Notes in the past.

Mention should also be made of a most convenient summary of the current theological status of various medical procedures on which the opinions of moralists differ. G. W. Healy, S.J.,⁸⁸ discusses such topics as organic transplantation, acute hydramnios, ectopic pregnancy, removal of the irreparably scarred uterus, and male sterility tests. After surveying the area of conflict and citing the authorities on either side of each dispute, Fr. Healy concludes in all five instances that the more benign opinions enjoy sufficient probability to make legitimate their use in practice.

To a question relating to the licitness of cosmetic surgery, L. L. McReavy⁸⁹ wisely refrains from giving an unqualified answer, since a variety of circumstances may in one instance serve to justify what in other cases could be sinful, either venially or mortally. Because even surgery for aesthetic reasons can qualify as a mutilation of sorts, Fr. McReavy draws his solution from the principle of totality and from the explicit teaching of Pius XII on this specific application of that principle. Physical beauty is of itself a corporeal good, and its preservation or restoration within reasonable

⁸⁷ "Transplantação orgânica entre vivos humanos," *Revista eclesiástica Brasileira* 19 (Dec., 1959) 785-95.

⁸⁸ "Medical Ethics: Some Current Doctrine," *Philippine Studies* 7 (Oct., 1959) 461-79.

⁸⁹ "Plastic Surgery for Beauty's Sake," *Clergy Review* 44 (Sept., 1959) 553-55.

limits conduces accordingly *ad bonum totius*. Improper motivation, ranging from vanity to seriously sinful intent, can vitiate an otherwise legitimate surgical repair, as can also disproportionate risk. When evaluating the risk, however, it should not be forgotten that some physical deformities can be of so grotesque a nature and so psychologically harmful to the individual as to make their correction permissible, even at considerable risk, if there is reasonable hope of doing so successfully by means of surgery.

This last reminder deserves some little emphasis. Unfortunately, cosmetic surgery is a term rather commonly applied not only to surgical beauty aids and restoratives but also to the correction of serious physical disfigurements. Whatever may be said about motives of vanity when only the acme of pulchritude is at stake, there need be no necessary association of that motivation with other surgical procedures to which the term "cosmetic" is also applied in something of a euphemistic sense.

A matter of more general practical concern in this country at present is the growing shortage of service patients in our hospitals and the consequent threat to the effectiveness of our hospital teaching programs. At least in principle the medical profession repudiates the use of private patients for training purposes, either medical or surgical, unless the patient is fully informed of and consents to the inclusion of intern and resident staff doctors as assistants to the attending physician of his choice.⁴⁰ Some have seen in this stricture the creation of an awkward dilemma: either an acknowledged right of the private patient must be ignored in the interests of good medicine for the future, or else medical education must suffer out of respect for the patient's right. It is reassuring to see a third and more acceptable alternative emerging from a source which forestalls any a priori rejection on presumed grounds of impracticality. P. W. Weld, M.D., and L. Horn, M.D.,⁴¹ report most favorably on three years' experience with willing private patients as teaching material in the Rochester (New York) General Hospital. The Rochester project, operative since 1956, leaves physicians and their private patients entirely free to dissociate themselves without apology from any pedagogic phase of the hospital's function. Those who freely choose to participate in the training program are visited on twice-weekly rounds by a group of house doctors under the supervision of a staff physician appointed on the basis of his professional qualifications and teaching ability. Reduplicated bedside observation and examination, coupled with subsequent discus-

⁴⁰ Cf. *Journal of the American Medical Association* 168 (Nov. 15, 1958) 1556; THEOLOGICAL STUDIES 20 (June, 1959) 241-42.

⁴¹ "Use of Private Medical Patients for Teaching Purposes in the Community Hospital," *Journal of the American Medical Association* 171 (Nov. 14, 1959) 1449-50.

sion between students, preceptor, and attending physician, represent the only concession asked of the patient. Almost universally, according to the report, patients are most willing to oblige.

It is not at all difficult to conceive the willingness of most people to accept medical service of this kind under the ultimate supervision of their own physicians. At the surgical level, however, it may require considerably more persuasion to convince them that it is no less to their advantage to allow a resident surgeon to perform a substantial part of a pending operation. Nonetheless, the only legitimate way out of the difficulties threatening proper surgical training would seem to be some adaptation of the medical program sponsored by the Rochester group. It remains for the medical profession, collectively and individually, to devise some effective means of educating the general public to the point where informed consent to a resident's surgical ministrations under competent supervision will be readily granted without fear on the patient's part that he is thereby jeopardizing his own interests.

SACRAMENTS

Commentators all agree that the canonical specifications for the licit baptism of infants outside danger of death make no explicit provision for the children of nonpracticing Catholics who cannot be correctly classified as apostates, heretics, or schismatics. Authors generally apply to this situation the "dummodo Catholicae eius educationi cautum sit" of can. 750, §2, although there is some divergence of opinion as to the requisite degree of assurance regarding the child's future education as a Catholic. Quite often when such a child is presented for baptism by one or both parents, a credible promise to provide proper religious training can be readily elicited. If so, the priest not only may but must baptize, and, as more than one author has had occasion to point out, refusal of baptism as a penalty upon parents for their personal defections in religious matters cannot be countenanced. But sometimes there may be serious reason for doubting the sincerity of a promise to rear one's child as a practicing Catholic, especially when the inefficacy of previous pledges is patent in the total lack of religious education provided for older children of the same marriage. In circumstances of this kind, how should a priest in prudence, and without explicit direction from common ecclesiastical law, respond to a parental request for an infant's baptism?

While discussing such a case, J.-C. Didier⁴² refers to local legislation in France which requires from the parents a guarantee—in writing, according

⁴² *L'Ami du clergé* 69 (July 30, 1959) 491-92.

to some diocesan directives—that not only the child to be baptized but also the older siblings, in so far as is possible, will receive catechetical instruction in the Catholic faith.⁴³ Presumably, subsequent failure to fulfil this promise would result in refusal of the sacrament if and when in the future the same parents present another child for baptism.

In L. L. McReavy's⁴⁴ consideration of essentially the same problem, one can perceive a distinct effort to demonstrate that the *mens ecclesiae* on the point is more lenient than many perhaps assume. While granting that the Church is unwilling that the sacrament of baptism should be profaned "by letting it be used for the mere enrolment of juridical subjects who will not continue as living members of the Mystical Body of Christ," Fr. McReavy invokes several pertinent documents of the Holy See in support of his contention that the requirements of the Church in this regard are "relatively modest." Of the phrases employed by the Holy Office in reference to the future Catholic education of such a child, perhaps the strongest is "just and reasonable hope," and it would be difficult to coin a milder expression than the "possibilis spes" which that Congregation later used in the same context. It is Fr. McReavy's suggestion that in appraising the factors which constitute sufficient expectation of a child's future training in Catholicism under the care of nominal Catholics, one should not ignore the efficacy of baptismal grace operating in the child, the influence of responsible godparents, and the apostolic zeal of parish priests.

In a similar vein Kyran McCrann, O.F.M.,⁴⁵ eventually concludes that baptism may be administered to any infant upon request of its Catholic parent(s), provided only that there is "some hope" of a Catholic education. Fr. McCrann rests his case largely upon the failure of can. 770 to distinguish between good and bad members of the flock when insisting on the obligation of Catholic parents to have their children baptized as soon as possible after birth, as well as on the 1796 response of Propaganda to the effect that "Even though the parents are indifferent or otherwise of such a character as to hold out little hope that the child will be brought up in the practice of the Catholic faith, the child may and must be baptized by the priest, especially when the parents themselves ask for it."

There would seem to be no question about the Church's own benignity

⁴³ The directive referred to by Fr. Didier is contained in *Directoire pour la pastorale des sacrements à l'usage du clergé* (Paris: Bonne, 1951), issued by the bishops of France after their plenary assembly in April, 1951. For a commentary on the Directory, cf. J. Putz, S.J., "A Pastoral Theology of the Sacraments," *Clergy Monthly* 16 (1952) 3-18.

⁴⁴ "Baptism of Child of Lapsed Catholic," *Clergy Review* 44 (Nov., 1959) 690-92.

⁴⁵ "Some Notes on Infant Baptism," *South African Clergy Review* 11 (Oct., 1959) 6-8.

in the face of this problem, and no reason to challenge the observation made by Fr. McCrann that she apparently prefers that we try to find reasons in favor of baptism in such instances rather than reasons for refusing it. It is, of course, impossible to escape the fact that the "spes educationis" is most consistently included in any theological discussion of the question, as it is also in documentary pronouncements; and it would doubtlessly be rash of any individual to exclude this element altogether. But the fact of its inclusion in our common teaching suggests several questions which might make for interesting speculation.

First, can. 770 affirms a grave obligation on the part of Catholic parents to provide for the baptism of their children; can. 1113 is but one of several which express the serious duty of including in the education of children proper instruction in faith and morals. Are these two obligations, as well as the corresponding rights to discharge them, distinct one from the other to the extent that a parent who even might explicitly resolve not to raise a child as Catholic would still retain the right to have it baptized? Or do the two obligations comprise *quid indivisibile* in the sense that baptism is but the first step in the process of religious education and that the right to have one's child baptized is contingent upon one's willingness to continue the educational process? Only on the latter supposition, it would seem, should the "spes educationis" affect the decision as to whether or not the offspring of nonpracticing Catholics should be baptized.

Secondly, unlike most authors who treat the question, both Fr. Didier and Fr. McReavy allude in passing to the *child's* right to baptism. The former makes that right dependent upon parental willingness to provide a Catholic education, while the latter speaks of it as "the correlative right" acquired by virtue of the grave parental obligation under divine law to make provision both for baptism and for education in the faith. If this right to baptism can be correctly predicated of the offspring of Catholic parents, does it not become quite difficult to explain how and why the sacrament could ever be denied because of the parents' perversity?

The only answer which presently occurs is based on the analogy which should exist between the requirements for the baptism of adult converts and those stipulated for the baptism of infants. An adult's request to be baptized, without concomitant intention to live thereafter as a Catholic, would certainly not entitle him to the sacrament. As regards infants, the Church recognizes parental request for baptism in lieu of the child's nonexistent intention to receive it. By the same token, is she not being only consistent in requiring vicarious assurance of sorts that the infant of today will be the practicing Catholic of tomorrow? It would seem, then, that the right to baptism in these cases is more properly attributed to Catholic parents than

to their infant children, and that this right must be acknowledged as long as there is any hope that instruction in the faith will not be lacking in the future. And when parental request for baptism comes from Catholics, even of the nominal variety, it should not be exceptionally difficult to discern the "spes possibilis" with which the Holy Office contented itself when speaking of the child's subsequent religious training.

Going from the neonatal to the moribund, and expanding the *status quaestionis* so as to include also the sacraments of penance and extreme unction, one finds the matter of sacramental ministrations to the unconscious dying still a hardy perennial among moot theological questions. The query as proposed to James Madden⁴⁶ limits his discussion to a comatose patient about whose religious status nothing is known, and the Monsignor proceeds to his answer by first enumerating the various possible states of soul of which any one may represent the factual truth in a given case. Stressing the strong possibility that in any individual instance the priest may be dealing either with a person who, though not baptized, is a fit candidate for baptism, or else with a Christian properly disposed for the other sacraments, the author concludes that in all such cases the three sacraments should be administered conditionally "unless the public good of the Church would thereby suffer."

Em. G.⁴⁷ in his turn deals with only two specific phases of the same problem, viz., the case of a Moslem and that of a Protestant, both known as such respectively, each comatose and dying. Despite the fact that, prior to losing consciousness, the Moslem had conversed piously of Allah with a Catholic priest and then listened respectfully to the latter's recitation of the Pater, Ave, and an act of contrition, Fr. G. declares himself unable to justify the subsequent conditional baptism of the unconscious Mohammedan.⁴⁸ Whereupon the same author invokes the authority of Cappello and Vermeersch to recommend the conditional administration of baptism, *secluso scandalo*, to the Protestant Christian who previously had evinced no indication of desire for any sacrament. Since nothing is said in this latter instance about extreme unction, presumably Fr. G. would omit it—an inconsistency which G. Rossino,⁴⁹ in agreement with many before him, explicitly remarks while commenting favorably on the administration of sacraments

⁴⁶ "Administering the Sacraments to an Unknown Dying Man," *Australasian Catholic Record* 36 (Oct., 1959) 315-19.

⁴⁷ "Audaces sacramentaires d'un aumonier vieilli!" *L'Ami du clergé* 69 (Oct. 22, 1959) 645-46.

⁴⁸ For a theological appraisal of the quality of faith professed by sincere Mohammedans, cf. André d'Alverny, "Chrétiens en face de l'Islam," *Études* 289 (May, 1956) 161-75.

⁴⁹ "Moribondo che rifiuta i sacramenti," *Perfice munus* 34 (Oct., 1959) 558-59.

to an unconscious Catholic who had previously, while still in possession of his faculties, refused to go to confession.

In view of the fact that these Notes have already several times in the past discussed the general question of ministering sacramentally to the unconscious dying, perhaps the references given below⁶⁰ would be comment sufficient to recall again the theological legitimacy of the opinion which maintains as solidly probable that "all three sacraments, Baptism, Penance, and Extreme Unction, may be given conditionally to the unconscious [dying], whatever their previous dispositions may have been, provided always that scandal can be avoided."⁶¹ And though some would maintain that this last proviso would be difficult to fulfil in practice with any degree of frequency⁶²—at least as regards baptism and extreme unction—this question of fact not only does not invalidate the thesis as enunciated but could be respectfully challenged out of the experience of many.

When speaking of the "last sacraments," it may not be entirely unorthodox to include confirmation administered according to the provisions of *Spiritus sancti munera* of 1946. This general decree, conferring limited powers of confirmation upon pastors and certain of their equivalents, has over the years received its fair share of private commentary. But the subsequent particular indult of 1948, granted bishops in this country for communication to some hospital chaplains, was allowed to pass singularly almost without theological discussion. Even the text of the rescript was not abundantly available in the standard journals,⁶³ and it was not until after 1954 that it appeared in an annual supplement of *Canon Law Digest*. Presumably, local chanceries have long since informed their respective hospital chaplains of the renewal or cessation of their confirmation faculty from December 19, 1959, the expiration date of the last previous extension *ad triennium*. To the best of my knowledge, it is not yet possible to cite any public authoritative source in substantiation of either the renewal or the termination of the indult as originally conceded.

But apparently the faculty granted for the United States has also had its counterparts elsewhere with substantially the same limitations. One common restriction allows the hospital chaplain to confirm only infants who are in danger of death. Another qualification limits the type of institution to

⁶⁰ THEOLOGICAL STUDIES 20 (June, 1959) 252-53; 19 (June, 1958) 196-98; 17 (June, 1956) 195-96; 13 (1952) 94-97.

⁶¹ L. L. McReavy, *Clergy Review* 40 (Feb., 1955) 87.

⁶² Cf. Patrick O'Brien, C.M., *A Handbook for Hospital Chaplains* (St. Louis: Herder, 1959) p. 250.

⁶³ The Latin text may be found in *Jurist* 9 (1949) 261-62; an English version is contained in *Canon Law Digest* 4, 253-54.

whose chaplain the faculty can be communicated and specifies "so-called maternity hospitals for parturient women and . . . orphanages."⁵⁴ With these provisos in mind, L. L. McReavy,⁵⁵ writing from England, undertakes to answer a hospital chaplain who inquires whether he may use his indult to confirm adult mental deficient, "many of whom . . . are still children in mind." Fr. McReavy qualifies his affirmative answer with two stipulations: (1) provided that the confirmands are mentally deficient in the sense of can. 88, § 3, i.e., to the point of being habitually devoid of the use of reason; and (2) provided that they are patients in the type of institution specified in the indult. And here it is interesting to note that the 1956 rescript for England and Wales defined in somewhat more detail the kind of establishment, apart from maternity hospitals and orphanages, wherein the faculty could be exercised, viz., "in hospitals in which some section is reserved exclusively for infants." It would seem to follow, as Fr. McReavy notes, that unless the institution or part thereof which houses the mentally deficient is one reserved entirely for those who qualify as canonical infants, the chaplain's faculty cannot be exercised.

In the course of several instalments in his monthly "Notes and Queries," J. Sanders, S.J.,⁵⁶ considers various consequences of the Church's legislation forbidding the celebration of Mass without a server. Much of his discussion necessarily revolves about the 1949 Instruction of the Congregation of the Sacraments which, after reiterating the prohibition of can. 813 and explaining the law's appropriateness in view of the social nature of the Mass, goes on to enumerate certain exceptional circumstances in which the legislation in its literalness need not apply. This last item has ever since been the subject of marked disagreement among commentators, the majority of whom have interpreted *sensu negante* the specification of but four situations in which a priest would be justified in departing from the letter of the law. Minority opinion, on the other hand, maintains that the Instruction's catalogue of excusing causes represents typical situations to which are reducible other circumstances which the Congregation did not note but left to the decision of an informed and prudent conscience.

Fr. Sanders ultimately expresses a decided preference for the milder interpretation, although such a statement as this among his preliminary observa-

⁵⁴ Although the "brephtropheia" of the Latin text has been commonly translated as "orphanages," the word admits etymologically of wider extension and could also, it would seem, include children's hospitals.

⁵⁵ "Mental Deficients—Hospital Chaplain's Faculty to Confirm," *Clergy Review* 44 (Dec., 1959) 759-60.

⁵⁶ "Mass without a Server," *Clergy Monthly* 23 (Sept., 1959) 281-84; (Oct., 1959) 323-28; (Nov., 1959) 368-69.

tions may prove momentarily disconcerting for the reader: "My own view is that the cases [in the Instruction] are given *taxative*, and not merely as examples. But as I understand the Instruction, these cases are given *taxative* as exceptions to can. 813, not as the only cases that provide a sufficient reason to be excused from observing the law about the Mass server." If my understanding of Fr. Sanders' position is correct, he would conceive can. 813 as now equivalently containing four, and only four, explicit exceptions to which the law is not intended to apply. However, as does all purely positive legislation, the canon still admits of excusing causes over and above its own express exceptions. Although he does not suggest specifically what such excuses might be in the concrete, neither does Fr. Sanders deny the opinion of those who maintain that, granted the moral impossibility of procuring a server, a priest for reasons of devotion alone would on occasion and *per modum actus* be justified in celebrating Mass without one.

Whether there is an essential difference between Fr. Sanders' solution and that originally proposed by Gerald Kelly, S.J.,⁵⁷ is perhaps a matter of sheer semantics. But it would seem altogether safe to say that one more voice has been heard in favor of the opinion that can. 813 is as yet subject to the same interpretation which was acknowledged as acceptable prior to 1949.

One would have to infer, however, that M. Huftier takes the more rigorous view of the same legislation. In response to the question direct, "May one celebrate Mass without a server?", Fr. Huftier⁵⁸ repeats the pertinent sections of *Mediator Dei* and the Instruction before answering in such a way as to imply that in his opinion, except in the circumstances expressly cited by the Congregation, at least an "imperfect" server must be at hand in order to justify the celebration of any Mass.

Another aspect of the same problem treated by Fr. Sanders regards the obligation of pastors and religious superiors to provide servers in the churches and chapels for which they are responsible. All would surely agree that such a duty, within reasonable limits, must be acknowledged. It should not be exceedingly difficult in the great majority of churches in this country—and far less so in religious communities—to make proper provision for that number of Masses which, according to normal expectations, will be celebrated at the usual hours on a given day. Difficulties, of course, can occur when other would-be celebrants present themselves, especially if they come at an unusual time. While courtesy and charity would urge that reasonable efforts be made to provide even for these unexpected cases, the inconvenience of so doing would very often excuse the pastor or superior from any obligation in

⁵⁷ "Mass without a Server," *THEOLOGICAL STUDIES* 11 (1950) 577-83.

⁵⁸ "Peut-on dire la Messe sans servant?", *L'Ami du clergé* 69 (Sept. 3, 1959) 529-31.

this regard. And as Fr. Sanders further notes, genuine inconvenience would often likewise absolve potential servers, even in seminaries or religious houses, of any obligation to volunteer their services at a time when other duties are scheduled. Circumstances such as these can certainly contribute towards a moral impossibility of procuring a server. It remains then for the priest to decide in prudence whether there is also reason sufficient to justify his proceeding without one.

Weston College

JOHN J. LYNCH, S.J.