

NOTES ON MORAL THEOLOGY

GENERAL MORAL

Among the works most often mentioned as leading the way towards a new orientation of moral theology is *Das Gesetz Christi*¹ by Bernard Häring, C.S.S.R., better known in this country in its French edition, *La loi du Christ*.² In a discourse to a group of his French confreres, published in the supplement to *Vie spirituelle*,³ Fr. Häring explains why he felt a new approach was needed. He complains that most of the moral books of the last three centuries, with a few exceptions, have been predominantly casuistic and juridical, and aimed exclusively at preparing priests for confessional work. Quite often, at least in French manuals, juridical casuistry covers as much as nine tenths of the book. Moral theology should not be a mere catalogue of commands and prohibitions. The New Law is a law of grace and response to grace, of assimilation to Christ. A juridic mentality tends to be too minimizing. It cannot vivify, as the following of Christ should. Greater stress should be placed on the interior law of love, on growth in Christ, with greater emphasis on the obligation of striving for perfection.

In much of his complaining, Häring, like many who make similar complaints, seems to confuse moral theology with ascetical and pastoral theology. Certainly all will grant that trying always to get away with the minimum is unworthy of one who truly loves God. But it is another thing to say that one sins by not striving always for the better. Our Lord Himself differentiated: "If thou wilt enter into life, keep the commandments" (and it might be noted that the majority of the ones He mentioned are negative in form); "If thou wilt be perfect. . ." (Mt 19: 17-21).

As an end for morality, beatitude, even of the beatific vision, is for Häring too selfish, too egotistic. Hope should rather be developed as a community virtue, hoping for the universal accomplishment of God's will for all people. The positive teaching here is excellent, but to overstress it can lead to discouragement and almost to despair for many very real people. The teaching of the Church implied in the condemnation of quietism⁴ is a great consolation to many fervent souls dedicated to the service of God, who by their God-given nature hope for their own reward too.

EDITOR'S NOTE.—The present survey covers the period from January to June, 1960.

¹ Freiburg: Wewel, 1959.

² Paris: Desclée, 1955, 1957, 1959.

³ "Renouveler la théologie morale? Pourquoi?", *Vie spirituelle, Supplément* 53 (2nd trimester, 1960) 115-30.

⁴ *DB* 1328 ff.

Häring would have moral theology treat even the sacraments simply as means to a greater union with Christ, and not pay so much attention to obligations. This aim, too, is admirable, but hardly moral theology. It is rather pastoral theology, which certainly can and should be inculcated along with moral theology; but it is not moral theology. How can a science of right and wrong with respect to the sacraments overlook the positive institution of Christ and the admitted authority of the Church to define what is of obligation in their regard?

Finally, Häring's stress on the importance of the personal dialogue of the soul with Christ and minimizing negative prohibitions might easily give an occasion to many moderns to follow the teaching of situational ethics, to consider themselves excused from the strict negative precepts of the moral law, especially with regard to contraception and remarriage after divorce, which are certainly a part of the teaching of our Lord and of St. Paul. In answer to just such an objection, in the discussion following his conference,⁵ Häring pointed out that nature and natural law are also expressions of the will of Christ.

At an almost opposite pole from this modern approach is the conservative holding to ancient tradition not only in matter and method, but even in form, of some Dominicans who want to use St. Thomas' *Summa* as a textbook for their theology classes. Somewhat in this vein, John Cahill, O.P.,⁶ defends the *Prima secundae* of St. Thomas against what he terms the kerygmatic approach and organization of moral theology. Against complaints that this part of the *Summa* is too ethical and psychological for a theology course, he insists that the sapiential nature of theology demands consideration of the whole of reality. And certainly the study of the nature of man and of his psychic acts is valuable background for moral theology.

A good example of the more kerygmatic approach by a Dominican is *Principes de morale chrétienne*⁷ by Marc Trémeau, O.P. He gives a definitely more theological treatment to the general principles of morality than one usually sees. But it is hardly a scientific work of theology, and it contains a number of flaws, two of which may be worth consideration here. As recounted in one review,⁸ the book is weak in its attack on probabilism. The author asserts, for example, that probabilism is illogical in making three exceptions to the application of the principle, *Lex dubia, lex nulla*: on means

⁵ *Vie spirituelle, Supplément* 53 (1960) 130-31.

⁶ "The Sapiential Character of Moral Theology," *Irish Theological Quarterly* 27 (Apr., 1960) 132-45.

⁷ Paris: Lethielleux, 1959.

⁸ *Clergy Review* 45 (June, 1960) 376-78.

necessary for salvation, on the validity of sacraments, and on the possible invasion of the certain right of another.⁹ In this he fails to recognize that these are not really exceptions to probabilism but examples of cases in which a higher and certain law prevails. I believe that he is also incorrect in stating that probabiliorism would be more consistent in applying the same rule to all matters. It is my understanding that probabiliorists also teach that in these matters the safer course must be followed, and the more probable is not necessarily the safer, which is only concerned with the objective possibility of material transgression and has nothing to do with the motives for believing it true.¹⁰

If this attack on probabilism seems to indicate a tendency towards severity, it becomes even more apparent in the chapter on sin.¹¹ Trémeau holds that all positive imperfections are venial sins, even though he admits a distinction between a precept and a counsel. For him, an act contrary to a counsel is a venial sin, and he claims the majority of Thomists for his side.

Certainly on his side is E. Ranwez,¹² according to J. Etienne, a former pupil of his who seems to agree with him.¹³ But to my knowledge, by far the majority of moralists, whether Thomist or otherwise, hold the opposite.

Perhaps the difference of opinion hinges on one's whole approach to reality, or at least to moral theology. If sin, including venial sin, is a transgression of the law of God, it is certainly not a sin to choose the lesser of two goods. The words of our Lord urging us to be perfect, to which Trémeau and others appeal, are certainly a counsel and not a precept. St. Paul makes this clear with regard to the counsel of virginity (1 Cor 7).¹⁴

If this attitude seems too "juridical" and "legalistic," it also seems to fit in quite well with divine revelation. Is not our relationship with God, even in the Christian era, considered a covenant? Of course, if one chooses to define venial sin simply as not being as perfect as one might be, then a deliberate imperfection is a venial sin. But this seems to do violence to the traditional concept of venial sin as a transgression of a precept. To hold that an imperfection is not a venial sin does not imply that imperfections are considered advisable. There is no question but that the better thing to

⁹ Trémeau, *op. cit.*, p. 266.

¹⁰ For another attack on probabilism see Giuseppe Pillarella, "Probabilismus an potius . . . improbabilismus?", *Palestra del clero* 39 (Feb. 1, 1960) 162-64.

¹¹ Trémeau, *op. cit.*, pp. 270-80.

¹² *Morale et perfection* (Tournai: Desclée, 1959).

¹³ "Morale et perfection," *Revue diocésaine de Namur* 14 (Mar.-Apr., 1960) 204-7.

¹⁴ Cf. my article, "Is Religious Disobedience Always a Sin?", *Review for Religious* 19 (July, 1960) 215-24.

do, the ascetical ideal, is to do always what is more pleasing to the infinitely good God.

THE COMMANDMENTS

The Moral Re-armament movement seems to be having a resurgence. C. G. O'Leary, C.S.S.R., reviews what has been said before about it¹⁵ and adds some later information on events and documents. Among the latter is the prohibition by Bishop Noa of Marquette, Mich., who has forbidden Catholics in his jurisdiction or territory to "attend the meetings of Moral Re-armament, or participate in or promote its activities."¹⁶

F. J. Connell, C.S.S.R., treats of some problems of Catholics connected with non-Catholic funeral services in "Problems of the Funeral Director."¹⁷ He deems it all right for a Catholic funeral director to allow a Protestant minister to hold service in his parlor and to prepare chairs and other equipment for him. A professional Catholic organist or singer might function too, if the service is private, but not if it is public. And he is using the canonical notion of public and private service here, that is, with special garb, ritual, and so forth.

Usually treated with reference to the third commandment, though specifically rather a precept of the Church, is the prohibition of servile work on Sundays and holydays of obligation. Two articles in the *Palestra del clero*¹⁸ by different authors both express the hope that the Second Vatican Council will consider reforming this precept. A number of *vota* being sent in by various theological faculties contain a similar suggestion for the Council. Nowhere in the Code or in official interpretations of the Code is the term "servile work" defined. The term is evidently a carry-over from the Old Testament, but is just as obviously not meant to be understood in the same sense. The two most common definitions found in the manuals would make the decisive element either that it is work of the body more than the mind or that it is work formerly done by slaves. Many modern writers on moral questions in periodicals have felt that the term should be defined according

¹⁵ "Catholics and the Moral Re-armament Movement," *American Ecclesiastical Review* 142 (Jan., 1960) 232-40. Cf. "Notes on Moral Theology," *THEOLOGICAL STUDIES* 14 (1953) 33; 15 (1954) 78-79, 599; 16 (1955) 242-43; 18 (1957) 236-37.

¹⁶ Dated Aug. 15, 1958, here cited on p. 238. It has been published also as a separate pamphlet. The MRA headquarters are in Bishop Noa's diocese.

¹⁷ *American Ecclesiastical Review* 142 (June, 1960) 424-25.

¹⁸ Leone Babbini, O.F.M., "Natura delle opere proibite in giorno festivo," *Palestra del clero* 39 (Mar. 15, 1960) 318-22; Domenico Squillaci, "Astensione delle opere servili," *ibid.* 39 (May 15, 1960) 572-75.

to modern circumstances.¹⁹ L. L. McReavy in the *Clergy Review*²⁰ and Msgr. J. D. Conway in his column in *Our Sunday Visitor*²¹ think that servile should be taken to refer to modern servitude to wages; that is, that one should abstain from ordinary weekday work. Msgr. Conway believes this to be according to the spirit of St. Thomas, who taught that the concept of servile works can change according to time and place.²² Many, too, have judged with canon 29 that custom is the best interpreter of the law or that the common estimation of good men is a legitimate norm.²³

At the 1957 convention of the Catholic Theological Society of America, Joseph A. M. Quigley, moral professor at St. Charles Seminary in Philadelphia, delivered a paper on "The Changing Concept of Servile Work," which led to a lively discussion, itself an indication of quite a divergence of views among the moralists present.²⁴ In view of all this diversity of opinion, and in view of the definite possibility of custom and the common estimation of good men, there are very few types of work which can be said to be certainly forbidden. And few good Catholics who think of asking such things in confession would think of doing such work. In fact, many working people of no faith would rebel at doing them on a Sunday without necessity.²⁵

Would it not, then, be better, in print or in sermons, to refrain from specifying any particular work as forbidden by the prohibition of servile work, and rather exhort the faithful to fulfil the spirit of the law? And in confession, when asked, the confessor might suggest, but not declare it obligatory to avoid unnecessary hard work on Sundays, if it can be done just as well on Saturday. It is salutary to remember, too, that many Sunday occupations are better adapted to keeping the day holy, in the sense of free from sin, than the leisure alternatives.

¹⁹ Cf. "Notes on Moral Theology," THEOLOGICAL STUDIES 9 (1948) 105-8; 16 (1955) 577-78; 17 (1956) 178; 19 (1958) 552-53.

²⁰ "The Modern Attitude to Servile Work," *Clergy Review* 44 (1959) 555-59.

²¹ "What is Servile Work?," *Catholic Mind* 56 (1958) 514-19; reprinted from *Our Sunday Visitor*, March, 1958.

²² *Sum. theol.*, 2-2, q. 122, a. 4, ad 4m, last sentence, explaining the difference between the Old and New Testaments; cited in *Catholic Mind* 56 (1958) 517.

²³ E.g., J. Madden, "Sunday Observance," *Australasian Catholic Record* 32 (1955) 233-38, applying it to recreational gardening; C. L. Parres, C.M., "Norms for Sunday Work," *Homiletic and Pastoral Review* 59 (1959) 483-85, on the hobby of gardening in the U.S.; Bucceroni 1, n. 652, according to Babbini, *art. cit.*, p. 319.

²⁴ *Proceedings of the Twelfth Annual Convention*, pp. 145-53; discussion, pp. 153-55.

²⁵ I use the following as a classroom example: digging a ditch (corporal and work of slaves), for another person (service to another person), for pay (servitude to wages), without any necessity whatever.

Among the civic duties usually enumerated in treating the fourth commandment is that of voting. Fr. Connell tackled the question, whether one should vote for a candidate for president just because he is a Catholic.²⁶ In answering in the direction in which we would all tend, he took an extreme stand:

... Catholics are bound in conscience to vote for the candidate whom they consider best suited for the office, whatever may be his religious affiliation. If a Catholic cast his ballot for a candidate because he was a Catholic and passed over a non-Catholic candidate who, in his estimation, would make a better president, he would be guilty of sin.²⁷

Fr. Edward L. Curran, president of the International Catholic Truth Society, immediately took exception to this statement in the *Brooklyn Tablet*.²⁸ Not that he wants anyone so to vote, but he objects to labeling as sin the choice of what is good but not better. Surely Fr. Connell does not hold the doctrine that the choice of the less good is sinful as long as it is still good. All should admit that it would be better to vote for the better qualified man. All would further admit and hold that it would be a sin to vote for a clearly unqualified man over a clearly qualified man, whatever be the motive.

FIFTH COMMANDMENT

Overstating moral obligations may seem to some a mere rhetorical device to put over a point. But to me, when it pretends to be giving Catholic doctrine, it is wrong. It not only tends to form overstrict consciences in some, but often has the opposite effect on others. From recognizing that a statement exaggerates the sinfulness of an action, they are apt to go to the opposite extreme. Another mild example of such exaggeration would seem to be an article on a "Moral Code for Motorists," by Daniel L. Lowery, C.S.S.R.²⁹ The author presents his matter not as his own opinions but as "those of professional moral theologians."³⁰ Among such opinions seems to be one that traffic laws oblige directly in conscience under all circumstances. For example, "to go through a stop sign on a deserted highway at three o'clock in the morning, when you're sure there's no one around. . . would not be a *serious violation* of the fifth or seventh commandments. But there are very probably venial sins involved."³¹ Granted that it is ordinarily better

²⁶ "A Catholic for President," *American Ecclesiastical Review* 142 (Apr., 1960) 271-73.

²⁷ *Ibid.*, pp. 271-72; also cited widely in the Catholic and secular press, e.g., *Time*, April 11, 1960, p. 58.

²⁸ Apr. 23, 1960, p. 6.

²⁹ *Liguorian* 48 (Feb., 1960) 1-8.

³⁰ *Ibid.*, p. 2.

³¹ *Ibid.*, p. 6.

to observe all traffic laws, and granted that sin, and even grave sin, is often objectively present in violating especially the safety measures in traffic laws, it still seems to me to be the better course to omit any debatable point—the moral obligation of civil laws—and concentrate on the most important, which is what Fr. Lowery does in most of his article: the possible serious violations of the fifth and seventh commandments. This was definitely what the Australian bishops did in their 1958 statement on automobile driving.³² Pius XII did the same in 1955 in an allocution to the International Highway Federation³³ in which he said:

The often dramatic consequences of violating the traffic code give its observance an *extrinsic* obligatory character far more serious than people generally think. Drivers cannot count on their own ability and watchfulness to avoid accidents: they must maintain a proper margin of safety in order to cope with the careless driver and unforeseen difficulties.³⁴

In this matter, priests would do well to stress the grave sin that can easily be committed by driving, even at moderate speeds, when under even slight influence of alcohol. Statistics, endorsed by the National Safety Council, show that the majority of fatal automobile collisions occur at speeds around forty miles per hour.³⁵ Obviously, very excessive speeds are seriously dangerous, even apart from danger of collision. But my point is that with even a small amount of alcohol in the system a speed of forty miles per hour can be fatal. The warning of the Australian bishops seems worth repeating:

A person who has indulged too freely in alcoholic drink, and who attempts to drive in that condition, has already committed a venial sin against the virtue of temperance before he starts out. But we consider that there is no parity between his sin of intemperance and the offence against the natural law which he commits when he assumes control of a potentially lethal machine while in that state.

One who by alcoholic drink has notably dulled his reflexes or diminished his judgment so as to render him an unsafe driver would grievously sin by driving a car in that condition. In that state of nervous and judicial instability a driver is in serious danger of becoming involved in an accident, and thus violating either the fifth or seventh commandment as a result of his own intemperance. One is never justified in placing one's self in a situation like that, even though in a particular case one should happen to escape unscathed.

³² "Massacre on the Roads," annual statement on social justice by the Australian hierarchy, Sept. 7, 1958; reprinted in *Catholic Mind* 56 (1958) 554–66.

³³ "The Highway and Accident Prevention," *The Pope Speaks* 2 (1955) 333–36.

³⁴ *Ibid.*, p. 335, italics added.

³⁵ Paul Kearny, "Let's Abolish Stupid Speed Limits," *Popular Science*, May, 1960, pp. 65–68.

... According to expert opinion, even the smallest amount of alcohol affects one's vision, judgment, speed of reaction and sense of caution.³⁶

And the expert opinion on which the bishops relied has been confirmed by subsequent scientific tests too. Alcohol in the blood system tends to numb important brain centers. Using a person with a weight of 150 pounds as the subject, medical studies have determined the following norms: the threshold of measurable effects occurs when there is one-half ounce of alcohol in the blood. (Alcohol is eliminated from the system at the rate of approximately one-half ounce an hour.) For some, impairment is not noticeable until one ounce is in the system. This causes approximately .05% blood-alcohol level, which is the legal limit for drivers in Norway and Sweden. Three ounces of alcohol in the system makes a blood-alcohol level of .15%, and this is judged by all studies to be beyond the level of safe driving and makes the driver liable to prosecution for driving in such a condition.³⁷

A person who has any appreciable amount of alcohol in his system, or who is feeling drowsy, or who has a car that is not functioning properly, should not drive until the dangerous condition is remedied. If there is a real need to drive, he should keep to a very slow speed, far below ordinary speed limits. Otherwise he is taking a serious risk of injury to person or property.

According to a report in the national edition of the *Register*,³⁸ Bishop Schexnayder of the Lafayette diocese has acted severely in this matter by decreeing that Catholics found criminally negligent in automobile mishaps are to be denied Christian burial. Another item in the same issue reminds drivers that trusting in a St. Christopher medal while taking unnecessary risks can easily involve the sins of presumption or superstition, depending on the motive for the trust.³⁹

Even ambulances should avoid excessive speeding. According to a report of a joint committee of doctors and safety council representatives, "Speed is seldom, if ever, a factor in the preservation of a life. The excessive speed

³⁶ *Art. cit.*, pp. 565-66.

³⁷ Cf. R. F. Turner, H. A. Heise, and C. W. Muehlberger, "Interpretation of Tests for Intoxication," *Journal of the American Medical Association* 168 (1958) 1359-62; B. B. Coldwell *et al.*, "Effect of Ingestion of Distilled Spirits on Automobile Driving Skill," *Quarterly Journal of Studies on Alcohol* 19 (1958) 590-616, abstracted in *Journal of the American Medical Association* 169 (1959) 1537; W. Haddon, Jr., and V. A. Bradess, "Alcohol in the Single Vehicle Fatal Accident: Experience of Westchester County, N.Y.," *Journal of the American Medical Association* 169 (1959) 1587-93. On the elimination of alcohol from the system, cf. Leon A. Greenberg, *What the Body Does with Alcohol* (New Haven: Yale Center of Alcohol Studies, 1955) p. 10.

³⁸ July 10, 1960, p. 6.

³⁹ *Ibid.*, p. 4.

of ambulances has been shown to result in more traffic deaths than lives saved."⁴⁰

Capital punishment has become a rather live issue during the past year, especially in California because of the Chessman case. Speaking of this, Anglican Bishop Pike, in a letter to *Time*, states that "Intentional unjustified homicide is murder and since deterrence is lacking as a justification for capital punishment, public execution is murder no less than private unjustified killing."⁴¹

This attitude that deterrence is the only motive for punishment is contrary to the teaching of Pius XII some years ago that punishment is also for satisfaction and reparation to the violated order of justice.⁴² As far as capital punishment is concerned, most moralists would agree that the state has the right but not an obligation to inflict capital punishment for a serious crime on a certainly guilty criminal. This leaves the Catholic free to hold either for or against the abolishment of capital punishment.

Another statement implying that deterrence is the sole purpose of punishment was made by Norman St. John-Stevas, writing in the *Dublin Review* about "Law and Christian Morals in the Liberal Society."⁴³ "The only justification for making suicide a crime would be if it acted as a deterrent. . . ."⁴⁴ He argues that suicide and attempted suicide should be removed from state penal codes. This is in accord with the recommendations of the Wolfenden Commission in England. Nevertheless it would seem desirable to have some legal prescription to make possible immediate enforced psychiatric care for such unfortunates.

Recalled again by this article is the advice always to take threats of suicide seriously. Such threats are only too often carried out and at the very least are almost always a sign of a disturbed mind that needs understanding and sympathy. This was the advice, too, of two British psychiatrists at a recent meeting of the International Association of Gerontology in San Francisco.⁴⁵

A recent series of articles in the *Journal of the American Medical Associa-*

⁴⁰ *Journal of the American Medical Association* 172 (Apr. 2, 1960) 1526.

⁴¹ April 4, 1960, p. 2.

⁴² Allocution to the Sixth International Congress of Penal Law, Oct. 3, 1953; *Catholic Mind* 52 (1954) 107-18, esp. pp. 117-18; and Allocution to the Italian Association of Catholic Jurists, Feb. 5, 1955; *The Pope Speaks* 2 (1955) 17-39, esp. p. 24.

⁴³ *Dublin Review* 234 (Spring, 1960) 3-20.

⁴⁴ *Ibid.*, p. 16.

⁴⁵ As reported in the *San Francisco News-Call-Bulletin*, Aug. 10, 1960, pp. 5, 36. Cf. *THEOLOGICAL STUDIES* 20 (1959) 607-8.

tion⁴⁶ on the use of drugs to improve athletic performances brings up an interesting question that may involve both the fifth and the seventh commandments, and perhaps even the eighth. The good expected could hardly compensate for the dangers of addiction in the use of habit-forming drugs. But besides the harmful physical effects of such drugs, the use of any unusual artificial helps by one athlete in competition with others (or of a student in a competitive examination, or a participant in a competitive quiz show) would seem to be taking an unfair advantage over the others and thus gaining a prize or honor not due him by the understood terms of such competition. Admittedly it would be difficult to draw a precise line as to what helps one might use licitly. Ordinary stimulants like coffee or cola drinks would certainly be all right. The use of hypnosis would be open to somewhat the same questions as drugs.

ATOMIC WAR

Atomic war has been a frequent subject of these Notes.⁴⁷ And the debate continues, occasioned in part by the appearance of *Morals and Missiles*,⁴⁸ a collection of articles upholding the pacifist position, denying for the most part the possibility of a just atomic war, even of defense. The articles are by Archbishop Roberts, S.J., Francis Stratmann, O.P., Canon F. H. Drinkwater, Christopher Hollis, E. I. Watkin, Sir Compton Mackenzie, and Dom Bede Griffiths, O.S.B., with an introduction by Michael de la Bedoyere. The *Homiletic and Pastoral Review* and the *Clergy Review* have both had a series of communications regarding this book. First to appear in print was the Radio Replies priest L. Rumble, M.S.C., in "The Pacifist and Modern

⁴⁶ G. M. Smith and H. K. Beecher, "Amphetamine Sulphate and Athletic Performance; I. Objective Effects," *Journal of the American Medical Association* 170 (1959) 542-57; "II. Subjective Evaluations of Performances, Moral States, and Physical States," *ibid.* 172 (Apr. 2, 1960) 1502-14; "Amphetamine, Secobarbital and Athletic Performance," *ibid.* 172 (Apr. 9, 1960) 1623-29. Allan J. Ryan, "Use of Amphetamines in Athletics," *ibid.* 170 (1959) 562: a guest editorial, explaining experiments financed by the A.M.A. Of special interest: "Since the use of any drug to improve athletic performance has already been made grounds for disqualification by the International Amateur Athletic Federation, the A.A.U., and the U.S. Olympic Association, as being contrary to the highest ideals of sportsmanship, and since the use of amphetamines even in moderately small doses is known in many instances to result in habituation and harmful effects, the Committee [on Amphetamines and Athletics, of the A.M.A.] has recommended that the use of amphetamines for this purpose be condemned."

⁴⁷ THEOLOGICAL STUDIES 10 (1949) 77-79; 12 (1951) 56-59; 13 (1952) 64-66; 14 (1953) 51; 15 (1954) 79-80; 16 (1955) 246-47; 18 (1957) 238-42; 20 (1959) 608-9.

⁴⁸ Edited by C. S. Thompson (London: James Clarke, 1959).

Morality,"⁴⁹ attacking especially Archbishop Roberts' article. This was followed by an "Exchange on Nuclear Warfare between Archbishop Roberts and Father Rumble."⁵⁰ The latter singles out some strange statements of Archbishop Roberts in an appeal to ecclesiastical authority: first, that he puts Cardinal Ottaviani above Pius XII as a "decisive" authority, and then, strangely, completely misquotes Ottaviani from a book published before he was prefect of the Holy Office. The Archbishop cites Ottaviani's "decisive" statement as: "War (modern total war) must altogether be forbidden."⁵¹ Fr. Rumble points out that the complete statement adds "apart from the question of a defensive war" and so is very similar in tenor to the statements of Pius XII. Although the Pope's statements occurred in allocutions and are certainly not infallible decisions, they do constitute an official statement of the highest doctrinal authority in the Church. That this was recognized by at least two German bishops appears from the fact that Cardinal Wendell of Munich and Archbishop Seiterich of Freiburg rebuked Catholic pacifists in Germany for saying that the statements of Pius XII were not authoritative, but only his private views. According to Fr. Rumble, both of these bishops "insisted that the Pope's condemnation of conscientious objection by Catholics in a legitimately authorized defensive war demanded the assent of the faithful as to a direction given by the Pope in virtue of his position as Supreme Shepherd of his flock, and that it could not be disregarded as if it were no more than his merely private opinion."⁵²

The following issue of the *Homiletic and Pastoral* carried two letters to the editor, both supporting Fr. Rumble's side of the debate. One letter included a citation from a National Catholic News Service release to the effect that Bishop Rusch of Innsbruck-Feldkirch had set down conditions under which atomic war could be justified as: (1) if it is strictly defensive against unjust attack; (2) if basic values of an entire nation are at stake; (3) if the

⁴⁹ *Homiletic and Pastoral Review* 60 (1959) 37-47.

⁵⁰ *Ibid.* (Feb., 1960) pp. 424-34, including "Nuclear Dilemma Restated," by Archbishop Roberts, pp. 424, 426-28, and "My Original Position Reaffirmed," by Fr. Rumble, pp. 425, 428-34.

⁵¹ *Morals and Missiles*, p. 14; Rumble, *art. cit.*, p. 428. Actually, the only place in the pages cited by Roberts from Ottaviani's *Institutiones juris publici ecclesiastici* 1 (3rd ed.; Rome, 1947) 151-55, which could be the basis of his quotation is the heading of par. 86 on p. 151: "Bellum omnino interdicendum." A citation which would better reflect the thesis of this section could be taken from the same page: ". . . hodie nisi agatur de bello defensivo (et quidem sub determinatis conditionibus), quo Status arcere nititur actualem iniustam aggressionem bellicam alterius, non datur amplius justum bellum quod Statui agredi liceat ad repetendum ius suum."

⁵² *Art. cit.*, p. 429.

effects of atomic weapons are controllable; and (4) only if no other sufficient means of defense is available.⁵³ The second letter recalled the traditionally American attitude of Patrick Henry's famous line, "Give me liberty or give me death," noting that Communist slavery can be worse than death.⁵⁴

The *Clergy Review's* moral and canonical writer, L. L. McReavy, also criticized *Morals and Missiles* strongly, especially Archbishop Roberts' contribution.⁵⁵ In a later issue the "Correspondence" section contained letters by three objectors, including Dom Bede Griffiths, together with Dr. McReavy's answers to each.⁵⁶ Another of these objectors, "Parochus Quidam," entered a rebuttal insisting that modern war is necessarily immoral because its end is now to kill off civilians.⁵⁷

In somewhat the same vein is a letter by another of the *Morals and Missiles* authors, E. I. Watkin, restating his opinion in specific answer to what is probably the best statement of what I would like to call the moderate opinion, the article of John Courtney Murray, S.J.⁵⁸ In a letter to the *Theology Digest*, Watkin says: "Father Murray prefers a world ravaged by nuclear warfare to a world ruled by Communism; . . . I reply: no end however good, not even the destruction of Marxian Communist rule, can justify the immorality of mass murder."⁵⁹ Much more moderate is the letter of Protestant theologian Reinhold Niebuhr, agreeing in principle with Fr. Murray but expressing the fear that a nuclear war would mean the absolute destruction of the world.⁶⁰

Another John Murray, S.J., a former editor of the *Month*, expressed the opinion that the functioning of the United Nations reduces the chance of any war being justified, at least without their backing, but he believes that the traditional doctrine on war still has room for application.⁶¹ And finally, a letter from U. S. Senator Eugene J. McCarthy in *Theology Digest* expressed agreement with John Courtney Murray's article.⁶²

In this great debate all Catholic writers are agreed on the obvious points:

⁵³ *Homiletic and Pastoral Review* 60 (Mar., 1960) 506, 508. The news release is cited on p. 508.

⁵⁴ *Ibid.*, pp. 508, 510.

⁵⁵ "The Debate on the Morality of Future War," *Clergy Review* 45 (Feb., 1960) 77-87.

⁵⁶ "Correspondence: The Debate on Future War," *ibid.* (Apr., 1960) 251-56.

⁵⁷ *Ibid.* 45 (May, 1960) 319-20.

⁵⁸ "Remarks on the Moral Problem of War," *THEOLOGICAL STUDIES* 20 (1959) 40-61; reprinted under the title, "God, Man and the Nuclear War," *Catholic Mind* 57 (1959) 274-88; digested under the title, "The Morality of War," *Theology Digest* 7 (1959) 131-37.

⁵⁹ *Theology Digest* 8 (Spring, 1960) 67, 127-28; citation, p. 127.

⁶⁰ *Ibid.* (Winter, 1960) 2.

⁶¹ *Studies* 193 (Spring, 1960) 30-44.

⁶² *Theology Digest* 8 (Spring, 1960) 128.

(1) that nuclear war would be an extremely grave physical evil; (2) that it is to be avoided by any honorable and just means available, and especially by United Nations action; (3) that an aggressive nuclear war could not be justified; (4) that the use of nuclear weapons in a defensive war or a U.N. police action would be immoral if the same military ends could be achieved just as effectively and safely with lesser weapons. In other words, the extreme position of favoring a war merely to help the economy at home or simply to kill off all Communists cannot be a legitimate Catholic opinion. It would seem, further, that the extreme pacifist position, that all killing in any war is immoral and sinful, is also irreconcilable with Catholic theology.

That leaves two possible positions for pacifists: (1) that nonviolence is the better way, even to the point of allowing Communist domination of the world; (2) that nuclear warfare is necessarily immoral, because the evils entailed are too great to be justified by any reason, even the avoidance of Communist domination.

It is on this second point that the issue exists between Catholics who are consistent with the traditional teaching of the Church. It is a question of which is the greater evil: the physical destruction and suffering of nuclear war or Communist domination. I believe that the vast majority of authorities on moral theology agree with what seemed to be the opinion of Pius XII and John XXIII, i.e., that Communist domination is definitely the greater evil. But certainly both are great evils and so to be avoided by whatever just means are possible.

In the meantime, since the issue is based on a weighing of evils and the proportion can hardly be infallibly decided, the theoretical question may still be debatable. But in the practical order, for the ordinary citizen, it seems to me that Catholic theology demands obedience to legitimate civil authority, unless the command is certainly unjust; that in doubtful matters the presumption favors legitimate authority. Hence, to be a conscientious objector, a Catholic would have to believe not only in the pacifist side of the debate, but in the complete lack of solid probability in the opinion of Pius XII and most Catholic moral theologians.

MEDICAL QUESTIONS

The question of experimentation in medicine was capably treated by John J. Lynch, S.J., in the June issue of *THEOLOGICAL STUDIES*.⁸⁸ He expressed the same doctrine in an article in *Chronical Pharmacology and*

⁸⁸ *THEOLOGICAL STUDIES* 21 (1960) 236-41. Cf. *ibid.* 19 (1958) 89-90; 15 (1954) 75-77; 20 (1959) 604-5.

Therapeutics.⁶⁴ On the same subject, Jesús Martínez Balirach, S.J., in *Sal terrae* discusses the Nuremberg principles and expresses agreement with them except on the question of experimentation by a doctor on himself, in which the Nuremberg principles seem to allow unlimited freedom.⁶⁵

In another article on experimentation, in the *Catholic Medical Quarterly* of England, J. C. Acland, of the Department of Pharmacology and Therapeutics of the University of Sheffield, ends somewhat strangely:

The above opinions would seem to conflict in part with those expressed by the late Holy Father and in particular with the following assertion: "Although one must recognize that the interests of science have an authentic value that the moral law does not forbid us to enhance and extend, one cannot agree to the following proposition: 'Granted that the doctor's intervention is determined by the interests of science and that he observes the rules of his profession, there are no limits to the means he may take to extend medical knowledge.' Even with these qualifications, the proposition is inadmissible." This quotation is characteristic of the article as a whole, which is primarily theoretical and therefore somewhat remote from the practical problems involved. It is worth pointing out in this connection that Pope Pius XII was merely delivering an Allocution to an International Congress on Histopathology of the Nervous System, and the question of Papal Infallibility would consequently not arise. Naturally, great weight should be attached to the words of a Pope on any occasion. It would seem, however, that the *personal* views of a Supreme Pontiff on medical matters should be treated in the same way as those of an eminent scientist on religion. They should be accorded respect but not automatic agreement, and they should be adopted, modified or rejected according to the criteria of the profession to which they refer. In the words of H. R. H. the Prince Philip, Duke of Edinburgh, in his Presidential Address to the British Medical Association ". . . it was recognised from the start that the profession was responsible for its own ethics."⁶⁶

The content of Prof. Acland's article seems pretty much in agreement with what Pius XII taught, with the possible exception that he seems to imply, as do the Nuremberg principles, that there are no limits to what a physician can do to himself to further science. This would be to deny that God has reserved the radical dominion over life.

⁶⁴ "Human Experimentation in Medicine: Moral Aspects" (Part 3 of a "Symposium on the Study of Drugs in Man"), *Chronical Pharmacology and Therapeutics* 1 (May-June, 1960) 396-400.

⁶⁵ "El hombre vivo como campo de experimentación," *Sal terrae* 48 (Feb., 1960) 88-99.

⁶⁶ "The Ethics of Therapeutic Trials and Clinical Investigations," *Catholic Medical Quarterly* 13 (Jan., 1960) 17-20; citation, pp. 19-20.

But much more serious is what appears to be a denial of the ordinary teaching authority of the pope on the morality of medical matters. It is certainly in the province of physicians to supply the medical data for a moral judgment, but just as certainly it is the pope's office to teach the moral doctrine. Is not a physician who would want to pronounce on the morality of a medico-moral question the same as "an eminent scientist on religion"? I hope that the professor did not mean what his closing words seem to imply.

An article by another English physician, Joseph P. Reidy, on "Some Moral Aspects of Cosmetic Surgery"⁶⁷ does not really discuss the moral aspects but does suggest an interesting list of different types of cosmetic surgery whose morality could be separately treated: (1) mere improvement of looks; (2) improvement of looks where looks are a part of one's equipment for earning a livelihood; (3) correcting deformities which affect mental attitude; (4) correcting congenital deformities or defects to fit the patient into the community; (5) various types of sexual changes; (6) changing identifying marks of a criminal. The moral principles have been adequately treated before in these Notes.⁶⁸ It should suffice for now to recall that, ordinarily speaking, only (5) and (6) would present any real moral problems.

The effort to legalize abortion more widely⁶⁹ continues. One recent and rather disappointing example is "Criminal Abortion: Facing the Facts," appearing in the *Los Angeles Bar Bulletin*⁷⁰ by Zad Leavy, a deputy district attorney in Los Angeles County. He urges a liberalization of the laws to allow abortions for psychological, eugenic, or social reasons, as well as therapeutic; that is, for cases of rape, incest, or moral irresponsibility of the female, and possibly also for immaturity of the mother. Mr. Leavy admits that abortion is not usually to be recommended in such cases, but he would like to see it legalized to prevent more dangerous secret abortions from disreputable operators. As an example of his eugenic reasons, he suggests allowing abortion for a woman who has had rubella during the first twelve weeks of pregnancy, claiming that there is a thirty per cent chance of serious disease, defect, or deformity in the child in such cases.⁷¹

In answer to such reasoning, one is tempted to suggest rather letting the child be born and then, if it is defective or deformed, kill it, thus saving the seventy per cent or more who would be perfectly normal. The repugnance

⁶⁷ *Ibid.*, pp. 20-22. Cf. Pius XII, Allocution to the Italian Society of Plastic Surgery, Oct. 4, 1958; *AAS* 50 (1958) 952-61.

⁶⁸ *THEOLOGICAL STUDIES* 21 (1960) 240-41.

⁶⁹ Cf. "Notes on Moral Theology," *ibid.* 21 (1960) 234-36.

⁷⁰ 34 (1959) 355-60, 373-83.

⁷¹ For medical articles on the matter, cf. abstracts in *Linacre Quarterly* 26 (1959) 24, 75-76, 102.

which would greet such a suggestion would illustrate the lack of basic principles in those who would permit abortion. Sentiment would seem to be their chief principle. Perhaps letting more ordinary citizens see the perfect features of an aborted fetus would help them to realize that it is just another form of murder.

Thomas C. Donlan, O.P., considers "Some Moral Aspects of Medical Partnerships" in the June issue of the *Homiletic and Pastoral Review*.⁷² A moral problem arises in a partnership or association with a doctor who engages in objectively immoral practices, especially direct abortion, direct sterilization, or fitting or advising contraceptives. By civil law, partners are equally principal agents and equally responsible for all acts of any individual partner, unless there is an explicit and known agreement to the contrary. Besides the question of co-operation, there is almost always also the question of scandal to be considered. Less scandal will usually be present in large groups or clinics. It is the bishop's right to decide in doubts as to whether or not scandal is involved.⁷³ As medical skill reflects from one partner to another, so also does morality.

Considering these factors, Fr. Donlan would allow a partnership with such a doctor or doctors, only if there is no formal co-operation and no immediate material co-operation in any illicit acts (e.g., no referral for objectively immoral services, no direct sharing in profits of immoral services); and "he must refuse to enter any partnership which truly causes scandal."⁷⁴ Even when these conditions are fulfilled, rarely will such a partnership be the better choice.

In my own judgment, real scandal will almost always be great enough in our country to rule out any such partnership, unless there is a very great good to be gained (which, if obvious, would usually reduce the scandal). Mere convenience or economy in sharing office arrangements would not seem to justify the danger. Too many Catholic women are under great pressure to have these immoral services, and even apparent approval by a Catholic doctor can well swing the balance the wrong way. And in our day there is such a crying need in so many places for good Catholic obstetricians and gynecologists and even for general practitioners who practice these branches, that the need for a livelihood can rarely, if ever, be adduced as a justifying cause.

⁷² *Homiletic and Pastoral Review* 60 (June, 1960) 795-801; cf. "Notes on Moral Theology," *THEOLOGICAL STUDIES* 15 (1954) 607.

⁷³ 60 (1960) 799.

⁷⁴ *Ibid.*, p. 801.

SIXTH COMMANDMENT

In evaluating a chapter of a recent book,⁷⁶ Josef Miller, S.J., of Innsbruck, gives a good outline of moral and pastoral theology on the problem of adolescent masturbation.⁷⁶ All directly voluntary venereal action is objectively gravely sinful. This is common and certain Catholic teaching, whatever may be said of the ethical reasoning to explain why. Indirectly voluntary venereal actions will be sinful or not according to the ordinary principle of double effect. Even in a directly voluntary act, there will be grave subjective guilt only when the act is placed with full realization that it is seriously wrong and full free choice of the will. These are principles admitted by all moralists.

Determining whether or not the full realization and free choice of the will are present in a given case is often a difficult problem. Psychologists, psychiatrists, and ordinary doctors can be of help in this matter. However, some psychiatrists exaggerate the lack of guilt. Von Gagern is cited as an example.⁷⁷ In *The Problem of Onanism* he says that he has never met a case where he thought the subjective elements necessary for mortal sin were present.

Still, often enough the advertence and/or consent is either entirely lacking or sufficiently so to reduce the subjective guilt to venial sin. This is especially true when a person is troubled while trying to get to sleep. At such a time, even the fear of having a temptation can be the cause of the difficulty. In time of temptation when going to bed or at other times, it is best to distract the mind and not to fight directly against the temptation, even by prolonged prayer, since even negative concentration on the subject tends to keep it in the mind and can aggravate the situation.⁷⁸

Hans Wirtz, the author of the book being reviewed by Fr. Miller, is criticized for giving general advice that adolescents should not confess acts of self-abuse, because the examination of conscience and even the act of confessing just brings the subject back to mind and thereby the difficulty is increased. All moralists agree that if recalling a sin or confessing it is a source of danger either to the penitent or to the confessor, the penitent is excused

⁷⁶ Hans Wirtz, *Stille Revolution: Laienbriefe an einen Priester* (Nürnberg: Glock und Lutz, 1959).

⁷⁷ "Moral- und Pastoraltheologisches zur Pubertätsonanie: Zur Kritik des Onanie-Kapitels in dem Buche *Stille Revolution* von Hans Wirtz," *Theologisch-praktische Quartalschrift* 108 (1960) 31-41.

⁷⁷ *Ibid.*, p. 35.

⁷⁸ *Ibid.*, p. 36. Cf. Pius XII in *Sacra virginitas; Catholic Mind* 52 (1954) 504.

from examining himself about the matter and from confessing it. But for most, the mere mentioning of the matter in confession does not cause further temptation.⁷⁹

Wirtz is again criticized for overstating the lack of guilt in this matter among adolescents. While many may be free from grave guilt, certainly some are not. This can be especially evident where they deliberately seek occasions.⁸⁰

If one is trying to get to sleep when the temptation begins, and fights against the temptation, but the phantasms and feelings keep increasing, the release is often brought on by a sort of reflex motion.⁸¹ In such circumstances one can hardly speak of mortal sin, and perhaps there is no sin at all, because of a lack of choice of the will.⁸²

Sometimes, too, the cause of adolescent masturbation can be a nervous disorder for which medical help should be sought. Habit, too, can have such an intensity as to cause such acts in spite of good will and honest efforts. Often success at breaking a real habit will only be very gradual.⁸³

Finally—and this is almost the only point on which I would tend to disagree with him—Fr. Miller feels that even in cases in which the confessor judges that there has been no serious subjective guilt, he should not tell this to the penitent.⁸⁴ Perhaps he is referring only to the last-treated case, that of force of real habit. If so, I would agree. I would also agree for cases involving external occasions. But in the case of the person trying to get to sleep, or similar cases, where it is morally certain that the guilt is not subjectively grave, I think the penitent should be told. Fr. Miller agrees that guilt feelings about such experiences can cause anxiety which tends to aggravate the difficulty. As I stated in an article in the *Priest*:

. . . I believe that this should be told to the penitent, so as to remove anxieties which may be aggravating the situation and to avoid causing despair, but cautiously, so as not to lead to laxism. The confessor might say: "These acts are always mortal sins when they are done fully deliberately; but if they happen . . . [when you are trying to get to sleep and] you can honestly say that you did not intend to do them before going to bed, that you were honestly trying to get to sleep when the process started, then most probably you have not committed a mortal sin; because in that state of trying to get to sleep, one is usually not in full possession of his faculties; and acts done in that state are usually not fully deliberate."⁸⁵

⁷⁹ *Ibid.*, p. 38.

⁸⁰ *Ibid.*, p. 39.

⁸¹ *Ibid.*: "Und schliesslich löst sich durch eine Art von Reflexbewegungen."

⁸² *Ibid.*

⁸³ *Ibid.*, p. 40.

⁸⁴ *Ibid.*

⁸⁵ "Questioning on Self-abuse," *Priest* 16 (May, 1960) 475-77; citation, p. 476.

Another point on which I would disagree with Fr. Miller is somewhat related. He seems to think that adolescents should be advised to put off Communion until they can go to confession, even when it is morally certain that there is no formal mortal sin, or at least a truly reasonable doubt about formal guilt. I would agree that such advice might be given to a lax penitent. But where there is no question of formal mortal sin, or even when there is a real doubt about it in a person of ordinarily delicate conscience, I see no reason to give such advice, especially since it can easily lead to further tensions which in turn will aggravate the difficulty.

Perhaps one reason for doubting the frequency of such cases is too much readiness to accept every confession of self-abuse as formal mortal sin without finding out the circumstances. Admittedly, there can be difficulty in finding out circumstances without causing undue embarrassment to the penitent. Over a period of several years I have tried to work out a method of doing this. My suggestions are included in the above-mentioned article in the *Priest*. I urge confessors to try such a method and not simply throw it out as a theory of a professor in his ivory tower. It is definitely the result of working out a system from a fairly extensive confessional experience.

At times a confessor will come across a penitent who seems to be masturbating as the result of a real compulsion or other psychological difficulty. Psychiatric help is usually indicated for such penitents. But in practice it is often hard to persuade a person to go to a psychiatrist with such a difficulty, especially an adolescent. For a possible line of action for such cases, Richard A. McCormick, S.J., gives very helpful advice in an article in the *Homiletic and Pastoral Review* entitled "Adolescent Masturbation: A Pastoral Problem."⁸⁶ The only further comment I would add is a caution not to think that a penitent is in the category requiring this fuller pastoral treatment too readily. I would urge trying my suggested approach first, and if this does not discover a simpler solution, then try Fr. McCormick's.

USE OF ANOVULANTS

The use of substances which prevent ovulation involves several questions which demand a precise understanding of general principles and their application. As mentioned before in these Notes,⁸⁷ all moralists would agree that the use of these substances for the sole purpose of contraception is certainly wrong; and their use for the sole purpose of correcting pathological menstrual disorders is certainly licit, provided it is done according to good medical

⁸⁶ *Homiletic and Pastoral Review* 60 (Mar., 1960) 527-40.

⁸⁷ *THEOLOGICAL STUDIES* 19 (1958) 549-51, 567-68; 20 (1959) 627; 21 (1960) 231-32.

standards. Difficulties come in the in-between area where motives seem mixed—where correction of a pathology or abnormality is desired, but avoidance of pregnancy is also desired.

John Acland—mentioned before as the author of a rather strange statement on experimentation—in a letter to the editor of the *Catholic Medical Quarterly* seems to suggest that the use of antiovolants as contraceptives might be licit.⁸⁸ He argues that the intention to avoid children is licit, as in the use of rhythm; that the use of antiovolants is admittedly licit for menstrual disorders and is not wrong on the ground of artificiality, because it promotes natural activities of various parts of the body. Perhaps, then, their use is all right to avoid conception.

The editors add a footnote disclaiming this letter as a view of the Guild. And in the next issue, surgeon John Ryan, commenting on Prof. Acland's letter, says:

The present moral directive on the use of the progestational steroids would seem to indicate that these drugs may not be used solely for the purposes of contraception; but they are permitted in treating gynaecological disorders or sterility, as in this case where the inhibiting of ovulation occurs it is incidental and not the primary intention of their administration.⁸⁹

Denis O'Callaghan, discussing "Fertility Control by Hormonal Medication" in the *Irish Theological Quarterly*, states the general principles for moral solutions quite well:

If the intention is bad, i.e., if it aims at contraception or sterilization, there is no need to examine the physical act itself since the whole human act is objectively wrong. If the intention is good, i.e., to correct pathology, then the liceity of the human act will depend on the moral character of the physical act—if this constitutes direct sterilization the therapy cannot be allowed. Pius XII recognises the validity of the principle *licet corrigere defectus naturae*, but he adds the important proviso, "it is still necessary to question by what means the natural defects are corrected and to take care not to vitiate other principles of morality."⁹⁰

And again: "... no reason however serious can justify what is contrary to nature."⁹¹ If the sterilization or prevention of conception is truly only indirectly voluntary (i.e., if neither is intended as ends or means), the principle of double effect will apply.

If Fr. O'Callaghan's statement of principles is accurate, it seems hard to

⁸⁸ *Catholic Medical Quarterly* 13 (Jan., 1960) 15-16.

⁸⁹ *Ibid.* (Apr., 1960) 72-73.

⁹⁰ *Irish Theological Quarterly* 27 (Jan., 1960) 1-15; citation, p. 15.

⁹¹ *Ibid.*, p. 6.

reconcile his application to a couple of concrete problems. He inclines to the opinion "that one may lawfully employ the progestogen medication to compensate for any failure of the natural hormones which normally operate to suspend ovulation at least during early lactation." As a reason he alleges that this is "aiding nature rather than . . . frustrating it."⁹² If the purpose of the medication is to aid the proper production of milk for nursing the baby with no intention of preventing another conception, it would seem to be an ordinary application of the principle of double effect. But if the intention is to be sure that no act of intercourse will result in another pregnancy, I find it hard to see why this is not immediately ruled out by the principle, "If the intention is bad, i.e., if it aims at contraception or sterilization, there is no need to examine the physical act itself since the whole human act is objectively wrong."⁹³ The intention would certainly be aiming at contraception. It would seem that Fr. O'Callaghan should either modify his principle or incline his view on its application in the opposite direction.

For my part, I incline to agree with the principle and deny the liceity of using such medication to prevent conception even if this amounts to doing what nature might have done itself. In this I incline to agree with John L. Thomas' statement that the evil of contraception is in the contradiction to nature in willing an act whose primary natural purpose is the procreation of children and at the same time willing another act to prevent this purpose from being fulfilled.⁹⁴

Canon P. Anciaux, Belgian writer on moral matters, goes even further away from traditional principles. He seems to think that as long as the reason for avoiding children is in some way medical (including psychic difficulties and even an extreme fear of pregnancy, even though this last be not based on any physical reason), the sterilization should be classified as indirect.⁹⁵ To me, this seems another example of confusing the distinction between direct and indirect voluntary. The fact that there is also a medical intention does not mean that the sterility is only indirectly voluntary. As long as it is willed, even as a means to a good end, it is directly voluntary. If one wishes to change the definition of direct and indirect sterilization, he would also have to throw out the traditional four conditions of the double-effect principle or at least these two: that the good intended must not result

⁹² *Ibid.*, p. 14.

⁹³ *Ibid.*, p. 15; cf. supra n. 92.

⁹⁴ In a paper delivered at the 15th annual convention of the Catholic Theological Society of America. The *Proceedings* have not yet appeared.

⁹⁵ "Regulation des naissances et thérapies hormonales: Aspects normaux des traitements à base de substances progestatives," *Saint-Luc médicale* 32 (no. 2, 1960) 67-80.

from the evil, and that the evil must not be intended either as end or means. Was Pius XII wrong in a statement cited by Canon Anciaux himself?

Is it licit to prevent ovulation by means of pills used as a remedy to disorders of the uterus or of the organism, since this medication, in hindering ovulation, also renders conception impossible? Is it permitted for a married woman who, in spite of this temporary sterility, desires to have relations with her husband? The answer depends on the intention of the person. If the woman takes this medication, not with the intention of preventing conception, but solely, on advice of her physician, as a necessary remedy because of a malady of the uterus or organism, she causes an *indirect* sterilization, which is permitted according to the general principle of actions with a double effect. But one causes a *direct* and hence illicit sterilization when one prevents ovulation for the purpose of saving the uterus or organism from the consequences of a pregnancy which it is not able to support. Certain moralists maintain that it is permitted to take these medicaments with this end, but mistakenly (*c'est à tort*). One must equally reject the opinion of some physicians and moralists in permitting their use when a medical indication makes an immediate conception undesirable, or in other similar cases which it would not be possible to mention here; in these cases, the use of the medicaments has as an end to prevent conception by inhibiting ovulation; therefore, it is a case of direct sterilization.⁹⁶

Admittedly, this statement does not have the guarantee of infallibility, but it is authoritative, as an answer to a group of doctors who asked him to give them the correct doctrine. It seems strange that Canon Anciaux seems to quote it approvingly and cites a number of other moralists as holding the same doctrine,⁹⁷ and yet seems to depart from it in some specific applications.

Another of Canon Anciaux' strange-sounding applications is to the premenopause period.⁹⁸ He seems to think that it is licit to inhibit ovulation during this time to prevent psychic disturbances over irregularity. If he means that he approves medication which might have as an immediate effect a feeling of relief in the way a tranquilizer would work, I would agree with him. But if he means that the medication will remove the fear of pregnancy from acts of intercourse, it seems to me to be a direct intention of contraception or direct sterilization, even if it is intended just to cover an outside chance that the woman is not sterile anyhow. To me, this would

⁹⁶ Allocution to the Seventh International Convention of the International Society of Hematology, Sept., 12, 1958; *AAS* 50 (1958) 732-40; citation, p. 735, my translation, italics in *AAS*; cited in the present article, pp. 69-70. Immediately following this section of the Allocution came the statement quoted above, n. 92.

⁹⁷ Fuchs, Gibbons, Janssens, van Kol, Connell, Burch, Lynch, B. Häring.

⁹⁸ *Art. cit.*, pp. 76-77.

be just as clearly a direct sterilization as a puncture of the heart of a seemingly dead person to be sure that he is not buried alive is murder in intention.

Let us hope that continuing discussion of these problems will lead to eventual clarification of the issues.

MISCELLANEA ON THE USE OF MARRIAGE

The population problem has been pretty thoroughly covered in previous editions of these Notes.⁹⁹ For this issue, it should be enough to add a few bibliographical items with very little comment: four periodical articles,¹⁰⁰ some book reviews,¹⁰¹ a paper read at last year's convention of the Catholic Theological Society of America,¹⁰² and an allocution of Pope John XXIII to a group connected with the FAO, sponsoring a "Campaign against Hunger."¹⁰³

Fr. Zimmerman's convention paper calls for brief comment. His sociological treatment of the population problem was interesting and thought-provoking. But in the moral area, he took the occasion to be somewhat severe on the practice of rhythm. Taking several citations from Pius XII praising large families and condemning superficial solutions to overpopulation by use of contraceptives, Fr. Zimmerman presented as a matter settled by the Holy See that overpopulation could not be a legitimate reason for the practice of rhythm. Unfortunately, in publishing the acts of this convention, the CTSA changed its former policy by omitting any record of the discussions following the papers. In this case quite a few moralists objected against Zimmerman's view and pointed out that Pius XII explicitly included "social" reasons among those which could justify rhythm even for the whole time of a marriage. To my knowledge, none of these moralists would recommend rhythm for this purpose, but they insisted that it is not outlawed by the late Pope's teaching.

⁹⁹ THEOLOGICAL STUDIES 19 (1958) 565-68; 20 (1959) 625-26; 21 (1960) 227-29.

¹⁰⁰ Bishop Karl J. Alter, "The Bishops and Birth Control," *Social Order* 10 (Mar., 1960) 99-102; Robert H. Amundson, "The Population Explosion," *America* 103 (Apr. 30, 1960) 192-95; James O'Gara, "Birth Control and Foreign Aid," *Catholic Mind* 58 (May-June, 1960) 239-43 (from *Worldview*, Jan., 1960); W. S. Thompson, "World Population and Food Supply," *Journal of the American Medical Association* 172 (Apr. 9, 1960) 1647-50.

¹⁰¹ By John L. Thomas, S.J., in *Social Order* 10 (Feb., 1960) 90-91; (March, 1960) 140-41.

¹⁰² Anthony F. Zimmerman, S.V.D., "Morality and the Problems of Overpopulation," *Proceedings of the Fourteenth Annual Convention*, pp. 5-27.

¹⁰³ AAS 52 (June 27, 1960) 463-65; the Allocution was given on May 3, 1960.

A final note on population—a curiosity item—to offer some comfort to those who may be scared by prophecies of “standing room only” on the earth. Although the problem may come to such a crisis sometime and possible solutions should be considered now, such a condition will hardly come in our generation. A little arithmetic shows that if all the people on earth today were crowded into the one state of Texas (now only second largest in the U.S.), each man, woman, child, and infant could have a lot fifty by fifty feet and have space left over; or a family group of parents and two children would have fifty by two hundred feet. So at least there is plenty of standing room.¹⁰⁴

Speaking of rhythm, L. L. McReavy considers the question, “Is the Duty of Fecundity Limited?”¹⁰⁵ Specifically, is the fact that a couple already has four or five children sufficient reason of itself to justify their using rhythm to avoid more children? He admits the extrinsic probability of the affirmative answer, but himself inclines to the negative in the theoretical order. In the practical order, he agrees that “such a couple will seldom. . . lack a reason sufficient to exonerate them from even venial blame.”¹⁰⁶

Protestant promoters of contraception usually fail to see a difference between end and means, as well as between primary and secondary ends of sex and marriage. William E. Hulme, Professor of Pastoral Theology and Counseling at Waterburg Theological Seminary in Dubuque, Iowa, in an article in *Pastoral Psychology*¹⁰⁷ holds that the theological issue is whether control of nature is a part of man’s responsibility. What means are used is of no consequence. “From a Christian point of view the moral issue is the same in the use of contraceptives as in the rhythm method. In either case the intention of the couple is to avoid conception without foregoing the marriage act, and morality centers in motivation so far as the New Testament is concerned.”¹⁰⁸ As proof of this, in a footnote he adds: “St. Paul even subjects martyrdom to this test in I *Cor.* 13”—which, of course, is the famous chapter on charity.

Hulme feels that the Catholic position amounts to a cult of nature contrary to Sacred Scripture. “We are to subdue nature, not worship it. . . . The

¹⁰⁴ Figuring the world population at 2.8 billion and using *World Almanac* area figure for Texas as 263,513 square miles of dry land. If the higher figure of three billion population is used, the per capita area would be a fraction less than fifty by forty-nine feet.

¹⁰⁵ *Clergy Review* 45 (May, 1960) 295–300.

¹⁰⁶ *Ibid.*, p. 300. Cf. THEOLOGICAL STUDIES 14 (1953) 57; 16 (1955) 588; 18 (1957) 593–94; 19 (1958) 569–71.

¹⁰⁷ “A Theological Approach to Birth Control,” *Pastoral Psychology* 11 (Apr., 1960) 25–32.

¹⁰⁸ *Ibid.*, p. 28.

Christian as a worker together with the Creator channels and subdues these processes to serve the purposes for which God has created and redeemed us."¹⁰⁹ For him, the theological issue between his position and ours is "whether there is not a higher source for the revelation of God's will than the processes of nature."¹¹⁰

Several times Prof. Hulme makes a comparison between sex and eating as natural functions; but each time he fails to make the application to the natural purpose of these functions. A comparison worked out a little further might be helpful. The obvious primary natural (biological, if he wishes) purpose of eating is to sustain the body. It is not wrong to eat for the pleasure, too, provided that such eating is not contrary to the primary natural purpose, that is, that it is not harmful to the body. I should think that Prof. Hulme would also consider it sinful to place some kind of a rubber bag to catch food eaten merely for pleasure, and then empty it out.

To my knowledge, Catholic theology has never held that contraception is wrong just because it is artificial, although even Prof. Acland, cited earlier,¹¹¹ seems to have this impression. Contraception is wrong because it goes directly contrary to nature. We do not believe in a cult of nature, but we do believe that nature is a source of finding out God's will, if taken in its completeness with all its relations and in conjunction with other sources of knowing God's will. This is obviously not to say that it is the only source of revelation, nor even necessarily the highest, but merely one source. And as our confirmation that it is a source, we might cite Wis 13:1-9 and Rom 1:18-20.¹¹²

Nor does our argument against contraception stem necessarily from placing the procreation of children as the primary purpose of sexual function and the fostering of mutual love as secondary. It is our belief that to go directly contrary to either natural end is wrong. One need not always achieve both ends, but one may never act directly contrary to either one.

Frustration of the secondary end of marriage is offered as the reason for the teaching of Pius XII that artificial insemination is wrong even with seed obtained legitimately from the husband. On the other hand, means

¹⁰⁹ *Ibid.* If one substitutes the word "them" after "created," it makes a good statement of our position. We believe in the same ultimate end too, but not by going against the immediate end.

¹¹⁰ *Ibid.*

¹¹¹ Cf. *supra* n. 90.

¹¹² It is to be hoped that some Catholic theologian or biblical scholar will develop more fully the scriptural argument from the Genesis account of Onan (Gn 38:8-10), showing that the constant pre-Reformation interpretation of the text is a condemnation of contraception. Cf. *A Catholic Commentary on Holy Scripture* (New York: Nelson, 1953) n. 156k.

used to help natural processes are never wrong merely because they are artificial; otherwise it would be immoral to wear glasses or use hearing aids. Similarly licit would seem to be a device to help a husband have more effective intercourse with his wife, although this can involve a question of impotence. A new aid of this type, under the name of Eros, is being produced in San Francisco. In the *Journal of the American Medical Association* a San Francisco doctor says of it: "The device has been helpful in the following ways: (1) vaginal insemination has been achieved. (2) Stronger erections are reported. (3) The husband's confidence has been increased. (4) Wives who had never experienced orgasm during marriage have done so. (5) One wife conceived."¹¹³

The doctor also says why its use, naturally speaking, is preferable to artificial insemination: "Since this [artificial insemination] entails masturbation or the equivalent to secure the specimen, it is psychologically undesirable, because the fact of impotence is emphasized. Indeed, some men are unable, after a few trials, to produce an ejaculation. Thus, a bad situation has been made worse."¹¹⁴

The problem of impotence involved here can be left to a discussion at some later date.

A final question on the use of marriage concerns the "Obligations in Conscience Following Sterilization Operations." In an article by that title Msgr. James Madden of Australia outlines the ordinary doctrine.¹¹⁵ If the person has proper contrition, he or she may be absolved and may exercise marriage rights. However, true contrition necessarily involves the willingness to submit to a repair operation if such becomes practicable and attainable without too great difficulty. At present, such repair operations are still rarely if ever fully successful to a restoration of fertility, and for the woman entail the risk of a major operation. Nevertheless, in the experience

¹¹³ Pendleton Tompkins, "Infertility Due to Faulty Intromission Successfully Treated by Prosthetic Device," *Journal of the American Medical Association* 172 (Jan. 2, 1960) 53.

¹¹⁴ *Ibid.* One non-Catholic suggests a start for further investigation. R. M. Fagley, in *The Population Explosion and Christian Responsibility* (New York: Oxford Univ. Press, 1960), cites the traditional Jewish interpretation (pp. 115-17) and Augustine's interpretation (p. 171) as against contraception. The reference to Augustine is to his treatise *De conjugis adulterinis* 2, 12 (ML 40, 479).

¹¹⁵ *Australasian Catholic Record* 37 (Jan., 1960) 33-36. Cf. F. J. Connell, C.S.S.R., "Rights and Duties of Vasectomized Man," *American Ecclesiastical Review* 141 (1959) 60; W. F. Allen, "Marital Rights of the Sinfully Sterilized," *Pastoral Life* 4 (1956) 30-32. Both present the same doctrine as Msgr. Madden.

of quite a few doctors and priests, many who have undergone sterilization prefer to try the repair operation for the peace of their own consciences.

Certainly, a person who deliberately had the operation of sterilization with the intention of confessing it later, would not have true contrition essential to valid absolution unless he had a real change of heart.

The obligation of the repair operation when and if it becomes easily available is comparable to that of a woman who has been fitted with a contraceptive diaphragm. She could hardly be said to have true contrition as long as she leaves it in place.

SEVENTH AND EIGHTH COMMANDMENTS

F. J. Connell, C.S.S.R., presents two brief items touching on justice. The first, "Dishonesty in a Public Employee,"¹¹⁶ offers examples of actions which would be sinful on the score of both justice and scandal: to do free work for friends of the boss at city expense; to give another worker credit for working when actually he was at the ball game; to give to friends of the boss or one's own friends materials which belong to the city.

The second item has to do with "The Disappearance of Library Books."¹¹⁷ Fr. Connell states that it is objectively a sin to take library books without recording their removal and without returning them. Even if eventually returned, this could cause inconvenience, sometimes even grave inconvenience. And as an act of proprietorship on another's property against his reasonable wishes, it is the equivalent of theft.

A comment might be added: for a religious to do this without a valid permission would be a violation of his vow of poverty. There is certainly no general permission to borrow library books without recording them, where recording withdrawals is the ordinary procedure.

Also connected with justice is an interesting question proposed without a definite solution by a German writer: Who owns the space above a nation?¹¹⁸ Ordinary air space is considered within the right of the underlying nation. But what about the space above the ordinary atmosphere? Perhaps it should be considered open to all, like the high seas, at least as long as it is not used in a way threatening the sovereignty of other nations.

The TV quiz scandal of last year seems to have so scared those concerned that the present tendency is almost to the contrary extreme—being almost absurdly honest. However, it did involve some interesting moral questions.

¹¹⁶ *American Ecclesiastical Review* 142 (Feb., 1960) 128-30.

¹¹⁷ *Ibid.* (May, 1960) 344-45.

¹¹⁸ Paul Roth, "Wem gehört der Luftraum?" *Stimmen der Zeit* 166 (June, 1960) 202-9.

Fr. Connell discusses some of these,¹¹⁹ holding that a rigged quiz program is at least a lie in action; and he thinks it might well be objectively a mortal sin because of the widespread effect on the public. But I wonder if the exposé has not actually shocked the public towards greater honesty. It seems to have done so in the industry at present. Let us hope that it is more than just a realization that dishonest programs may lose patronage.

In the same article Fr. Connell also considers possible questions of justice. If the contestants participate in the rigging, there would seem to be no violation of justice. But if there is an express or even implicit agreement that this is a fair competition for a cash prize and then one contestant is given answers, it amounts to cheating the other contestant of his fair chance to win. It might be hard to estimate the value of the chance, but it would seem to be more or less a fifty per cent chance between two contestants, lacking any norm for a surer evaluation. On the other hand, we might ask whether a contestant who pays nothing to get on the program and enjoys a free trip and vacation anyhow, has a strict right in justice to such a chance. Is his mere appearance on a commercial show an exchange on his part?

The concept of lying seems a simple one, and yet all are aware how difficult it is to give a very precise definition. The problems connected with such a definition are numerous. One is, how far one can go in concealing the truth without being guilty of a lie. J. Goffinet¹²⁰ considers the question in connection with the doctor's obligation to warn his patient of approaching death so that he can get his affairs in order. How can he do this and at the same time not cause his patient undue alarm?¹²¹ Fr. Goffinet suggests that the whole truth about a patient's condition may be kept from him. To justify false rather than merely ambiguous statements,¹²² he relies on the inclusion of the intention to deceive in his definition of lying, saying that the doctor's intention is to serve the good of his patient rather than to deceive

¹¹⁹ "Moral Problems Connected with Television," *American Ecclesiastical Review* 142 (Jan., 1960) 54-59. Cf. Hans J. Morgenthau, "America's Moral Crisis: I. The Van Doren Case," *Catholic Mind* 58 (Mar.-Apr., 1960) 110-14; "II. Epistle to the Columbians," *ibid.*, pp. 114-20. The first is from the *New York Times Magazine*, Nov. 22, 1959; the second from the *New Republic*, Dec. 21, 1959.

¹²⁰ "Faut-il dire la vérité aux malades?", *Revue ecclésiastique de Liège* 47 (no. 2, 1960) 93-102.

¹²¹ One doctor of rather wide experience told a group of interns in my presence that he had never seen advice of extreme unction cause undue shock to a patient except in one case: when a priest began to anoint a non-Catholic by mistake.

¹²² Fr. Goffinet criticizes B. Häring, *La loi du Christ* 3, 213-23, as holding too strict a doctrine, insisting that there always be a true sense to the words used.

him. But is it not by means of deceiving him that he will comfort and help the patient? Therefore, the matter of intention is not the decisive element.

Few modern moralists would question the liceity of untruthful words where there is an obligation to protect a secret. How to reconcile the false statements, undoubtedly meant to deceive the importunate fisher after secrets, is the theoretical problem. I think a solution based on a fuller understanding of the classic *locutio contra mentem* will do it, in which *locutio* or speech is taken in a formal sense as the use of arbitrary signs in circumstances which indicate that the speaker intends to communicate what is in his mind. In this sense, for example, speaking in a play is not formal speech, but only material. So also, when a person is forced to answer questions on matters about which the asker has no business asking, this should indicate that the speaker does not intend to communicate what is in his mind. So, whatever he says in such circumstances is not a lie. It is simply not formal speech in the full sense of the word. It is, if you wish, verbal fencing.

It may still be sinful to deceive a person even when only material speech is used, or even when objectively true but deliberately misleading words are used. To lead a person into error is to cause him a physical evil. And generally speaking, charity demands that we do not cause evil to our neighbor. However, physical evil can be done even deliberately for a sufficient reason, as long as the act is not morally evil in itself.

How would this definition of formal speech and of lying fit the doctor's case? In my judgment, the use of false words to a patient can only be justified when the patient has shown by previous actions and statements that he does not want to be told dire news of his state. Then his attitude shows that he does not want the doctor to communicate his real judgment if it is objectively hopeless. However, with such a patient, ordinary evasion will do the trick, since usually such a patient "will never ask a question which does not allow easily for an evasive reply."¹²³

But if the patient has let it be known by previous words and actions that he does want to know his true state, than I think that the doctor should tell him. Obviously, as Fr. Goffinet says of warning of death, the doctor (or whoever acts for him in the matter) must use prudence and charity. This may also call for looking externally more optimistic than one feels, but not for giving a false statement of the illness.

All of this discussion supposes that the patient asks about his condition. Whether a doctor should tell him his condition without being asked is

¹²³ K. M. F. Pole, *Catholic Medical Quarterly* 10 (1957) 84.

another question not concerned with lying, and has been treated often enough already.¹²⁴

Lying in another form is discussed by Fr. Connell in "Cheating in Schools and Colleges."¹²⁵ Cheating is labeled as a "lie in action," because in handing in an examination paper a student "asserts implicitly. . . that he has used no other help than those that are permitted. . . ." It is also against justice, if it is the means of cheating another out of a prize, or for admission to medical or legal practice, or especially to the priesthood.¹²⁶ On the question of justice in cheating to gain entrance to the medical or legal profession, Frs. Ford and Kelly¹²⁷ think that the injustice would be rather in the actual practice of the profession without being truly qualified. The injustice would be to the patient or client, who has the right to expect proper training which passing the qualifying examination should warrant. For the priesthood, there would be a sin in accepting orders while conscious of being unfit; but I should think that the sin would be against religion rather than against justice.

Under ordinary circumstances, cheating in a school examination certainly seems to be against right reason and sinful. But I find some difficulty in seeing precisely where it is a lie. To be a lie, there has to be some false statement, some abuse of the faculty of communicating ideas. The answer obtained by forbidden means is not a lie. Is the act of handing in the paper actually a form of gesticular speech equivalent to saying "This is my unaided effort"? It is certainly understood in ordinary circumstances that it should be his unaided effort. But to be a lie and not just a violation of regulations, there must be some use of speech, at least gesticulatory.

By "ordinary circumstances" I mean that the teacher has not challenged his pupils to use any means they can, that he has not given such an examination that no one could reasonably be expected to pass it without surreptitious help. In such circumstances the handing in of the paper will certainly not be a claim to unaided effort. If a student receives honor from

¹²⁴ Cf. John J. Lynch, S.J., "Should the Cancer Patient Be Told?", *Linacre Quarterly* 22 (1955) 127-30; 23 (1956) 27; Gerald Kelly, S.J., *Medico-Moral Problems* (St. Louis: Catholic Hospital Association, 1958) pp. 41-45 on death, pp. 46-51 on cancer; L. L. McReavy, "Warning the Dying of Their Danger," *Clergy Review* 44 (1959) 295-97; J. Madden, "Informing the Sick of Impending Death," *Australasian Catholic Record* 36 (1959) 217-18.

¹²⁵ *American Ecclesiastical Review* 142 (Mar., 1960) 202-3; cf. F. J. Connell, C.S.S.R., "Cheating in School," *Liguorian* 47 (1959) 12-13; John C. Ford, S.J., "On Cheating in Examinations," *THEOLOGICAL STUDIES* 2 (1941) 252-56; Gerald Kelly, S.J., "Notes on Moral Theology," *THEOLOGICAL STUDIES* 14 (1953) 64-65.

¹²⁶ *American Ecclesiastical Review*, *loc. cit.*

¹²⁷ *Ibid.*

fraudulently getting a higher grade than he deserves, as Fr. Kelly has said,¹²⁸ he would seem to be stealing honor to which he has no right. Perhaps someone should devote more study to the question of fraud as distinct from lying and as against the right of others to expect its absence, even apart from gaining temporal goods or honor, or of depriving others of the same by fraudulent means.

In speaking of "Teen-agers and Truth-telling," Ernest F. Miller, C.S.S.R.,¹²⁹ seems to take a rather overly severe and negative approach. For example, one case he gives is this: A girl copies her school work.

Her teacher becomes suspicious. She calls the girl aside and asks her point-blank whether or not she copied the answers from another girl's paper. The two papers are very much alike. The girl answers that she did not copy. No matter how severely she is cross-examined, she maintains her innocence. She heaps one lie upon the other.¹³⁰

According to at least one psychologist, asking such questions "is about the best way invented to make liars."¹³¹ Fr. Miller admits that lying to avoid unpleasantness is common among small children. To train to truthfulness, it would seem better not to put a child on such a spot, especially before his or her fellow pupils. And is a child who denies guilt in such circumstances really guilty of lying?

As an example of a mortal sin of lying, Fr. Miller gives this:

... a boy, in an attempt to say something startling, blurts out to his friends who are standing on a street corner holding up various trees and telephone poles that a certain girl (she happens to be passing by at the moment) is entirely free in her morals, in fact that she has no morals at all. To make a statement like this is supposed to be the last work in bigness in some masculine teen-age circles.

The trouble with such a statement is that, if it is not true, it is a mortal sin. Not only does the boy who makes the statement have the obligation of confessing the sin but he also has the added obligation of doing everything in his power to restore the reputation of the girl which he so easily destroyed.¹³²

There seem to be at least two erroneous implications here, and in general the use of a bad means for a good end. The first false implication is that in such circumstances as described there would be any really serious damage to the girl's reputation. The second false implication is that, if the statement had been true, there would be no sin. If real damage is done to the

¹²⁸ *Ibid.*

¹²⁹ *Liguorian* 48 (April, 1960) 19-24.

¹³⁰ *Ibid.*, pp. 20-21.

¹³¹ A. E. Wiggam, "Explore Your Mind" (syndicated psychological column), as in the San Jose, Calif., *Mercury*, May 14, 1956.

¹³² *Art. cit.*, p. 23.

girl's reputation just to show off to the boys, it would seem to be a sin of detraction. I pass over the implication that there could be a formal mortal sin in the circumstances described. In general, it is certainly a good end to want to train teen-agers to truthfulness, but again I fear that overstating the evils is not a good means to the end.

Another example of possible grave detraction is suggested by a case of Fr. Connell's on a different subject.¹³³ In discussing whether an invalidly married teacher should be kept on in a Catholic school, he answered with a definite negative, "at least if her marital status is publicly known." I would have omitted the words "at least." For our example, let us suppose a case of invalid marriage in which the couple are now legitimately living as brother and sister, and the invalidity of their marriage is not generally known. To tell the fact of the invalidity could easily be a serious sin of detraction, and the cause of further injustice if it caused the woman to lose her job.

Although moral problems concerning the press are concerned with more than the eighth commandment, this seems an appropriate place to mention the comments of Pope John XXIII on the "Freedom of the Press."¹³⁴ In a talk to the Association of Italian Catholic Jurists, who had made freedom of the press the theme of their meeting, the Pope disappointed some lovers of the absolute autocracy of the press when he stressed the need for proper legislation to restrain the press from violating the liberty of the people by attacking their moral health. Self-limitation has not proved sufficient. He was speaking specifically of the press in Italy to Italian jurists, but much of what he said applies to parts of the press in this country too.

Besides the need for prudent laws, His Holiness proposed norms for the press itself: a clear conscience, which will put decency, veracity, and justice above profit and sensationalism; and clear positions and positive programs in support of worthy causes. In this they will fulfil their double role of forming minds as well as informing them.

Fr. Connell, in briefly outlining "Newspaper Ethics,"¹³⁵ put the same norms more briefly and a bit more clearly. Reporters and publishers should be sure that they give a true and objective presentation of the news, avoid detraction by explicit word or implication, avoid undue emphasis on details of sex and criminal activities in stories and advertising, and promote good

¹³³ F. J. Connell, C.S.S.R., "An Invalidly Married Teacher," *American Ecclesiastical Review* 142 (Feb., 1960) 130-31.

¹³⁴ Dec. 8, 1959; *AAS* 52 (1960) 45-50; *The Pope Speaks* 6 (Spring, 1960) 193-99. Cf. Jesús Iturrioz, "La prensa según recientes documentos de Juan XXIII," *Razón y fe* 161 (Feb., 1960) 117-28.

¹³⁵ *Liguorian* 48 (Jan., 1960) 8-9.

by features and editorials. He mentions an example of false slanting that seems to happen fairly often: the use of a candid-shot sort of picture which makes an intelligent person look stupid.

THE SACRAMENTS

Common estimation of people is considered the norm for judging whether a liquid is to be considered water and hence valid matter for baptism. Fr. Connell makes a strange application of the principle in judging an ordinary hospital saline or sodium chloride solution doubtful matter, because ordinary people hearing the technical name would not consider it water.¹⁸⁶ Not many people hearing hydrogen monoxide (or whatever the technical name for pure H₂O is) would consider it water from its name either. But this does not mean that in their estimation of the substance they would have any doubt about its being water. And a hospital saline solution (.9% salt in pure water) is definitely less saline than sea water. Of course, chemical content is not the norm, but would not most people, knowing that saline solution or sodium chloride solution is just a technical name for pure water to which salt has been added in the ratio of a teaspoon of salt to a pint of water, still consider it water?

D. Squillaci, in *Palestra del clero*, discusses several points "De absoluteione complicitis."¹⁸⁷ Absolution of the specific sin committed with the accomplice would not be valid apart from the danger of death, even in grave necessity. If the accomplice could not get to another priest because of a crippling but not dangerous infirmity, she should rather make an act of perfect contrition. If a priest absolved his accomplice when she omitted confessing the sin, because she was not formally guilty, but that only because he had so persuaded her before the act, the absolution would be valid (since the reservation is only for the formal sin), but the priest would still incur the excommunication.

To what extent may a priest use knowledge which he has received in confession? Two recent articles review the principles in this matter and suggest some applications.¹⁸⁸ Obviously, he may not reveal any sin of any penitent, either directly by identifying sin and sinner, or indirectly by speaking in such a way that others could find out a sin of a particular per-

¹⁸⁶ F. J. Connell, C.S.S.R., "Sodium Chloride Injection for Baptism," *American Ecclesiastical Review* 142 (June, 1960) 422-23.

¹⁸⁷ *Palestra del clero* 39 (Jan. 1, 1960) 34-37.

¹⁸⁸ Winfred Herbst, S.D.S., "The Seal of Confession," *Priest* 16 (Feb., 1960) 169-72; Stefano Tumbas, S.J., "Segreto sacramentale," *Palestra del clero* 39 (Apr. 1, 1960) 392-93.

son or even have reason to suspect a particular person of a specific sin. These are the immediate object of the seal itself (can. 889). Beyond the direct and indirect violation of the seal, the law of the Church forbids any use of confessional knowledge which could make confession distasteful to the penitent or to others (can. 890). And in this matter, since such harm is absolutely to be prevented, in doubt the safer course must be followed; or as Fr. Herbst puts it, "danger to the seal must always be presumed."¹³⁹

The safest and best course is simply not to talk about things heard in confession. Especially young priests naturally like to discuss their new ministerial experiences. But any mention of actual cases heard in confession can easily be an indirect violation. This is especially true if one connects a sin with an unusual experience or with a peculiar trait of a penitent, such as stuttering, or unusual voice, or unusual use of language, accent, or such like. As an unusual experience, I mean something like the penitent's tripping while entering or leaving the confessional, or fainting, or dropping something which would be audible to others outside. For example, if a priest mentioned some specific confessional matter to fellow priests and said that the penitent dropped his hearing aid just as he was giving advice, he could well be guilty of an indirect violation of the seal.

Fr. Herbst gives the ordinary warnings against even the appearance of the illicit use of confessional knowledge in sermons or conferences. He suggests that if one foresees the possibility of this during a confession, he might avoid the suspicion of the penitent by telling him then and there that there will be some appropriate matter for him in the conference or sermon already prepared for that day.¹⁴⁰ For my part, I suggest that in using any stories or examples about confession in preaching, the preacher make it clear that it is just a story and not an actual experience.

Fr. Tumbas goes into more specific cases on the use of confessional knowledge apart from any violation of the seal. He thinks that it would be licit to use such knowledge in the spiritual direction of a penitent who asked for direction, although he advises that the confessor first get explicit permission even for this—at least a general permission.¹⁴¹ I would be even a little stricter and say that he should not use confessional knowledge even with the penitent unless it is evident that the penitent wants him to do so. And I would agree with Fr. Tumbas that it is even better not to speak of past sins in subsequent confessions unless the penitent shows he wants advice based on past confessions.

Qualities required in candidates for the priesthood, according to Pope

¹³⁹ *Art. cit.*, p. 170.

¹⁴⁰ *Ibid.*, p. 171.

¹⁴¹ *Art. cit.*, p. 393.

John XXIII, include purity of heart, strength of character, and ardent charity.¹⁴³ As is usual with our present Holy Father, the talk was more a pastoral exhortation than an outline of the teaching of the Church on the matter. One aspect of the strength of character is certainly emotional maturity. This quality was discussed in three articles appearing originally in the *Supplément de la Vie spirituelle* and summarized in *Theology Digest*.¹⁴⁴ Another article in the *Supplément*¹⁴⁴ goes even more thoroughly into some of the psychological aspects to be checked in deciding whether a person has a vocation or not. It is aimed specifically at the vocation to religious life, but, *mutatis mutandis*, can certainly be applied also to the priestly vocation apart from religious life.

The first point to be checked is motivation. The candidate should not be entering religion as an escape, but should rather be giving up something good for something better. Secondly, he should give promise of being able to find satisfactions in religious life to compensate for the inevitable difficulties. For this, he should be able to achieve some satisfaction from spiritual joys and should be satisfied with the type of prayer of the order to which he aspires. Thirdly, he should show an ability to bear frustrations which are involved in the ordinary difficulties of religious life, and especially in keeping the three vows. At the same time he should show judgment capable of independent action.

Indications for rejection of candidates would include, first, any lack of mental health, because the strains of religious life will hasten the development of mental aberrations. To discover weakness here, the Rorschach and MMPI tests are suggested, but are to be conducted and evaluated by experts in psychology who are also well versed in the exigencies of religious life. Also to be eliminated are candidates with weak characters, of a type who get along all right in certain stable circumstances, but who could hardly stand the difficulties of later religious life. These weaknesses might be discovered by personality tests and a life history of the candidate, again

¹⁴³ Allocution to Italian Seminarians, Nov. 22, 1959; *AAS* 51 (1959) 903-7; *The Pope Speaks* 6 (Spring, 1960) 164-68. Cf. Francisco Reino, S.J., "Juan XXIII y las virtudes de los seminaristas," *Sal terrae* 48 (Apr., 1960) 193-99. Pope John also addressed seminarians during the Roman synod, Jan. 28, 1960, in St. Ignatius' Church (Latin text in *AAS* 52 [1960] 262-70; Italian text, pp. 271-77).

¹⁴⁴ "Emotional Maturity and the Priestly Vocation," *Theology Digest* 8 (Winter, 1960) 56-58. Cf. A. Plé, O.P., "Principles of Maturity," *ibid.*, pp. 51-55. All four pieces are from *Vie spirituelle, Supplément* 46 (1st trimester, 1958) 284-327.

¹⁴⁴ D.-H. Salman, O.P., "Le discernement des vocations religieuses," *Vie spirituelle, Supplément* 52 (1st trimester, 1960) 81-98. Cf. Philippe Parrot, "Point de vue du médecin psychologue sur les aptitudes psychologiques à une vocation religieuse," *ibid.*, pp. 99-108.

evaluated by an expert who knows the particular religious institute. Finally, peculiar characters are usually to be rejected too: fanatics, reformers, jealous persons, and any who do not seem suited to the particular life of the particular institute, even though not falling into any of the above categories.

Part of the way to help discover these qualities is to have the candidate tell the history of his vocation and of his life in general: what he thinks of celibacy; of frustrations that may come. Should this be done before acceptance or during novitiate? The ideal time would seem to be a few months after the beginning of the novitiate, when there is more hope for true answers.

If a candidate is sent to a psychologist or psychiatrist to check on his suitability, what is the relationship among the three parties: the doctor, the candidate, and the religious superior? Louis Beirnaert, S.J., discusses this in the following issue of the *Supplément*.¹⁴⁵ The doctor's first obligation is generally to his patient, in this case the candidate. Would this be violated by reporting him unfit to the superior and thus keeping him from the life he desires? It might almost seem that a report to the superior would be a violation of secrecy, and yet that is the whole reason for seeing the candidate and examining him. Fr. Beirnaert resolves the difficulty this way: the candidate is asking admittance to the religious institute. Implicit in his request is the question about his suitability. The doctor is helping him to discover whether he is fit or not, and so is not violating his obligation of helping the candidate, even if his decision is against suitability. The candidate asks for a true report by applying to the institute and agreeing to the examination.¹⁴⁶

The Holy Office on March 21, 1960, issued an important decree on the distribution of Communion in the evening apart from Mass.¹⁴⁷ It gives local ordinaries the faculty to permit Communion to be distributed apart from Mass, but in connection with some other function (e.g., Benediction or novena service), to be determined by the ordinary, during hours when evening Masses are allowed (four to eight), in any church, or in chapels of hospitals, prisons, or schools ("collegiorum"). The decree remarks that this means that can. 867, §4 will rather rarely find room for application but is not abrogated. Can. 867, §4 says that Communion may not be distributed outside the ordinary time unless there is a reasonable cause for doing so.

¹⁴⁵ "L'Investigation psychanalytique des candidates," *Vie spirituelle, Supplément* 53 (2nd trimester, 1960) 179-86.

¹⁴⁶ For an allied question see J. Sanders, S.J., "The Professional Secret," *Clergy Monthly* 24 (Mar., 1960) 72-73.

¹⁴⁷ "Decretum: de S. Communionis distributione postmeridianis horis," *AAS* 52 (1960) 355-56.

L. Babbini, O.F.M., joins the vast majority of commentators on the Eucharistic fast in agreeing that the term "potus" in the 1957 regulations is to be taken in the same sense as the "per modum potus" of the 1953 rules. He is personally opposed to the opinion that lozenges, caramels, and other substances which dissolve in the mouth can count as liquids, but he thinks the opinion is extrinsically probable in spite of Cardinal Ottaviani's private response to the contrary.¹⁴⁸

An allied question which I am often asked is whether chewing gum breaks the fast, and if so, as liquid or solid. In answering, I usually follow the opinion of Regatillo, expressed a couple of years ago,¹⁴⁹ that ordinary chewing gum (as distinguished from candy-coated gum) does not break the fast at all. It may be good to advise against its use just before Communion, but no specific time limit need be declared. I consider the opinion that ordinary gum does not break the fast at all as at least intrinsically solidly probable for the reason given by Regatillo: the amount of sugar or other substance which is swallowed is so slight that it is swallowed only *per modum salivae* and neither *per modum potus* nor *per modum cibi*. This general principle, that what is swallowed *per modum salivae* does not break the fast, is generally accepted by moralists.¹⁵⁰

To point out that it is no sin to chew the Sacred Host may seem superfluous,¹⁵¹ but I have found sisters and even priests who have thought that it is, and evidently had been passing on such teaching to children under their care.

One of the many areas in moral theology where exhortation seems more appropriate than an attempt to fix obligations is that of thanksgiving after Communion. And even in exhortation, prudence would seem to demand that one take into account ordinary circumstances of ordinary people. Leone Babbini, O.F.M.,¹⁵² urges priests to exhort the people in sermons to make a thanksgiving of at least fifteen minutes. He admits that the only obligation is to make some thanksgiving, and that this obligation is a light one, excused by any reasonable cause.

Certainly, anyone receiving at Mass who stays to the end of Mass has fulfilled any obligation, even if he is the last to communicate. Urging people

¹⁴⁸ *Palestra del clero* 39 (Jan. 1, 1960) 52-53. Cf. *THEOLOGICAL STUDIES* 18 (1957) 585.

¹⁴⁹ E. F. Regatillo, S.J., "Ayuno eucarístico, el chicle," *Sal terrae* 46 (1958) 175-76.

¹⁵⁰ E.g., Noldin 3, n. 151.

¹⁵¹ F. J. Connell, C.S.S.R., "Chewing the Sacred Host," *American Ecclesiastical Review* 142 (May, 1960) 348.

¹⁵² "Il ringraziamento dopo la Santa Comunione," *Palestra del clero* 39 (Feb. 15, 1960) 229-30.

to stay for a full fifteen minutes after Communion seems a little unrealistic to me. Choosing the fifteen minutes as an ideal seems to be based on the idea that the sacred species remain incorrupt in the stomach about that long. This popular notion is undoubtedly due to St. Alphonsus and the manualists who followed his lead in compromising between opinions which held for much shorter (one minute) and much longer times (thirty minutes to an hour or more).¹⁵³ Both extremes appealed to "scientific evidence." Those holding for the longer periods were based on some cases of sick people vomiting after receiving Communion. The species in some cases were recognizable after a quarter-hour. Those holding the shorter time seem to have been based on the effect of the initial processes of digestion in the saliva of the mouth. The latter seem to have had the more reliable basis of judgment for normal healthy people.

To my knowledge, the only really scientific testing of facts as to what happens in the digestive juices of the stomach was a study done by Dr. Eugene G. Laforet, who published his results, with the collaboration of a priest for the canonical implications, in the *Linacre Quarterly* a few years ago.¹⁵⁴ His findings show that in a stomach of normal acidity the host becomes "corrupted" (unrecognizable) in less than a minute and is completely dissolved in less than two minutes. Of fifty sick patients, only nine showed more than ten minutes for "corruption" and the longest was twenty-one minutes.¹⁵⁵ This is only recently scientifically established with respect to stomach juices, but it is not a new finding, as mentioned above. Cardinal de Lugo, S.J., over three hundred years ago, reported that physicians whom he consulted in Rome were of the opinion that the small host was corrupted within a minute.¹⁵⁶

All of this seemingly unimportant detail is mentioned here to console those who find fifteen minutes after Communion quite hard or inconvenient.

¹⁵³ Alphonsus Liguori, *Theologia moralis* 6, n. 225. Compare with Noldin, 3, n. 102.

¹⁵⁴ "Medical Aspects of the Holy Eucharist: A Physiological and Canonical Study," *Linacre Quarterly* 22 (1955) 11-17.

¹⁵⁵ In what may be a strange twisting of these findings, one of the feature writers in the *Liguorian* 47 (1959) 51 says: "According to medical opinion, the sacramental presence of Christ remains within a person after Communion for *at least* ten minutes and perhaps longer" (italics added). From this he urges a thanksgiving of at least ten minutes.

¹⁵⁶ *De eucharistia*, disp. 10, n. 54, as cited by St. Alphonsus, *Theologia moralis* 6, n. 225, who also cites Bernal and LaCroix as holding this. A longer time was thought necessary for the priest's host, no doubt also based on the action of saliva in the mouth. More recent findings show that even the large host is a comparatively small mass for the stomach and so should not take noticeably longer to digest.

And certainly people are not to be discouraged from receiving Communion because they find the fifteen minutes too much. For this reason I recommend omitting any mention of time in sermons, unless to mention Dr. Laforet's findings to show the lack of even venial obligation beyond a minute or two, and merely exhorting to a suitable showing of appreciation for so great a gift.

The actual immediate purpose of the article by Dr. Laforet and Fr. Casey was to encourage priests to be liberal in giving Communion to the sick. Their conclusion:

Apart from mental incompetence, defective sensorium, or intractable vomiting, there appear to be few medical contraindications to the reception of Holy Communion by the ill. In general, it would seem that the Grace to be gained by reception of the Sacrament outweighs any risk of irreverence to the Sacred Species if such irreverence is less than *certain* to follow.¹⁵⁷

THE MASS

Another important decree of the Holy See is that of the Sacred Congregation of Rites, March 9, 1959, allowing the Leonine prayers to be omitted after low Masses whenever (1) Mass is celebrated on the occasion of a wedding, first Communion, general Communion, confirmation, ordination, or religious profession (this has been the general practice already); (2) some other function or pious exercise follows immediately after Mass; (3) there is a sermon during the Mass; and (4) after dialogue Masses on Sundays or feast days.¹⁵⁸ This may well be a step towards omitting them entirely.

A priest writing in *Emmanuel*¹⁵⁹ mentions that he has never heard of a faculty to binate on weekdays except for weddings and funerals. For him and for others who may be of the same impression, attention is called to the present loose-leaf supplement of the *Canon Law Digest* under can. 806. Recorded there is a faculty to binate daily for a monastery of nuns when they cannot otherwise get to Mass; and another faculty, in the diocese of Springfield-Cape Girardeau, for binating on weekdays every sixteen days for renewing the sacred species in convents, and whenever evening Mass is allowed. In the Archdiocese of San Francisco last year a letter from the Archbishop communicated to all a faculty valid for three years to binate "on the occasion of a nuptial Mass or a funeral Mass, on Ash Wednesday

¹⁵⁷ *Op. cit.*, p. 17.

¹⁵⁸ "Decretum: de precibus post Missae celebrationem recitandis," *AAS* 52 (1960) 360.

¹⁵⁹ *Emmanuel* 66 (May, 1960) 240.

and on First Fridays [all had previously], and on three other weekdays, if there is pastoral necessity."¹⁶⁰

It is common doctrine that "pastoral necessity" will be fulfilled whenever twenty or more people will be enabled to attend Mass. But what of the necessity on the part of the priest? If a parish has four priests and eight Masses, and a religious house with plenty of priests is nearby, must the pastor ask for four religious priests to help, or may the four priests all binate? Fr. Connell approves what has been common practice by answering that the four may binate.¹⁶¹ In the same note he solves what is sometimes a bit more of a puzzler to parish priests: even if a visiting priest wishes to say Mass in the church at another hour, the others may still binate. And I would add that if for any reason a visiting priest prefers not to say one of the regular parish Masses, he may be allowed to say a side-altar Mass, while one of the regular priests of the parish is binating; but he should ordinarily not be expected to do this if he is willing to say one of the regular parish Masses.

A new line of reasoning on the question of Mass without a server has been suggested by John J. Reed, S.J.¹⁶² Taking the statement of can. 29, "consuetudo est optima legum interpretres," he shows that this may well be applied to determine the meaning of the much-discussed Instruction of the Sacred Congregation of the Sacraments in 1949.¹⁶³ The widely differing opinions on the meaning of the Instruction are sufficient indication that some interpretation is needed. The Instruction does not certainly rule out the possibility of devotion as a sufficient reason. The writings of reputable authors accepting a broad interpretation are themselves a good indication of the practice of good priests. In practice, one might say that the Instruction does not insist on omitting Mass when a server is unavailable, but rather

¹⁶⁰ E. F. Regatillo, S.J., "Binación en días laborables," *Sal terrae* 48 (Jan., 1960) 41-45, gives examples of other such indults: for Mass in a convent daily if necessary; for parishes for three days a week for evening Masses. On the use of such faculties he comments that when they are given explicitly in favor of a certain community, the bination must somehow be for that purpose. However, one priest could say two scheduled Masses in the parish church to allow the other to say the convent Mass. Fr. Regatillo expresses the hope that the Holy See will grant a general faculty to all bishops to allow bination on weekdays.

¹⁶¹ "Is Bination Permitted?," *American Ecclesiastical Review* 142 (June, 1960) 422.

¹⁶² "The Mass Server and Canon 29," *THEOLOGICAL STUDIES* 21 (1960) 256-70. Cf. "Notes on Moral Theology," *ibid.* 9 (1948) 108-10; 13 (1952) 98-99; 16 (1955) 579; 20 (1959) 615; 21 (1960) 247-49.

¹⁶³ Cf. *Canon Law Digest* 3, 334-36.

stresses the positive obligation of taking at least the ordinary means to try to have a server; and if conditions are habitually present where a server cannot be had, an indult should be obtained.

As might possibly be expected, a rubricist expresses a stricter view. John P. McCormick, S.S., writing in the *American Ecclesiastical Review*, thinks that devotion is not enough reason to say Mass without a server.¹⁶⁴

This is a strange view; for, even taking the strictest possible interpretation of the Instruction, it allows one case in which the motive is clearly only one of devotion, the famous "tempore pestilentiae" case: "in time of pestilence, when it is not easy to find someone to serve and the priest would otherwise be obliged to abstain for a notable time."¹⁶⁵

A peculiar note about this particular statement of the Instruction is its complete inconsistency with its context. Right after listing this and the three usually mentioned exceptions, for viaticum, for a Mass of precept, and for continuing Mass when a server departs after the beginning of Mass, the Instruction calls them the cases "which are allowed by unanimous consent of the authors." Undoubtedly, this case was a later addition, suggested perhaps by Cappello, incorporated without changing the following statement; for by no stretch of the imagination can this case be called a common opinion, let alone unanimous. As for the term "tempore pestilentiae," out of curiosity I checked all the authors I could find, and out of 107 authors checked only three mentioned the term at all, and of those one rejected it and the other two used it in an entirely different application from that of the Instruction.¹⁶⁶ Pasqualigo and LaCroix use the time of pestilence as an example of a time when a priest might positively exclude a server for fear of contagion. Piscetta-Gennaro doubted the probability of this opinion. Not one held exactly the opinion expressed in this statement of the Instruction.

The other three exceptions mentioned are more or less unanimous in a broad sense of that term. The only opinion of any number of authors which comes even close to this unusual case is that which would insist that a priest take ordinary means to get a server, but that he would not be obliged to omit Mass, even a Mass of devotion, if no server can be had.

¹⁶⁴ "Absence of a Server at Mass," *American Ecclesiastical Review* 142 (Feb., 1960) 126-27.

¹⁶⁵ *Canon Law Digest* 3, 335.

¹⁶⁶ A. Piscetta, S.S., and A. Gennaro, S.S., *Elementa theologiae moralis* 5 (6th ed.; Turin, 1938) n. 486; Zacharia Pasqualigo, *De sacrificio novae legis* 1 (Venice, 1707) q. 340, n. 14; Claude LaCroix, S.J., *Theologia moralis* 4/2 (Venice, 1760) n. 385.

THE SACRAMENT OF MATRIMONY

At the eleventh annual meeting of the Guild of Catholic Psychiatrists in February of this year, a "Seminar on the Psychiatric Aspects of Annulment" was held. Papers of three psychiatrists and one chancery official who participated, as well as the introductory remarks of the chairman, were published in the *Bulletin* of the Guild. The titles indicate the interesting topics treated: "Mental Disease and Ecclesiastical Courts," by Msgr. John J. Hayes, *officialis* of the Diocese of Bridgeport in Connecticut; "Psychopathic Personality and Annulment," by Paul E. Kubitschek, M.D., of St. Louis; "Schizophrenia as a Consideration in Annulment of Marriage," by John W. Higgins, M.D., of West Haven, Conn.; and "Homosexuality as an Impediment to Marriage," by John R. Cavanagh, M.D., of Washington, D.C.¹⁶⁷

Dr. Joseph D. Sullivan in his "Introductory Comments,"¹⁶⁸ and Dr. Cavanagh in his paper, make the very interesting suggestion that the Church should make antecedent and perpetual homosexuality an ecclesiastical diriment impediment. There have certainly been many cases of marriages breaking up or threatening to break up because of the homosexuality of the husband. And often enough the wife learns of her husband's state only after the marriage. This seems a great injustice to the normally sexed partner.

Dr. Cavanagh presents some reasons for thinking such marriages are invalid anyhow, but his reasons are hardly cogent enough to prove invalidity. He thinks that a true invert lacks a necessary psychic element in his consent. He wonders, too, whether a man should not be considered impotent who cannot consummate his marriage except by using phantasies of homosexual relations. Be this what it may, the suggestion of making homosexuality an ecclesiastical diriment impediment seems worthy of consideration.

Dr. Sullivan voices the feeling of many when he suggests that something should be done about the length of time it takes to have a marriage declared null. He complains that even an innocent party may have to spend several years "of great psycho-biological importance. . .between 20 and 40. . . in frustration and turmoil in the effort at an annulment with great psychological, social and moral tension."

Many theologians have also expressed a desire for a speeding up of the processes, as is evident from several sets of suggestions sent to Rome for the coming ecumenical council. And actually the Holy See seems to be doing something about it already, to judge by some cases mentioned in the

¹⁶⁷ *Bulletin of the Guild of Catholic Psychiatrists* 7 (Apr., 1960) 75-109.

¹⁶⁸ *Ibid.*, p. 75.

Jurist of last January. The Holy Office accepted a *ratum-non-consummatum* case from the Archdiocese of Chicago on an informal petition with good testimony but without any formal process.¹⁶⁹ In another, from the Archdiocese of Washington, the Holy Office declared a marriage null¹⁷⁰ by reason of *ligamen* of a former marriage, although the former husband could not be found, nor any of his relatives, nor any record of the marriage. The decision was based on the wife's word that he had told her that he had been previously married and had told an Army psychiatrist the same. This was combined with evidence that he had used false names and had a criminal record.

Finally, on a case submitted only by letter of the woman's pastor to the Sacred Penitentiary and turned over by it to the Holy Office, the latter granted a declaration of nullity by reason of disparity of cult¹⁷¹ on the woman's word that she was told by her parents that she was never baptized and that her husband had told her that he had been baptized a Catholic. Neither part could be proved by documents. The only document sent to the Holy See was the letter of the pastor.

In view of such cases, one wonders whether some chancery offices should not try more short cuts and not completely stop a process for lack of one of the witnesses or parties. This might help obviate another difficult situation discussed at the annual convention of the Canon Law Society of America in Los Angeles last year, namely, the arbitrary refusal by chancery officials to handle certain types of marriage cases. It is arbitrary in that they set their own norms, not based on the practice of the Holy See. This is especially true of certain types of privilege-of-the-faith cases, which John XXIII seems no less ready to handle expeditiously than did his predecessor.

A number of unusual privilege-of-the-faith cases have been recently published, including one which even went beyond what one writer on the subject thought possible. L. C. de Lery, S.J., in last year's *Periodica de re morali canonica liturgica*¹⁷² thought that the Church would not have jurisdiction over a marriage of two unbaptized persons unless one wanted to be converted. He did think it possible that the pope could dissolve a marriage between an unbaptized person and a baptized Protestant so that one of them could marry a Catholic without himself entering the Church. Examples

¹⁶⁹ *Jurist* 20 (Jan., 1960) 76.

¹⁷⁰ "Ligamen," *ibid.*, pp. 70-71.

¹⁷¹ "Disparity of Cult: Unusual Case," *ibid.*, pp. 69-70. Rescript of the Holy Office to the Brooklyn diocese dated Feb. 12, 1958, Prot. N. 308/57m.

¹⁷² "Quousque se extendat ecclesiae vicaria potestas solvendi matrimonium," *Periodica* 48 (1959) 335-48.

of both cases were sent to him and published in *Sciences ecclésiastiques*.¹⁷³ One was the case of an unbaptized man, a university professor, divorced from a baptized Protestant. He wished to marry a Catholic woman but had no intention of becoming a Catholic himself. Turned down by a U.S. chancery office, he was told to try the chancery office in Tokyo, where he was going as an exchange professor. The Archdiocese of Tokyo sent the case to the Holy See. Pope John XXIII, on the recommendation of the Holy Office, granted the dissolution so that the unbaptized "petitioner, although not converted to the Catholic faith, may, with a dispensation from the impediment of disparity of cult, validly and licitly enter into a new marriage with a Catholic woman."¹⁷⁴

The other case published by Fr. de Lery was of the dissolution of the marriage of two pagans so that one of them could marry a Catholic, with no conversion involved.¹⁷⁵

I presume that most readers are already familiar with the "Fresno cases" of dissolutions of marriages celebrated in the Catholic Church with a dispensation from disparity of cult to allow convalidation of subsequent unions, in some cases of the original non-Catholic party, in some of the Catholic party.¹⁷⁶

FAST AND ABSTINENCE

Some commentaries on the decree of the Sacred Congregation of the Council, Dec. 3, 1959, for anticipating the fast of the Christmas vigil on December 23rd seemed to imply that it was a case of simply changing the obligation of fast and abstinence from the 24th to the 23rd.¹⁷⁷ The wording of the decree would rather indicate that it was granting the option of anticipating or keeping the 24th.¹⁷⁸ This understanding of the decree as optional

¹⁷³ "Deux nouveaux cas de dissolution du mariage en faveur de la foi," *Sciences ecclésiastiques* 12 (May, 1960) 267-69.

¹⁷⁴ Holy Office Prot. N. 996/58, of which I have a copy certified by the Tokyo chancery office; the protocol number cited by de Lery is that of the Tokyo chancery; cf. *Canon Law Digest*, loose-leaf supplement, under can. 1127, p. 5, where it is noted that several similar cases were sent in to the editors.

¹⁷⁵ Holy Office Prot. N. 1986/59, as cited by de Lery, *loc cit.*

¹⁷⁶ *Canon Law Digest* 3, 485-88; 4, 347-52.

¹⁷⁷ E.g., Aidan M. Carr, O.F.M.Conv., "Permanent Change of Christmas Vigil Fast and Abstinence," *Homiletic and Pastoral Review* 60 (Feb., 1960) 453.

¹⁷⁸ "Decretum: anticipandi obligationem abstinenciae et ieiunii pervigilii nativitatis D. N. Iesu Christi," *AAS* 51 (1959) 918; *Canon Law Digest*, *Supplement*, under can. 1252, p. 2.

was later confirmed by the *Osservatore Romano*.¹⁷⁹ All of which means that one may choose either the 23rd or the 24th for his Christmas vigil penance. Casuists should enjoy trying to decide whether all would be completely excused if the 23rd should fall on a Sunday, as in 1963.

Alma College

JOHN J. FARRAHER, S.J.

¹⁷⁹ Dec. 23, 1959, as cited in *Jurist* 20 (Apr., 1960) 229, and by Fr. Carr, in *Homiletic and Pastoral Review* 60 (Apr., 1960) 651.