

CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY

GENERAL MORAL

Few principles or virtues have been invoked as often and with so much danger of abuse as *epikeia*. Is it simply a principle of interpretation of law or is it a virtue? It has been described in both ways, sometimes even by the same author.¹ E. Hamel, S.J.,² gives a very convincing presentation of reasons for considering it a virtue, a part of justice guided by *gnome*, which inclines the will to act contrary to the letter of a positive law when so directed by a higher law, especially by the natural law. Ordinarily, *epikeia* is invoked to justify an exception to a positive law, but considered as a virtue it could be said at times to denominate an obligation stricter than the positive law. Fr. Hamel does not press this point, and it would seem to be an extension beyond the ordinary use of the word. Certainly there can be obligations of the natural law which are stricter than the corresponding positive law. For example, the fifth commandment gravely obliges one to drive an automobile in a way that respects the life and safety of people, even where the positive traffic law might not be considered to oblige in conscience at all.

That exceptions from one law can be the result of the obligation of a higher law is shown by Fr. Hamel from examples in the New Testament in which our Lord justified the apostles for violating the Sabbath regulations to get necessary food. The Pharisees were berated by our Lord for not seeing the possible conflict of a positive law, even a religious one, with a higher law of God: e.g., excusing men from the obligation of supporting their parents to give an offering to the Temple.

The proper application of *epikeia* can provide the flexibility of law to fit given circumstances which the proponents of situational ethics desire so greatly. Of course, there will still remain certain negative precepts of the natural law which admit no exceptions in any circumstances, and may even justly demand heroism in their fulfilment.

Ever more is being written about the need for a new approach to moral theology.³ René Carpentier, S.J., has added three articles on the primacy of

EDITOR'S NOTE.—The present survey covers the period from January to June, 1961.

¹ E.g., D. Prümmer, O.P., *Handbook of Moral Theology* (Westminster, Md.: Newman, 1956) nos. 105, 472.

² "La vertu d'*épikeia*," *Sciences ecclésiastiques* 13 (Jan.-Apr., 1961) 35-56.

³ Cf. "Notes on Moral Theology," *THEOLOGICAL STUDIES* 21 (1960) 581-82.

charity and love in Christian morality,⁴ and an Italian journal has reviewed the various attempts at renovation.⁵ One concrete example of a new application of charity (new to me, at least) was an attempt to show that Friday abstinence should be motivated by fraternal charity.⁶

Two articles in the *Liguorian* give some down-to-earth applications of the virtue of charity towards neighbor, one on "Charity at Home,"⁷ the other on "Witnessing an Accident."⁸ Charity would seem to demand that one give aid to any injured or in need in an accident, and also that one agree to act as witness in court to help arrive at justice—especially if one is a sole witness.

MORAL RE-ARMAMENT

MRA seems to be making another major effort to gain followers in this country and in Latin America. Full-page ads in a number of large-city newspapers⁹ apparently try to attract Catholic support by giving an impression that there is strong Catholic approval of MRA and no Catholic opposition. For approval are cited Dr. Bernardus Kaelin, former abbot primate of the Benedictines, and several Catholic priests and prominent Catholic laymen. In the two such ads of which I have copies, no other religious affiliation is mentioned. At least two writers have seen such propaganda as deliberately misleading and contrary to MRA's profession of "absolute honesty." "Current Comment" in *America*¹⁰ recalls Bishop Noa's forbidding Catholics to attend meetings of MRA at its main American assembly and training center at Mackinac Island in Michigan.¹¹ Similarly, in Argentina, a Jesuit writer charges violation of absolute honesty in citing Cardinal Cushing in a Spanish-language booklet in a context that would

⁴ "Le primat de l'amour dans la vie morale: Problèmes et réponses," *Nouvelle revue théologique* 83 (Jan., 1961) 3-24; "Le primat de la charité en morale surnaturelle," *ibid.* (Mar., 1961) pp. 255-70; "Le primat de l'amour-charité comme méthode de théologie morale," *ibid.* (May, 1961) pp. 492-509.

⁵ Ambrogio Valsecchi, "Verso un rinnovamento della teologia morale," *Scuola cattolica* 89 (Mar.-Apr., 1961) 125-43.

⁶ A. Guillaume, "Abstinence du vendredi et charité fraternelle," *Nouvelle revue théologique* 83 (May, 1961) 510-21.

⁷ By Louis Mather, C.S.S.R., *Liguorian* 49 (Mar., 1961) 23-25.

⁸ By L. G. Miller, C.S.S.R., *ibid.* (Feb., 1961) p. 24.

⁹ E.g., San Francisco *Examiner*, Jan. 15, 1961; San Francisco *News-Call-Bulletin*, June 5, 1961.

¹⁰ "MRA and a Benedictine Abbot," *America* 104 (Feb. 4, 1961) 583.

¹¹ In the Notes, *THEOLOGICAL STUDIES* 21 (1960) 584, I mentioned this as MRA headquarters. I meant to say American headquarters and more properly should have said one of the principal international assembly centers of the movement.

seem to indicate that he approved Catholics' joining the movement, while saying nothing of the frequent warnings against Catholic participation issued by Catholic bishops and theologians throughout the world.¹² The same author also recalls the *monitum* of the Holy Office, first issued to bishops in 1951, and again with further comment to various bishops in 1955.¹³

That such propaganda has an effect on even Catholic journalists would seem to be apparent from an article and editorial comment in a recent issue of *Jubilee*. The article begins with the statement: "The warm endorsement given by European Catholic leaders, clerical and lay, to Moral Re-Armament, a movement which has traditionally been cold-shouldered in the United States by their counterparts, has created a puzzling situation."¹⁴ The editorial comment, by Pauline Holman, pretends to give the pro and con of MRA,¹⁵ but evidently Pauline has not read much of the abundance of Catholic literature on MRA, for she can find nothing con except possibly the practice of public confession of faults.

This seems a somewhat amazing statement in what purports to be an intelligent Catholic magazine. Although the staff might be excused for not having read articles on the subject which have appeared in practically every theological and ecclesiastical journal in the world, and even might be excused for not having seen the full treatment of the question in *Social Order*¹⁶ or in the English translation of Bishop Suenen's book,¹⁷ it seems strange that they would not have seen the rather full accounts in diocesan journals in the years past.¹⁸ And even a quick reference to the *Catholic Periodical Index* in any volume since 1950 would have shown at least some of the more than fifty entries on MRA in that period. In none of the articles which I have read have I found any Catholic objection to the public confession of faults. In fact, a related phenomenon in Alcoholics Anonymous is frequently mentioned without adverse criticism. The only mention of an objection against this practice which I have seen, was in an account in *Time*¹⁹ in which it was stated that Princeton had objected to the practice among its students in 1926.

¹² Pedro Miguel Fuentes, S.J., "Rearme moral y catolicismo," *Estudios* 50 (May, 1961) 171-79.

¹³ *Canon Law Digest* 4, 384-85.

¹⁴ George Shuster, "Moral Re-Armament," *Jubilee* 9 (July, 1961) 30-35.

¹⁵ "Moral Re-Armament—Pro & Con," *ibid.*, pp. 34-35.

¹⁶ Edward Duff, S.J., "Verdict on MRA," *Social Order* 6 (1956) 274-90.

¹⁷ *The Right View of Moral Re-Armament* (London: Burns and Oates, 1954).

¹⁸ E.g., NCWC News Service release, Los Angeles *Tidings*, Aug. 26, 1955, p. 3.

¹⁹ Feb. 14, 1955.

On the other hand, practically every article on the subject does judge that, in spite of contrary claims, MRA is a religious movement favoring indifference, based on a number of Protestant doctrines at variance with Catholic beliefs. Most also mention the warning of the Holy Office mentioned above. And many of the articles mention the condemnations, warnings, and prohibitions of many bishops against Catholics' participating in the movement, in Germany, Belgium, Italy, India, the Philippines, England and Wales, and the United States.

This is not to say that one cannot admire and praise the zeal and enthusiasm of the followers of MRA, just as one can also praise the great practical charity of the Salvation Army or the youth work of the YMCA—although the amount of self-praise indulged in by the MRA would seem to absolve all others of any such duty.

That one may praise the work of the YMCA is an opinion expressed by William J. Whalen in an article in the *Priest*.²⁰ But beyond that, he does not see how a Catholic can co-operate with the movement even by contributing towards its work, except perhaps as part of a business or company contribution. Most theologians, I believe, would not be quite as strict but would stand by earlier opinions that Catholics should not join the "Y" or even use its facilities, unless no comparable sports or social facilities are available, and there is no participation in religious activities, no danger to one's faith, and no scandal.²¹ Bishops are acting within their authority if they forbid even this co-operation, as did the bishops in the Philippines in 1954.²²

SERVILE WORK

Three recent articles have again treated in a rather complete way the question of the nature of servile work as forbidden by Church law.²³ All three described the various theories, treated before in these Notes,²⁴ and

²⁰ "Catholics in the YMCA?" *Priest* 17 (May, 1961) 407-14.

²¹ Cf. Letter of the Holy Office to bishops of the U.S., Nov. 5, 1920, *Canon Law Digest* 1, 607-9; S. Woywod, O.F.M., "Interpretation of the Decree of the Holy Office on the YMCA and Kindred Societies," *Homiletic and Pastoral Review* 22 (1921-22) 290-91; V. T. Schaaf, O. F. M., "Catholics in the YMCA and the YWCA," *American Ecclesiastical Review* 96 (1937) 537-39; J. J. Danagher, C.M., *Homiletic and Pastoral Review* 53 (1952-53) 753-56.

²² *Canon Law Digest* 4, 366-70.

²³ Aurelio Yanguas, S.J., "Las obras serviles," *Estudios eclesiásticos* 36 (Jan.-June, 1951) 145-64; G. B. Guzzetti, "Problemi del giorno del Signore," *Scuola cattolica* 89 (Mar.-Apr., 1961) 9-21; Miguel-Angel de Espinal, O.F.M.Cap., "Noción de obra servil en orden al descanso dominical: Exposición histórico-doctrinal," *Archivo teológico granadino* 21 (1958) 5-197.

²⁴ Cf. *THEOLOGICAL STUDIES* 21 (1960) 584-85.

the two briefer articles suggested the need for the Church to revise its law, at least by clearly defining servile work. Fr. Guzzetti inclines toward the definition most frequently found in American catechetical works, namely, work that is more of the body than of the mind, but he admits the probability of the other opinions.

In view of the amount of literature on the subject, it is strange to find a Catholic writer, in this case Pius J. Lutkus, a missionary of Our Lady of LaSalette, ignoring or denying the opinions which differ from his, not even conceding them any probability.²⁵ In answer to his own question, "Can we say that this question is disputed, i.e., the definition of servile work?" he responds, "I would definitely answer no."²⁶ According to him, "it is all a matter of an established custom."²⁷ And for his controlling custom he seems to demand a universal custom to make a given work licit, but not necessarily universal to make it illicit. The usage of some good Catholics cannot be a norm, because "it does not follow that because some few individuals have been acting so in a certain locality, custom has been established. The people as a whole must have the same understanding."²⁸ Take knitting, for example. "The very fact that people ask about knitting indicates that there does not seem to be a general understanding that it is licit."²⁹

Fr. Lutkus recognizes that the Code does not define servile work, and so "we have then to go to the traditional teaching of canonists and moral theologians for the definition."³⁰ He seems to think that all varying opinions express merely what their authors would like to see the Church define, not what is licit or illicit now. If some seem to allow gardening for recreation, they are missing the point: "The work is either servile or not . . . if legal custom makes it servile, it is servile!"³¹

Among other things which Fr. Lutkus seems to have overlooked is that for custom to have the binding force of law in creating a new obligation, it has to have been consciously begun with the intention of binding oneself while realizing that one is not already so bound. Perhaps he is rather taking custom as a norm of interpretation. But are there not also great differences of custom? Does not the asking of questions about knitting show a difference of custom? And what about the teaching of canonists and moral theologians? If so many judge the matter doubtful (even St. Thomas held for service to others as the norm³²), it seems strange that Fr. Lutkus can be so sure in favor of his very severe interpretation.

²⁵ "The Definition of Servile Work," *American Ecclesiastical Review* 144 (June, 1961) 398-405.

²⁶ *Ibid.*, p. 405.

²⁷ *Ibid.*, p. 402.

²⁸ *Ibid.*, p. 400.

²⁹ *Ibid.*, p. 402.

³⁰ *Ibid.*, p. 403.

³¹ *Ibid.*, p. 405; exclamation point in original.

³² *Sum. theol.* 2-2, q. 122, a. 4, ad 3m.

At least liberal on interpreting the necessity which can excuse servile work is an answer by F. J. Connell, C.S.S.R., as to whether the precept is obligatory also on holydays of obligation.³³ I would prefer to answer confessional questions with an exhortation to avoid work which can be done just as well on another day.

CIVIL LAW AND PUBLIC MORALITY

In the last issue of these Notes, John J. Lynch, S.J., treated two questions of "moral law and civil legislation," Sunday closing laws and laws forbidding contraception.³⁴ In the period covered by the present survey, several articles have appeared on other matters of public morality, especially on abortion and immoral literature and movies.

On the question of civil law and abortion, coincidentally two Martins take up opposing positions. Joseph Martin opposed proposals for "liberalizing" the abortion laws in Germany,³⁵ while in this country John Bartlow Martin wrote a three-part article in the *Saturday Evening Post*³⁶ which amounted to a plea to free non-Catholics from legislation imposing Catholic morality on all. While he mentions explicitly that Catholics consider abortion to be murder, he does not say why he thinks it is not murder or why he thinks that laws against murder are a result of the domination of Catholic morality. To me it seems like another clear example of situational ethics using the principle that the end justifies the means.

According to a news item,³⁷ the non-Catholic governor of New Hampshire

³³ "Servile Work on Holydays," *American Ecclesiastical Review*, 144 (May, 1961) 350-51.

³⁴ THEOLOGICAL STUDIES 22 (June, 1961) 235-38. New England is not the only place with laws against contraceptives. The German penal law forbidding morally offensive advertising or display of prophylactics against venereal diseases under fine and imprisonment up to one year is discussed by Joseph Martin, "Amoralische Rechtsprechung in Sachen Empfängnisverhütungsmitteln," *Freiburger Zeitschrift für Philosophie und Theologie* 7 (1960) 162-67. The German law (*Strafgesetzbuch*, § 184, Abs. 1, Nr. 3a): "Wer in einer Sitte oder Anstand verletzenden Weise Mittel, Gegenstände oder Verfahren, die zur Verhütung von Geschlechtskrankheiten dienen, öffentlich ankündigt, anpreist oder solche Mittel oder Gegenstände an einem dem Publikum zugänglichen Orte ausstellt, wird mit Gefängnis bis zu einem Jahre und mit Geldstrafe oder mit einer dieser Strafen bestraft." Martin says that the courts interpret the law very broadly, allowing even vending machines for health's sake. He thinks this very harmful to the common good. For related matters, cf. also Norman St. John-Stevass, *Life, Death and the Law: Law and Christian Morals in England and the United States* (Bloomington: Indiana Univ. Press, 1961).

³⁵ Joseph Martin, "Juristen zur Schwangerschaftsunterbrechung," *Freiburger Zeitschrift für Philosophie und Theologie* 7 (1961) 168-70.

³⁶ "Abortion," *Saturday Evening Post*, May 20, May 27, June 3, 1961. Cf. also THEOLOGICAL STUDIES 17 (1956) 562; 21 (1960) 234-36, 595-96.

³⁷ As reported in an NC release, *Los Angeles Tidings*, Apr. 7, 1961.

risked his political future by vetoing a bill which would legalize therapeutic abortions. Leaders of five Protestant denominations are said to have endorsed the bill. Perhaps they eased their consciences by speaking of interrupting a pregnancy or emptying a uterus, without considering that it meant killing a baby.

Even more has been written during the first half of the year on immoral movies and literature and on the need for some sort of regulation. In Italy the matter of immoral movies was especially agitated. Articles in *Civiltà cattolica*, *Palestra del clero*, and *Perfice munus* all deplored the state of Italian movies and expressed the opinion that something should be done.³⁸ A revision of existing civil legislation for stricter control is under consideration.³⁹

On the ecclesiastical side, the Conference of Italian Bishops, alarmed "by the growing immorality of a large part of present movie production," which "constitutes a grave danger for all and especially for the younger generations," and admitting that Italy "seems to be striving for a sad first place in the number of morally negative films,"⁴⁰ reminds the faithful of "their duty in conscience to follow . . . the moral designations furnished by the Catholic Cinematographic Center."⁴¹

Judging from one commentary, the Bishops' statement aroused some adverse criticism in the Italian secular press. One paper accused the Bishops' conference of trying to impose the decalogue on esthetics in opposition to the "great superiority even in morals of modern esthetics, emancipated from didactic principles with respect to uncertain Catholic doctrine."⁴²

This may provide a clue to the widespread opposition to all forms of censorship, even of the advisory type: that some resent what they consider the imposition of Catholic teaching on the population at large; or, in general, that they so exaggerate liberty that they do not want anyone trying to tell

³⁸ Gino Concetti, "Il punto sul cinema," *Palestra del clero* 40 (Jan. 1, 1961) 17-20; Domenico Squillaci, "Cinema," *ibid.* (Jan. 15, 1961) pp. 114-18; Antonio Covi, S.J., "La censura degli spettacoli," *Perfice munus* 36 (May, 1961) 253-58; E. Beragli, S.J., "Verso la nuova legge di revisione cinematografica," *Civiltà cattolica* 112, 2 (May 20, 1961) 372-78; (June 17, 1961) 598-612.

³⁹ Beragli, *art. cit.*; Gino Concetti, "Considerazioni morali sulla relazione del Procuratore Generale di Cassazione," *Palestra del clero* 40 (Mar. 1, 1961) 240-46.

⁴⁰ La Conferenza Episcopale Italiana, "La moralità dello spettacolo," *ibid.* 40 (Apr. 1, 1961) 345-50; citation, p. 345.

⁴¹ *Ibid.*, p. 349. Also strict on the obligation to follow the ratings of the CCC is Domenico Squillaci, *art. cit.*, p. 117: "All have a grave obligation to avoid films rated 'advised against' (*sconsigliabili*) or 'excluded' (*esclusi*), because they present a probable or morally certain proximate danger of sin."

⁴² Gino Concetti, "I problemi morali del cinema nella dichiarazione dei Vescovi," *Palestra del clero* 40 (Apr. 15, 1961) 401-6; citation, p. 406.

them what to do or think. A writer in the *Priest* suggests that such opposition may be due, at least in part, to Communist influence.⁴³ It would be in line with Communist aims to foster such movements, but in my opinion it is due rather to other factors: in some, an extreme liberalism which wants no restraints of any kind; in others, a mistaken idea of what is right and wrong in sexual matters; in still others, the view that what a person sees or reads has little or no influence on his overt acts.

That the state has a right to control movies and literature where these have a harmful effect on the common good has always been the common teaching of both Church and state.⁴⁴ To what extent and how the state should exercise this right is open to debate and is a question rather for sociologists and jurists. The related questions of what is moral or immoral and what influence movies and books have on human actions is of more direct interest to moral theology.

In a seminar held by the Guild of Catholic Psychiatrists and published in the January and April issues of their *Bulletin*, a psychiatrist and a lawyer⁴⁵ marshal a great amount of evidence to show that obscene materials do have appreciable effects and that the effects are bad. Between them they consider most of the books and studies quoted by anticensorship forces and show that they are either mistaken in their premises or incomplete in their evidence or both. As an example of a book failing in both respects, both writers mention *Pornography and the Law* by Drs. Eberhard and Phyllis Kronhausen.⁴⁶ Psychiatrist Hoffman cites the Kronhausens' false moral premise that man has a right to use his body and sexual organs in complete freedom as long as this does not involve violence, constraint, or fraud against another person.⁴⁷ And lawyer Ball points out that the same authors reason incorrectly from what evidence they offer and overlook important scientific studies giving evidence against their thesis, such as *Seduction of the Innocent* by Dr. Frederick Wertham.⁴⁸

⁴³ Paul Hayes, "Why Filthy Literature?" *Priest* 17 (Feb., 1961) 131, 134, 137.

⁴⁴ The position of the state was confirmed, at least negatively, i.e., that government regulation is not against the Constitution, by Supreme Court decisions: on regulation of movies, Jan. 23, 1961, as reported in NC release, *Tidings*, Jan. 27, 1961; on obscene literature in decisions of 1957 and 1959. For the Church's position, see the statement of the U.S. bishops in 1957. For previous comment, see THEOLOGICAL STUDIES 17 (1956) 555; 19 (1958) 175-76, 555-56. For a more recent article, see D. F. Miller, C.S.S.R., "Is Censorship Necessary in Your Life?" *Liguorian* 49 (May, 1961) 1-7.

⁴⁵ Carl Hoffman, "A Psychiatric View of Obscene Literature," *Bulletin of the Guild of Catholic Psychiatrists* 8 (Jan., 1961) 3-13; William B. Ball, "Legal Aspects of Obscene Literature," *ibid.* (Apr., 1961) pp. 79-87. Cf. also Victor T. Suren, "Obscene Literature: A Theological Opinion," *ibid.* pp. 73-77.

⁴⁶ New York: Ballantine, 1960. ⁴⁷ Hoffman, *art. cit.*, p. 12.

⁴⁸ New York: Rinehart, 1953-54; cited by Ball, *art. cit.*, p. 85.

Coming to similar conclusions as Dr. Wertham and the above-mentioned seminar, and with considerable evidence of the extent of so-called hard-core pornography, is James Jackson Kilpatrick's *The Smut Peddlers*.⁴⁹ This book, according to one of the editors of the *Priest*, "cannot be put into the hands of every reader but surely every educator and parent and clergyman should be aware of the book's basic facts."⁵⁰

The debate on obscenity, morally, sociologically, and juridically, rages more on the question of erotic scenes in movies and novels than on the hard-core pornography. All Catholic moralists agree that, outside of legitimate activity between husband and wife, the intention to arouse sexual excitement is immoral, whether this be on the part of author, producer, actor, reader, or viewer. This is Catholic teaching of God's law. But unfortunately many authors, producers, actors, jurists, and others follow the same morality as the Kronhausens, cited above: sexual activity is a man's own business and is not wrong unless it leads to violence against an unwilling person.

But even granting the Catholic doctrine on purity, there is still room for debate. To what extent are erotic scenes, by word or picture, justifiable as a part of a whole book or movie? The principle of the indirect voluntary ("double effect") can be applied, but all its conditions must be fulfilled. One may not intend the evil effect—here sexual excitement—either as an end in itself or as a means to something else. To intend to convey a strong impression or message by arousing sexual excitement is immoral. This in itself might tend to cause suspicion of the novels of authors who feel that a little private sexual excitement is a legitimate recreation. If there is no intention of arousing sexual excitement, but such may result, then the reason for including the scene must be proportionate to the evil effect, and the evil should be kept to a minimum. So, if the same story or moral or lesson can be put over without matter which will cause sexual excitement, it would be wrong to use such matter.

To try to judge a book or movie objectively on these principles involves also the question of who might be aroused by the matter. Obviously, neither the abnormally oversexed or undersexed should be the norm, but rather the middle group which would be considered normally sexed.⁵¹ These principles

⁴⁹ Garden City: Doubleday, 1960.

⁵⁰ G. J. Gustafson, S.S., "The Smut Peddlers," *Priest* 17 (Mar., 1961) 203-7; (Apr., 1961) 299-302.

⁵¹ Alejandro Roldán, S.J., "Tipología y moralidad pública," *Razón y fe* 163 (Jan., 1961) 37-48.

apply to all forms of communication, movies, novels, newspapers, and even billboard advertising. All have been treated to a varying degree recently.⁵²

In spite of all the difficulties in agreeing on what is or is not obscene or unchaste, and on what effect it may or may not have on public actions, at least one state, California, has strengthened its laws against pornographic literature, increasing the penalties and the categories of those liable to such penalties.⁵³

FIFTH COMMANDMENT

Research in a field which should be of great interest for its implications in other matters forms the basis for an article by J. F. Groner, O.P., on the development of the doctrine of St. Thomas on drunkenness.⁵⁴ It seems that the Angelic Doctor first considered drunkenness to be only a venial sin, as an excess against temperance—too much of a good thing. Later he came to realize its gravity against the proper use of one's own body in the violent deprivation of the use of reason. Just as preventing a man from entering his own house even temporarily is a violation of justice, so also violently depriving a man of the use of his rational faculties is against justice—and with this big difference, that the owner has complete dominion over his house, but man has not complete dominion over his own person. Hence, he may not consent to or cause a violent deprivation of his own faculties, unless it is justified by the principle of totality, i.e., where it will serve for the immediate good of the body.⁵⁵ Drunkenness differs from natural sleep because the latter is merely the withdrawal of or abstention from use and does not deprive one of the possibility of use.

I would have explained this last point by saying that sleep in proper amount is also necessary for the good of the body and so is in accord with the principle of totality. In any case, I find the doctrine especially interesting as applicable to the deliberate knocking out of an opponent in boxing.⁵⁶

⁵² E.g., F. Getlein and H. C. Gardiner, S.J., *Movies, Morals and Art* (New York: Sheed & Ward, 1961); M. J. Costelloe, S.J., "Sex in Contemporary Literature," *Homiletic and Pastoral Review* 61 (Oct., 1960) 19–28; (Nov., 1960) 145–54; and letter to editor, *ibid.* (Apr., 1961) pp. 624, 626, 628, 670; Giuseppe de Rosa, S.J., "Un problema urgente: La moralizzazione della cronaca," *Civiltà cattolica* 112, 2 (Apr. 1, 1961) 3–17; Pietro Biennati, "Il problema morale della stampa di affissione," *Perfice munus* 36 (May, 1961) 250–52.

⁵³ Assembly Bill # 1979, effective Sept. 15, 1961.

⁵⁴ "Zur Lehrentwicklung über die moralische Qualifizierung der Trunkenheit bei Thomas von Aquin," *Freiburger Zeitschrift für Philosophie und Theologie* 7 (1961) 284–96.

⁵⁵ Or perhaps the good of others in organic transplantation and legitimate experimentation.

⁵⁶ Cf. *THEOLOGICAL STUDIES* 16 (1955) 248–50.

On the somewhat related question of hypnosis, a few new items have appeared since those mentioned in the June issue of these Notes.⁵⁷ As might be expected, a Sunday-supplement article played it up as a miracle worker,⁵⁸ while articles in two scientific journals re-emphasized the dangers of hypnosis, even when exercised by physicians, if they are not trained in psychiatry. A report by the Committee on Mental Health of the California Medical Association and articles by two members of the Committee warned that the improper use of hypnosis can lead to psychosis and even to suicide.⁵⁹ The Committee and the general assembly of the California Medical Association recommended legislation to prohibit the use of hypnosis for entertainment.⁶⁰ Dr. John R. Cavanagh also warns of the dangers of hypnosis and expresses the opinion that "hypnosis has very little real value as a therapeutic agent. Almost everything which it does can be done more simply and less dangerously by other means."⁶¹ Nevertheless, he admits that the dangers can be exaggerated and he believes that A. Wiesinger, O.C.S.O., in his book *Occult Phenomena*⁶² "grossly exaggerates" them.⁶³

Dr. Cavanagh brings up again the question of whether a person under hypnosis can be led to commit immoral acts. He believes that it can be done by making the subject see the action as something good. A question on which I should like to see more scientific evidence is whether repeated submission to hypnosis could lead to a weakening and even loss of self-control. That it might do so seems indicated by something Dr. Cavanagh says on another point. Considering whether a person can be hypnotized against his will, he concedes that it might happen in certain rare circumstances, but "of course, could not occur on the first attempt."⁶⁴

It was suggested here last year⁶⁵ that the use of hypnosis or drugs to improve athletic competition, besides violating the fifth commandment, might also violate the seventh or eighth by using unfair means to win a prize, trophy, or honor. Fr. Connell apparently does not think so, at least

⁵⁷ *Ibid.* 22 (June, 1961) 249-50.

⁵⁸ Ann Cutler, "Hypnosis up to Date," *American Weekly*, Jan. 1, 1961.

⁵⁹ "Hypnosis," A Report of the California Medical Association Committee on Mental Health, *California Medicine* 94 (Apr., 1961) 252; Alfred Auerback, M.D., "The Place of Hypnosis in Medicine," *ibid.*, pp. 252-56; Jack B. Lomas, M.D., "Uses and Abuses of Hypnosis," *ibid.*, pp. 256-58.

⁶⁰ *Ibid.*, p. 252.

⁶¹ "Hypnosis," *Bulletin of the Guild of Catholic Psychiatrists* 8 (Apr. 1961) 94-111; citation, p. 107.

⁶² Westminster: Newman, 1957, p. 235.

⁶³ *Art. cit.*, p. 102. ⁶⁴ *Ibid.*, p. 104.

⁶⁵ THEOLOGICAL STUDIES 21 (1960) 589-90.

as far as "Drugs for Athletes"⁶⁶ are concerned. Granting that their use is against the fifth commandment, but considering that it is certainly legitimate to use special diet and training regimen, he asks: "Where, then, is the injustice in the employment of some drug that will increase his strength, speed, etc.?" But I am still inclined to think that the use of illicit means to gain advantage over other contestants for a prize, be it cash or trophy or mere honor, is at least depriving the others of a fair chance at that prize. The other contestants do not have a strict right to the prize, but do they not have a right to a fair chance at the prize? And the use of drugs is an illicit means if it is against the fifth commandment. Perhaps their use for such purposes could be placed in the category of a violation of distributive justice.

The evidence of a direct causal connection between heavy cigarette smoking and lung cancer seems to be mounting. According to Dr. Brian MacMahon, Professor of Epidemiology at Harvard University, "it is now established beyond any reasonable doubt that lung cancer would be reduced to less than ten per cent of its present incidence if cigarette smoking were discontinued."⁶⁷ Statistics in the other direction—how many cigarette smokers develop lung cancer—would be more *ad rem* for a moral consideration of the problem.

In a consideration of "Moral Problems of Plastic Surgery,"⁶⁸ Fr. Connell adds a new example. It is all right for a plastic surgeon to do a "mammaplasty for the purpose of augmentation," provided that it is not for any sinful purpose and that the augmentation is within the range of normal. To help get or hold a husband would seem to be a legitimate purpose. Actually, the doctor need not inquire into the purpose as long as the resultant product will be within the range of normal.

*Life*⁶⁹ reports that a Texas chiropodist has amputated the tip of the little toes to the first joint for several hundred women, so that they can wear the extremely pointed shoes more comfortably. I suppose that this could be considered negligible on the matter of mutilation, but it does seem to me to be an excess of vanity to carve the feet to fit the shoes, instead of getting shoes to fit the feet. And the effect on the feet is permanent, whereas the fashion seems already to be changing.

⁶⁶ *American Ecclesiastical Review* 144 (Feb., 1961) 136-37.

⁶⁷ As reported by John F. Allen, Science Editor, San Francisco *Examiner*, Mar. 23, 1961, p. 1.

⁶⁸ *American Ecclesiastical Review* 144 (Apr., 1961) 274-77. Cf. THEOLOGICAL STUDIES 21 (1960) 595.

⁶⁹ June 23, 1961, p. 37.

Concerned with more serious surgery, John J. Lynch, S.J., reviews the morality of surgical treatment of ectopic pregnancies.⁷⁰ He outlines what is now considered the ordinary moral doctrine on the matter: by reason of the principle of the indirect voluntary combined with the principle of totality, the section of a Fallopian tube containing a fetus may be removed even with the certain death of the fetus resulting, when it is judged that the condition of the tube itself is a threat to the mother. The fetus itself can never be directly attacked or aborted.

Recently I have been asked about tubal pregnancies in a way that makes me wonder about the objective truth of the indirectness of intention in such surgery. At times some doctors feel that it would be possible to save the entire tube and ask whether in such cases they may not shell out the fetus and repair the tube, or if that is not allowed, at least to open the tube and remove only a tiny spot where the fetus is actually attached, i.e., not a whole section of the tube but merely a tiny patch of tube lining, so as to leave the tube as a whole intact.

Certainly, no more need be removed than is pathological and a threat to the mother. Suppose, on opening the tube, the doctor finds that he can save the entire tube. May he remove the fetus? Can he justify removal on the ground that the fetus is no worse off outside than in the tube? It will die sooner outside, but perhaps no more certainly than in its present confined position. If there were a possibility of keeping the fetus alive, either by artificial aids or by transplanting it to the wall of the uterus, then I believe that there would be no objection to removing it from the tube. But as long as there is no real chance of the fetus surviving, I believe moralists would agree in considering the removal of the fetus an occisive action and a direct abortion and so gravely illicit.

Faced with the same situation, where the doctor feels that the whole tube can be salvaged, would he be justified in removing a tiny patch from the tube where the fetus is attached? Would it fulfil the double-effect conditions, even though the condition of the tube here and now is no threat to the mother? If it can be truly said that the tube is already in a pathological state which will become a threat, I believe that most moralists would allow the operation. The fact that the fetus will almost surely die anyhow can be a valid consideration where its death is only indirectly voluntary. It seems like hairsplitting, and perhaps there is a danger that the removal of the patch of tube is only an excuse for the direct intention of removing the fetus. Maybe the case will be alleviated in the years to come by finding means to

⁷⁰ "Ectopic Pregnancy: A Theological Review," *Linacre Quarterly* 28 (Feb., 1961) 9-14.

keep alive even a fetus of a few weeks by artificial means. For this purpose we can hope that research and experiments will be done with animals, but not with human beings. The only possibly licit experimentation of the kind with human embryos or fetuses that occurs to me might be in cases in which an already growing embryo or fetus is excised by legitimate application of the principle of the indirect voluntary.

Experiments attempting to unite human ovum and sperm in vitro, like the widely publicized one of Dr. Daniele Petrucci in Bologna, were characterized by Pius XII in 1956 as "immoral and absolutely illicit,"⁷¹ and this because human fecundation may take place only by a natural use of the sex function by husband and wife. However, the Pope added another reason too: "The Church . . . disapproves of all genetic experiments which make light of the spiritual nature of man and treat him as though he were nothing more than a member of an animal species."⁷² Dr. Petrucci's experiment seemed also to be a grave violation of the fifth commandment in another way, if, as the news item reported, he destroyed the life he had helped to start. Whatever theory one may hold on the time of human animation, it will be immoral deliberately to destroy what may be a human life, even though the resulting body may be grossly deformed. These points were made in a number of articles commenting on the Petrucci experiment.⁷³ Several mentioned that similar experiments had been conducted before by other scientists, including Dr. John Rock in 1944.⁷⁴

The principles of licit medical experimentation with human beings have been discussed in these Notes previously.⁷⁵ An interesting application of the same principles to experiments in space flights is the subject of an article in *Sal terrae*,⁷⁶ in which the author shows approval of the way the United

⁷¹ Allocution to a Congress on Human Fecundity and Sterility, May 19, 1956; *The Pope Speaks* 3 (1956) 191-97; citation, pp. 194-95.

⁷² Allocution to the International Society for Blood Transfusion, Sept. 5, 1958; *The Pope Speaks* 6 (1960) 386-91; citation, p. 391.

⁷³ Roberto Masi, "Valeur philosophique et moral d'une récente expérience de fécondation artificielle," *Collectanea Mechliniensia* 46 (Mar., 1961) 179-84 (a translation from Italian original in *Osservatore romano*, Jan. 15, 1961); M. Dayez, "Expérimentation scientifique et exigences morales," *Revue diocésaine de Tournai* 16 (May, 1961) 268-73, which contains a good bibliography on human animation, p. 271; "Fecundation 'in vitro,'" *Clergy Monthly* 25 (Jun., 1961) 181-83; G. Bosio, S.J., "A proposito dell'esperimento di Bologna," *Civiltà cattolica* 112, 1 (Feb. 4, 1961) 268-75.

⁷⁴ *Clergy Monthly*, art. cit., p. 181.

⁷⁵ THEOLOGICAL STUDIES 21 (1960) 593-94. A recent summary of the ordinary doctrine is: Santiago Geraghty, S.J., "Ética en la experimentación médica," *Estudios* 50 (May, 1961) 180-85.

⁷⁶ Fernando Fueyo, "El hombre interespecial y la moral," *Sal terrae* 49 (May, 1961) 279-91.

States fulfilled all the ordinary conditions: the free consent of the subject, previous tests with animals (Ham gets honorable mention), the avoidance of unnecessary suffering and danger, avoidance of undue danger of death or permanent invalidism, medical preparedness of the subject, qualified personnel conducting the experiment, the ability of the subject and experimenter to call off the experiment in case of unexpected danger, and even a value of success proportioned to the danger involved.

"The Humanitarian Theory of Punishment"⁷⁷ is rejected by C. S. Lewis as contrary to a proper concept of justice, and harmful not only to the best interests of society but also of the criminal himself. If deterrence is the norm and not desert, any punishment could be imposed for any crime as long as it would deter others. Or if punishment is considered merely therapeutic, in the belief that all criminal acts are pathological, then it would follow that the state could impose "therapeutic" punishment for any mental "aberration," including religion, if it so decided. Even pardon would have no meaning if there is no guilt.

The ever-present possibility of nuclear war⁷⁸ has called forth more writings, especially on disarmament and nonviolent resistance. Bede Griffiths, O.S.B.,⁷⁹ still thinks that nonviolence is the only Christian way. He is willing to leave it to the conscience of each individual, but he believes that the more perfect way is an obligation for all who wish to follow the Christian way of life. He praises Ghandi for showing the effectiveness of nonviolence.

Norman Karol Gottwald,⁸⁰ a non-Catholic, thinks more research is desirable on ways of nonviolent resistance of the type exemplified by Ghandi and by Martin Luther King in the South, but he points out that Ghandi and King were both dealing with presumably Christian peoples, and their methods involve an appeal to Christian consciences in their own or mother country. The same effect cannot be expected on an outside enemy, especially when the enemy is a force of atheistic Communism. Nevertheless, he proposes that some start might be made by some gesture at unilateral disarmament, to prove our good will in wanting general disarmament.

To help Americans form a judgment on the question of disarmament, the Book-of-the-Month Club has sent to all college libraries gift copies of two books on the subject. *The Nation's Safety and Arms Control*,⁸¹ by Arthur

⁷⁷ *Catholic Mind* 59 (May-June, 1961) 254-60 (reprint from *20th Century*).

⁷⁸ Cf. THEOLOGICAL STUDIES 21 (1960) 590-93; 22 (Jun., 1961) 241; *The Moral Dilemma of Nuclear Weapons: Essays from WORLDVIEW* (New York: Church Peace Union, 1961).

⁷⁹ "Non-violence and Nuclear War," *Blackfriars* 42 (Apr., 1961) 157-62.

⁸⁰ "Some Strategies of Non-violence," *Worldview* 4 (Apr., 1961) 3-7.

⁸¹ New York: Viking Press, 1961.

Hadley, presents arguments against disarmament. *Arms Control, Disarmament and National Security*,⁸² edited by Donald G. Brennan, contains a series of articles, mostly sponsored by the American Academy of Arts and Sciences, discussing various aspects of the question, most of the articles being in favor of disarmament of some kind.

Against a proposal of total unilateral disarmament as being the only Christian way, a letter to *Worldview*⁸³ takes up the suggestion that Christian love abstains from all force except to restrain evil, and asks what else the purpose of our armament is except to restrain the evil of Communist domination.

Whatever be one's opinion on the liceity of a nuclear war of defense, another name may be added to those who hold that the commands of government are to be obeyed unless one is sure that the command is unjust.⁸⁴ In doubts, the presumption favors legitimate authority.

The building of bomb shelters has been the subject of a number of comments. To judge from a review,⁸⁵ Herman Kahn, in a book *On Thermonuclear War*,⁸⁶ suggests, among other things, that people should be made to believe the possibility of war, so that they will build shelters and take other means for survival and so will actually be taking steps to avoid war. The reviewer, a teacher in the Yale Divinity School, fears that making war seem thinkable and survival possible may make war more likely.

Two Catholic writers expressed opposite opinions on the obligation to build bomb shelters. Msgr. Emmett Murphy, former Professor of Moral Theology at St. Bernard's Seminary in Rochester, New York, stated that fathers of families have a moral obligation to provide fall-out shelters as the most feasible protection for their families.⁸⁷ Fr. Connell had earlier given what to me seems the more solid doctrine, that there is hardly a moral obligation to build bomb shelters, since they would seem to constitute extraordinary means, especially since it is doubtful that there will be a bombing attack, and further, doubtful how much good a shelter would be if there were such an attack.⁸⁸ Co-operating with government programs in the

⁸² New York: George Braziller, 1961.

⁸³ Herman F. Reissig, "A Christian Approach to Nuclear War," *Worldview* 4 (Apr., 1961) 8-9.

⁸⁴ A. Tillet, "Encore l'objection de conscience," *L'Ami du clergé* 71 (June 15, 1961) 379-81.

⁸⁵ William Lee Miller, "Which Unthinkable Thoughts Do We Think?" *Worldview* 4 (Apr., 1961) 10-11.

⁸⁶ Princeton: Princeton University Press, 1960.

⁸⁷ As reported, San Francisco *Monitor*, Aug. 18, 1961, p. 1.

⁸⁸ "Must We Build Bomb Shelters?" *Liguorian* 49 (Feb., 1961) 8-9.

matter is certainly recommended but hardly obligatory under pain of sin.

Also on the fifth commandment was an answer by L. L. McReavy, that a direct intention to kill in self-defense against unjust attack is legitimate if it is the only feasible means of defense.⁸⁸ He believes that this holds also for defense against rape under the usual conditions, *servato moderamine inculpatae tutelae*.

BIRTH CONTROL AND ANOVULANTS

Cahiers Laënnec devoted two issues to the subject of birth control.⁸⁹ The chaplain of the Laënnec center⁹¹ presents a good general outline of the principles agreed on by Catholic theologians regarding birth control: granted a proportionate reason, the avoidance of conception is not wrong in itself, so that its morality will depend on the morality of the means used. He distinguishes between means which are contraceptive ("anticonceptionels") and those which are in conformity with nature.⁹² The bulk of his article is the traditional argument as to why nature can be a norm of morality. He makes no concrete applications.

P. Anciaux, cited last December as holding some rather strange views,⁸⁸ discusses the question of whether there has been a change in the Church's teaching on the morality of marriage in these matters.⁹⁴ He finds that there has been no change of doctrine, but a development of doctrine to keep pace with the development of science and general knowledge.

The general principles of the morality of birth control are outlined in a different approach by H. E. DiCristina, S.J.,⁹⁵ to show that the difference between contraception and rhythm as means to avoid conception is clear from a consideration of the sovereignty of God and the creaturehood of man; that man should use God's plan for birth control and not go contrary to it. Even more poetical in arguing against contraception are two other articles. An Argentinian Jesuit⁹⁶ argues that true conjugal love is found in the very fertility of its act, so that contraception is an abuse of conjugal

⁸⁸ "Killing in Self-defence," *Clergy Review* 46 (Apr., 1961) 237-39.

⁸⁹ April and June, 1961.

⁹¹ Bernard Simmonet, "Réflexions sur l'enseignement de l'église," *Cahiers Laënnec* 21 (June, 1961) 18-28.

⁹² *Ibid.*, p. 18.

⁹³ THEOLOGICAL STUDIES 21 (1960) 601-2.

⁹⁴ "Verandert de huwelijksmoraal? Pastorale beschouwingen bij een groeicrisis," *Colloctanea Mechliniensia* 46 (Mar., 1961) 113-33.

⁹⁵ "God or Man in Birth Control?" *Priest* 17 (Apr., 1961) 331-35.

⁹⁶ Enrique E. Fabbri, S.J., "Amor y fecundidad," *Estudios* 50 (May, 1961) 186-91.

love. An American Jesuit⁹⁷ treats of the nature of sex as essentially altruistic and at the same time aiding the perfection of one's own person by helping towards the perfection of another. His treatment is reminiscent of E. Mersch's *Love, Marriage and Chastity*.⁹⁸

In a more practical vein, an English doctor⁹⁹ suggests points which may help encourage couples who have reason to limit their families to practice rhythm rather than contraception. He emphasizes the safety of rhythm under proper direction and the value to be found in the sacrifice involved in abstinence as manifesting true love, where contraception rather shows selfishness.

In one of the issues of *Cahiers Laennec* mentioned above, Dr. Maurice Dubost¹⁰⁰ recounts the latest scientific developments regarding ovulation. Without making any moral judgment, he describes methods for determining ovulation in two senses: finding out when it takes place and using anovulants to insure its taking place or not at a given time.

Msgr. James Madden¹⁰¹ again summarizes the basic moral principles for the use of anovulants as recounted in these Notes last December,¹⁰² without touching the more delicate questions on which Catholic writers have differed. One of these questions is whether a woman may deliberately suppress ovulation during the time of lactation. Denis O'Callaghan¹⁰³ reaffirms his earlier stand that suppression of ovulation is licit during lactation, because nature intends sterility at that time. In other words, suppressing ovulation at such a time is aiding nature, not going contrary to it. Holding the same opinion and on the same grounds is Dr. Leonhard M. Weber, Professor of Moral Theology in Solothurn, Switzerland.¹⁰⁴

Dr. Acland, whom I would not consider a very reliable authority on moral matters, challenges Fr. O'Callaghan's doctrine on the question of biological

⁹⁷ Paul M. Quay, S.J., "Contraception and Conjugal Love," *THEOLOGICAL STUDIES* 22 (Mar., 1961) 18-40.

⁹⁸ New York: Sheed & Ward, 1939. Originally, "Amour, mariage, chastité," *Nouvelle revue théologique* 55 (1928) 5-30.

⁹⁹ J. Dominian, "Family Limitation: A Catholic Doctor's View," *Blackfriars* 42 (May, 1961) 206-13.

¹⁰⁰ "Données récentes sur l'ovulation," *Cahiers Laennec* 21 (June, 1961) 2-17.

¹⁰¹ "Oral Contraceptives and Family Limitation," *Australasian Catholic Record* 38 (Apr., 1961) 140-46.

¹⁰² *THEOLOGICAL STUDIES* 21 (1960) 599-600.

¹⁰³ "Fertility Control by Hormonal Medication," *Irish Theological Quarterly* 27 (Oct., 1960) 333-39. Cf. comment on original article, *THEOLOGICAL STUDIES* 21 (1960) 600-601.

¹⁰⁴ "Präparat Noraethynodrel," *Allgemeine Sonntagszeitung* 6 (Apr. 23, 1961) 5 (reprinted from *Petrus-Blatt*).

facts as well as on the ground of inconsistency.¹⁰⁵ He states that the time of absence of menstruation in healthy women after childbirth, and so presumably of ovulation, differs from six weeks to eighteen months. He wonders whether Fr. O'Callaghan would allow anovulants up to eighteen months. He also accuses the Irish writer of inconsistency in allowing what appears by his own norms to be a direct sterilization. In the same issue of the *Irish Theological Quarterly*, Fr. O'Callaghan defends his previous position by saying that he considers a direct sterilization the rendering a woman sterile when she would naturally be fertile.¹⁰⁶

M. Thieffry, S.J.,¹⁰⁷ also challenges this liberal lactation opinion on both fact and principle. He wonders whether it can be said that nature does not intend a woman to be fertile during lactation. But whatever the medical facts and presumptions therefrom, he feels that if conception should be avoided during the time of lactation, it must be achieved by licit means; and any positive act to frustrate the effects of an act of natural intercourse is the sin of contraception. This conforms to my opinion in the matter as expressed last December.¹⁰⁸ In my judgment, a principle which seems valid and applicable here is one enunciated by Nicholas Crotty, C.P., in Australia: "the individual's direct right over this power [the reproductive function] is limited to use and non-use and goes no further."¹⁰⁹ However, when Fr. Nicholas comes to the application of his principles to this particular question of the deliberate suppression of ovulation during lactation, he seems to hesitate. He wonders whether "depriving the act of its power when nature intends it should be absent"¹¹⁰ may not be contraception. In other words, he seems inclined to think it still is contraception, but he is not sure.

Perhaps I am harping on an oversimplification, but it seems to me that if our accepted moral terminology is to mean anything, we must say that every act by which sterility is deliberately produced is a direct sterilization, and that every act by which conception is deliberately impeded from following an act of intercourse is contraception. What Fr. O'Callaghan and the

¹⁰⁵ "Fertility Control by Hormonal Medication," *Irish Theological Quarterly* 28 (Apr., 1961) 155-56. For my doubts on Dr. Acland, see *THEOLOGICAL STUDIES* 21 (1960) 594-95, 600.

¹⁰⁶ "Dr. O'Callaghan Replies," *Irish Theological Quarterly* 28 (Apr., 1961) 156-59.

¹⁰⁷ "Stérilisation hormonale et morale chrétienne," *Nouvelle revue théologique* 83 (Feb., 1961) 135-58.

¹⁰⁸ *THEOLOGICAL STUDIES* 21 (1960) 601.

¹⁰⁹ "The Moral Issues in Hormonal Control of Fertility," *Australasian Catholic Record* 38 (Apr., 1961) 102-13; citation, p. 108. Cf. *THEOLOGICAL STUDIES* 22 (Jun., 1961) 260. Of course, this does not rule out the application of the principle of totality to the sexual organs in their function as parts of the body and not in their specifically sexual function.

¹¹⁰ *Art. cit.*, p. 112.

others mean, perhaps, is that direct sterilization is not forbidden when it can be said that the person should naturally be sterile, or that contraception is not sinful when it can be said that nature intends that conception should not take place.

It is certainly true that a statement of papal teaching is to be interpreted according to what the pope meant to be teaching. For example, all agree that Pius XI did not mean to exclude the possibility of direct sterilization as a punitive measure. Similarly, one might say that papal statements condemning all forms of contraception did not mean to exclude the possibility of a licit douche to expel semen immediately after an act of rape. I would call such a douche contraceptive but not meant to be included in the general condemnation. So also, I suppose that one might argue that Pius XII and the Holy Office in condemning direct sterilization did not mean to condemn direct sterilization of a woman at a time when she should naturally be sterile. But this is what I cannot see. It seems to me that the reason why direct sterilization is always wrong is that the positive suppression of the sexual function is not within the dominion of the individual. Likewise, it seems to me, the reason why contraception is immoral is the contradiction in willing an act of intercourse and a deliberate frustration of the natural purpose of that act. If this is true, then the douche after rape, although contraceptive, would not have this contradiction in the will, since the act of intercourse was not willed by the woman.

If the other principle is allowed—that it is all right to induce sterility deliberately when nature seems to intend sterility—I see further difficulties. Who is to judge when nature intends sterility? Are we to say that whenever conception would be physically harmful to the woman, causing sterility or impeding conception is legitimate? To me it seems that the answer has to be rather that when conception would be harmful, the couple should abstain. Pius XII certainly ruled out the use of anovulants for preventing conception even at times when the uterus or whole organism could not bear a pregnancy.¹¹¹ Are we to say that as long as the treatment is in imitation of natural processes, it is all right, but forbidden if it is not similar? Anovulants are certainly not an exact replacement of natural substances¹¹² and are certainly artificial means; so, why not other contraceptives in similar circumstances?

And who is to say when it is natural to be sterile? Is natural *post partum*

¹¹¹ Allocution to the Seventh International Convention of the International Society of Hematology, Sept. 12, 1958; *The Pope Speaks* 6 (1960) 392–400, esp. 394–95.

¹¹² J. D. Acland explicitly denies that it is replacement therapy: *Catholic Medical Quarterly* 14 (Apr., 1961) 41–42.

sterility six weeks or eighteen months or what?¹¹³ Is it natural for a woman to be sterile for twenty-five days out of every twenty-eight? So, may she use anovulants to be sure that she cannot be fertile except on a given three days each month? If that were true, could she also use other contraceptives on all but days thirteen, fourteen, and fifteen after each menstruation? These seem to me to be logical consequences of the principles of those who hold the liberal opinion on the lactation period, and if so, are strong arguments against its truth.

Dr. Weber¹¹⁴ suggests one norm for the use of anovulants which I have used in other gynecological moral problems. If a doctor feels that a given treatment with anovulants (or a hysterectomy or a D and C) would be medically indicated for a woman who had no sexual life, or (I would add) is certainly already permanently sterile, then that treatment might also be used on married women of childbearing age. It is not an exact norm, but in my judgment it is often a good practical norm.

In last December's consideration of the use of anovulants, I had commented on Canon Anciaux' approval of their use to allay extreme fear of pregnancy,¹¹⁵ that it would not be licit if the intent is to allay the fear by making sure that pregnancy will not follow, but that if the drugs had some sort of immediately tranquilizing effect and impeding of pregnancy was not intended, their use might be justified on the principle of the indirect voluntary or double effect. Dr. Weber, in the article mentioned before, seems to think that anovulants do have such an immediate effect;¹¹⁶ at least, he mentions the possibility without further comment. As with others, he seems to be somewhat remiss in his application of the principle of the indirect voluntary. He keeps insisting on the *only* intended effect, whereas all moralists have always agreed that the evil effect must not be intended at all, but only permitted. The fact that the evil effect is one half of a twofold or double effect does not make the act therefore licit. The other conditions must also be fulfilled, as is clearly explained by Josef Fuchs, S.J., of the Gregorian in Rome,¹¹⁷ and Fr. Thieffry in the article mentioned before.

Another use of anovulants discussed by moralists is the question of putting

¹¹³ J. D. Acland, *Irish Theological Quarterly* 28 (Apr., 1961) 155-56, says it varies from six weeks to eighteen months. Cf. Thieffry, *art. cit.*, who cites R. Carpentier, S.J., as following Dr. DeGuchteneere's opinion, originally for nine months, revised to three months as solidly probable.

¹¹⁴ *Art. cit.*

¹¹⁵ THEOLOGICAL STUDIES 21 (1960) 601-2.

¹¹⁶ *Loc. cit.*

¹¹⁷ "Nota de aliquo casu recentiore 'sterilizationis therapeuticae,'" *Periodica de re morali, canonica, liturgica* 50 (1, 1961) 31-38.

off menstruation to improve efficiency in a scheduled sports event. In moral conferences I have held that a fairly important event could justify putting off menstruation, provided that there is no contraceptive intention. Further conditions are added by two other writers. Nicholas Crotty¹¹⁸ would approve if it does not unduly delay ovulation. A long delay of ovulation would violate the principle of totality. Thomas J. O'Donnell, S.J.,¹¹⁹ until recently Regent of the Georgetown University School of Medicine, approves on condition that the delay in menstruation be not caused by inhibiting ovulation. I would agree to these conditions but I find a difficulty in Fr. O'Donnell's reasoning. He would not allow deferring menstruation by inhibiting ovulation, because this "would clearly seem to be direct sterilization. It is a procedure which accomplishes its end precisely by rendering procreation impossible (even though temporarily) and this is a definition of direct sterilization."¹²⁰ But does it accomplish its end precisely by rendering procreation impossible? Or is it not rather an example of an action which produces two effects: rendering procreation impossible (by preventing release of a fertilizable ovum) and preventing the development of the endometrium (by preventing release of hormones)? The sterility, the inability to conceive, is not what is directly intended as end or means, but a condition is intended which will also produce sterility. So also, a hysterectomy performed to prevent menstruation and without intending sterility would be an indirect and not a direct sterilization. It would be immoral if only for convenience of avoiding menstruation, because of lack of a reasonable proportion between good and bad effects. This seems to me an example of the lack of precision in applying the principle of the indirect voluntary of which Fr. Thieffry complains in his article.¹²¹

Be it noted that I consider Fr. O'Donnell's article an excellent treatment of the morality of the use of anovulants, aside from what I consider this one slight inaccuracy. And even here, am I perhaps missing something?

On a somewhat related matter, L. L. McReavy¹²² raises an interesting question. Bertha, with the consent of her husband, takes a pill which would prevent the implantation of a fertilized ovum. If they both now repent, may they have marriage relations while the pill is still exercising its effect? Citing Noldin as an authority, Fr. McReavy says that ordinarily they must

¹¹⁸ *Art. cit.*

¹¹⁹ "Moral Concepts of Progestational Therapy," *Georgetown Medical Bulletin* 14 (May, 1961) 330-33.

¹²⁰ *Ibid.*, p. 332.

¹²¹ *Art. cit.* For other examples of inaccurate application of the principle, see THEOLOGICAL STUDIES 21 (1960) 601, 602.

¹²² "Pharmaceutical Birth Prevention," *Clergy Review* 46 (Feb., 1961) 103-6.

wait until the effect has ceased or has been medically counteracted, but for a grave cause they may have relations. The same might well be applied to the contraceptive use of anovulants.

The question of birth control as a solution to the population problem has brought forth more discussion, including mention in at least two ecclesiastical documents, Pope John's Encyclical *Mater et magistra* and a statement by the assembly of cardinals and archbishops of France. The Encyclical was somewhat disappointing on this question, since it treats the problem as though there were only two alternatives: contraception or economic development.¹²³ The statement of the cardinals and archbishops of France mentioned also the third possibility: legitimate regulation of births by use of abstinence.¹²⁴ Individual statements of Cardinal Gerlier and Msgr. Guerry also spoke of the Christian possibility of a regulation of births.¹²⁵ All of these French statements point out that even apart from a general population problem, regulation of births by legitimate means is often a social necessity for the fulfilment of the second part of the primary end of marriage, the proper bringing-up of children.¹²⁶

CHASTITY AND FRATERNAL COHABITATION

With the appearance of *Whom God Hath Not Joined*¹²⁷ by Claire McAuley, and its reviews in *Time*¹²⁸ and in the syndicated column of Msgr. John Kennedy in many diocesan papers of the country,¹²⁹ the possibility of frater-

¹²³ *Acta apostolicae sedis* 53 (July 15, 1961) 401-64; on population problem, pp. 445-49.

¹²⁴ Déclaration de l'Assemblée des cardinaux et archevêques de France, "La limitation des naissances," *Documentation catholique* 58 (Mar. 19, 1961) cols. 371-73.

¹²⁵ "Le problème du contrôle des naissances: Réponse de S. Em. le cardinal Gerlier," *ibid.* 58 (Mar. 19, 1961) cols. 374-75, also discusses the law of France which forbids advertising and sale of contraceptives; "Lettre de S. Exc. Mgr. Guerry," *ibid.*, col. 375.

¹²⁶ Similarly, Raymond H. Potvin, "Human Fertility and the Common Good," *American Ecclesiastical Review* 144 (Apr., 1961) 217-30; G. J. Gustafson, S.S. ("GJG"), "Current Population Myths," *Priest* 17 (May, 1961) 395-99; "The Population Explosion," *Revue de l'Université d'Ottawa* 31 (Jan.-Mar., 1961) 29-49, which includes three articles: Edward O. Dodson, "A Biologist's View," pp. 29-34; D. Clarke Taylor, "The Economist's Viewpoint," pp. 35-40; Gordon Irving, "A Sociologist's View," pp. 40-49. According to a news item in the Los Angeles *Tidings*, Mar. 31, 1961, the assembly of the World Health Organization of the UN defeated a proposal to endorse "planned parenthood" as a preventative health measure by a vote of 31-18 with 25 abstentions. The resolution had been proposed by delegates of Ceylon and Norway and was opposed especially by representatives of Spain, Portugal, France, and Belgium on the grounds that WHO should not pass on a matter involving the religious beliefs of people in several member countries.

¹²⁷ New York: Sheed & Ward, 1961.

¹²⁸ Mar. 3, 1961, p. 58; and correspondence, Mar. 24, 1961, p. 6.

¹²⁹ E.g., *Tidings*, Mar. 3 1961, p. 8.

nal cohabitation as a solution to some situations involving invalid marriages is bound to become far more widely known than before. It has been treated in ecclesiastical journals a number of times¹³⁰ and is mentioned very briefly in most manuals of moral theology.¹³¹ In a recent review of the matter, Giuseppe Rossino¹³² recalls that it should not be an ordinary solution but is only to be used for exceptional circumstances, especially where there are children of the invalid union and the former spouse is also remarried civilly. Usually there should have been a period of proof of being able to make the ordinarily proximate occasion of sin in cohabitation actually remote in the particular case.¹³³ To absolve a dying penitent, it will often be enough to get a promise to do what must be done.¹³⁴

The third condition, the absence of scandal, will perhaps be made easier of fulfilment by Claire McAuley's book. At least now many more people will appreciate that such things are done and so may be more ready to believe it true of a particular case.

Canon Rossino exhorts priests to be courteous and kindly to people involved in invalid marriages. Their asking how to get back to the sacraments is an indication of some good will, and priests should be willing to help them find and embrace a way. If the matter comes up in confession, the priest might even suggest that the penitent give him permission to use the knowledge outside of confession, so that he can try to see the other party and help persuade him to give the brother-sister arrangement a try. One can appeal to his love for his partner to agree to what will be the only solace for the partner's conscience.

Even if a priest has to refuse absolution for failure to fulfil the necessary conditions, he should explain his refusal as gently as possible, promise to pray for the person, and urge him too to prayer, for the grace to realize what is necessary and to be able to do it. Certainly, a confessor would be failing in his duties if he immediately ordered a person from his confessional without hearing any more than her opening statement that she is a divorced woman.

¹³⁰ Cf. THEOLOGICAL STUDIES 16 (1955) 268-69.

¹³¹ E.g., hard to beat for brevity: Noldin, *De sacramentis* (31st ed.; Innsbruck: Rauch, 1955) n. 657, *Pro praxi*, n. 2: "Si impedimentum indispensabile est et uni vel utrique notum, coniuges omnino separandi sunt. Quenam autem separatio urgenda sit, ex adiunctis dependet; scilicet . . . c) Si ex cohabitatione non oritur incontinentiae periculum, sufficit ut a communi toro separentur et tamquam frater et soror cohabitent."

¹³² "Si assolvono i concubini?" *Perfice munus* 36 (Jan., 1961) 12-17.

¹³³ The Holy See sometimes requires a year of living free from sexual activity before allowing such cohabitation for an ex-priest.

¹³⁴ G. Rossino, "Come trattare i concubini moribondi," *Perfice munus* 36 (June, 1961) 336-42.

Fr. Connell¹³⁶ rightly condemns such actions and incidentally warns against inaccurate and misleading generalizations from the pulpit about divorced and remarried persons.

The confessor or priest adviser should be kind, but not to the extent of approving or even appearing to approve a sinful situation.¹³⁶ According to Claire McAuley's book and according to what I have heard in actual cases, all too often priests tell people in invalid marriages that nothing can be done except to wait and pray—apparently either afraid to suggest too difficult a solution or perhaps only trying to practice nondirective counseling. If it is the latter, the priest should let them know clearly that he is not suggesting anything. But when a person is asking a priest how to get back to the state of grace, the priest should give a true answer.

Some priests apparently think that a brother-sister arrangement is too difficult and that even to suggest it might put the inquirer in bad faith. But if the party has asked about fixing up an invalid marriage, or asked how to regain the state of grace, he presumably already realizes that his present situation is sinful. The first requisite for such a person to get into the state of grace is to stop committing adultery, and I think he should be told this. If the person has had enough good will to ask for advice, give him credit for enough to make an effort to do the *unum necessarium*. If he shows any good will at all, God's grace will not be wanting.

The first reaction of many to such a suggestion may be to consider it impossible. But I know quite a few couples who first balked at my suggesting the idea, but later realized its necessity and began to live up to it, and have shown gratitude ever since for having had the idea suggested to them.

And if they cannot come to accept such a suggestion, how can they ever have true contrition? If the invalidly married couple continue to commit adultery until the former spouse dies, have they true contrition? It is possible but very doubtful. M. Huftier in *L'Ami du clergé*¹³⁷ proposes such a case. He puts it in this form. Suppose a couple is invalidly married because of a living former spouse. The invalidly married couple continue to have marriage relations. Then word comes that the former spouse is dead. So they go to confession and are about to have their marriage validated, when it is discovered that the death report was erroneous. The former spouse is still alive. Certainly, if the invalidly married couple will not now separate at least *a toro*, their contrition is not true.

¹³⁶ "Denouncing the Divorced," *American Ecclesiastical Review* 144 (May, 1961) 352-53.

¹³⁶ Also urging kindness towards sinners without showing approval of sin is Bernard F. McWilliams, C.S.S.R., "The Care and Feeding of Black Sheep," *Liguorian* 49 (June, 1961) 1-4.

¹³⁷ "Contrition et état extérieur de péché?" *L'Ami du clergé* 71 (Jan. 19, 1961) 47-48.

A confessor need not specifically ask a couple who have continued having intercourse up to the death of the former spouse whether they would be willing to give up such activity if the report of death was false; but it certainly has to be their state of mind even for valid imperfect contrition with the sacrament of penance.

For an invalidly married couple a copy of *Whom God Hath Not Joined* should be helpful, both towards making the decision and for practical hints on how to live up to a brother-sister arrangement. It might also be useful for a couple who, though validly married, have to practice complete abstinence because of the wife's health or for some other grave reason.

The matter on chastity can be concluded with a few very brief notices involving opposite extremes. A new foundation of Dominican Sisters of Bethany has been made in Boston. Their special work is "converting prostitutes and women criminals and attempting to lead them to a religious vocation in an order inspired by a public sinner and a great saint, Mary Magdalen."¹³⁸ L. L. McReavy shows that "the superior blessedness of the single life"¹³⁹ consists in the fuller dedication to closer union with God, whether through vows or not. Without such dedication the married life would seem superior to the single. William Bertrams, S.J.,¹⁴⁰ outlines his new book on the celibacy of priests,¹⁴¹ explaining that misunderstanding of the nature of celibacy, virginity, and sexuality is the cause of many defections from the priesthood.

JUSTICE

The right to own private property, implicitly affirmed in the seventh and tenth commandments and confirmed in the great social encyclicals including *Mater et magistra* of John XXIII,¹⁴² is the subject of two articles by Ignatius McDonough, of the Society of the Atonement seminary,¹⁴³ but his treatment is rather socioeconomic than moral. Francis J. McGarrigle, S.J.,¹⁴⁴ treats of

¹³⁸ John Baptiste, "Salvaging the Streetwalker," *Priest* 17 (Jan., 1961) 61-64.

¹³⁹ *Clergy Review* 46 (May, 1961) 298-301.

¹⁴⁰ "De caelibatu clericorum," *Periodica de re morali, canonica, liturgica* 50 (2, 1961) 203-11.

¹⁴¹ *Der Zölibat des Priesters: Sinngehalt und Grundlagen* (Würzburg: Echter-Verlag, 1960). Cf. also, by the same author, "De efformando in clericis genuino fundamento caelibatus suscipiendi," *Periodica de re morali, canonica, liturgica* 47 (1958) 3-28, digested in *Theology Digest* 8 (1960) 167-68.

¹⁴² *AAS* 53 (1961) 427.

¹⁴³ "Ownership: A Tabooed Subject," *Homiletic and Pastoral Review* 61 (Mar., 1961) 553-61; "The Unit System of Ownership," *ibid.* (Apr., 1961) 662-70.

¹⁴⁴ "The Humility of 'The Poor in Spirit,'" *American Ecclesiastical Review* 144 (May, 1961) 313-19.

the limitations of the right of ownership, but from an ascetical rather than a moral viewpoint—at least, I trust it is so intended, for he urges all to use material goods in the best possible way. More specifically moral is an article by Franz Klüber showing that the right to private property is not an absolute right, but rather relative.¹⁴⁵ In the actual condition of mankind it is the best and only sure way to fulfil the absolute right of all to the material things of the world necessary to their lives as human beings.

Are all workers obliged to join a union? J. M. Jackson,¹⁴⁶ writing in *Blackfriars*, judges that there is no obligation to join a union, especially when the union may engage in immoral activities. But even if nothing immoral is being done by the union, a worker should not be forced to support political actions in which he does not believe. The mere fact that a worker shares in the benefits secured by a union does not in itself create an obligation in justice to join the union. The principles outlined in the article could well lead to the conclusion that in some circumstances there could be an obligation to join. F. J. Connell, C.S.S.R.,¹⁴⁷ comes explicitly to this conclusion in commenting on the letter of Cardinal Tardini¹⁴⁸ to the Semaine Sociale in Grenoble, while holding that there is not always an obligation to join a union.

E. A. Keller, C.S.C.,¹⁴⁹ noted as a spokesman for the conservative side on socioeconomic matters,¹⁵⁰ is strong in denying any right on the side of labor to share in management. He correctly cites Pius XI and Pius XII as his authorities, but neglects to mention that the very sections of their writing which denied the right urged the practice as a helpful means towards better relations between labor and management. In *Mater et magistra*, Pope John XXIII reaffirms the desirability of some form of profit sharing and sharing in the ownership of the business,¹⁵¹ and holds as legitimate the desire of workers to have some say in the management of business enterprises for which they work.¹⁵²

¹⁴⁵ "Der Ort des Privateigentums im System des Naturrechts," *Die neue Ordnung* 13 (1959) 81–97; digest: *Theology Digest* 9 (Winter, 1961) 59–61.

¹⁴⁶ "Trade Unions and Individual Liberties," *Blackfriars* 42 (Apr., 1961) 163–70.

¹⁴⁷ "Compulsory Unionism," *American Ecclesiastical Review* 144 (Feb., 1961) 133–35. Cf. Gerald Kelly, S.J., *THEOLOGICAL STUDIES* 9 (1948) 60–61; 14 (1953) 47–50.

¹⁴⁸ *The Pope Speaks* 6 (1960) 401–4.

¹⁴⁹ "Co-management: A Moral Analysis," *Homiletic and Pastoral Review* 61 (Jan., 1961) 335–42.

¹⁵⁰ Cf. criticisms of his ultraconservatism: *Catholic Mind* 53 (1955) 1–12; *America* 79 (Apr. 17, 1948) 21–24; *Crown Heights Comment* 9 (Jan. 20, 1948 and Jan. 27, 1948): whole of both issues; *Social Order* 6 (1956) 440–45; *Homiletic and Pastoral Review* 57 (1956–57) 479–80.

¹⁵¹ *AAS* 53 (1961) 420–21. ¹⁵² *Ibid.*, p. 424.

A number of brief answers to cases concerned matters of justice. Emile Garrigou¹⁵³ states that a business man has no right to keep what he makes in unjust profits, but admits that it is often hard to say when profits are unjust. The same article affirms that restitution for the thefts of children from their parents can usually be safely presumed to be condoned.

Is it licit for a librarian of a public library to buy books at the library discount for friends? No, says Father Connell,¹⁵⁴ it is a violation of justice unless the bookseller agrees to the practice at least implicitly or tacitly. Such agreement should not simply be presumed, but there should be some evidence. Otherwise the librarian is deceiving the seller, since it is understood that the books will be used in the public library, which should help promote sales. But might the reason for the discount be rather that libraries are quantity buyers of books? If so, there would seem to be no injustice in increasing the quantity a little more.

If a storekeeper accepts money which he later learns is counterfeit, he may not pass it on to another person in change. It is simply his loss if he cannot locate the person who gave it to him. Ordinarily he should report the fact to the police. If a clerk takes counterfeit money inadvertently, he should not have to make it up unless there is an explicit agreement to this beforehand. He is merely the owner's agent, and supposing no fraud or undue negligence on the part of the clerk, the loss is the owner's. So answers Fr. Connell,¹⁵⁵ and he might have added that the same holds for any person who so receives counterfeit money. He has a right to be recompensed by the person or firm who gave it to him, but not by anyone else.

Insurance claims can involve knotty problems. Msgr. James Madden¹⁵⁶ proposes such a problem and attempts a solution. A friend of a car owner is driving without a license. Although he is a competent driver, he is involved in an accident. When the investigating police officer asks who was driving, the owner says that he was, to protect his friend from arrest for driving without a license. Later there are insurance claims to be filed. The insurance contract has a condition that the car was being operated according to the law. What is the owner to do? Msgr. Madden points out, first of all, that the owner sinned in lying to the police officer, even though no sin was committed by the friend for violating a penal traffic law, provided he was truly a competent driver. There would also be a sin of injustice in collecting from

¹⁵³ "Honnêteté en affaires," *L'Ami du clergé* 71 (Jan. 26, 1961) 56-57.

¹⁵⁴ "Extension of a Discount," *American Ecclesiastical Review* 144 (Feb., 1961) 135-36. Cf. a similar case, *THEOLOGICAL STUDIES* 16 (1955) 254-55.

¹⁵⁵ "Questions about Counterfeit Money," *Liguorian* 49 (Mar., 1961) 13-14.

¹⁵⁶ "Car Insurance," *Australasian Catholic Record* 38 (Apr., 1961) 36-40.

the insurance company on the false statement that the car was being operated in accordance with the law, and so an obligation to restitution. However, in such cases where the violation of the law was a mere technicality and in no way a contributory cause of the damage, the insurance company may be willing to make some kind of settlement. Msgr. Madden suggests that if the money had already been received and restitution was due, the amount might be estimated by an expert in insurance matters who knows the company and can fairly judge the amount which the company would be willing to pay.

EIGHTH COMMANDMENT

Pope John suggested an outline for a positive treatment of the eighth commandment in his Christmas message last year: "think the truth, pay honor to it, speak it, and do it."¹⁵⁷

Must a guilty person admit his guilt on questioning by a superior? M. Huftier¹⁵⁸ answers in the negative: certainly not in a penal or criminal judicial process and probably not to the private questioning of a superior, even a religious superior, who can inflict a penalty. The only obligation might come from a requirement of the common good, if otherwise some other person or persons would suffer unduly from suspicion or accusation. This seems a question that could stand more research. Church and state both protect a person from having to testify against himself. I almost feel that it is a natural right, unless the guilty person has himself established circumstances where he shows that he is willing to incriminate himself, as in going to confession.

Calumny is a rather serious charge to make against a person, especially against a public servant. Edward Duff, S.J., editor of *Social Order*, makes such a charge against J. B. Mathews, executive director of the Senate Permanent Subcommittee on Investigations, for his 1953 statement that "the largest single group supporting the Communist apparatus in the United States today is composed of Protestant clergymen."¹⁵⁹ Fr. Duff goes on to show that the vast majority of Protestant clergymen are loyal Americans, as everyone knows. But nowhere does he show that the statement as cited from Mathews is false. He might better have attacked the statement for the false suspicions it might cause in the minds of hearers. But to prove

¹⁵⁷ *The Pope Speaks* 7 (1, 1961) 73-83.

¹⁵⁸ "Un coupable doit-il se dénoncer?" *L'Ami du clergé* 71 (Jan. 26, 1961) 52-54.

¹⁵⁹ "Not Guilty As Charged," *Social Order* 11 (Feb., 1961) 49-53; citation of Mathews, p. 49; the charge: "The charge of J. B. Mathews, on the record, must be set down as a calumny" (p. 52).

the statement actually false, he should show that there were other single groups supporting the Communist apparatus more numerous than the group of Protestant clergymen.

A case at the University of California brings up an interesting point of justice with regard to honor and perhaps also with regard to material goods. Is a teacher justified in giving a student an "F" as a punitive measure? The facts of the UC case¹⁶⁰ were that the professor of military science gave a student an "F" when academically he deserved an "A" as a punishment for appearing in ROTC uniform while on a student picket line protesting compulsory military training. It seems to me that a punitive failing grade can be justified, provided that it is clearly understood, by explicit regulation or general custom, before the course is begun, or at least before the offense is committed. For example, in most places it is generally understood that anyone caught cheating in an examination will receive a zero for that examination. But if there is no indication before the offense that a punitive "F" may be given, I do not think that the professor would be justified in giving it. Flagrant offenses against school regulations or morals would justify expulsion from a school, but academically I should think that this should be put down as withdrawing or expelled while passing, as differing from expelled while failing.

CHURCH PRECEPTS

Fast and abstinence regulations are the occasion of many questions. Answers to several were given early this year. One question is whether meat extracts used to flavor broths or gravies are forbidden on days of abstinence. Writers in France¹⁶¹ and Italy¹⁶² agreed on the norm: if they have lost all flavor of meat, they are allowed; but if they give a meat flavor, they are forbidden. The Italian writer judged that cubes of meat extract used in Italy do not have the flavor of meat and so are allowed: the "Maggi" type certainly, the "Liebig" type probably.

T. P. Cunningham¹⁶³ reminds readers that the obligation to fast and/or abstain still holds on holydays of obligation which by indult are not observed as such, like the Epiphany in the U.S. Vermeersch once held the opposite opinion but rejected it in 1912.

¹⁶⁰ As reported in the San Francisco *Examiner*, May 2, 1961, p. 6.

¹⁶¹ Emile Garrigou, "Abstinence," *L'Ami du clergé* 71 (Jan. 26, 1961) 57-58.

¹⁶² Leone Babbini, O.F.M., "Grassi animali fusi e dadi di carne per brode," *Palestra del clero* 40 (Apr. 1, 1961) 398-99. Cf. *THEOLOGICAL STUDIES* 11 (1950) 55.

¹⁶³ "Abstinence on Retrenched Holydays—Vermeersch's Opinion," *Irish Ecclesiastical Record* 95 (Mar., 1961) 202-4.

As was expected, the option of observing the fast and abstinence of the Christmas vigil on December 23rd has brought up many questions. F. J. Connell, C.S.S.R.,¹⁶⁴ answers a number of them briefly. (1) When Christmas falls on Monday, as this year, there will be no fast or abstinence for the vigil, but the 23rd will be an ember day. (2) When Christmas comes on Tuesday, as in 1962, one may fast and abstain on either Sunday or Monday. If the obligation had been simply transferred to the 23rd, it would cease in such a year. But it is only that one may fulfil it on the 23rd. (3) A person born on December 24th would have to abstain for the Christmas vigil on his twenty-first birthday but not fast. A person born on the 23rd would have to fast and abstain when he reached twenty-one; but in both cases he may fulfil his obligation by anticipation on the 23rd even though he would not be obliged on that day. (Compare with anticipating the breviary before ordination.) (4) A person born on the 24th need not fast on his fifty-ninth birthday. (5) If a person abstains on the 23rd when it is a Friday without thinking of the vigil, he can still count it as his vigil abstinence. (6) By epikeia he can separate the obligations of fast and abstinence.

When challenged about point 4 above, Fr. Connell explained that the authors are split over whether the obligation ceases on the fifty-ninth birthday or the day after.¹⁶⁵ The sixtieth year begins on the day of the fifty-ninth birthday at the time when the person was born fifty-nine years before. And when part of the day is free from the obligation, the whole day is free. So also, when one will be for part of a fast day in an area where it is not obligatory, he need not fast before arriving there either.

A note by an Episcopalian lady gives a good treatment of the obligation of head covering for women in church.¹⁶⁶ It is a matter of accepted good manners. The use of gloves or Kleenex on the head is an absurdity. I am certainly in agreement with this. At least in our country, better no covering than something absurd. The obligation of canon 1262, §2 is considered by all commentators to be a light obligation, and it obliges strictly only for sacred services. Scandal should not be given, but in my judgment, in our civilization a girl or woman should rather visit a church bareheaded than not visit; and better bareheaded than using an absurd covering.

A similar question might be raised as to whether the narrow headbands, no wider than a ribbon and often almost invisible in dark hair, can count as

¹⁶⁴ "Fast and Abstinence on the Christmas Vigil," *American Ecclesiastical Review* 144 (Mar., 1961) 208-12.

¹⁶⁵ "When Does the Obligation to Fast Cease?" *ibid.* (June, 1961) 418-19.

¹⁶⁶ Eleanor M. Lewis, "The Holiness of Hats," *Episcopalian* 126 (Jan., 1961) 14-15. Cf. E. J. Mahoney, *Clergy Review* 38 (1953) 432-33; J. Danagher, C.M., *Homiletic and Pastoral Review* 54 (1953-54) 258-59; J. F. Marbach, *Priest* 12 (1956) 1044-45.

hats. If they are accepted as fulfilling the demands of society as a head covering, they should suffice for church too. Obviously, in other civilizations the obligation can be more serious, especially in those places where a woman with uncovered head is considered shameful.

The regulations of the new code of rubrics regarding anticipation of Matins and Lauds have occasioned a variety of opinions, first, as to whether private recitation of Lauds is outlawed, and secondly, whether former special privileges of anticipation of Matins and Lauds from noon are revoked. On the first question, some had held that private recitation *a solo* of Lauds was not ruled out.¹⁶⁷ A declaration of the Sacred Congregation of Rites, published in the *Osservatore romano*,¹⁶⁸ was taken by many as decisive against the point.¹⁶⁹ The language is certainly clear. In spite of this declaration, E. F. Regatillo, S.J., still thinks that the opposite opinion is solidly probable until the declaration of the Sacred Congregation of Rites is officially promulgated in the *Acta apostolicae sedis*.¹⁷⁰

The other question is definitely distinct. Are privileges specially granted to societies, religious orders, missionaries, or others to anticipate Matins and Lauds from noon revoked by the new code? It explicitly revokes all privileges which are contrary to the new legislation.¹⁷¹ Is the privilege of anticipating Matins and Lauds from noon contrary to the legislation? That some privileges and indulgences are not contrary is clear from an instruction of the Sacred Congregation of Rites¹⁷² speaking of the revision of particular calendars. Also, a decree of the Sacred Congregation of the Council explicitly says that privileges with regard to choir which "non obstant" remain in effect.¹⁷³ Some feel that the anticipation of Lauds is definitely *contra legem*, but that anticipation of Matins from noon is only *praeter legem* and so still holds good.¹⁷⁴ Others think that all privileges of anticipa-

¹⁶⁷ E.g., J. B. O'Connell, "New Office," *Clergy Review* 46 (Jan., 1961) 27-29; E. F. Regatillo, S.J., *Sal terrae* 49 (Jan., 1961) 41-51, as solidly probable.

¹⁶⁸ Dec. 30, 1960 as cited in *Clergy Review* 46 (Feb., 1961) 111.

¹⁶⁹ C. L. Parres, C. M., *Homiletic and Pastoral Review* 61 (Mar., 1961) 598, 600; J. P. McCormick, S.S., *American Ecclesiastical Review* 144 (Mar., 1961) 202; "J. B.," *Nouvelle revue théologique* 83 (Feb., 1961) 198; F. R. McManus, *Jurist* 21 (Jan., 1961) 99; P. L. Murphy, *Australasian Catholic Record* 38 (Apr., 1961) 158.

¹⁷⁰ *Art. cit.* In spite of its date in Dec., 1960, it had still not appeared in the *Acta apostolicae sedis* up to and including the issue of Aug. 12, 1961.

¹⁷¹ "Quae his rubricis obstant," *Motu proprio* of John XXIII; *AAS* 52 (1960) 594.

¹⁷² Feb. 14, 1961; *ibid.* 53 (1961) 179.

¹⁷³ Dec. 3, 1960; *ibid.* 52 (1960) 986-87.

¹⁷⁴ E. F. Regatillo, S.J., *art. cit.*, following A. Peinador, C.M.F., "Casuística de las nuevas rúbricas del Breviario," *Ilustración del clero*, Nov., 1960, p. 447; C. L. Parres, C.M., held this: *Homiletic and Pastoral Review* 61 (Jan., 1961) 399; he later retracted because of a private reply of the Assessor of the Sacred Oriental Congregation, *ibid.* (May, 1961) 804.

tion are revoked by the new code.¹⁷⁶ On the other hand, the faculties for missionaries to anticipate Matins and Lauds from noon were explicitly declared to remain in effect by His Holiness in reply to the Secretary of the Sacred Congregation for the Propagation of the Faith¹⁷⁶ and by the same Congregation in a reply to the Archbishop of Calcutta.¹⁷⁷ Both of these replies could be interpreted to imply renewal of a former privilege revoked by the new code, but their language seems rather to say that the privileges were not revoked.¹⁷⁸

For those who have had a privilege or faculty similar to that of missionaries, to anticipate Matins and Lauds from noon, the doubt can best be solved by applying to the Holy See for a renewal of the privilege. Until that is done or until a more definite decision is given by the Holy See, because of the difference of opinion expressed by the authors and especially in view of the statements of the Holy See on the missionary faculties, in my opinion those who have had such a privilege may consider it still in effect. The revocation seems doubtful and so the continued possession may be presumed until a clearer decision is given by the Holy See.

THE SACRAMENTS

In treating of the administration of the sacraments to dying non-Catholics, Msgr. Domenico Squillaci¹⁷⁹ emphasizes fidelity to the prescriptions of the law of the Church more than the principle *sacramenta propter homines*. He seems to apply what the law of the Church requires for ordinary cases also to those *in extremis*. He demands positive explicit signs of wanting baptism, even in the dying. In a dying but conscious schismatic he wants a formal abjuration, not an implicit one. He admits that some moralists are against his opinion, although he gives no references.

To the many references given in past issues of these Notes,¹⁸⁰ of moralists allowing the administration of sacraments to dying non-Catholics and dying unconscious persons of unknown religious beliefs, a reference to L. L. McReavy¹⁸¹ can be added as holding the more liberal opinion to be at least

¹⁷⁶ Dante Balboni, *Palestra del clero* 40 (Jan., 1961) 21-29; Parres, *loc. cit.*

¹⁷⁶ Jan. 17, 1961; cited by L. Buijs, S.J., *Periodica de re morali, canonica, liturgica* 50 (1, 1961) 42; P. L. Murphy, *Australasian Catholic Record* 38 (Apr., 1961) 158.

¹⁷⁷ Dec. 12, 1960; cited, *Clergy Monthly* 25 (Jan.-Feb., 1961) 26.

¹⁷⁸ Pope John: "in vigore maneat" (*loc. cit.*); S.C. Prop. Fid.: "uti adhuc posse facultate" (*loc. cit.*).

¹⁷⁹ "Sogetto dei sacramenti," *Palestra del clero* 40 (Jan., 1961) 58-62.

¹⁸⁰ Cf. THEOLOGICAL STUDIES 21 (1960) 244-45, with other references; 22 (June, 1961) 267-68.

¹⁸¹ "Absolution of Dying Non-Catholics," *Clergy Review* 46 (Apr., 1961) 235-37.

solidly probable enough to allow the administration to dying non-Catholics as licit but not obligatory.

Whether saline solution in a hospital is certainly valid matter for baptism was questioned by F. J. Connell, C.S.S.R., in an answer last year. It had seemed obvious to me that Fr. Connell was confusing a technical designation with true common estimation, i.e., a technical designation of what everyone would call salt water with their actual estimation of the matter. I had thought that Fr. Connell would agree with my comments in last December's Notes.¹⁸² Instead, he reaffirmed his first position.¹⁸³ This in turn made me wonder whether I had overlooked something. Since then I have asked about a dozen professors of dogmatic theology and over a dozen professors of moral theology for their judgment on the question. So far I have not found one who would admit that there was any doubt about saline solution being certainly valid matter for baptism.

Fr. Connell says that it is an important question. In this I fully agree. I find from asking doctors and nurses that saline solution has been used in a number of hospital baptisms. If there is a reasonable doubt about the validity of these baptisms, they should be repeated; priests who were so baptized should be rebaptized, reconfirmed, and reordained; and if any bishop were so baptized, he should be rebaptized, reconfirmed, reordained, reconsecrated, and should see to it that all priests ordained by him be reordained, etc. If the nurse or doctor who used saline solution for baptism had asked any of the theologians whom I questioned, he or she would have been assured that the matter was certainly valid. And if the priest who supplied ceremonies had asked the same theologians, he would have been told that it would be sinful to repeat the actual baptism as long as he was sure of the proper form and administration. There could be no prudent doubt, even slight, on the validity of the matter. So, perhaps the reasons should be further investigated.

Fr. Connell says that I overlooked two important details: the matter must be *called* water and must be suited for ablution or washing. To take the latter first, hospital personnel tell me that saline solution is often used for washing, especially around open wounds or in washing eyes. And certainly it is better suited for washing than sea water, which is judged certainly valid matter by all.

But is it *called* water? Obviously, Fr. Connell is not insisting that the one English word "water" is the only possible name for valid matter, or that what is surely water and so considered by all cannot also be designated

¹⁸² THEOLOGICAL STUDIES 21 (1960) 613.

¹⁸³ "Valid Matter for Baptism," *American Ecclesiastical Review* 144 (Mar., 1961) 206-8.

by some other term, too—for example, H₂O. All certainly hold that salt water is valid matter. Why do not hospital personnel call saline solution salt water? I would say that saline solution is just as truly another name for salt water as sodium chloride is for what ordinary people call salt. Saline solution or sodium chloride solution or physiological salt solution are just hospital jargon for salt water in which the water is pure and salt content is at a fixed proportion. If Fr. Connell is not convinced that this is true, I suggest that the next time he visits a hospital he ask the first twenty nurses he meets whether there is any salt water in the house. Some few more liturgically-minded nurses may think he is asking for holy water,¹⁸⁴ but I would be willing to wager that most will show him some saline solution.

To allay any doubts caused by Fr. Connell's articles, I repeat that over a score of doctors of theology and professors on pontifical theological faculties agreed unanimously that there is no objective reason for doubting the certain validity of saline solution as matter for baptism. Nevertheless, some felt that if someone has a scruple about the validity of a baptism because of Fr. Connell's statements, the subjective doubt might justify but not require a conditional rebaptism. I hope that Fr. Connell will reconsider his opinion. If not, I think the matter should be submitted to the Holy See, to settle the doubts that can arise because of the great and well-earned respect for Fr. Connell's name.

Another question of almost infinitely less importance, but one on which an error seems quite common,¹⁸⁵ is the requirement of age for licit sponsorship at baptism or confirmation. Canon 766, 1° specifies that the sponsor should have reached his fourteenth year. This, of course, means that he must be what we call thirteen years old. One reaches his fourteenth year on his thirteenth birthday.

T. P. Cunningham¹⁸⁶ notes that pastors should still notify the ordinary of the place when they make use of their power to confirm in danger of death. On the other hand, the bishops need no longer report on the matter to the Holy See.

With regard to the sacrament of penance, it is interesting to note how the

¹⁸⁴ One theologian whom I questioned on the certainty of the validity of saline solution answered: "Why, of course, saline solution is valid matter. Holy water is a saline solution."

¹⁸⁵ At least twice this year: W. J. Schmitz, S.S., "Solemn Baptism," *Priest* 17 (Feb., 1961) 151; J. P. Kenny, S.J., "Sponsors at Confirmation," *Australasian Catholic Record* 38 (Apr., 1961) 123-24.

¹⁸⁶ "Notice of Confirmation to the Ordinary," *Irish Ecclesiastical Record* 95 (Apr., 1961) 272-73.

Holy See has extended the faculties of military chaplains.¹⁸⁷ Now any chaplain with faculties from any military vicariate can validly and licitly hear the confessions of any subject of his own or any other military vicariate in any place permanently or temporarily reserved for the military.

Two European writers¹⁸⁸ encourage the practice of frequent confession as a means toward greater perfection, both advising what amounts practically to the Ignatian practice of the particular examen. One¹⁸⁹ recalls the warning of Pius XII in *Mystici corporis*: "Let those, therefore, among the young clergy who make light of or weaken esteem of frequent confession realize what they are doing is foreign to the spirit of Christ and disastrous for the Mystical Body of our Saviour."¹⁹⁰

C. L. Parres, C.M., notes that there is no limit placed to lateness of an evening Mass, provided it is over before midnight.¹⁹¹

The decree of the Sacred Congregation of Rites authorizing the omission of the Leonine prayers after low Masses on certain occasions was recorded in these notes without comment last December.¹⁹² One of the points of the decree was somewhat obscure. It authorized the omission after dialogue Masses, but only on Sundays and feast days. Some, myself included, took this to mean any festal day as distinguished from a ferial day.¹⁹³ Others thought it should be restricted to feasts of the first and second class as being days of special solemnity.¹⁹⁴ The latter interpretation was the one reported given in a private reply by the Sacred Congregation itself to Bishop Dworschak of Fargo.¹⁹⁵

¹⁸⁷ S. Congregationis Consistorialis, "Orbis-Vicariatus Castrensis, Decretum: Facultas audiendi confessiones pro militum cappellanis extenditur," Nov. 27, 1960; *AAS* 53 (Jan. 30, 1961) 49-50.

¹⁸⁸ P. Anciaux, "Confession régulière et examen de conscience," *Collectanea Mechliniensia* 46 (Mar., 1961) 50-68; Antonio Oliva, S.J., "Valorizzazione della confessione di devozione," *Palestra del clero* 40 (Mar. 15, 1961) 320-25.

¹⁸⁹ Oliva, *loc. cit.*

¹⁹⁰ Translation from America Press edition, p. 42. The preceding section of the Encyclical is also appropriate.

¹⁹¹ "Latest Time for Evening Mass," *Homiletic and Pastoral Review* 61 (Mar., 1961) 597.

¹⁹² *THEOLOGICAL STUDIES* 21 (1960) 619.

¹⁹³ So also, Franco Lisi, "Il punto sulle 'Preci leoniane,'" *Palestra del clero* 40 (Feb. 15, 1961) 200-6.

¹⁹⁴ E.g., J. B. O'Connell, "Leonine Prayers," *Clergy Review* 46 (Apr., 1961) 240-41.

¹⁹⁵ A. M. Carr, O.F.M.Conv., "Prayers after Mass (cont'd)," *Homiletic and Pastoral Review* 61 (Feb., 1961) 466-67.

VOCATION

The nature of a vocation to the priesthood occasioned a good deal of correspondence in the *Homiletic and Pastoral Review*, especially commenting on an anonymous San Francisco priest's claim that it is the bishop who gives the vocation.¹⁹⁶ Of the responding letters in following issues, two¹⁹⁷ pointed out the obvious distinction between the divine vocation and the canonical call; that a bishop has no right to call an unworthy candidate nor to reject a worthy candidate for priesthood in a religious order for irrelevant reasons; and if a boy is so suited and felt called to a religious order, "it is a very unwise person—be he parent, priest or bishop—who would attempt to persuade him otherwise."¹⁹⁸

A third letter, by James E. Noonan, O.M.I., phrased it in a slightly different way: "The bishop may be said to consummate, or crown, the vocation, perhaps, in the actual rite of ordination. But to infer that a bishop, personally, has the power to decide to which sphere of clerical life a candidate may go is to run contrary not only to canon law, but to the mind of Christ Himself."¹⁹⁹

A fuller treatment of this question is given by Angel Santos, S.J., in *Sal terrae*.²⁰⁰ He recalls that Lahitton, followed fairly closely by Cardinal Mercier, had held that the divine vocation was not manifested in the qualities of the candidate, but solely by the official call of the bishop. This doctrine can no longer be held, according to Fr. Santos, after the encyclical of Pius XI on the priesthood. The vocation is given by God to the young man and is recognized by the ordinary signs of suitable qualities plus the right intention. The bishop's function is to recognize these signs of a divine vocation in a candidate and then give an official invitation to follow the call of God.²⁰¹ Fr. Santos goes on to show that a vocation is an invitation and not a command, so that a young man is free to accept the invitation or not.²⁰²

¹⁹⁶ *Ibid.*, p. 418.

¹⁹⁷ Charles Connors, C.S.Sp., " 'Vocation' Author Comments on February Telegram," *ibid.* (Mar., 1961) pp. 524, 526, 528; "December 'Appreciative Priest' to February 'Appreciative Priest,'" *ibid.*, pp. 528, 530.

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.* (Apr., 1961) pp. 630, 632, 634; citation, p. 632. He adds a citation from Pius XII's *Annus sacer*: "Let no one deter candidates from entering religious orders" (p. 634).

²⁰⁰ "La vocación sacerdotal: Discusiones modernas," *Sal terrae* 49 (Apr., 1961) 199-209.

²⁰¹ *Ibid.*, pp. 206-7.

²⁰² *Ibid.*, p. 207. He acknowledges debt to J. A. Nabais, "La vocation sacerdotale à la lumière de la théologie et de la psychologie," *Revue de l'Université d'Ottawa* 26 (1956) 350-88.

Several recent articles²⁰³ on the psychological considerations in the selection of candidates for the priesthood or religious life covered pretty much the same ground as those mentioned in last December's Notes.²⁰⁴ Fr. Heinzel²⁰⁵ would absolutely exclude anyone suffering from any abnormality of strength or direction of the sexual instinct. On the other hand, C. Joseph Kurth would not necessarily exclude from the sisterhood candidates with homosexual tendencies, if there have been no overt acts. He would judge each case individually.²⁰⁶ My own judgment would be to discourage a true homosexual from applying for admission to religious life or a seminary; but if such a candidate has been admitted, I would not consider a homosexual tendency a reason for advising him to leave, unless it had led to overt acts or seemed unusually strong in intensity. In a private discussion, a number of other moralists concurred in this judgment.

One who has or ever has had epilepsy is barred from orders as irregular *ex defectu*.²⁰⁷ With the greater control from modern drugs, those who have had epilepsy can give good assurance of its not interfering with religious or clerical life, according to several articles on the subject.²⁰⁸ Freedom from seizure for a period of three years and a favorable medical assurance that there should be no more seizures would seem to be reason enough to apply for a dispensation from the irregularity.

The *Jurist*²⁰⁹ for last January gave examples of more cases in which dissolutions or declarations of nullity of marriages were granted by the Holy See with little or no corroborating evidence.

²⁰³ Gottfried Heinzel, S.J., "Leitsätze für Beichtväter von Priesterkandidaten," *Theologisch-praktische Quartalschrift* 109 (1, 1961) 16-22; Leon Barbey, "Apports de la psychologie au problème de la vocation," *L'Ami du clergé* 71 (Feb. 9, 1961) 88-92; C. Joseph Kurth, "Psychiatric and Psychological Selection of Candidates for the Sisterhood," *Bulletin of the Guild of Catholic Psychiatrists* 8 (Jan., 1961) 19-25; Angel Santos, S.J., "La vocación sacerdotal (Selección y orientación)," *Sal terrae* 49 (May, 1961) 270-78.

²⁰⁴ THEOLOGICAL STUDIES 21 (1960) 615-16.

²⁰⁵ *Art. cit.*, p. 19.

²⁰⁶ *Art. cit.*, p. 22.

²⁰⁷ Canon 984, 3°.

²⁰⁸ Kurth, *art. cit.*, p. 23; T. J. O'Donnell, S.J., "Epilepsy in Canon 984 and Modern Medical Therapy," THEOLOGICAL STUDIES 22 (June, 1961) 209-27. Cf. also E. F. Regatillo, S.J., "Irregularidad por epilepsia," *Sal terrae* 49 (Feb., 1961) 114-15; M. Zalba, S.J., "La epilepsia desde el punto de vista canónica," *Estudios eclesiásticos* 32 (1958) 345-54. D. F. Miller, C.S.S.R., also asks, "Is Epilepsy a Bar to Marriage?" *Liguorian* 49 (June, 1961) 45-46, and answers in the negative but recalls that the person is obliged to warn the prospective partner.

²⁰⁹ *Jurist* 21 (Jan., 1961) 115-23. Cf. THEOLOGICAL STUDIES 21 (1960) 622-24.

C. L. Parres, C.M.,²¹⁰ recalls that to marry a Catholic who has become a Mason does not require a dispensation for mixed religion, unless he has also joined a non-Catholic sect. But canon 1065 does require consultation with the ordinary.

With the prevalence of divorce in our country today, it might seem that many non-Catholic marriages would be invalid because of deficient consent for intending a dissoluble union. Thinking this might be so, Paul Hilsdale, S.J.,²¹¹ asked a number of couples applying for marriage licenses about their attitude towards the permanence of their intended marriages. His conclusion: non-Catholic marriages must still be presumed valid, unless there is positive evidence to the contrary in an individual case. Of those whom he questioned, he found that 80% certainly had no positive act of the will against the substance of marriage and the other 20% were at most doubtful.

Ugo Rocco, S.J.,²¹² solves rather simply a question about a marriage consent conditioned on the practice of rhythm. He applies the words of Pius XII to the midwives about limiting the right or merely the use. Perhaps this is too simple a solution. The Pope was speaking about an intention to practice rhythm. But suppose a really conditional consent is given, the condition being that the other person will live up to the agreement to practice rhythm. This could involve further complications. Such a condition could be simply a condition about the other party's present sincerity in making such an agreement. If so, it would be very hard to prove insincerity, even though the person later insisted on violating the agreement. And a condition on the future fulfilment of such an agreement would seem to render the marriage invalid as well as illicit. Certainly, any such condition should be avoided. If, for health or other reasons, a couple feel that they should practice rhythm, it should take the form of a simple prenuptial agreement and not enter into the consent at all. And if the investigating priest discovers such an agreement, he must also make sure that the couple have true matrimonial consent.

An item of interest on marriage is the decision of a judge in California ruling invalid a proxy marriage performed in that state. The case concerned a Catholic marriage in which all the canonical formalities were fulfilled.²¹³

²¹⁰ "Marriage of Catholic to Mason: Is Dispensation from Mixed Religion Required?" *Homiletic and Pastoral Review* 61 (Jan., 1961) 384-86.

²¹¹ "Are Non-Catholic Marriages Still Valid?" *American Ecclesiastical Review* 144 (Jan., 1961) 23-31.

²¹² "Matrimonio con la condizione della continenza periodica," *Palestra del clero* 40 (Feb. 15, 1961) 228-29.

²¹³ As reported in the San Francisco *Examiner*, Jan. 17, 1961.

PARTICULAR STATES OF LIFE

One of the chief moral problems facing Catholic lawyers today is the question of divorce cases. Robert H. Dailey, S.J.,²¹⁴ gives an excellent explanation of the principles involved, with a clear statement of directives in the *University of Detroit Law Journal*. Reprints of the article are being distributed to Catholic lawyers in a number of cities by St. Thomas More societies and chancery offices. The summary of directives:

1) *When the Marriage Has Been Celebrated Before a Priest.* The plaintiff needs the permission of the bishop to seek civil divorce or separation. Unless this permission has been obtained the Catholic attorney cannot take the case. He can defend the respondent who is illegitimately sued. He can defend the respondent who is legitimately sued in order to safeguard his merely civil rights.

2) *When the Marriage Has Not Been Celebrated Before a Priest.* A) If one partner is a Catholic the marriage is invalid so that the attorney may represent the plaintiff in seeking freedom from the civil bond, the real bond being non-existent. He may defend the respondent in order to obtain his merely civil rights. B) If neither spouse is a Catholic the attorney may not represent the plaintiff who is seeking a divorce for the purpose of remarriage. He may defend the respondent. The attorney may represent the plaintiff who has true, serious, honestly provable causes for divorce or separation. He may defend the respondent. In these cases he is bound by Christian love for his fellow man to try to effect a reconciliation of the embittered spouses if the marriage is valid.²¹⁵

F. J. Connell, C.S.S.R., has added brief notes on two more professions, tax accountant²¹⁶ and building inspector.²¹⁷ The former may generally take his client's word, unless he is sure that it is false. He may not lie to help his client avoid taxes, and to accept money for falsifying reports is accepting bribery. In passing, Fr. Connell states his opinion that the natural-law obligation to pay a just share of the expenses of government applies to the full amount demanded by civil law, but he admits the probability of the opinion that would put the natural-law obligation somewhat lower than the assessed amount.²¹⁸ A building inspector who accepts or demands payment in money or gifts for doing what he is already paid by salary to do, is clearly

²¹⁴ "The Catholic Attorney and the Moral Lawfulness of the Civil Divorce Case," *University of Detroit Law Journal* 38 (Feb., 1961) 255-78.

²¹⁵ *Ibid.*, pp. 277-78.

²¹⁶ "Problems of the Tax Accountant," *Liguorian* 49 (Jan., 1961) 16-17.

²¹⁷ "A Building Inspector's Problem," *ibid.* (May, 1961) pp. 11-12.

²¹⁸ *Art. cit.*

violating justice. The fact that it is a common practice does not justify it.²¹⁹

A related question often asked nowadays is from the builder's side. Supposing that an unjust practice of gifts to inspectors is a fact, may a building contractor pay the bribe or give a gift to the inspector to get approval for his building? This is a case of co-operation with a sinful action, and generally speaking such co-operation should be avoided. But if the approval should be given, but will not be given or will be unduly delayed unless a gift is forthcoming, and such delay or refusal will cause considerable loss to the builder, he may be justified in giving the gift. However, it would be wrong to expect approval when approval should not be given. And it would be better to try to break up the dishonest practice where approval should be given. The difficulty apparently comes from the practice of some dishonest inspectors insisting on technicalities beyond the range of right reason to hold up approval when a gift has not been received.

Occasioned by two train accidents in Spain, an article by Antonio Udina, S.J.,²²⁰ proposes moral questions for railroad management and employees. The safety of the passengers is of prime importance, but also getting them to their destinations on time is a duty of those concerned. In fact, a railroad company violates justice if it accepts extra fare for an express train and then fails to give the passengers the expected extra speed. The article even goes into such details as the placing of cars in a train for maximum safety.

Finally, for priests, Pope John gave useful advice in his allocution to Lenten Preachers:

"The flashy ornamentation of a "vague erudition" *quae ad rem non pertinet*, has lost the power of attraction it once enjoyed. And so everything has to be said clearly, calmly, and respectfully—never with the sharp and bitter tones of fruitless polemic. . . .

"The people need the solid nourishment of truth . . . not . . . little tracts, or more or less edifying stories, which have no impact on people's minds."²²¹

Much of the same advice was already incorporated in the decrees of the Roman Synod, which Pope John hopes will be a model for other dioceses: preachers should use solid arguments, avoid rhetoric, and use rather a simple and direct manner. The Sunday sermon should not go beyond fifteen minutes and may be a homily on the Gospel or Epistle, but from October to

²¹⁹ *Art. cit.* On moral problems in other professions by Fr. Connell, see his *Morals in Politics and Professions* (Westminster: Newman, 1946) and *Problems of Professional People* (Liguori, Mo.: Liguorian Pamphlets, 1957).

²²⁰ "Moral ferroviaria: A propósito de dos choques de trenes," *Razón y fe* 163 (Apr., 1961) 383-98.

²²¹ Feb. 13, 1961; *The Pope Speaks* 7 (1, 1961) 49-54; citation, pp. 52-53.

June it should be part of a systematic catechesis for adults according to a schedule given out by the vicariate.²²²

Alma College

JOSEPH J. FARRAHER, S.J.

²²² Decrees 256-65 as reported in "The Decrees of the Roman Synod," *Clergy Monthly* 25 (May, 1961) 135-43. On various phases of the synod, cf. John A. Abbo, "The Roman Synod," *Jurist* 21 (Apr., 1961) 170-203; Alexander Szentirmai, "Die Bedeutung der römischen Diözesansynode für die Kanonistik," *Theologie und Glaube* 51 (3, 1961) 215-23; E. Bergh, S.J., "La vie sacerdotale d'après le Synode romain," *Nouvelle revue théologique* 83 (Mar., 1961) 271-93; Francis X. Murphy, C.S.S.R., "The Roman Synod, II," *Irish Ecclesiastical Record* 95 (June, 1961) 377-86; I. LoGrasso, S.J., "Summarium primae Romanae synodi constitutionum de normis praeviis et de cleri iuribus et officiis (art. 1-74)," *Periodica de re morali, canonica, liturgica* 49 (1960) 497-508.

EDITOR'S NOTE.—By an editorial slip, the author's name on last December's Notes was given as *John J. Farragher*, S.J. It is the same author as for this survey and should have read *Joseph J. Farragher*, S.J.