

CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY, 1942

GENERAL

In the *Downside Review* (LXX [1942], 56 ff.) Dom Mark Pontifex discusses "Intrinsic Good." He begins by assuming that nature is the true criterion of morality and that actions are intrinsically right or wrong according as they fulfil or frustrate human nature. This raises his problem: "If nature is the standard, how can it ever be right to defend ourselves by injuring others, or to conceal the truth even for the protection of the innocent, or to punish evildoers by pain or imprisonment, or to perform a surgical operation? If nature is the criterion of morality, surely it can never be right to frustrate nature for any reason at all? If it is ever right to do so, this seems to imply that nature is not the ultimate standard . . ."

To solve this problem the author proposes the somewhat novel idea that in the examples cited what appears at first sight to be frustration of nature is not really frustration at all: "If a thing is corrupt, if its nature is twisted and its powers are tending in a wrong direction, we are not in any true sense acting against nature by frustrating those powers as they are now directed. . . . If a human being is using the powers of his body to attack an innocent person, then by stopping him, if necessary with violence, in a sense we are frustrating his nature, but we are frustrating a nature whose purpose has already been frustrated." The author then applies this principle in considerable detail to the question of lying, self-defense, punishment, and surgical operations. In accordance with this principle, lying would have to be redefined: "Speech contrary to our thought addressed to a person of right dispositions in the matter concerned." The other examples receive similar treatment. The author concludes: "There is such a thing as intrinsic good in morality, namely, that conduct which is in accordance with the ends of nature. An action is intrinsically evil when it directly frustrates the ends of nature. But some acts which at first sight seem to contradict this principle, because they are admitted to be morally right while apparently frustrating nature, are not really contrary to nature if we examine them carefully. [For they are merely the contra-frustration of an already frustrated nature.] To justify them does not imply any abandonment of the principle that action in accordance with nature is an intrinsic good and therefore can never be violated."

A cognate question is treated from a more practical angle in "The Medium of Virtue," by M. S. Welsh, O.P. (*Ecclesiastical Review*, CVI [1942], 133 ff.). Those who have not studied their moral theology

directly from St. Thomas are sometimes puzzled by the expression, "in medio stat virtus." If moderation is the rule, how could total abstinence be virtuous? Or how could the practice of celibacy be called moderation? The author explains clearly the difference between a *medium rei*, in which some material quantity is set down as the standard (e.g., in commutative justice, which requires neither too much nor too little to be restored, but the exact quantity corresponding to the injury), and the *medium rationis*, which is "something relative with reference to persons and conditions, and to be determined according to prudence." St. Thomas himself sums it up: "The moderation of a virtue is not always to be judged according to the quantity of a thing, which is regulated by reason, but according to the rule of reason which aims at the proper end and weighs appropriate circumstances" (III *CG*, 137, ad 4m). The author makes some practical applications on the possible necessity and suitability of total abstinence societies. In these applications he is at his best.

Young religious, as well as experienced theologians are sometimes puzzled by the doctrine found in many ascetical and moral books on "positive moral imperfections." The attempt is frequently made to explain these in such wise that venial sinfulness is excluded from their concept. In the *Thomist* (IV [1942], 388 ff., 649 ff.) J. C. Osbourn, O.P., discusses thoroughly the doctrine of St. Thomas and the Thomistic School. The first article, after clearing the ground and stating the question, draws its argumentation from the nature of finality in the moral order. The second article argues against the possibility of sinless "positive moral imperfection" by exploring St. Thomas' doctrine on the law of Christian perfection. The result is a scientific piece of work, deserving of careful study. The conclusion is: "St. Thomas and the Thomists, therefore, with the exception of Passerini and the Salmanticenses, never concerned themselves with a discussion of the problem of positive moral imperfections from the precise angle of imperfection. From the viewpoint of the better good, however, as related to the law of finality, and of Christian perfection, the problem was attacked and solved by them. St. Thomas and the great Commentators, with the sole exception of the Salmanticenses, have answered that the positive moral imperfection, which so strangely and insistently haunts the pages of our modern manuals of moral theology, is nothing but venial sin."

The question of perfection is treated from another angle by A. Klaas, S.J., in a series of articles, not yet complete, in the *Review for Religious* (I [1942], 94 ff., 233 ff.). "Perfection and the Religious" deals, first, with the idea of perfection in general, and its essential oneness for priest, religious, and layman; secondly, with false notions of the essence of perfection (surprisingly current, even among some religious), and with its true essence, charity and its maximum activity. In a third article, Father

Klaas will apply these principles to the religious life, and answer the question: "How is the religious to do the maximum good and practise the maximum charity?" The series will be interesting and practical for religious and their directors.

From the definition of perfection we turn to "The Definition of Sin," Philip Kesting (*Eccl. Rev.*, CVI[1942], 205 ff.).¹ After calling attention to the theoretical difficulties and disputes about the nature of sin, the author rejects some of the definitions commonly found in manuals, e.g., "libera transgressio legis Dei," or "praevaricatio legis Dei." These are not false but inadequate. And it is Father Kesting's contention that St. Augustine's definition, "Dictum, factum, concupitum contra legem Dei aeternum," is the best that has so far been devised: "Far from adding confusion to that which has since been disputed, it sheds greater clearness and more accuracy of thought upon the nature of sin. While several authors are content merely to make mention of St. Augustine's definition, it is to be hoped that the value of such a definition will come to receive the recognition that it deserves."

Likewise, "The Mystery of Sin" is treated by Gearóid MacEóin (*Irish Ecclesiastical Record* (LVIII[1941], 29 ff., 317ff.). The treatment is rather pastoral; good material for preaching is presented clearly and solidly. The same may be said of "A Discourse on Conscience," by Stephen J. Brown, S.J. (*Homiletic and Pastoral Review*, XLII [1942], 1094ff.). An excellent popular explanation of what conscience is and how it works, it would serve as a good basis for Sunday sermons.

The new periodical, *Review for Religious*, whose instant success has proved its timeliness and value, is not lacking in things of interest to the moralist. Notice should be given to "Religious and the Study of the Decalogue," continued in "Moral Beauty in our Relations to God," by Gerald Kelly, S.J. (I[1942], 123 ff., 244 ff.). The author states the scope of the contemplated series of articles: "Each Commandment, even though phrased in a purely negative manner, really does three things: first, it *indicates* a whole field of virtuous acts which it is both natural and becoming for a human being to perform; secondly, it *commands* certain minimum essentials of virtue necessary for preserving the dignity of a human being; and thirdly, it *forbids* certain thoughts and acts which either mar or destroy the beauty of human nature. In subsequent issues of this Review we shall give thorough explanations of these various aspects of the Commandments." The treatment is principally on the positive side; but the author is convinced that religious, both for their

¹ In *Divus Thomas* (XIX [1941], 129 ff.), and in subsequent issues, Alexander M. Horvath contributes a series of articles on "Sünde und Unsündlichkeit." Owing to war conditions most of the copies of this periodical have failed to arrive from Switzerland. The same is true of all French, German and Italian publications.

personal lives, and for the instruction so many of them must impart to others, should have a thorough knowledge of the prohibitions of the decalogue: "The policy of leaving all personal perplexities of conscience to be solved by an occasional word from a confessor is not a sound one. . . . Moreover, the policy of hedging when explaining moral obligations to religious, of confusing ascetical norms with moral norms, slight obligations with serious obligations, is also difficult to justify. It breeds false consciences, and often enough is the cause of scruples."

The same author also writes on "Exemption from Fasting" (*ibid.*, pp. 42 ff.), explaining the general obligations of the law, and giving practical examples of circumstances in which Catholics (especially religious, but also others) may be validly and licitly dispensed, or considered excused, from the law. We look forward to future articles from this competent pen. Excellent articles on the Canon Law of religious have also appeared, written by Adam Ellis, S.J.; but since Canon Law is not pertinent to the present survey, attention is merely drawn to them. One of the most interesting features of the Review is the "Question and Answer Department," covering queries submitted on matters moral, ascetical, liturgical, and canonical.

PATRIOTISM, MILITANT VIRTUES, ETC.

Msgr. Lawrence L. McReavy contributes an article on "Patriotism" to the *Clergy Review*, (XXII[1942], 337 ff.), which is an excellent epitome of Catholic teaching on this point. "The obligations of this virtue of patriotism (*pietas in patriam*) are threefold. In the first place we owe to our country, in itself, and in the person of the King and his ministers, the same kind of *respect* that we owe to our parents, and by the same title. . . . The second duty of patriotism is *preferential love*. . . . The third duty of the patriot is that of obedience to legitimate authority. The modern state is not likely to let us forget this duty, but only too often it ignores the theological principle from which alone it can derive. The totalitarian regime usurps the authority of God by making the State the be-all and end-all of the citizen. The democratic State makes the illogical pretence of demanding obedience from those who, according to its philosophy, are the source of its authority. The obedience of the true patriot on the contrary, is neither pagan nor inconsistent. It is based on the principle that no matter how the governing authority be established, whether the procedure be dictatorial or democratic, there is no power but from God. . . . Therefore he that resisteth the power, resisteth the ordinance of God."

Msgr. McReavy quotes an extremely apposite instruction of Cardinal Mercier with reference to the German invasion of Belgium during the last war: "This power is not a legitimate authority, and consequently in

your inmost heart you owe it neither esteem, nor attachment, nor obedience. . . . The public administrative acts of the occupier would be in themselves void of force; but the legitimate authority [the government of the King of Belgium] tacitly ratifies those which are justified by the public interest, and it is from this ratification alone that they derive all their juridical value. To the persons who rule over us by military force . . . let us show such regard as the common interest requires."

The article then discusses briefly the concept of "fatherland" (*patria*) in relation to larger political entities, and the distinction between the cognate virtues, legal justice and patriotism.

Similar discussions of patriotism and its obligations can be found in Msgr. Fulton J. Sheen's book, *For God and Country* (New York: P. J. Kenedy and Sons, 1942), and in the *Review for Religious* (I [1942], 301 ff.), where the present writer discusses "Patriotic Obedience in Time of War." Particular attention is called to Archbishop Spellman's new book, *The Road to Victory* (New York: Charles Scribner's Sons, 1942). In it we find the fundamentals of patriotism set forth in clear and engaging style, with constant reference to the encyclical teaching of the Popes. The book does not fail to stress the need for unity under the leadership of the President, and throughout breathes a truly religious spirit of love of God, love of Fatherland, and love of peace.

The most important of all the publications on patriotism, however, is the doctoral dissertation of John J. Wright, *National Patriotism in Papal Teaching* (Boston: Stratford Company, 1942). In this volume of 350 large pages we have collected all that four Popes (Leo XIII, Pius X, Benedict XV, and Pius XI) have had to say on the problems of patriotism, nationalism, and international unity. The work is done in a thoroughly scientific way, and the author proves himself a master of the contemporary literature. The book is divided into three main parts: The Nature and Object of Patriotism, The Principal Obligations of Modern Patriotism, National Patriotism and International Order. The problem of Nationalism and Internationalism is a pressing one. In this book we have the indispensable sources from which to derive the Catholic answer to the problem. The last chapter, "The Solution of the Problem of Nationalism in Papal Social Teaching," is particularly well done.

An obligation which can be considered either as of patriotism or as of legal justice is the obligation to vote. Father John H. Schwarz contributes a badly needed and satisfying discussion of this obligation (*Eccl. Rev.*, CV[1941], 289 ff.). When I say the discussion is satisfying, I do not mean that I agree with every word of it. Once it becomes necessary to distinguish mortal from venial sin in the concrete cases of given elections it would be too much to expect, perhaps, that agreement could be reached immediately. On the whole, Father Schwarz leans towards stressing the

gravity of the obligation of the individual voter to cast his vote. And there is no doubt that in the past it has not been sufficiently brought home to the people that in our form of government we are not at liberty morally to neglect this obvious means of promoting the common good. My own impression is that in preaching this obligation to the people (whether in the name of legal justice or of patriotism), it is wiser, both because of theoretical disputes, and because of general prudential considerations, to omit the thunders of mortal sin, and merely to insist on the obligation, without trying to distinguish mortal from venial. The value of the present contribution can be surmised by reading the headings of the seven parts of the article: (1) Basis and nature of the duty of voting; (2) General principles that should guide a citizen in voting; (3) Gravity of the duty of voting; (4) Conditions that may relieve one from the obligation of voting in a particular election; (5) Conditions under which citizens may be permitted to vote for an unworthy candidate; (6) For whom and for what elections does there exist a moral obligation to vote; (7) Other duties which flow from or are corollaries of the duty of voting.

Dr. Rudolf Allers offers some reflections on "Morale and Morals" (*Eccles. Rev.*, CVII[1942], 93 ff.), which were occasioned by a series of articles appearing in the *American Journal of Sociology* for 1941. (Or perhaps they were more proximately occasioned by the remark of a prominent military authority: "To hell with morals; what we need is morale.") After pointing out that military morale depends to a great extent on civilian morale (and that this is difficult to maintain because civilian populations lack the strong bond of "belongingness" which characterizes the uniformed army), the author shows that, fundamentally, morale must depend on morals, and there must be no contradiction between them. But in the series of articles on which he comments, Dr. Allers found a disposition to de-emphasize the moral angle. "The reason for this may be that morals have become, in our times, a very controversial topic, and that the writers fear to weaken their position and to make less impressive their assertions by letting themselves become involved in one of the endless controversies." Some of the writers who contributed to the series mentioned were W. E. Hocking, P. E. Vernon, E. G. Bogardus, J. R. Angell, and J. M. Landis.

It is Dr. Allers' conviction that "if man does not return to the fundamental idea of absolute values—values which are beyond all influences of a changing world—there is no chance of building up a true and resistant morale. One has to believe in morals, eternal, immutable principles, to develop morale. . . . Let morals go to hell and morale is sure to follow suit. Fortify morals, and morale will withstand the impact even of the greatest trials."

Ignatius Smith, O.P. writes on the "Militant Christian Virtues" in the *Thomist* (IV[1942], 193 ff.). He is of the opinion that Church leaders lean too much toward weak sentimentalism and neglect the sterner qualities which Christian virtue sanctions and the present situation demands. Some quotations will show his point of view: "In these church pronouncements there is a manifest gentleness that approaches spiritual and religious flabbiness. This is a carry-over from the pre-war pacifistic activities, now necessarily quiescent. . . ." "The definite indictment which can be brought against incomplete and sentimental Christianity is that . . . it has exiled from life Christian obligations like holy anger and vindictive justice." "Anger is . . . a combination of sorrow and the desire for vindication. This combination existed in Christ in a perfect degree and under the perfect control of reason and justice." "Vindictive justice brackets together a crop of firm and tough-souled qualities and unites them with charity. . . . The ordinary implement of vindictive justice is punishment, either medicinal or obliterating." At the peace table after the war, "the vindication of justice and the future and peaceful health of society demand distasteful medicine for the Axis governments and even for the civilian populations who have made them possible. Satisfaction must be demanded in the name of charity, justice, and order, which have been violated and must be restored. Correction is a function of charity, and in its coactive phase it is an inescapable duty of justice, all the more difficult when the culprit is proud and stubborn. In such a situation severity, another virtue, will reinforce the demands of vindictive justice. Severity will give that firmness which sentimental sympathy might abdicate but which right reason demands." "Another virtue which needs rehabilitation in national and international relations is virtuous disdain and hatred of crime, even though one is compelled to cherish a degree of charity for the criminals themselves." "Complete Christian living demands that [the] bestial qualities of ferocity, cruelty, savagery, mercilessness, and sinful anger be neutralized by the virtues of clemency, mildness, and mercy. But complete Christian living demands also that these gentle virtues be kept from going to extremes of mildness, by truth, justice, vindication, and severity." The civilian populations of the Axis powers must also be dealt with severely: "Medicinal punishment for them will be necessary to convince them that there are laws for nations that are sacred, and that totalitarian governments can never again be permitted to exist by the consent, explicit or implicit, of the people. Christian charity, justice, truth and the continued peace of the world, demand severity with peoples as well as with the Nazis, the Fascists, and the Japanese leaders." To one who reads all of Father Smith's words (he refers to St. Thomas frequently in confirmation of what

he says), the extracts given here are more easily understood—and perhaps it is unfair, to pick out excerpts of this kind from a long article. But I leave it to others to judge whether this approach (especially in the matter of civilian populations) is the proper solution of the problem of international peace after the war.

Last year we referred to the question of reprisals, a subject not too remote from that of vindictive justice. The principal point at issue was really the morality of bombing civilian centers. In answer to a query, J. McCarthy (*Irish Eccl. Rec.*, LVII[1941], 367 ff.) sets down principles which for the most part concord with the opinions of Canon Mahoney and Msgr. McReavy. The problem which remains to be solved seems to be this: How far can we go in considering ordinary civilians to be combatants in total war? On the one hand, almost every adult (even housewives, educators, and clerics) has a share in the effort to down the enemy; on the other hand, it seems utterly inhuman to allow bombing of civilians from the air. That problem remains to be answered; and, as we said last year, in the meantime pilots and bombardiers may continue to obey the orders of their superior officers, except in cases where it is *certain* that an unjustifiable attack on the innocent is being made. In his reply, Father McCarthy distinguishes between what is forbidden in warfare by the natural law, and what is prohibited by international agreement. In his view, reprisals may justly be applied for violations of international agreement, but not for violations of natural law. For example, if one side uses poison gas, the other side may retaliate by using it, too; but if one side directly kills non-combatants, the other side may not retaliate in kind, for such action is contrary to the natural law in all circumstances. However, as Father McCarthy admits, the difficulty in our times is to draw the line between combatants and non-combatants.

JUSTICE

The idea of vindictive justice is deeply rooted in human consciousness and is closely connected with many of the truths of faith—the Atonement, the existence of hell, etc. And yet it is not altogether easy to show that in the very nature of things physical suffering (punishment) must restore the balance when it has been upset by moral evil. In the *Irish Ecclesiastical Record* (LX[1942], 127 ff.), Rev. Michael J. Mooney starts a series of articles on "The Morality of State-Punishment." He says: "There are, properly speaking, three theories of punishment—the deterrent or utilitarian, the reformatory or medicinal, and the retributive view. The question therefore presents itself: Has the State the right to punish at all? If so, what is the basis and foundation of the right? What purpose is the State to have in view in punishment? Are there any limits to the

State's penal authority with regard to the manner or amount of punishment or the person to be punished? Is the right to inflict capital punishment grounded on a different basis from the right to impose a fine, corporal punishment, or imprisonment? All these questions must be answered in order to have a complete and adequate philosophy on the morality of State punishment." Dr. Mooney had discussed these problems at length in a doctoral dissertation presented at Maynooth in June 1942. The present series of articles takes up some of the principal points. "Though all Catholic moralists at the present time agree that the right to punish exists, they disagree as to the foundation and purpose of that right. Accordingly, it may be of interest to discuss and analyze, in turn, the retributive, medicinal, and deterrent theories, and to see how far any one of them, by itself, offers a satisfactory solution of the problem of punishment. The present article will consist mainly of an exposition and analysis of the retributive theory." Dr. Mooney's conclusion on this point: "To sum up, the arguments brought forward in favor of the retributive theory, namely, the passage from St. Paul, the analogy between Divine government of the universe and human government of society, and the attitude of the popular mind to punishment, do not seem to show any reason why punishment should be regarded as retributive; they merely show that punishment is not unjust and may serve *some* very useful purpose. On the contrary, the impossibility of applying the retributive view, and its rejection both in theory and in practice by statesmen and legislators, would seem to prove conclusively that whatever be the purpose of punishment it cannot be to proportion pain to guilt."

The further writings of Dr. Mooney on this subject are awaited with interest, because the problem of just retribution is at present a very pressing one in international relations. We have already called attention to Father Ignatius Smith's appeal to the militant virtues of vindictive justice and just anger.

In the *Hibbert Journal* (XL[1942], 320 ff.), Stephen Hobhouse writes on "Retribution." He begins: "Archbishop Temple bases his support of national armaments and of punitive or preventive war largely on the doctrine of 'just retribution' as distinct from the self-centered spirit of vengeance. Such retribution is advocated as being a form of personal activity proper to God, who is Love, to Christ and to the Christian, a form of Justice promoted by holy or 'righteous' anger at sins of violence and cruelty: it expresses itself by the infliction of suffering and loss in some degree proportionate to the wrong done, and is justified as the true expression of love and loyalty, not only to God and to goodness and to the victims of aggression, but equally also to the wrongdoers (who in the present issue are primarily the leaders of the Nazis and other Fascist ag-

gressors)." Dr. Hobhouse, who is apparently a pacifist, disagrees fundamentally with the idea of retributive justice, and is satisfied that his position is the correct one from the viewpoint of Scripture and of reason. "If the fatal illusion, as we regard it, of the human duty of inflicting 'just retribution' be cleared away, Christian and other idealists will find themselves able to cooperate fruitfully with those religious-minded agnostics and determinists (e.g., in the present crisis, Mr. Harold Laski and Mr. Victor Gollancz) who are fighting against the evil spirit of hate, contempt, and revenge (often, as they point out, disguised under the name of retribution) which will assuredly if unchecked, wreck the future of humanity in the world-shaking conflicts that are upon us. . . . It is also necessary to point out that, even supposing this theory be true . . . nevertheless 'just retribution' is very unlikely to come from a very mixed body of politicians and soldiers, at different levels of moral achievement and religious faith, and representing overstrained nations exulting in victory and fresh from the poisonous infections of war. Such 'retributive' punishment administered on a national scale and so precariously sponsored will only, we fear, in effect be vengeance under another name."

In the same number of the *Hibbert Journal* there is an article by Ronald Gregor Smith, "Retribution and Mercy are One in God." This author tries to reconcile God's justice and love by an appeal to metaphysical considerations. He gives an interesting quotation from Tertullian: "Who is the author of good but he who also demands it? In like manner who is a stranger to evil but him who is its enemy? Who is its enemy but him who is its conqueror? Who else is its conqueror than he who is its punisher? Thus God is wholly good because in all things he is on the side of good."

In the *Catholic Biblical Quarterly* (IV[1942], 101ff.), Michael J. Gruenthaner, S.J., writes on "The Old Testament and Retribution in This Life." "The teaching of the Old Testament on retribution in this life is sometimes charged with being exaggerated, unjust, or even contradictory. We propose, therefore, to examine this teaching, especially that part of it which relates to solidarity in punishment, which we shall designate as social retribution. This consisted in the fact that a social unit, such as the family or the nation, was afflicted because of the transgression of one or more of its members." Father Gruenthaner's examination of the Old Testament evidence leads him to conclude that it is not inconsistent or contradictory; and, wrestling with the problem of reconciling the justice of God and the punishment of the innocent, he makes several telling points. If rightly understood, the doctrine of social retribution "does not stand in need of revocation or reformation. On one occasion our Lord's disciples asked Him about a man born blind: 'Rabbi, who has

sinned, this man or his parents, that he should be born blind?' Jesus answered: 'Neither has this man sinned nor his parents, but the works of God were to be made manifest in him.' . . . This answer shows that there may be other reasons for affliction beside personal and parental guilt, but it does not deny that these, also, may occasionally be the causes of misfortune."

FIFTH COMMANDMENT

Last year we commented in these pages on two articles on ectopic gestation, one by Dr. Elmer A. Schlueter, the other by Monsignor James W. O'Brien, which appeared together in the *Ecclesiastical Review*. In the same periodical (CVI[1942], 122ff.), Henry Davis, S.J., writes "Ectopic Gestation. A Rejoinder", and thereafter Monsignor O'Brien makes a reply to the rejoinder (*ibid.*, pp. 282 ff.). Father Davis is of the opinion that Monsignor O'Brien's article did not do justice to the opinion of those who hold that in all tubal pregnancies there is a pathological condition of the tube, which constitutes sufficient threat to the mother's life to justify the surgical removal of the tube. Monsignor O'Brien, on the other hand, does not believe there is sufficient evidence to show that the condition of the tube in such pregnancy is always a source of serious danger to the mother. "Why is it," he asks, "that when both tubes are affected only the pregnant one is removed?" Perhaps I am misinterpreting, but this, and the other questions he asks at the end of his article seem to imply that the tube cannot be considered the source of danger to the mother unless it would also be such a source even in the absence of the foetus. I had thought that all were agreed that the presence of the foetus was responsible for the danger to the mother, in the sense that if she had not become tubally pregnant, her life would not have been threatened by the tubes themselves, even though diseased. In order to make out a case for the use of the double effect, is it not sufficient to show that here and now, granted the pregnancy and its inevitable development, and granted a pathological condition of the tube, there is a condition which gravely endangers the mother's life? In these circumstances cannot the tube be treated as the source of danger to the mother, even though it would not have become thus dangerous except for the presence of the foetus? I make these remarks tentatively, not with a view to coming to the defence of Father Davis (who needs no defence from me), and not with the idea of entering into a controversy which unfortunately was somewhat sharp in tone towards the end.

Another problem suggests itself in connection with the use of the double effect in tubal pregnancies. It is said usually that the operation cannot be performed unless the mother is in "proximate danger of death,"

or "immediate" or "imminent" or "very grave" danger of death. Some of those who make use of these expressions draw the conclusion, that if the ectopic is discovered early in the pregnancy, the physician should use "expectant treatment." For, they say, if the bursting of the tubes is some months off, the mother cannot be said to be in danger here and now. Hence the doctor must wait until the danger is really present. Needless to say, expectant treatment increases the danger to the mother very considerably.

Do the principles of morality require that the idea of "immediate danger" be so strictly interpreted? Here is a tentative definition of danger for the purposes of the moralist. *Danger consists in a set of circumstances from which one can foresee with certainty or probability a future impending evil.* Danger should be looked on as an objective thing, inasmuch as the circumstances which constitute it exist independently of anyone's thought about them, and inasmuch as these circumstances taken together generally *cause* the evil which is impending. The danger is one thing. The foreseen or foreseeable evil is another. And yet when adjectives—grave, slight, remote, proximate, serious, certain, probable, imminent, present, future, etc.—are used in connection with danger, they sometimes, to speak accurately, should be used of the evil itself, sometimes of the danger. The indiscriminate usage makes for confusion of the moral questions involved.

In order that there be any danger in the true sense (according to the common usage of men), the future evil must be in some sense impending. Circumstances in which one foresees a future evil which is altogether remote, even though certain, are not called danger by anyone, nor is a person in such circumstances said to be in danger. To decide when the future evil effect is near enough in time to be called dangerous requires a moral estimate. According to the nature of the circumstances and the nature of the thing feared this time element will vary greatly. For instance, there is a response from Rome which allows Extreme Unction to be administered in mission countries to persons whose death is foreseen from a long, lingering illness, even if the death is not likely to occur for a year or more. When the set of circumstances that constitute the danger is a cause, and a certain cause, of the future evil, then one can go farther in estimating that a somewhat distant evil is impending. Granted, therefore, that the future evil is sufficiently proximate so that common sense is not offended in calling it dangerous, the danger of it is a *true present danger* as soon as the circumstances exist which will result in it.

In applying these ideas to an ectopic pregnancy we get the following result. If a doctor discovers an ectopic in the tubes and the tubes are in such a condition that they will certainly or very probably burst later on

and seriously threaten the mother's life, then even if it is foreseen that this hemorrhage will not take place for several months, the mother is nevertheless in *present* danger of death. I do not draw the conclusion that in every such case the surgeon may operate, because he can never operate unless all the conditions for the principle of the double effect are fulfilled. But as far as the question of "present" or "immediate" or "imminent" danger of death is concerned, I do not think it makes any difference morally whether the woman is going to hemorrhage next week, or six months from now. From the moral viewpoint, a woman in that condition is in *present* danger of a death that will take place some months hence.

In the *Homiletic and Pastoral Review* (XLIII[1942], 47ff.), John F. O'Malley takes up the question of the "Assistance of Nurses at Illicit Operations." He explains the principles of co-operation, and shows how far one can go in permitting it in such operations as therapeutic abortion. He would permit a nurse to assist in the operating room (not in the actual bringing about of the abortion, of course), provided that she has a very grave reason, and provided that her co-operation is not necessary to the evil result. He would not give the same solution in the type of operation where all probability of baptizing the foetus was eliminated. Whether this reservation is necessary might be debated, seeing that whether the nurse assists or not, the foetus is not going to be baptized.

The following case was proposed to Father J. McCarthy, *Irish Ecclesiastical Record* (LVIII[1941], 552): "A woman was suffering from diabetes for which insulin was prescribed. If she were to omit taking this treatment, it appears that she would go into a diabetic coma and die an easy death. The unfortunate patient developed inoperable cancer, and the prognosis was that she would live for about six months in great pain. Would it be permissible for her to discontinue the use of insulin and so die?" The answer is based on the principle that we are obliged to take ordinary means to preserve our lives and that the use of insulin in the circumstances is such an ordinary means, even though its use will incidentally be accompanied by great pain. "It will be obvious that means which some years ago would rightly have been regarded as extraordinary, may today, with the advance of medical and surgical science, be classed as ordinary. This is particularly true of some surgical operations." The argumentation is carefully and clearly proposed. The conclusion may seem harsh to the tender-hearted, and perhaps some might argue plausibly that the use of insulin is in itself an extraordinary means of preserving life. In any event, the moralist cannot desert his principles in order to arrive at the easier solution.

Some new types of cases involving sterilization have been discussed. "The Morality of a Sterilizing Operation" is contributed to the *Ecclesi-*

astical Review (CVI[1942], 444ff.) by Thomas V. Moore, O.S.B. A patient was being treated for cancer of the prostate, and part of the treatment involved the use of X-rays on the prostatic region. Prostatectomy, as at present performed, is of itself sterilizing in general. But the doctor wanted to go further and X-ray the testicles, too—a procedure which would certainly result in sterility. The testicles were not cancerous or otherwise diseased, but the theory was that such irradiation would give the patient a better chance of escaping death by cancer. The theory was based partly on statistical evidence and partly on a probable conjecture that “a suppression of testicular hormonal activities by irradiation might in some way influence prostatic carcinoma.” Father Moore expounds the general principles on which mutilation, even of healthy members, may be permitted for the good of the whole body. He concludes: “When we consider the great danger of death when carcinomatous tissue is found anywhere in the body, we must grant that an individual is justified in risking any surgery that offers him a greater chance of recovery. Though the statistical evidence of the advantages of this operation are as yet weak, on account of the small number of operations reported, the evidence is sufficient to make one pause before condemning it as morally unjustifiable. In this regard one should consider the fact that prostatectomy, particularly as now performed, is in general a sterilizing operation. To object to another operation which enhances the chances of survival, because it is a sterilizing operation, is therefore unjustifiable.”

A similar question received a similar solution in the *Linacre Quarterly* (X[1942], 4 ff.): “The question has arisen whether it is permissible to make use of X-ray or radium treatment to cure uterine bleeding, when such treatment involves danger of sterilization. Or is it permissible even to destroy the ovaries on purpose to cure this or other disease.” The answer stresses the point that such mutilation is permissible when in the doctor’s judgment there is a serious threat to the mother’s life or health, provided always there is no concealed contraceptive intent. Attention is called, too, to the fact that it is improper to *experiment* on a patient with the risk of depriving him of the generative function. There must be well-founded hope of success or alleviation, based on theoretical or experimental evidence. Also, where the treatment involves risk of sterility, it should not be used without the patient’s consent.

The question has also been raised whether it would be licit to excise a uterus which is in such a weakened or abnormal state due to previous injuries in childbirth, that another pregnancy will certainly result in grave danger to the mother’s life. And if such an operation were permissible, would it not be allowable instead merely to ligate or bury the tubes? To the present writer it seems that such an operation is an illicit contraceptive

procedure. The objection may be offered that we should decide the objective morality of the operation independently of the woman's intention (to prevent future conception), for that is a subjective element. The answer is that the intention which governs a human act is part of the objective morality of the act. The adequate moral object is made up of proximate object, circumstances and intention. It is impossible to judge the complete objective morality of a given act independently of the intention of the agent. The decree of a year or two ago against *direct* sterilization certainly must include any sterilization the *purpose* of which is to prevent future conceptions, even if this is intended only as a means to the health of the whole body.

The following note appears in *The Jurist* (II[1942], 312): "On June 1st the Supreme Court handed down the decision that the 'Habitual Criminal Sterilization Act' of Oklahoma is unconstitutional. The Oklahoma Act provided for the compulsory sterilization of any person convicted for the third time of a crime involving moral turpitude, and the Court ruled that it violated the 'equal protection' clause of the 14th Amendment of the Constitution. As to the power claimed by the state to impose sterilization, the Court pointed out that this 'involves one of the basic civil rights of man,' and that it 'may have subtle, far reaching and devastating effects. In evil or reckless hands it can cause races or types which are inimical to the dominant group to wither and disappear.' "

This decision does not seem to mean, however, that all such sterilization laws would be struck down if submitted to the court. The decision was probably reached because the terms of this law were too broad.

The power of the state to sterilize, or prevent marriage, for eugenic reasons is touched on, and denied, in an article written by J. Pujiula in *Razón y Fe* (CXXXV[1942], 375 ff.), "Eugenesia Bionomica Humana." He discusses the eugenical aspects of the problem, and shows that the right to reproduce is a God-given right. The state can counsel against it and should do so in some circumstances, as we ourselves do. But it cannot prohibit marriage for eugenical reasons, much less sterilize. Eugenics, to be scientific, must take into account general bionomic (i.e., ecological) factors, which in the case of man means that it must regard him as a spiritual being, with his relationships to God and his rights from God. God cannot be left out of social considerations with impunity. Man will pay for his sins in the next life. But there is no next life for society which will suffer here if it abandons God.

SEX MORALITY

No matter how often the confessor may be called on to deal with sexual matters, and no matter how well versed he may consider himself to be in

the principles that govern them, he can usually profit by a return to his books. Mistakes in doctrine and mistakes in prudence are not unheard of. In the *Irish Ecclesiastical Record* (LIX[1942], 259ff., 538ff.), Father J. McCarthy answers questions on the malice of directly intended venereal pleasure outside of marriage, and the morality of kissing, principally in circumstances where the pleasure is only indirectly voluntary. These two answers of Father McCarthy, who always writes in a solid and scholarly way, might well serve as a review for the busy confessor. The first of them gives the grounds from reason for the moral teaching of the theologians, and does not evade the troublesome question raised by the teaching that outside of marriage there is no parvity of matter in directly voluntary venereal activity. The questioner was interested in proofs from reason alone. In practise, dealing with people, it may often be found that these proofs do not actually convince. An appeal to the teaching of the Church (when she has spoken) and to higher supernatural motives must be made. The second problem was raised by a questioner who evidently had rather strict ideas about the morality of kissing between young people not engaged. Without departing at all from common teaching in the matter, the answer points out sensibly and prudently, and as clearly as the matter permits, where to draw the line between mortal sin and venial sin, and between venial sin and no sin in this delicate matter.

A little book has appeared this year entitled *Chastity and Catholic Youth*, by Gerald Kelly, S.J. (Published by the author, St. Mary's College, St. Marys, Kansas), which is intended as a college text for freshmen, in the important matter of sexual education. The booklet is the best treatment of the subject that the present writer has ever seen. The approach is, of course, religious, but beyond that, psychological. The sexual problem is treated in its relation to friendship, love, and the preparation for marriage. Sufficient physiological information is imparted, and a fine summary given of the morality of sex for the unmarried. But the stress is on the positive side—the cultivation of chastity as a preparation for marriage, and as a Christian virtue.

Quite a different, and a more difficult, problem is that of sexual education for children in grade school. In "Sex Education in Public Schools" (*Hom. Past. Rev.*, XLII[1942], 645 ff.), Kilian J. Hennrich, O.F.M.Cap., discusses the problem, particularly as it exists in New York City. He points out the practical impossibility of Catholics co-operating with the sort of program which will be proposed, or, in fact, with almost any conceivable program. Our approach is primarily moral and religious, and we have as guiding norms in the matter of sex education for children the documents of the Popes, and rather well determined principles of theologians (the true meaning of which, however, is not always well understood even by Catholics who write on this matter). Father Hennrich is

rather pessimistic about any collaboration by Catholics, so long as the individual teacher is going to be allowed to impart this training or information. He has reason to be. On the other hand, he recognizes, as all Catholics do, the necessity which the young have for instruction in sexual matters. But this instruction should be given in private and with discretion, and by persons qualified to show the moral and religious significance of the phenomena of sex. Some might consider Father Henrich over-cautious in his advice as to the part teachers, especially priests and other celibates, should play in giving this instruction, either when asked for it, or when it appears necessary to proffer it.

There is no doubt that priests and religious must be extremely careful not to give the impression that they are unduly interested in sexual matters. I have heard the complaint made by booksellers that priests frequently buy books of a sensational character, or those whose morality has been questioned. The reason is simple enough—practically all the books about which priests are consulted by penitents, etc., are of this character, and the priest cannot pass judgment unless he has read them. Moreover Catholic reviews do not review fiction bestsellers on time or in sufficient numbers. To meet this problem, a new bi-weekly service (\$2.00 a year) has been started, *Best Sellers*, published by the Library, Scranton University, under the direction of Eugene P. Willging (for details, cf. *Ecol. Rev.*, CVI [1942], 277 ff.).

While the Church's teaching on sexual matters always remains substantially the same, yet the doctrines taught by theologians over the course of long centuries have undergone a certain development. This point is evident from the article, "The Ethics of Conjugal Intimacy according to St. Albert the Great," by John J. Clifford, S.J. (*THEOLOGICAL STUDIES*, III [1942], 1 ff.). Some of the practical applications made by St. Albert of his theoretical teaching would seem strange indeed to one acquainted only with modern manuals. Yet he wrote on these questions in much the same vein as the authors of his time, and, in fact, followed closely the tradition established by St. Augustine. Father Clifford's article is simply historical, but at one point he calls attention to what he considers a departure by some modern writers from the true norm of Scripture. The Book of Tobias portrays marriage as it was meant to be, and St. Albert and his contemporaries based their teaching upon it. The marriage act is "not to satisfy concupiscence, not to gratify sensuality, but for the sake of posterity—such, indeed, is the motivation taught by the Holy Ghost. What a contrast, therein, to modern writers, even Catholics, who openly teach that the salvation of marriage lies in the gratification of the sense of venery, and who advance so far as to suggest modes of sensual satisfaction which approach a paganization of this sacred act." Perhaps Father Clifford refers to books like *Ideal Marriage, Its Physiology and Tech-*

nique, by the Catholic Doctor Van de Velde, the original German of which was condemned by Rome.

Articles like this one on St. Albert's doctrine are interesting and instructive in their content, and stimulating to the speculative moral theologian. For they make it difficult to explain that Catholic teaching in moral matters has not really changed in the course of the centuries. Writing in the middle of the seventeenth century, Eusebius Amort could not bring himself to admit that intercourse during pregnancy was free from venial sin, because he had what he considered to be a complete *catena* of the Fathers who had condemned it as sinful in very strong terms. Other anomalies of this kind are suggested by Dominikus Lindner's book, *Der Usus Matrimonii* (Munich, 1929). St. Augustine's opinions on the sinfulness of intercourse by sterile couples, or during the safe period to avoid conception, or as a remedy for concupiscence, are at the bottom of this kind of teaching. I have seen no thorough study which reconciles the discrepancies between what is commonly taught now, and what seems to have been more or less commonly accepted in the past.

On the substantial of marital morality there has always been agreement, of course. And in particular the whole of Christian tradition has condemned contraception as seriously sinful. The argument from Scripture, however, which gave onanism its name, is sometimes called in question. In a scholarly article in the *Catholic Biblical Quarterly* (IV [1942], 323 ff.), Charles F. DeVine, C.S.S.R., examines "The Sin of Onan, Genesis 38:8-10." He comes to the conclusion that "Onan was punished by God *principally* because of his crime against the natural law, and secondly because he failed to perform the levirate duty." Father DeVine supports his conclusion with solid argumentation, and his work is welcome to the moralist who wants to make sure of the scriptural proof against birth-control.

Nowadays, there are left for dispute in the matter of birth-control only some practical applications of the doctrine, for instance, the case when one unwillingly co-operates in the sin of another. In the *Ecclesiastical Review* (CVII [1942], 55 ff.), Francis J. Connell, C.S.S.R., discusses questions as to "How Must the Confessor Deal with an Onanist." He restates the familiar distinction between a case of a husband who withdraws, and one who uses an instrument. Only the very gravest reasons can ever justify passivity on the part of the woman in the latter case. Not many theologians have expressed in print their opinion as to what such reasons would be, in addition to danger of death or serious physical harm. Father Connell suggests that if the cost of resistance would be "dire poverty for the wife and children and the necessity of these latter being put in a public institution, there might be a sufficient reason for the toleration of the

sinful act; for a good mother would regard such a turn of events as an evil comparable with death. Perhaps another justifying cause would be present if the husband, refused by his wife, would take to drink, bringing disgrace on the family and scandalously disturbing the peace of the household."

In the same review (*ibid.*, pp. 283 ff.), John A. Ryan, after discussing the distinction between the two types of co-operation, quotes with approval the above suggestions of Father Connell. The remarks of Father Ryan bring out the theoretical difficulties that lie behind the basic distinction. They are difficulties shared by other moralists. But all are agreed as to the practical necessity of making the distinction, for the practice has been determined by uniform teaching of moralists, and explicit responses of the Roman Congregations. In the case of withdrawal the wife may for serious reasons co-operate actively up to the moment of withdrawal. But in the case of condomistic intercourse she must actively resist, and only the very gravest reasons will justify her in tolerating passively her husband's sin.

In connection with co-operation in onanism and other sexual immorality the following questions were submitted to the *Irish Ecclesiastical Record* (LIX) [1942], 80 ff.). They are quite appropriate for discussion in this country at present. "(1) May we approve of Ablution Centres, set up by military authorities, for use by soldiers who have had irregular relations with prostitutes? (2) May we approve the military authorities issuing prophylactic packets which do not contain contraceptives? They are meant only for immediate use by the soldier when he thinks he may have been infected by syphilis. (3) May we approve of such packets being issued if they contain contraceptives also?" In answering these questions Father McCarthy relies largely on the principle of the double effect. As to the first question; "It is our opinion, then, that the setting up of Ablution Centres by the military authorities may be approved. Care should be taken, however, that the provision of such treatment is not interpreted by the soldiers as approval of their illicit intercourse." Father Davis, S. J. agrees with this solution of the case. As to the second case: If the packets are issued *post factum* the practise can be tolerated (supposing of course the fulfilment of the conditions for applying the principle of the double effect). If the packets are issued *ante factum*, for example, to soldiers going out on leave, then it will be more difficult to fulfil those conditions. "The degree to which the issue of these prophylactic packets is an inducement to sin becomes ultimately a question of fact, for a judgment on which we have not all the necessary data, and on which therefore we cannot presume to give any final decision." But Father Davis, writing from England (the source of the question), said: "The issue

of prophylactic packets to individual soldiers *officially* will be calculated to lower the sense of public morality among soldiers and civilians. Therefore I condemn the issuing of them. I would not object to soldiers being told where they can get the packets if they need them." In answering the third question both Father McCarthy and Father Davis are agreed that the issuing of packets containing contraceptives must be condemned.

SACRAMENT OF PENANCE

Practical advice for confessors is found in such articles as the following: "The Hard Confessor," by Dominic Curran, O.P., *Irish Ecclesiastical Record* (LX[1942], 167ff.); "Sex Sins in the Confessional," by Eugene A. Dooley, O.M.I., *Ecclesiastical Review*, 106 (April, 1942) 294; and "Short Confessional Advice", by George J. Haye, *Ecclesiastical Review*, 106 (Mar. 1942), 226. In the first of these articles Father Curran gives some advice, which, it is to be feared, is not unnecessary. There is always a possibility, human nature being what it is, that in order to avoid getting the reputation of a "hard" confessor, the confessor might unconsciously favor his penitent too much. Certainly a policy of hardly ever asking any questions must be condemned. Father Curran points out that the confessor must be faithful to God's law above all, and give his advice accordingly. Therefore he must know his theology. The differences in popularity, however, which exist among various confessors is probably to be attributed much more to their personality and manner of dealing with people than to a difference of doctrine in their decisions. In the second article, Father Dooley gives some actual examples of the kind of exhortation that can be profitably used in dealing with sexual delinquents. This sort of advice will never give a man the name of being a hard confessor, and proves to the penitent that the priest is interested in his particular case. It eliminates that feeling of a mechanical factory process in going to confession. The article also stresses the need, which arises more frequently than formerly, of refusing absolution to recidivists in birth-control. Father Hayes gives us an attractive list of short hortatory phrases which are to be administered "in capsule form" in the confessional. Naturally, each priest will want to think up his own advice and phrase it his own way, but the idea is excellent. As examples of his capsules: "Love the Mass, the biggest thing in your life"; "Whatever your work always do it well for God"; "Visit the sick to please God." These little nuggets of advice are meant to be delivered, I imagine, more especially to unknown or occasional penitents. When one is dealing with a regular penitent they might also be useful, but more personal advice would usually then be in order.

Canon Mahoney answers a question concerning "Generic Confession of Past Sins" (*Clergy Review*, XXII [1942], 127 ff.). The problem is a minor

one but it often worries young confessors: "Devout people who confess regularly often have no sins to mention. May they be permitted, after confessing merely imperfections, to add: 'I confess again all the sins of my past life,' or must they specify what these sins are, e.g., 'all the sins of anger in my past life'? Canon Mahoney answers that the generic confession is certainly valid, and some (e.g., Genicot) teach that it is probably licit, but he advises that "in publicly instructing the faithful this probable opinion should not be taught." In hearing confessions the confessor often says to this type of penitent, "Mention some sin of your past life," and gets unsatisfactory results thereby. When the penitent is slow to understand, it is better to drop the matter and absolve him. Or to follow the Canon's advice: "A scrupulous confessor could, in practice, evade the whole difficulty by saying before absolution: "Renew your sorrow for these things and for the sins against charity in your past life."

Canon Mahoney was also asked (*ibid.*, p. 82): "Is a general absolution valid if given by a priest in the presbytery to all the Catholics of a town, in their homes, or wherever they may be, at the beginning of an air-raid?" In answer, attention is called to the necessity of intention to receive the sacrament, and the necessity that the penitent be present to the priest when absolved. "The editor would welcome any arguments that these scattered penitents may be considered present. . . . Since we can find nothing to justify the view that penitents in these circumstances may be validly absolved, nor even a probability in its favour, it is our opinion that absolution may not lawfully be given, even conditionally."

The *Review for Religious* (I [1942], 218) has introduced a subject for discussion which is of great interest to all religious, but especially to those, many of them diocesan priests, who are the ordinary confessors of religious men and women. "'Our confessor never says a word to us. He just gives absolution and lets us go. He seems to have no time for us.'" Thus goes a complaint, which, though not exactly common, is frequent enough to indicate a problem that calls for a solution. The problem—a very important one in the religious life—may be clearly stated in two brief questions: Does the Church wish ordinary confessors to give spiritual guidance? If so, why is this office at times neglected? There seems to be no valid reason for hesitancy concerning the answer to the first question. The Church does wish that, in general, the ordinary confessor should give spiritual advice." The Editors then call for positive and constructive suggestions from priests, individual religious, and religious communities, to solve the problem of this neglected duty. In the following issue (*ibid.*, pp. 341 ff.) are printed some extremely interesting replies, which, though they do not solve the problem, make it only too evident that the problem exists. Incidentally, the *Review for Religious* itself would be of

inestimable help to any priest called upon to give spiritual advice to religious, men and women, and it is not too much to say that it will play a major part in solving the problem if it is put into the hands of these confessors.

An unusual case on the hearing of confessions in a community was presented to Joseph P. Donovan, C.M. (*Hom. Past. Rev.*, XLII [1942], 1142): "I am living at a Diocesan Hospice, the purpose of which is primarily the care of aged and infirm priests. The Most Reverend Bishop of the diocese, amongst the regulations of the Hospice, restricted the extent of confessional jurisdiction of the priests who reside therein, amongst whom I number. The resident priests here, many of whom help out in parishes in the diocese over the week-ends, are not permitted to hear one another's confession except, as the Bishop stated, in the emergency of death. His Excellency did however secure a priest from a Religious Order of a neighbouring diocese to hear our confessions every Friday and at the same time granted jurisdiction to the Religious Superiors of the Hospice, to hear confessions. . . . It certainly causes grave unrest spiritually and mentally, when two obligations are binding at the same time, the obligation of making a confession and the obligation of daily Mass. I say the obligation of daily Mass because for each day of the month we receive a dollar intention, twenty five of which each month are retained as a partial payment for our board here." It is the opinion of Father Donovan that if the Bishop gives these priests general diocesan faculties which continue week in and week out (and are not merely given them for the time when they are on call), then he is unable validly and effectively to restrict the faculties so that they cannot hear their brother priests. This would be true if the priests were religious, for the latter have the privilege of canon 519. But it may be doubted whether the common law is so explicit in granting "freedom of confession" to all, that the Ordinary has gone beyond what he can do validly. The Code gives no privilege like that of canon 519 to diocesan priests. But everyone will agree that the Bishop in the case is utterly in the wrong, and gravely so. Besides failing to supply proper spiritual care for these aged and infirm priests, he is creating a situation which is (by analogy) flagrantly at variance with the *Instructio Reservata* of the Sacred Congregation of the Sacraments, December 8, 1938.

The power of Bishops to restrict the jurisdiction of confessors to whom they grant faculties, extends also to the reservation of *cases*, so that they may put limits on the jurisdiction, not only with regard to the persons who may be absolved, but also as to the sins which may be absolved. Father Donovan discusses and rejects a rather common interpretation of canon 900, under the title: "Is the Interpretation of Canon 900 Also Dated?" (*ibid.*, pp. 431 ff.). Authors generally say that a person with a

reserved sin, who goes outside his diocese into another diocese where the same sin is reserved, cannot there be absolved. Father Donovan considers that in this opinion they are reading into canon 900, n. 3 ("quaevis reservatio omni vi caret . . . extra territorium reservantis, etiamsi dumtaxat ad absolutionem obtinendam poenitens ex eo discesserit") something which was in the old law, but was purposely left out of the Code.

His arguments fail to convince the present writer. He seems to pay too little attention to the nature of reservation as applied to sins. It differs radically from the reservation of censures. Father J. McCarthy, writing about a similar problem says: "All such arguments are based on a misconception of the nature of reservation. And we may say briefly here that reservation is not a law in any strict sense of that word. It is essentially the recalling, by the competent superior, of certain defined cases to his own tribunal. As a consequence of this recall the inferior confessor's faculties of absolving are thus far limited. They do not normally extend to the cases recalled. Indirectly, of course, but only indirectly, this limitation of the power of the *simplex confessorius* affects the penitent" (*Irish Eccl. Rec.*, LVIII [1942], 558).

Now, it may well be supposed that the writers of the Code, knowing of this very common explanation of the nature of reservation, saw no need of introducing into the text of canon 900, n. 3, the case of another diocese having the same reservation. This would explain their omission of the second proviso of the pre-Code instruction. As for the response of the Code Commission, November 24, 1920, which declared that *peregrini* are bound by the reservations of the place where they are, this, too, finds a clear and consistent explanation if we suppose it to be based on the nature of reservation as commonly held and explained above. Whereas, if we try to find the reason for that response by imagining that "the Holy See was asked if the reservation of sins comes under public order, or, in our civil parlance, if the commission of these sins constitutes a breach of the peace," we will be led far afield. As far as the response goes, *peregrini*, who committed the sin in a place where it was not reserved, are bound by it when they go to confession where it is reserved. Public order has nothing to do with such a case. Furthermore, Bishops can and do reserve sins of an entirely private nature, and which do not affect the public order at all, using that phrase in the sense of canon 14, § 1, n. 2. These remarks are not intended, however, in a controversial spirit. They are merely offered in the hope of arriving at the true meaning of the canon.

HOLY EUCHARIST

Last year we mentioned in these pages the *Instructio Reservata* on the frequent reception of Holy Communion, issued by the Congregation of

the Sacraments, December 8, 1938, but which the Congregation left to the discretion of Ordinaries to communicate to their subjects. The full text is contained in Bouscaren, *Canon Law Digest, Supplement, 1941*, under Canon 856. We call attention to its provisions once more, the occasion being an excellent summary of its contents by Father J. McCarthy in answer to a question (*Irish Eccl. Rec.*, LIX [1942], 461). It is not unnecessary to reiterate one or two of the points of the Instruction. For instance: "In communities of boys and girls there should never be an announcement of a *General Communion*, with special solemnity, and even outside communities, the very name "General Communion" should not be used at all, or its meaning should be carefully explained." Likewise, it is made obligatory upon the Superior of a community to see to it that Holy Communion be not brought to the sick who do not expressly ask for it. Sometimes zeal in urging people to the reception of Holy Communion goes too far, and abuses result. We can feel sure that this Instruction was not written to meet the mere speculative possibility of abuse; and it seems to me that it is not out of place for directors of retreats in convents and schools, discreetly to promote a knowledge of the requirements of this decree.

An excellent little volume, *Art of Persuasion in Pastoral Theology*, by Very Rev. Henry A. Buchanan (Philadelphia: The Dolphin Press, 1940), seems to the present writer to be marred by some advice it gives on persuading people to receive Holy Communion. The advice in examples 30, 34, 48, seems not quite in keeping with the spirit of the decree. Incidentally, this little volume should prove very useful to all who are fishers of men. The fact that the Instruction was not public undoubtedly accounts for its escaping the attention of many.

Moralists are so frequently asked to determine what is a sin, and how much of a sin it is, that it is refreshing to read a little discussion (*Irish Eccl. Rec.*, LIX [1942], 78) of the following case: "A teacher lives in a parish where there is only one Mass during the week. He has the option of (a) receiving Holy Communion, returning home for breakfast without hearing Mass and being back by nine o'clock for school, or (b) of hearing Mass without receiving Holy Communion and then going straight on to school. Which is the better thing for him to do and why?" Father McCarthy decides in favor of Holy Communion because it produces sanctifying grace *ex opere operato*; *per accidens* it may produce even first grace; it effects sacramental and spiritual union between Christ and the soul; it remits venial sin; etc. But he notes that if there is a daily Mass (the question does not make this clear), "perhaps the best practical solution . . . would be that the teacher vary his procedure, receiving Holy Communion on some week days, and assisting at Mass on others. The individual is expected to be, and it is good for him to be, unselfish

and generous in spiritual as well as in material things. By varying his practice in the manner suggested, the teacher will show an unselfish and a social consideration for God's glory, and, at the same time, a prudent concern for his own sanctification." A further remark might be added here. In circumstances where it would be easily possible to receive Communion and attend Mass, too, the omission of Mass, and especially the omission of any adequate thanksgiving after Communion could degenerate into a practice tainted with irreverence towards the Blessed Sacrament.

The war has raised some questions with regard to the validity of the Eucharistic matter and the conditions of the Eucharistic fast: "A priest in an invaded district, having exhausted his stock of wine and altar breads, can obtain only commercial wine and *ersatz* bread made from a little wheaten flour and a great deal of potato. Except by using these unsatisfactory materials, he will be unable to say Mass and give viaticum to the dying, and he is unable to approach the local Ordinary. Is he justified in using them?" Canon E. J. Mahoney answers this query in the *Clergy Review* (XXII [1941], 111). He considers the potato bread to be certainly invalid matter. As to the wine, if it comes from a reliable source, e.g., "chateau bottled", its validity can be determined with moral certainty, though its use may be illicit because of various factors. It is not permitted to make use of probabilism where the doubt concerns valid Eucharistic matter. Hence, unless the priest in question can obtain materials whose validity is morally certain, he must forego celebration, even for the sake of administering Viaticum.

As regards the Eucharistic fast, some privileges have been granted to defense workers and soldiers. The Ordinaries have received word that they can "permit the faithful of their diocese, who are engaged in works of National Defense and must work after midnight, to receive Holy Communion without observing the prescribed fast. This faculty is given for the duration of the war and the following conditions must be observed: (1) These workers must abstain from solid food for at least four hours before receiving Holy Communion, and from liquids for at least one hour; (2) the liquids taken from midnight until one hour before Holy Communion must not be alcoholic; (3) this privilege must be used in such manner as to avoid "scandalum et periculum admirationis" (*The Jurist*, II [1942], 181). It is to be noted that this faculty is granted to the Ordinaries, and can be used by the defense workers only when the Ordinaries see fit to permit it. Some Ordinaries have not communicated the privilege at all. Others have granted it only in a limited number of cases.

This privilege, granted to defense workers, is not granted to soldiers. Soldiers have another privilege, however, in case they are going to receive

Holy Communion at an afternoon Mass. On such occasions they need merely to fast from solid food for four hours previous to the celebration of Mass, and from liquid foods for one hour. And they must have taken nothing alcoholic since the previous midnight. When the privilege of afternoon Mass was first introduced together with the special rules for fasting that went with it, some soldiers thought that they could use these rules for fasting even when they attended morning Mass on Sundays. This point was immediately cleared up. And it seems important to keep all these war-time privileges within proper bounds, lest after the war large numbers of people continue the courses of action which were permitted to them only because of war-time conditions.

The military faculties contain other privileges as regards the fast, both for the chaplains themselves and for sick soldiers. One of the points which may cause discussion is the question of deciding whether mobilized soldiers are in danger of death, so that they can receive Viaticum not fasting (and absolution from any priest, whether he has diocesan faculties or not). For an excellent treatment of this subject, which lays down principles that help to solve this problem, one may consult the *Eucharistic Fast*, by Thomas Francis Anglin (Washington: Catholic University of America, pp. 101 ff.).

The problems of canon 33, in relation especially to the Eucharistic fast, seem to be perennial, and now a new one has been added. Writing in the *Homiletic and Pastoral Review* (XLII [1942], 1055 ff.), Joseph P. Donovan, C.M., in answer to a query, declares that we are no longer allowed to use the old Standard Time (zone time) in reckoning the obligations for which canon 33 allows an option. For, since war time has gone into effect, the old time is no longer "legal" within the meaning of canon 33, and the response of the Code Commission, November 10, 1925. He later repeats this assertion (*ibid.*, XLIII [1942], 73 ff.). What is to be thought of it?

I will call the old standard time "zone time," and the new standard time "war time"; for both the time in use before the new law was passed (January, 1942), and the new war time introduced by the bill, are legally standard time. The effect of the bill was to redefine the standard time made legal for the United States by the act of 1918 (as amended), by advancing it one hour. We are on standard time at present according to the new law—that is why some of the timetables that first came out after the bill was passed were labelled "standard time." But this caused confusion and they no longer carry this legend. So to avoid confusion, I call the old standard time "zone time," and the new standard time "war time."

The Code Commission (November 10, 1925) declared that the option

of canon 33 applied to zone time only if it is *legal*. In this country zone time was in quite common use prior to 1918 (by agreement of railroads, etc.), but it was not legal in the sense of being imposed by law for the whole United States until Congress passed the act of March 19, 1918 (as later amended). The effect of this act was to define that the zone time was standard time, and compulsory throughout the United States for interstate commerce, and various Federal activities. This act, therefore, made zone time a legal time for the whole United States, but it did not make it the *only* legal time. The States were free to establish other time reckonings for dealing with matters other than interstate transportation and the activities mentioned in the Federal Act. The Supreme Court has ruled that the Federal Act does not exclude state action governing local time in other matters. Hence, when a state passed a daylight-saving law, both times were legal in that state, the zone time and the daylight time; cf. Arthur Joseph Dubé, *The General Principles for the Reckoning of Time in Canon Law* (Washington: Catholic University of America Press, 1941, p. 151).

But what about the case where there is only the central government, e.g., most European countries, and where this government makes daylight time legal, and imposes it? Dubé says that in such a case zone time can no longer be used as legal time (*op. cit.*, p. 149). And in a foot-note, after citing Cicognani, Cance, Van Hove, and Toso in support of this view, he goes on to say: "Maroto (*Institutiones*, I, n. 258, 1, C) is possibly the only author who maintained explicitly that the fundamental regional time of a country [zone time] could be used throughout the year even when D.S.T. was imposed by law. This author, however, wrote before the decision of the Pontifical Commission of Interpretation under date of November 10, 1925. There is no longer any doubt on the matter at present."

The supposition underlying this argumentation is that a time is not legal unless it is obligatory here and now at least with regard to some acts: "Legal time is another generic expression and refers to the time that any duly constituted government prescribes, at least for one obligation. [Citing Michiels and Van Hove.] This government might be either Federal, State, or municipal" (*op. cit.*, p. 145).

Now, what is the effect of the new Federal Amendment on the zone time which was made legal in 1918? The new law simply suspends the old one to this extent, that for the duration of the war and six months thereafter standard time will no longer be zone time, but it will be one hour in advance of zone time. And this is made compulsory for interstate commerce, and all the various Federal activities that were enumerated in the Act of 1918. Consequently, the effect of the new act is that zone time is no longer obligatory, no longer imposed for the whole United States

with regard to any activities here and now. Hence the conclusion of these authors that zone time is no longer legal in the United States, and therefore cannot be used for reckoning the Eucharistic fast, etc.

Father Dubé's excellent study on the reckoning of time appeared before this problem arose, but judging by the principles he sets down, he would come to that conclusion. Father Donovan goes still farther and says, (surprisingly, in view of the Supreme Court Decision cited above) that even if there are State laws making the old zone time legal, and which have not been repealed, they must nevertheless be considered as superseded for the duration by the new Federal law. Hence the zone time is no longer legal in such states. The work of Father Anglin, *The Eucharistic Fast*, likewise appeared before the problem arose, but his principles seem to incline toward Father Donovan's solution. For he says (*op. cit.*, p. 82): "Daylight-saving time may not be made use of for the observance of the Eucharistic fast in those places where daylight-saving time is not adopted as the legal time." It is clear that his meaning here is to exclude the use of a time which is not legal. Actually, however, there seems to be a slip; for no one wants to follow daylight-saving time in the observance of the Eucharistic fast: it would mean stopping eating at 12 o'clock midnight by the daylight-saving clock. What the author apparently meant to exclude was the use of *standard* time, or some time slower than daylight time, in case it were not legal. Father Anglin, however, does not seem to define what is meant by the word "legal."

It is apparent that the conclusion which would not allow us to use zone time at present for the Eucharistic fast is based fundamentally on the supposition that no time can be called legal within the meaning of the canon (and the response) unless it is here and now imposed by law for some acts. But this supposition is very questionable. It is possible to take the word "legal" in a somewhat broader sense, so that we may hold that even at the present time there is a sense in which zone time is legal throughout the United States, and so usable under the option of the canon.

This country is committed permanently by law to zone time as the fundamental reckoning point. The Act of 1918 is permanent. It is not repealed by the present Act, but its effect is superseded for the duration. The present time-reckoning therefore, is a *tempus legale extraordinarium*. The fact that it is of a merely emergency character is brought out in the Act itself, and still more clearly in the debate in the House of Representatives that preceded its passage (cf. *Congressional Record* for Jan. 9, 1942, p. 212, col. 1; p. 200, col. 3; p. 202, col. 1 and 2). It is made clear, too, that there is no intent to make the new time obligatory except for the activities specifically mentioned in the bill. The whole tone of the discussion seems to me to indicate that in the minds of the legislators the

zone time is still being given some sort of recognition. It is the time-basis used to calculate the new standard time. It is a fundamental, permanent, starting point still *recognized* by law. It is the reckoning to which we are now legally obliged to return once the war is over.

It is not stretching the word "legal" too far to call zone time in these circumstances a legal time. And in deciding the question I think we ought to keep in mind that the intent of canon 33 is to give a broad option; hence the canon lends itself to a favorable interpretation.

Furthermore, although Maroto seems to be the only one who explicitly permitted the use of zone time when D.S.T. was made legal by the central authority, I wonder how many canonists there were who treated the matter explicitly. Dubé names a few. But it can well be argued, because of the way authors speak in defining "extraordinary legal time," that they had not treated the matter because they took it for granted that the canon was giving an option between zone time (*regionale*) and extraordinary time, in those places where zone time was *ordinarily* the legal time.

In the United States, I believe, we proceeded on the supposition that we had such an option. We did not appeal to the peculiar division of sovereignty between State and Federal governments, in order to explain why we could use zone time after daylight time went into effect. We simply took for granted that zone time was the fundamental *legally recognized* time in this country, and that therefore we could use it. And from 1918 until 1921, when this same Federal law made D.S.T. legal, no one doubted about using the option of the canon.

This point of view is confirmed by a comment on the 1925 response in *Periodica* (XIV [Bruges: Beyaert, 1926] 179). The question asked was: "An ubique terrarum . . . tempus vulgo *zonarium* sequi possit." The commentator, probably Vermeersch, says: "*Vis* quaestionis propositae est *omnis* in verbis *ubique terrarum*; et haec sola ratio dubitandi esse potuit, quod non omnis lex civilis tempus illud in regione sua *admiserit*" (my italics). Holland, for instance, had never *permitted* zone time to be introduced as legal. The purpose of the response, therefore, seems to have been, not to declare that ordinary zone time becomes illegal when extraordinary legal time is introduced, but rather that zone time cannot be called legal until after it has been once introduced as the ordinary time.

My conclusion from all this—and six other professors of moral theology and canon law concur in it—is that we have solidly probable reasons for asserting that the old standard zone time may still be used in reckoning the Eucharistic fast. Hence in practice one can eat and drink until one o'clock by a clock showing war time.

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