CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY, 1943

FUNDAMENTAL AND GENERAL MORAL

It is somewhat disconcerting to find in a journal devoted to "Religion, Theology and Philosophy" an article so crassly materialistic as Julian Huxley's, "Man—the Trustee of Ethical Goodness," which appears in the *Hibbert Journal.*[1] Its general thesis is that since man alone has evolved to the possession of ethical ideals, and man alone is capable of further development into a new dominant type, "all future progress hangs on the thread of human germ-plasm." "A corollary of the facts of evolutionary progress is that man must not attempt to put off any of his burden of responsibility on to the shoulders of outside Powers, whether these be conceived as magic, or necessity, as life-force, or as God. Man stands alone as the agent of his fate, and the trustee of progress for life." "For a justification of our moral code we no longer have to have recourse to theological revelation, or to a metaphysical Absolute; Freud in combination with Darwin suffice to give us our philosophic vision." The importance for ethics of psychoanalysis and the mechanism of repression

> . . . is enormous, for it enables us to understand how ethical and other values can be absolute in principle while remaining obstinately relative in practice. . . . The task before us, as ethical beings, now begins to take shape. It is to preserve the force of ethical conviction which springs up naturally out of infantile dependence and the need for inhibition and repression in early life, but to see that it is applied, under the corrective of reason and experience, to provide the most efficient and the most desirable moral framework for living. . . .
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> . . . The fact that we, all the human beings now in existence, are now the exclusive trustees for carrying any further the progress already achieved by life, is a responsibility which, if sobering, is also inspiring; as is the fact that we have no longer either the intellectual or moral right to shift any of this responsibility from our own shoulders to those of God or any other outside power. . . . The truth . . . as shown by the extension of scientific method into individual and social psychology, is that we create our own values.

It is no surprise to see Mr. Huxley writing in that strain, but it is difficult to swallow it under the heading of theology and religion, or, for that matter, even of philosophy. But other thinkers who might be supposed to have a more orthodox basis for morality are also caught in the toils of relativism.

[1] XLI (April, 1943), 193. Cf. "The Biologist Looks at Man," *Fortune* (Dec. 1942), 139.

Dr. George Albert Coe was for a long time professor of religious education at Union Theological Seminary, and then at Teachers College, Columbia University. According to Wilbur M. Smith, D.D.,[2] Dr. Coe's fundamental conception of religion "means that man, discovering man, has already become religious, with the corollary proposition that to have a true religion one does not need to recognize any being higher than man. . . . " This is also the view of the late Dr. A. C. McGiffert, for many years president of Union Theological Seminary, who went so far as to say that democracy "demands a God with whom men may cooperate, not to whom they must submit." A reviewer of Dr. Coe's new book, *What is Religion Doing to Our Consciences?*[3] tells us that he speaks of the "continuous new creation of conscience," the "unremitting revaluation of our values," "the creation of a moral order in which there is perpetual newness of both good and evil." "Unpredictable events modify the religious [Christian] conscience indefinitely."[4]

A Spanish writer has attempted a criticism of one of the philosophic systems which is back of the modern relativistic view of morality. G. Márquez, writing in *Razon* y *Fé*, discusses "La Etica de los valores."[5] He had previously contributed to the same periodical, "Critica de la filosofia de los valores."[6] This article was a general criticism of the value philosophy of the German school, in which he sought to demonstrate the identity of these "values" with the traditional *bona* of Scholasticism. In the present article he shows how the ethical system based on value philosophy tries to harmonize the diverse moralities of all ages and all localities, but only succeeds in contradicting itself and rejecting the very notion of true obligation.

Even non-Catholics have reacted strongly against the shifting relativity of the new morality, though not always with complete success, nor for the same reasons. Mortimer J. Adler has attempted *A Dialectic of Morals*,[7] which is intended by the author to supply for the inadequacies of the usual textbook treatment of fundamental morality. This inadequacy betrays itself in a failure to confront the modern positivist and relativist with the sort of argumentation which will meet his peculiar mentality. Mr. Adler's work is closely reasoned and demands careful study. Whether his explanation of the meaning of the word "should" (he does not treat "obligation" explicitly) is acceptable to the orthodox defenders of an absolute morality

[2] "The Need for a Vigorous Apologetic," *Bibliotheca Sacra*, C (July–Sept., 1943), 412.

[3] New York: Charles Scribner's Sons, 1943.

[4] Cf. *Christendom*, VIII (Autumn, 1943), 561.

[5] CXXVI (1942), 263–80. [6] CXXVI (1942), 53–70.

[7] *The Review of Politics*, Notre Dame, Indiana, 1941.

remains to be seen. Obligation is an elusive concept. Would all Catholic schools agree with the following from Father Walter Farrell's: *A Companion to the Summa*?

Is not obligation after all the imposition of the will of the superior upon an inferior? That is exactly the point. Obligation is no such thing. Law is a thing of reason, not will; and its obligation is established by reason, not will. . . . The whole difficulty has arisen from our misinterpretation of obligation. Moral obligation is a result of a double necessity: the necessity of an act in relation to a necessary end. It is necessary for me to go to Europe, so I am obliged to take a boat. My goal is necessarily fixed by nature, so I am obliged to plan this act of justice which necessarily leads me to this end; I am obliged to refrain from this act of murder which necessarily leads me away from that goal. . . . The picture of obligation as a whip wielded by a tyrant according to his whims is altogether wrong. . . . [8]

Another non-Catholic writer, C. S. Lewis, the author of that psychological masterpiece, *The Screwtape Letters*,[9] has risen to defend an absolute moral order in *Broadcast Talks*.[10] He discussed for a more general audience *Right and Wrong: A Clue to the Meaning of the Universe.* Canon Smith, who praises his work highly,[11] questions nevertheless his statement that, "This Rule of Right and Wrong . . . must somehow or other be a real thing—a thing that's really there, not made up by ourselves," and thinks that this conception of the *reality* of the moral law cannot be maintained unless one maintains with Plato the real existence of universals. "Surely it would be abstract, this law, not real." Perhaps the answer lies in a more thorough investigation of the real intentional order of being—a category somewhat neglected in ontology.

Two authors who cannot be presumed to be in collusion have touched on a fundamental point in Christian morality from curiously different angles. Winston Lee King, in *Christendom*,[12] defends the Christian appeal to rewards and punishments against modern objectors who say that, "The ideal and perfectly Christian religion would have next to no place for self-regarding motives." This article, "The Religious Context of Christian Ethics," seems more valuable for its posing the difficulty than for clarity in answering it. The other writer is E. Guerrero: "Immoral la vida christiana?" in *Razon y Fé*.[13] He defends Christian morality against the opposite attack,

[8] New York: Sheed and Ward, 1939, II, 384. [9] New York: Macmillan, 1943.

[10] London: Geoffrey Bles, The Centenary Press; published in this country under the title: *The Case for Christianity* (New York: Macmillan, 1943).

[11] *Clergy Review*, XXII (1942), 561. [12] VIII (Spring, 1943), 242–53.

[13] CXXVII (June, 1943), 544–55.

namely, the charge that Christian asceticism is a barbarous and immoral negation of all man's natural instincts and propensities. The charge is based on misinterpretation and exaggeration of the ascetical exhortation to self-denial. The reply expounds the relations between nature and grace and insists on the principle that true Christian asceticism does not destroy nature but supernaturalizes it.

Another question that goes deep in the ground of Christian morality, but which is confined rather to the household of faith, is that of the "moral system." Dr. James E. Sherman contributes "The Spirit and the Letter of the Law" to the *Ecclesiastical Review*.[14] He summarizes his article in these propositions:

> Present moral systems which are based on the degrees of probability of the lawfulness of actions give no truly ultimate guidance. Only that system which has a view to *the more reasonable* can serve as a sufficient guide. Christ's system of morality, which was also that of the Fathers and Scholastics until the time of Medina (1577), was based on doing *the more reasonable.* Aristotle and Greek philosophers possessed knowledge of a system of morality based on doing *the more reasonable* and gave exact names to the virtues guiding us in the application of this system.

In spite of the implication that Christ's system of morality was not the system of those who came after Medina, the writer "has no desire to cast a bombshell into the camps of all the various moral systems." The article does not reach explosive proportions, and brings to mind the far heavier barrage of antiprobabilistic bombing contained in Father Deman's two hundred column study "Probabilisme" in the *Dictionnaire de théologie catholique.*[15]

IMPEDIMENTS TO HUMAN ACTS

Heaven and hell are at stake in the decision whether a man's guilt is mortal or not. Fortunately the decision is in God's hands. But the moralist and the confessor cannot shirk the responsibility of making the estimate as well as they can, and it is a particularly difficult estimate to make in cases of abnormal mentality. With a view to teaching confessors how to recognize in a general way the presence of some of these abnormalities, Dr. John R. Cavanagh writes on "Nervous Mental Diseases" in the *Ecclesiastical Review* for September,[16] the second part of the article following in the October issue. He warns the priest against trying to play the part of the

[14] CIX (Sept., 1943), 217–26. [15] XIII, 417–619. [16] CIX (Sept., 1943), 179–89.

physician, but lays down some general norms and a description of symptoms which help the confessor recognize the psychoneurotic. He does not conclude, of course, that the mere presence of mental abnormality means that responsibility is impossible, but he indicates the cases in which culpability is more likely to be diminished. Some confessors have not yet learned to suspect the presence of nervous anomalies which decrease or even eliminate guilt.

Rudolf Allers, on the other hand, warns against excessive use of an imperfect medical psychology, in "The Limitations of Medical Psychology."[17]

> Medical psychology has strengthened the tendency towards narrowing as far as possible the range of responsibility. Misdemeanors of all kinds, antisocial attitudes, criminality and immorality of the worst sort are comprised under the heading of neurosis, psychopathic states, and similar names, all of which refer to pathological factors. A man does not misbehave or commit a crime because it is his will to do so. He cannot be made responsible. He is the unwilling victim of his inferiority complexes. . . .

It is Dr. Allers' opinion that medical psychology which is based on an unacceptable philosophy is a definite danger.

"The Psychology of Irresistible Impulse" in relation to criminal imputability is the subject matter of an article by Jess Spirer in the *Journal of Criminal Law and Criminology*.[18] He treats of impulses due to emotion, to psychoneurosis and to mere habit (in the absence of any other abnormality). His description of the psychoneurotic is suggestive and helpful in recognizing the type. He recognizes that "irresistible" is a term that admits of degrees and apparently gives up the question of determining responsibility. "It is evident, also, that there is no readily observable line of demarcation between resistible and irresistible impulses. . . . Is there any solution to this problem? Should we free all criminals on the ground that they were not responsible for their acts? Should we punish indiscriminately on the ground that everyone is responsible for his deeds?" He thinks the dilemma is partly due to the habit of clinging to standards of absolute responsibility, i.e., guilty or not guilty, instead of recognizing degrees of innocence and culpability. And he refers this attitude in turn to the habit of looking for punishment and retribution, instead of rehabilitation.

> If we conceive of one of the aims of law to be rehabilitation of the offender, we need no longer strain to find excuses for certain classes of individuals whom we wish to except from punishment; for what he has done, and the disposition of his case

[17] *Thought*, XVII (1942), 477–88. [18] XXXIII (March–April, 1943), 457–62.

will be made in accordance with an established program of differential treatment. The criminal whose act grew out of neurosis will be treated one way; the normal habitual offender will receive another form of treatment; the emotional criminal perhaps another. The point is that instead of permitting irresistible impulse as a defense, the law would hold that the stronger the impulse the greater the need for treatment.

Such a philosophy ends up by punishing the innocent, and calling the punishment "treatment."

But Mr. Spirer is not alone in his sentiments. The theory of punishment he advocates is exactly that which has the support of large numbers of sociologists, and which is officially adopted by the extremely influential American Law Institute in its model draft of a "Youth Correction Authority Act."[19] The introduction to this act subscribes wholeheartedly to the "rehabilitation" theory and the model act (which has already been substantially adopted in California) calls for radical changes in our procedures in handling youthful offenders. Nor do its proponents deny that their ultimate purpose is to supply the same kind of machinery for all criminals young and old.

No one denies the obvious problems of youthful delinquency, recidivism, and the defects in our prison system.[20] But the new proposed act leans heavily on a philosophy that minimizes human freedom and wants to treat all criminals as if they were sick. Judge John F. Perkins of the Boston Juvenile Court has pointed out trenchantly the false analogy between criminology and clinical medicine in "Indeterminate Control of Offenders: Arbitrary and Discriminatory."[21] In the same article and in another entitled "Defect of the Youth Correction Authority Act,"[22] he exposes a radical fallacy in the proposals of the American Law Institute. These proposals involve a departure from objective standards of criminal responsibility. They substitute the judgment of the Control Authority, with none but the vaguest norms of action, based on inexact social and psychological sciences. They make possible and even demand corrective measures which hitherto would certainly have been called discriminatory. And they try to eliminate the thing called punishment by substituting for it the word

[19] Philadelphia: Executive Office, The American Law Institute, 1940.

[20] Cf. "Juvenile Delinquency," a symposium in *America*, LXIX (Sept. 25, 1943), 680–85; Barry J. Wogan, "Now Come the Delinquency Experts," *Homiletic and Pastoral Review*, XLIII (Aug., 1943), 979–83; and "Inside Looking Out at Delinquency," *ibid.*, XLIII (Sept. 1943), 1083–87.

[21] *Law and Contemporary Problems* (Duke University Law School, Autumn, 1942).

[22] *Journal of Criminal Law and Criminology*, XXXII (1942), 111–18.

"rehabilitation" or "corrective treatment"—though the latter may be administered in State's Prison as heretofore.

I have thought it worthwhile to refer to these radical proposals under the heading "Impediments to Human Acts" because the philosophy behind them definitely tends to treat crime as a mental disease, and because the proponents of this legislation enjoy great prestige, and are ready to employ pressure methods to put their plan in operation. The philosophical questions go deep, involving the freedom of man, and the validity of retributive punishment—both of which ideas are sacred in Christian tradition, and have inspired the Anglo-American criminal law. That imperfect structure has need of many repairs, but we cannot expect to make them by tearing out its foundations. It is to be hoped that our own social schools will take thought before adopting any theory of punishment and criminal responsibility which overlooks the nature of retributive justice or underemphasizes the freedom of human choice.

However, in asserting that the validity of the idea of retributive justice is sacred in the Christian tradition, I do not mean to lose sight of the obvious difference between divine government, where God proportions pain to guilt, and human government, where that proportion can be at best very imperfect. Last year in these notes the conclusion of Dr. Michael I. Mooney was quoted that "The impossibility of applying the retributive view [of punishment, to explain the morality of punishment by the State] and its rejection both in theory and in practice by statesmen and legislators, would seem to prove conclusively that whatever the purpose of punishment it cannot be to proportion pain to guilt." His article was the first of a series entitled, "The Morality of State Punishment."[23] The first article treated the retributive theory and rejected it, as above. The second article, "The Morality of State Punishment—Medicinal and Deterrent Theories,"[24] raises objections against both of these latter theories. Of the medicinal theory it is said:

> Reformation alone could never justify the infliction of state-punishment, but charity for the criminal and consideration for its own ultimate good, will oblige the state when inflicting an otherwise necessary and justifiable penalty, to choose that quality and quantity of punishment which, if it cannot actually improve the criminal, will at least do him the least possible harm, and will at the same time not conflict with the demands of the common good.

As to the deterrence:

> Now even though the necessity of a deterrent does not justify punishment, deterrence may yet be an object, if not the primary object of state punishment.

[23] *Irish Ecclesiastical Record*, LX (1942), 127. [24] *Ibid.*, LXI (Feb., 1943), 104–15.

Deterrence seems to be necessary if society is to attain its object—the common good. . . . The theory as it stands contains at least a half truth: what it lacks is a suitable explanation of why punishment is not an injustice—is not in itself a crime.

These brief extracts by no means do justice to Dr. Mooney's thoughtful analysis. But it will be interesting to see what the third article brings us, by way of positive explanation of the State's right to punish. For a more conventional exposition of retributive punishment and its application to international affairs the reader is referred to *Transition from War to Peace*, Appendix B, "Retributive Justice after the War."[25] The article calls for the execution of the most responsible culprits in Germany, Italy, and Japan, but says nothing of the crimes of the Russian leaders. Presumably there is no use discussing the just deserts of Joseph Stalin, since we will not be in any position to administer them to him.

FAITH: COMMUNICATIO IN DIVINIS

The Declaration on World Peace issued by individuals of the Catholic, Protestant, and Jewish faiths is an example of the sort of intercredal co-operation which promises a maximum of beneficial result with a minimum of danger to faith. Father John Courtney Murray, S.J., has pointed out that

> It is important to have in mind a distinction between the legitimacy of co-operation and its expediency. . . . In the last analysis co-operation is expedient in that form, and in that organizational framework in which the Bishops judge it to be expedient. . . . The main danger . . . is, of course, that of somehow fostering an indifferentist view of religion—an effect which is certainly not a necessary product of the papal ideal of co-operation, but which remains a real possibility. That which is done with a clear conscience by the strong and well instructed can be 'a stumbling block to the weak' (I Cor. 8:9) and it is, therefore, prudent at times to be weak for the sake of the weak.[26]

As an illustration of what these dangers may be in a country like ours, I should like to call attention to an article by the Reverend G. Arthur Devan, (who is the General Director of the Commission [Protestant] on Army and Navy Chaplains), in *Christendom*.[27] I do not mean that intercredal co-operation cannot be managed without the dangers of indifferentism which seem inherent in some of these Army practices. But the latter show, it seems to me, that in this country at least the idea that one religion is as good

[25] Washington, D. C.: Catholic Ass'n for International Peace, 1943, p. 28.
[26] Quoted in a press report. [27] VII (1942), 450–60.

as another is so widespread and deep-rooted that it is ready at any excuse to come forth and profess itself.

In spite of the diversity of denominations, the Chaplaincy in each of the two services [Army and Navy] stands as *one co-operative system.* The Chief of Chaplains of the Army at the present time is a Roman Catholic Prelate; his predecessor was a Baptist. . . .When the Chaplain himself belongs to a minority group whose worship is markedly different from others, he is expected, in addition to his distinctive denominational services to hold what are known as *general services.* For example, if a Catholic priest is the only chaplain at a post or on a ship, he will hold confession and celebrate mass for the Catholics of his command, but in addition to this he will also hold a general service. This will be a simple service of prayer, Scripture lesson, hymn singing, and preaching. It is not *technically* [my italics] a Protestant service, but a general service. . . . Amusing situations sometimes arise. . . . A Catholic Chaplain on the Pacific Coast told the writer of the service he had *managed* [my italics] the previous Sunday. . . . There was no Protestant Chaplain with the regiment. The priest had arranged for a Protestant service to be held in the beautiful ballroom of the race track. He invited a civilian Methodist minister to come in and hold the service. . . . The visiting preacher . . . found himself in a remarkable situation. . . . He was preaching in the ballroom at the race track, standing up alongside a bar, and doing all this on the invitation of a Catholic priest.

In all except purely religious problems where the Protestant is more likely to want to talk to a Protestant Chaplain, the Catholic to a priest, and the Jew to a rabbi (although *even this does not always hold*) [my italics], the denominational affiliation of the Chaplain and the soldier or sailor is immaterial. It is simply a case of a man in need of turning to the pastor. If the writer may be pardoned for referring again to his personal experience, it was summed up by the Band Chief of the regiment to which he was assigned in France. The Chief came to him and said, 'Chaplain, I am a Spaniard by birth. I was born a Catholic, but I want you to know that while you are with this regiment, I regard you as my pastor. I would rather go to you with anything than to the village curé. The other boys in the band are mostly Catholics, too, but they feel the same way. . . . ' Only in its particular form is this a unique experience. Every experienced Chaplain could tell a similar story.

The present Chapel building program of the Army is a marvellous instance of ecumenicity. . . . It is an understood principle that *all chapels are for the use of all faiths.* . . . There is an altar, but this is constructed in such a way that those who do not wish to use it or have it in view need not so do: it can be pushed back into the rear of the chapel so that it becomes invisible. On the altar is a tabernacle for Jewish services, but when the doors of this are closed they simply become a part of the panelling. . . .

There is a bit of curious psychology about the altar crosses. The Government regards a simple cross as a Protestant emblem, and a crucifix as a Catholic emblem,

and one of each is provided for each chapel. The Navy solves the problem a little differently. It has a reversible cross, plain on one side and a crucifix on the other!...

Question sometimes arises as to the furnishing and appearance of the chapels between services....The writer discovered one good simple Chaplain who has found his own way out of the difficulty. He kept *both* the cross and the crucifix on the altar all the time, *side by side.* It looked a little odd, but could anything be fairer than that? In one of the older Army chapels at Fort Knox, a beautiful building, the custom is, or was, to have the altar 'dressed Protestant' and 'dressed Catholic' on alternate days through the week. On Catholic days, there was a reserved Sacrament, with red lamp, crucifix, altar cards and statues unveiled over the altar. On Protestant days there was a cross, flowers, and an open Bible on the altar, and curtains drawn over the statues. At the moment when the writer first visited this chapel, in the early evening, two soldier orderlies were, as they told him, 'fixing the church for the Protestants'—they were both Catholics and one was a lay brother in a monastery [?] but they did not seem to mind what they were doing, and explained the arrangement with great interest. The second day after that a Chaplains' conference was being held, with thirty or forty Chaplains representing many faiths present. The altar of course was 'dressed Catholic.' The devotional service was conducted by a civilian minister, and Protestant hymns were sung by all with apparent enjoyment. The writer noticed that the presiding officer, who was a Catholic, did not seem to mind sitting with his back to the reserved Sacrament, and the Protestant took as a matter of course the Catholic dressing of the altar, and the supervision of the affair by a Catholic priest.

In the bookracks on the back of the pews will usually be found the Army and Navy Service Book. This is another rare piece of practical ecumenicity. Bound in one cover are many Protestant hymns, responsive readings, *orders of worship* [my italics], and special prayers, along with the Catholic Mass of Christ the King, Stations of the Cross, hymns and prayers, and also a small section of Jewish hymns and liturgy. One book of worship to be used by hundreds of thousands of worshippers every week—Jew, Roman Catholics and every variety of Protestant! Its editor is a Baptist....

It hardly calls for any great degree of prevision to see that all this, if it keeps on long enough, is going to have a great influence on the ecumenical outlook of American Christians of the next generation. In strong contrast to the compartmental, denominational life they were used to at home, religiously minded soldiers and sailors are finding their needs ministered to by Chaplains of every faith. They are learning two things at once: the value of other ways of doing things and other points of view than those with which they have been familiar and at the same time an appreciation of the fundamental identity underlying the common religious approach to the problems of life and death....The young men...are growing very impatient of the denominational trammels in which they formerly lived and worked. They find that without any sacrifice of principle, they can work cooperatively, not only with clergymen of Protestant denominations other than their

own, but with priests and rabbis, and they like it. So do most of the priests and rabbis. Who can say what the effect will be?

The picture which Dr. Devan gives of interdenominational co-operation in the armed forces may be overdrawn. But no one can deny that the set-up itself necessarily involves the danger of indifferentism. In addition we hear that some Catholic soldiers (by what authority does not appear), are now beginning to attend the general service, either in addition to attendance at Mass, or when Mass is lacking. And it would appear that what we call indifferentism and condemn, may easily be a goal to be achieved under the name of "ecumenicity" in the eyes of some of our separated brethren. Everyone realizes the difficulties involved in supplying the religious needs of soldiers without compromise of Catholic principles. These difficulties should be solved by the proper authorities: for us, the Military Ordinariate. It is the responsibility of the Ordinary, in vexed questions of *communicatio in divinis*, to decide what can be allowed and what must be forbidden, and in the last analysis Rome must judge. At all events Catholic chaplains should not on their own authority introduce practices which hitherto have been generally condemned by theologians as involving forbidden co-operation.

To give an instance of the attitude of theologians in matters of this kind I cite a response to a query in the *Clergy Review*.[28] Canon Mahoney was asked,

> 1) Is a Catholic boy allowed to join in the night prayers led by a non-Catholic lay club-leader in a non-Catholic club? 2) Is a Catholic leader allowed to read the prayers or at least assist at them in a non-Catholic club of which he is an officer?

His reply:

> Ad 1) A Catholic may not join actively in these night prayers; if he cannot avoid being present, his passive assistance may be tolerated as directed by canon 1258 §2 and with the safeguards mentioned therein. Ad 2) The Catholic leader's 'assistance' is provided for in the answer ad 1). He may however as leader recite a formula of prayers which is indisputably a Catholic formula, e.g., the night prayers from the 'Manual of Prayers.' It may be true, indeed, that the non-Catholic formula, e.g., that contained in the 'Book of Common Prayer' is orthodox in its expressions, but it remains unlawful for a Catholic publicly to use a form of worship not authorized by the Church.

[28] XXIII (Feb., 1943), 81.

Canon Mahoney notes that all would not agree with his reply but he holds that if such practices are justified

> ... it means that a momentous change will be introduced, both in the principle underlying the prohibition of *communicatio in sacris* and in the practice which Catholics in this country have always followed in the past. It is our opinion that no private individual whether priest or layman should introduce this change; it is a matter for the judgment and direction of the local ordinary.

Canon Mahoney had previously treated the principle at more length in "Notes on Recent Work,"[29] where he shows that canon 1258 §1

> ... forbids the faithful to take any active part whatever in the religious worship of non-Catholics, the reason being that such active participation though not necessarily the profession of heresy is an external approval of heretical or schismatical worship, and therefore an implied denial, externally at least, of Catholic faith and unity. It is always forbidden, even though there is no scandal, even though there is no internal act of worship, no danger to one's own faith and no internal approval of heresy or schism.... The only kind of public corporate worship in which Catholics may take an active part is that which is indisputably Catholic worship.... Some may think that a united act of worship is, or should be, permissible when it is merely incidental to the purpose of the meeting e.g. when Catholics and non-Catholics meet to discuss some social question. It must be conceded that the *communicatio in sacris* does admit of smallness of matter which may sometimes be so slight as to be negligible—*de minimis non curat lex*—and it may often be advisable to leave Catholics in good faith about trifles. In principle, however, a united prayer is a corporate act of worship even in these circumstances, and is subject to the same ruling as any other united religious service.

I would not be prepared to go quite so far as Canon Mahoney in this absolute prohibition. The principles are indeed stringent but in the application of them there is room for doubt first of all as to what amounts to *public* worship. And even in case of public acts of religion the Church herself countenances co-operation in some circumstances, for instance, the reception of the sacraments by a dying man from a schismatic minister, and the marriage of a Catholic to a Protestant in which each one administers to the other the sacrament of matrimony. It may be replied that these cases are very different, or very extreme, but I adduce them to show that the principle underlying the prohibition is not absolute. Canon Mahoney says: "Any corporate act of religion, united prayer for example, presupposes that those who join therein share a common religious faith of conviction." Shall we say that the prayers of Eddie Rickenbacker and his companions on a raft in

[29] *Clergy Review*, XXII (1942), 76–79.

the Pacific were a corporate act of religion? Were they permissible? And if so, only because they were private? Or only because all concerned were of good faith? It seems to me that in the marriage of a Catholic and a non-Catholic we have a "corporate" act of religion whether it be called public or private and yet the circumstances are such that the act does not presuppose "that those who join therein share a common religious faith or conviction."

I offer these remarks not because I think that public united prayers with Protestants can be justified by any private individual at the present time, but in order to bring out the point that circumstances can change the implications of unity which ordinarily accompany united prayer, and that the Church, through the Bishops, is the sole competent judge of the circumstances. And in particular I feel that only high ecclesiastical authority could allow Catholic soldiers to take an active part in the "general service" conducted by chaplains.

Another problem is raised in the publication of a *Religious Book List* by the National Conference of Christians and Jews.[30] The list contains 50 Jewish, 50 Catholic, 50 Protestant, and 50 "Good Will" selections. It is published in connection with Religious Book Week, the object of which is "to stimulate the reading of religious books by lay men and women." The implication of the pamphlet is that all these books and particularly the "Good Will" selection, are recommended by the Conference, which numbers Catholics among its members. Obviously these Catholics do not intend to recommend to Catholics, or others, books which are forbidden by the law of the Church. But actually many of these books are in that category, including some on the "Good Will" list, and it is unfortunate that the list is presented in such a way that Catholics may be led to believe that they are at liberty to read all the books therein contained.

The Holy Office has issued a new decree on forbidden books.[31] The decree reminds Ordinaries that the Holy See is not able to take note of the large number of pernicious books which appear, and that they, therefore, in accordance with their powers under the Code should be on the lookout for such books and forbid them to their subjects when the circumstances require it. The decree also reminds other superiors of their rights in this regard and calls attention to the duty of denouncing books to the proper authorities. The decree does not contain new law, but merely recalls and insists on certain points of existing legislation.

Since the decision of the United States Supreme Court in *Williams* v.

[30] New York, 1943.

[31] *AAS*, XXXV (May 15, 1943), 144–45.

North Carolina,[32] in which a Nevada divorce decree was held valid, even though the parties had obviously established only a fraudulent domicile in that state, there has been increased talk of uniform federal divorce legislation. The case is ably discussed by Judge John J. Burns under the title "Two Nevada Divorce Decrees Get Full Faith and Credit."[33] The co-operation of Catholics in ameliorating the divorce situation by means of legislation therefore becomes a problem. It is discussed briefly by Dr. Jerome D. Hannan in *The Jurist*.[34] He is of the opinion that any Catholic intervention *as such* (e.g. by the hierarchy or through a spokesman of theirs) "would seem to be a *causa major* reserved to the Holy See." He notes that the proposal to list causes of divorce taxatively on a printed marriage contract signed by the spouses involves danger of invalid marriages for Catholics by reason of a *conditio contra substantiam*. Furthermore since such a statute would authorize divorce, it would be immoral and no Catholic legislator could vote for it. A speculative question might be raised: Suppose a Federal statute were drafted (after satisfying the Constitutional difficulties), the effect of which would be to make uniform the laws of divorce, and to diminish the number of divorces in the United States. (All are aware of the scandalous laxity of states like Nevada.) Could a Catholic, whether legislator or not, uphold and vote for such a law on the principle of intending the lesser of two evils, or at least of advising the lesser of two evils? The answer to such a question, involving as it does problems both of fact and of principle, could come, I believe, only from ecclesiastical authority.

PATRIOTISM

Father H. F. Tiblier, S.J., writes on "The Philosophy of Patriotism in the Present Crisis," in the *Ecclesiastical Review*.[35] He bases his treatment largely on the articles (*s. v.* "Patrie") in the *Dictionnaire de théologie catholique* and the *Dictionnaire apologétique*. After explaining the nature of love or piety towards the fatherland in accordance with the doctrine of St. Thomas, he proceeds to discuss the duties it imposes on us. First of all, respect for the fatherland, which includes respect for the administrators of government, no matter what our personal dislikes may be; then, love and obedience.

It is true that because of the malice of men in authority who have launched their country on a campaign of aggression and unjust conquest, or who have flagrantly violated the rights of God and religion, there may arise conflicts in the

[32] 63 Sup. Ct. Rep. 207.
[33] *American Bar Association Journal*, XXIX (March, 1943), 125–28.
[34] III (April, 1943), 305–6. [35] CVII (1942), 428–39.

soul of the individual who wishes to be faithful at once to his country, to his God, and to the right. The people of the United States in the present crisis are blessed that they have no such conflict of duties. . . . We are fighting a just war and there is no sacrifice too great to be demanded or cheerfully given.

The present war involves issues that "transcend merely national rights; there is question today of the survival of traditional Christian civilization itself." Although we cannot claim completely Christian civilization for ourselves, yet it is clear that our enemy is actively bent on the destruction of Christianity.

Democracy has emphasized the value of the individual person and the obligation of the state to respect and protect the individual's rights, but this has occasioned the weakness of democratic states. The individual of a democratic state has often forgotten his social obligations—his duties to the state. . . . If we are to succeed in this titanic struggle, the individuals of the democracies must become conscious of their obligations to the state.

"The Citizen of the State and the Faithful of the Church," by Dr. Edward G. Roelker,[36] enlarges on the obligation of civil obedience, which is a part of patriotism, and compares it with the obligation of obedience to Church authority. He summarizes his argument as follows:

People who are both citizens of some State and members of the Catholic Church are subject to the laws of these societies. Because entrance into these societies is of obligation and not strictly of freewill, neither citizens nor the faithful can in point of fact refuse to accept a just law. Moreover, the authority of the State in natural law, and the authority of the Church in divine law definitely and completely exclude the people from any formal part in the enactment of positive law. Neither in the State nor in the Church is there any real right to withhold obedience to law until an enactment is proven beneficial. The justice and utility of a law are presumed in its promulgation. A law, of course, may fail to bind, but this failure is not due to any alleged right of the people to give their consent or to be consulted. Rather, failure of a law to bind is due to unsuitable matter and therefore beyond the competence of the legislator. As long as the legislator, both in the State and in the Church, remains within the competence attributed to him by natural or divine law, his enactments must be obeyed without previous approval on the part of the people. This is not harsh doctrine. Nor does it imply autocratic government. The legislator is as much bound in conscience to rule justly as his subjects are bound to obey just laws. Both ideas are inherent in a perfect society.

A point of lesser importance, but one which nevertheless has occasioned considerable discussion in the reviews during the last two years, concerns

[36] *Ecclesiastical Review*, CVII (1942), 337–52.

the display of flags, papal and American, in Church. Rev. John P. Bolen writes at some length on the subject and, without passing definitive judgment on those who have introduced the practice, gives his vote against it.[37] He mentions six possible procedures in the display of the flags, indicating that to his mind some of these are certainly incorrect. His sixth suggestion is: "The absence at all times of all flags, except those strictly religious [and the Papal flag is not such], in the earthly home of Him who has no flag. Until lawful authority plans otherwise this last procedure, to the writer at least, seems best."

A more difficult problem in principle at least, if not in practice, is discussed in "The Catholic Conscientious Objector" by Father Joseph J. Connor, S.J.[38] Though the article outlines the theoretical stand taken by various groups of pacifists, its main object is to present a practical basis for the pastoral conclusions with which the article closes. Very few would disagree with these conclusions. He holds that there is an objective duty to obey the call to arms, but the state of the law being what it is, and the state of certain sections of Catholic opinion as to pacificism having been what it was before the war, the sincere objector cannot be denied absolution. The Church has not spoken authoritatively on the justice of the war and the individual is entitled to the liberty of his conscience.

One would not expect so inoffensive a theme to stir up angry rebuttal, but Dr. John K. Ryan made vigorous comment on the "matter, form and method" of the article, in "The Catholic Conscientious Objector and Some Traditional Principles."[39] There also appeared in *The Catholic Worker*[40] a lengthy pacifistic apology by Father John J. Hugo. The tone of the latter contribution did not exceed the bounds of charity. Dr. Ryan objects particularly to what he considers overemphasis on the principle of obedience to the State. This principle is based on the presumption that the State declares war justly—a presumption which is overcome only in the case of palpable injustice. Dr. Ryan is of the opinion that the American bishops did not arrive at their conclusion as to the justice of our cause "by any appeal to a mere principle or criterion of presumption with regard to the justice of our country's cause. They came to their decision by the use of traditional Catholic doctrines with regard to the right and duty of a nation and its citizens to defend themselves against an unjust aggressor. They did this after a great national debate had abruptly come to an end by reason of the enemy's attack."

[37] "Flags Inside the Church," *Ecclesiastical Review*, CIX (Aug., 1943), 116–24.

[38] *Ecclesiastical Review*, CVIII (Feb., 1943), 125–38.

[39] *Ecclesiastical Review*, CVIII (May, 1943), 348–56.

[40] May and June, 1943.

But Cardinal Villeneuve, Archbishop of Quebec, writing in *Le Nationaliste et le devoir*, expresses a different opinion on the very same point, and one which coincides with Father Connor's:

> What has created unanimity of sentiment among the members of the American hierarchy? Evidence of the facts? Perhaps. The treachery of Pearl Harbor, the opinion most commonly held in the great nation which is our neighbor? Perhaps. But in our opinion a still more definite criterion was the declaration of war by the American government....
>
> The decision of making war, in each nation, is within the power of the political authority according to the constitutional determinations of the country. It follows that, excepting in evident cases of injustice or error, the Church accepts the judgment of the responsible authorities whose role it is and who have in their possession information which is not available to the observation or analysis of particular individuals. In doubtful cases the benefit of the doubt is in favor of the constituted authorities. When individuals cannot of themselves judge the legitimacy of the war—and how can they do it?—the faithful can always in their moral judgment on the matter hold to the decisions taken by the leaders of their nation.
>
> Furthermore, once such a declaration has become formal it is law, in accord with the legislative provisions of each country, whatever the speculative judgment that anyone might pass upon it; that law obliges all citizens. Otherwise all practical vigor would be denied to laws, all real power to political authorities, and sedition would be made legitimate.[41]

It appears to me that Dr. Ryan and Father Connor are in accord as to the main conclusions of the article, and that such disagreement as there is on the "matter, form and method" of the article is due in part to a misunderstanding of its scope, which was pastoral.

One might expect that in an editorial entitled "Patriotism and American History,"[42] the emphasis would be on the necessity of instilling American culture and ideals by means of teaching our own history in schools and colleges. This would seem all the more likely when it is revealed that only 18 out of 100 colleges in this country require American history courses. But Dr. John J. Wright, the author of the above article, takes the opportunity of stressing the need of understanding the history, culture and ideals of other nations, including our enemies. The study of American ideals should "be undertaken with a deep respect for still more human and universal traditions and values. No divisions amongst men which have caused—or resulted from—the present war must be allowed to destroy or obscure the fundamental unity of the human race." Those who have read Dr. Wright's book,

[41] Montreal, Feb. 11, 1943.

[42] *Thought*, XVII (1942), 403–7.

National Patriotism in Papal Teaching,[43] will recognize here a principle ably expounded in that work. True patriotism is not merely, or excessively, national. The love of one's own country must not exclude but promote collaboration in realizing an international order. "No small part of that work, nor that the least important part, must be done in the history classrooms of our nation."

SEX MORALITY

In another part of these notes mention is made of an increase in juvenile delinquency. Much of it is of a sexual kind. The F.B.I. issued a statement on February 18, 1943, which contained the information that prostitution had increased among minor girls 64.8% in 1942, as against the year 1941. The number of arrests for other sex offenses increased more than 100%. In Ireland, Fr. P. J. Gannon, writing on "Art, Morality and Censorship,"[44] invokes the statistics of police courts, divorce courts, illegitimacy, etc., as pointing to "a sharp decline in morality, and particularly in sexual morality, in most countries of the world." In the same issue of *Studies*[45] James Montgomery, the film censor of Ireland from 1923 to 1940, writes on "The Menace of Hollywood," and sees in the films a threat to the purity of youth.

Without attempting to settle the perennial riddle, the comparative morality or immorality of the newest generation, one must endorse heartily the "Campaign for Purity" which is urged by Fr. Francis J. Connell, C.SS.R., in an article titled thus in the *Ecclesiastical Review*.[46] He describes conditions in the vicinity of certain military establishments, and, in fact, generally throughout the country, and calls on us to do something about it. "In a word, the Catholic clergy of America should set out on a wholehearted campaign for purity—not as fanatics or extremists, but as the authorized defenders of God's law." As for the form of campaign, he recommends frequent, outspoken, and forceful condemnation of obscenity, whether in print or on the stage. Parish priests should bring their influence to bear on local enforcement officers, in order to suppress commercialized vice. Condemn the practise of landlords who refuse to rent their houses to married couples with children. Preach purity from the pulpit. Instruct the children and warn their parents of their duties of education and supervision. Above all, use the confessional as Christ meant it to be used. "The priest cannot content himself with the mere conferring of absolution. In the sacred tribunal he is a physician as well as a judge; he must provide remedies

[43] Boston: The Stratford Co., 1942. [44] *Studies*, XXXI (1942), 409–19.
[45] *Ibid.*, pp. 420–28.
[46] *Ecclesiastical Review*, CVIII (May, 1943), 321–30.

adapted to the individual penitent...." "When solitary sins are confessed, the confessor must point out specific remedies...." A sensible sex instruction is sometimes in order in the case of boys who confess these sins. As to onanism, let the confessor remember his obligations.

Any priest who time after time absolves a penitent confessing this same grave sin each time without any manifestation of amendment, and who offers no more in the matter of advice or warning than some platitudinous remark, such as 'sin no more' or 'do your best,' should ponder seriously on the account of his sacred ministry he must render to Almighty God.

I think every theologian would agree with the following statement of Fr. Connell's: "I do not hesitate to state that if a priest habitually does nothing more than impose a penance and grant absolution to penitents who have committed mortal sins against the sixth commandment, he is guilty of grave neglect in the administration of the Sacrament of Penance." The article concludes: "We are not alone in the combat. At our side is One who by word and example declared the excellence of chastity and made it one of the chief virtues of His religion, and who rendered homage to those who are faithful to the practise of this virtue in the consoling words: 'Blessed are the pure of heart, for they shall see God.' "

Last year in these pages,[47] we called attention to some remarks of Monsignor John A. Ryan concerning the distinction commonly made by moralists between onanism by withdrawal and by means of an instrument. Apropos of an article by Father Connell, he pointed out some theoretical difficulties in the matter and asked for a general moral principle which would satisfy them. In "The Intrinsic Evil of Condomistic Relations,"[48] Father Connell attempts to establish such a principle. According to common teaching there is something immoral in the condomistic act from the very beginning. Hence no active co-operation with it is ever allowed—otherwise than in the case of withdrawal. But if it is intrinsically wrong from the beginning, how could this first stage of the act ever be permitted? And yet we can imagine a case where it would be permitted—by way of an imperfect act, where both the partners intend to confine themselves within the limits of an incomplete act. Does this not prove that the first stage of condomistic intercourse is not intrinsically immoral, since it is sometimes allowed? Father Connell presents the difficulty cogently and to answer it quotes Merkelbach:

The matter or the circumstances of certain precepts [of the natural law] can be changed, and when they are changed the law no longer binds. There are some

[47] THEOLOGICAL STUDIES, III (1942), 597.

[48] *Ecclesiastical Review*, CVIII (Jan., 1943), 36–39.

precepts which are based on the very immutable essences of things, immediately and independently of every condition, and in these there is no change; others are based on the natural and ordinary conditions of things, and regard those things which are ordinarily and regularly good or bad, but not under every condition and for every case.... [49]

This appeal to the primary and secondary precepts of the natural law is used by St. Thomas to explain how divorce could be permitted by God even though contrary to the natural law, and I confess that I have never found the explanation completely satisfying. After applying it to the present difficulty, are we not still looking for a final criterion (besides the consent of moralists) to determine why the physical action which constitutes the first stage of condomistic intercourse is intrinsically immoral if consummation is foreseen or intended, but not immoral when consummation is excluded? The question is not intended to be captious. When the metaphysics of intrinsic evil is applied to practice, and pushed to the limit, it is neither surprising nor dismaying to come up against an apparent impasse. It would be defeatism to say that the facts are too much for the principles. Perhaps it would be arrogance to assume that stupidity plays no part in one's inability to see a distinction. At any rate it is common sense meanwhile, and humility too, to prefer the consent of moralists, backed by the authority of Roman congregations.

To descend to the more practical (without abandoning the unpleasant subject of condoms), what is permitted to a soldier who must issue contraceptive devices in camp stores, or run the risk of court-martial for insubordination? Fr. Connell answers the question in "The Sale of Contraceptive Devices in the Army," in the *Ecclesiastical Review*.[50]

Ordinarily the better and nobler course for a soldier placed in the situation described would be to refuse to have any part in the sale of contraceptive devices. If Catholic soldiers adopted this policy, without regard to the inconveniences that would perhaps result, it would be a very emphatic way of informing government officials that at least one religious group is utterly opposed to the disgraceful practice of providing our soldiers with the means of committing fornication and adultery with greater impunity.

And it seems to me that the protest would be even more emphatic if it had behind it as authority, and before it as a rallying point, some official condemnation of the Army practice by ecclesiastical authorities. The call to heroism on the part of the individual soldier would then be easier to make and more certain of success. Father Connell explains that the co-operation of the soldier clerk can be only material, and for sufficient reason may be per-

[49] *Theologia Moralis*, I, 258.

[50] CVII (1942), 440–41.

mitted. In estimating the gravity of the excusing cause, besides the points he alludes to, perhaps we should take into consideration the fact that the co-operation is rarely necessary, and often the sins co-operated with, *qua* onanistic, are not formal sins. "In each particular case the confessor, asked about the lawfulness of this type of cooperation, should inquire if the circumstances are such as to justify the soldier in rendering material co-operation, and only in the event that they are of this nature may it be permitted. But he should not omit to recommend the nobler and more heroic course of action." I understand the Army regulations no longer permit the practice of making acceptance of prophylactics a condition for going on leave. But in some sections where disease is on the increase it is now required that the availability of the devices be brought to the attention of men about to go on leave, either individually, or in groups. What shall we say to the sergeant who is told by his commanding officer to tell each soldier as he checks out: "There are the condoms for those who want them." May such co-operation ever be excused? *Sapientiores judicent.*

The question is asked in the *Clergy Review*[51]: "Since the provision of safe-guards against V.D. is calculated to facilitate illicit intercourse by removing the harmful physical consequences of the act, to what extent are these measures lawful?" Canon Mahoney distinguishes between contraceptive and non-contraceptive prophylactics, and in the case of the latter, following Vermeersch,[52] permits their use either before or after the risk of infection. And in a case of a person already determined to sin, it would not be *per se* sinful to indicate the means of avoiding the physical consequences. But when the provision or advertisement of these articles becomes an incitement to sin, then the principle of the double effect must be invoked and the decision is a delicate one. Canon Mahoney quotes Father Davis: "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."[53]

Some interesting and subtle questions are proposed to Father McCarthy as to the use of contraceptive prophylactics in the *Irish Ecclesiastical Record*.[54] Agreement with Father McCarthy's solutions has become such a habit that one hesitates to offer objections. But in the answers referred to there are one or two points in his premises, if not in his solutions, that at least allow of discussion. The first case concerns a married woman who believes her husband is syphilitic. May she after intercourse use a douche for prophylactic purposes, foreseeing its contraceptive effect? Father McCarthy is of the opinion that such means are a direct attack on the life

[51] XXIII (Jan., 1943), 38–40.
[52] *De Castitate* (ed. 1919), n. 321.
[53] Cf. THEOLOGICAL STUDIES, III (1942), 597.
[54] LX (1942), 301–2.

of the seed and that the good (prophylactic) effect is obtained by means of the evil (contraceptive) one. But even where the means used, though certainly destructive of seminal life, accomplish this destruction only indirectly, he would not permit the use of the principle of the double effect, as DeSmet does, on the ground that a sufficiently grave cause is lacking. But where the prophylactic douching (or injection?) indirectly and only probably impedes conception, then it is permissible for grave reasons of health. The questions I would propose for consideration are these: How can one distinguish between a douching which directly destroys seminal life, and one which does it only indirectly? And does "directly" here mean as a direct or immediate consequence in the physical order, or as directly intended or a combination of both? How can it be shown that the destruction of seminal life by a douche used for prophylactic purposes is a means to, and not merely a concomitant of, the destruction of disease germs? With regard to the lack of excusing cause (where the principle of the double effect might otherwise be applied) how serious is the evil effect which is permitted? The destruction of seminal life is permitted by nature itself on a grand scale, and by far the greater number of sexual acts, even when naturally performed, end in such destruction. Does it take a very serious cause to permit the placing of an act foreseeing that it will end indirectly in the destruction of seminal life? In other words it appears to me, that the contraceptive effect which is permitted, if considered by itself, is not so great an evil that only a very grave cause will justify it. And in any event the right of the woman to the marriage act, and her need of it, are reasons of a serious kind. It may be objected (with Hürth) that the woman cannot avail herself of the principle of the double effect because she has at her disposal another means of obtaining the good effect, namely abstention from intercourse. But once one establishes a sufficient reason for permitting an indirect evil effect, there is no obligation to omit the action and forego the good effect desired in order to prevent the evil one. This is implied in Vermeersch's statement, "Semper autem effectus malus praevisus imputatur ei qui *sine actionis omissione* eum vitare potest."[55]

Another question concerns the sin of condomistic fornication. Is it enough for the sinner to confess simply fornication, or must he mention that it was onanistic? The answer, of course, is that he must confess the circumstance of onanism. All are agreed that this sin is specifically distinct from simple fornication. But I do not understand the statement—made also by other authors—"Fornicatio onanistica est duplex peccatum: fornicatio (inchoata) et pollutio. Primum peccatum est secundum naturam,

[55] *Theologia Moralis*, I, n. 130. My italics.

alterum est contra naturam." How can the same act be both *contra naturam* and *secundum naturam*. Morally is there not but one external act, as in the case of bestiality or sodomy? And is not that one act against nature? On what principle can one discover numerically distinct malices? When a man is guilty of sodomy we do not say he commits two sins, one against chastity and another against nature. "Against nature" is not a species; it is rather like a genus. Such a sinner commits one sin which is specifically different from, and objectively worse than, simple fornication. The same thing seems to me to be true of onanistic fornication. But in any event the penitent's obligation remains the same. If he knows of this malice he is bound to confess it.

Finally Father McCarthy offers the opinion that when a man or woman confesses fornication and the confessor has serious reason for thinking onanistic means have been used, he should ask about this (but only with great caution). It seems to me this question should not be asked except in the unusual case where the confessor thinks that the penitent is aware of this specific malice and is forgetting or neglecting to confess it. In the ordinary case penitents, at least in this country, are not aware of the distinct malice involved, and no purpose is served by telling them about it. It merely changes their good faith to bad faith on this point. For what sinner, tempted to fornication, will ever be held back from the sin itself or from the use of onanistic means by the thought that these latter increase the malice of his sin? In practice they will either not be convinced of this, or even if convinced, will think they may as well hang for a sheep as for a lamb.

The question might be proposed speculatively whether onanistic fornication is always *objectively* more malicious than simple fornication. Merkelbach,[56] cited by Father McCarthy, admits that subjectively the sin is sometimes less serious. "Qui copulam onanisticam eligit ut minus noceat feminae et societati, minus perverso affectu ducitur quam qui onera mulieri timenda contemnit ut sibi plenius satisfaciat. Qui vero voluptatem sine onere quaerit magis peccabit quam qui connexa onera resignato animo ferre studeat ut secundum naturam agat." (This latter quotation sounds like an echo of Vermeersch.) Apparently he considers these intentions to be only subjective components of the morality of the acts. But is it not more proper to recognize intention or *finis* as one of the objective components of morality? The adequate moral object is made up of object, circumstances, and end. This being the case, the good purpose (or less malicious purpose) for which an act is done will modify the total objective morality of the act. And in this sense one might assert that the end palliates (not justifies) the means.

[56] *De Castitate*, p. 42.

And in the case we are discussing, the good intent of the onanistic sinner might make his action objectively less malicious than simple fornication. But of course such a good, or less malicious intent could never justify an intrinsically bad act, nor ever reduce the intrinsic malice of a sin from mortal to venial. And since in any event the sin keeps its specifically different morality it must be confessed—hence I consider this whole discussion rather theoretical.

An excellent article summarizing the present state of medical opinion on the "safe period" and offering practical advice to confessors on the handling of this subject in the confessional appears in the *Irish Ecclesiastical Record*.[57] As to the medical findings the author gives a summary which is based on a rather extensive review of the literature and which is much less sanguine than what we usually hear.

A reasonable degree of probability as to the existence of the 'safe period' is the most which can be claimed in the present state of medical science: the determination of the length of the periods as well as the time when they begin is difficult in practice: data for each individual case collected over a period of some months, under the guidance and with the advice of a competent physician, is indispensable for whatever security the theory offers: haphazard, rough and ready calculations will inevitably spell failure: in some cases, for a time at least, it is impossible to forecast the incidence of the sterile periods.

The first conclusion Dr. Ahearne draws from the uncertain state of medical science is that the confessor should never, under any circumstances, try to tell the penitent when the sterile period is. And he gives good reasons in support of this view; but they do not seem to me so conclusive that it would always be improper or imprudent for a confessor in answer to a direct question (especially from a penitent who has not the means of consulting a doctor) to indicate when the sterile period generally takes place, making it quite clear that only professional advice can give any real assurance in the matter, and that the use of the sterile period merely diminishes the probability of conception and does not exclude it. Dr. Ahearne discusses also the reasons which justify the practice, the conditions under which it can be permitted, and the circumstances in which the confessor might be justified in spontaneously suggesting its use. On the whole he is decidedly sceptical, both as to the medical value of the theory and as to the prudence of making use of it in the confessional.

The prudence and caution with which matters concerning the sixth

[57] Rev. P. Ahearne, D.D., "The Confessor and the Ogino-Knaus Theory," LXI (Jan., 1943), 1–14.

commandment must be handled in the confessional has been set forth anew in an instruction of the Holy Office dated May 16, 1943. It is sent to the Ordinaries with a letter from the Secretary of the Holy Office urging that they see to it that the norms therein laid down be brought to the attention of confessors and others who are concerned. The covering letter (signed by Cardinal Marchetti-Selvaggiani) insists on the necessity of giving sufficient instruction on these matters to future priests, so that they will understand what is confessed without having to ask useless and annoying questions. The instruction is entitled, "Normae Quaedam de Agendi Ratione Confessariorum Circa Sextum Decalogi Praeceptum." It recalls the injunction of canon 888 §2, as to useless and curious questions, reminds the confessor that *per se* he is not the one to give medical or hygienic advice, urges special prudence in the confessions of women, and proper instruction of a practical kind for future priests. In great part the instruction merely repeats and insists on principles which have been commonly taught hitherto. But evidently the practice of them has not been as common as the teaching.

FIFTH COMMANDMENT

The command "Thou shalt not kill" has many interesting and difficult applications in time of war. One of the most fundamental is the question whether soldiers in war may directly intend the death of the enemy. It is a theoretical question, of course, seeing that soldiers with guns in their hands, or bombardiers ready to release their load, are not going to think, and should not be asked to think, "How about my intention? Is it direct or indirect?" But the discussion is by no means useless, because like other discussions of principles it can result in a clarification adaptable to practice. Hence the thoughtful paper of Dr. James E. Sherman, "Aiming at Death in War,"[58] is well worth the perusal of the practical moralist. After giving the opinion of Father Cronin and other modern moralists, according to which the direct intent of death is always unlawful, the author argues that St. Thomas permits the direct intent of the enemy's death in war, though in private self-defense St. Thomas is generally understood to have appealed to the principle of the double effect. On this point, however, serious doubts have been raised by Vicente M. Alonso, S.J., *El principio del doble efecto en los comentadores de Santo Tomas de Aquino desde Cayetano hasta los Salmanticenses.*"[59] With St. Thomas are Cardinal DeLugo, St. Alphonsus, Waffalaert, and many others. Dr. Sherman gives the theoretical ground of the opinion (which at first sight seems to contravene the natural precept, "Thou shalt not kill")

[58] *Ecclesiastical Review*, CVIII (Feb., 1943), 102–9.
[59] Rome: Gregorian University, 1937 (dissertation).

by appealing to the conditional character of some natural precepts. Another way of expressing the same thing, I suppose, would be to say that the precepts of the natural law are not perfectly enunciated in the brief formulae of the commandments. As Merkelbach puts it: "Notetur insuper pleraque principia quae generali formula proponuntur, inadaequate exprimi et non esse universalia, sed includere subintellectam restrictionem, conditionem vel determinationem. Sic v.g., praeceptum: Non occides, adaequate expressum sonat: Non occides innocentem privata auctoritate et per modum aggressionis."[60] Dr. Sherman appeals further to this distinction: "Although no individual is ordained to the common good *qua homo*, (existit propter se), he is nevertheless so ordained *qua homo agens*, if I may make this distinction. This distinction is implied by St. Thomas II–II, q. 64, art. 2 ad 3" (the article in which he explains the right of the State to inflict capital punishment).

The practical conclusions drawn by Dr. Sherman are that "not only soldiers but even civilians on the tacit direction of their government may do all those things which will serve to promote the winning of the war. Doubtless, then, it is within the right of all to pray for the death of the Führer, in this present war, or even to steal secretly into his room at night and slay him while unarmed." Could I do the same in the case of a sixteen-year-old German girl who spends ten hours a day in a munitions factory testing the timing devices on bombs?

As to prisoners, "While the right to kill exists in war it can hardly be said to apply to the killing of captured prisoners. These are no longer in the state of being active enemies. . . . The same reasons that justify capital punishment for citizens do not apply as reasons justifying the infliction of death on such captives." The extent to which retributive punishment may be employed against them seems to me, however, to be a rather difficult question.[61] Dr. Sherman also touches on the treatment of prisoners, the right to kill an escaping prisoner, and does not omit to invoke norms of charity as well as of justice in dealing with all these problems.

Another practice reported from some of our training camps raises the problem of direct killing of the innocent. The men are made to creep across a level terrain and stay as near as possible to the ground so as to present a minimum target to the imaginary enemy. But the enemy is not quite imaginary. For live machine gun fire is being shot above them (say 30

[60] *Theologia Moralis*, I. n. 258 *ad fin.*

[61] Cf. *Transition from War to Peace*, Appendix B, "Retributive Justice after the War" (Washington, D. C.: Catholic Ass'n for International Peace, 1943).

inches from the ground), and if they by accident, or by folly, raise themselves to that height they will be wounded and even killed. The object of the fire is to teach them the importance of staying low, and it is said that actual deaths have reinforced this lesson.

Can this practice be justified? I do not believe that the principle of the double effect can be invoked by such a machine gunner. He cannot say: "I intend to teach a lesson, I do not intend to kill." For he teaches the lesson by means of the wounding or killing. Nor can he say: "The bad effect is only *per accidens*." Certainly it is accidental on the part of the unfortunate victim, and undoubtedly it is contrary to the wish (velleity) of the machine gunner. But actually the direct purpose of his firing is to kill or wound his comrades *if* they raise their bodies too high. I believe that this is a conditional direct intention to kill, and entirely inexcusable as far as the principle of the double effect is concerned.

It has been argued, however, that just as the sleeping sentry in wartime can be taken out and shot at sunrise for his neglect and carelessness, so the death penalty can be inflicted on soldiers who fail to keep the rules and lie low. I do not believe the parity holds: first, because only the supreme authority of a perfect society can make a law and sanction it with the death penalty, and in the present case we have a mere Army practice; and secondly, even in the case of the sleeping sentry, he gets some kind of summary trial by his superiors before he is put to death, whereas in the present case there is no semblance of any process. A soldier guilty of robbery and rape would get a better hearing than the unfortunate individual who, perhaps through some spasmodic motion induced by fear, is jerked above what may be called appropriately the dead line. Life is cheap in wartime. But we cannot afford to make it that cheap, without being tainted with the ruthlessness of which we accuse our enemies. As a practical matter I would not disturb the conscience of the machine gunner at the present state of the discussion. Other theologians whom I have consulted do not share my views. Some think that the principle of the double effect can be legitimately invoked.

Another case which seems to me to involve the "conditional direct intention" of death is the case of the hunger strike. In the *Homiletic and Pastoral Review*,[62] Father Jos. P. Donovan, C.M., answers a question on this point. He is of the opinion that the hunger striker is a suicide. This opinion he bases on sound reasoning, and the question is particularly timely since there appeared lately a remarkable book on the hunger strike which vigorously and even violently asserts the opposite position. The book is marked "for

[62] XLIV (Oct., 1943), 52–54.

private circulation only." Although it bears the *imprimatur* of Cardinal Hayes, who died in 1938, it contains much material written after that date. All in all, it is a puzzling performance.

I said that hunger strike involves "conditional direct intention" of death. By this I mean that the hunger striker intends to fast until death, as a protest against injustice *unless* the government, or other author of the injustice, remedies it. It is noteworthy that in the case of hunger strike the connection between the cause (fasting) and the evil effect (death) is physical, whereas the connection with the good effect (removal of injustice) is moral, i.e., the fasting acts as a motive or argument moving the authors of injustice to desist. But since it gets all its motive power because of its connection with death or the danger of death, the hunger striker cannot intend the good effect without intending death or the danger of death as a means to obtaining it.

Closely connected with homicide and suicide are questions of mutilation. In the *Ecclesiastical Review*,[63] Father Peter Kremer, O.S.Cam., writes on "Some Ethical Considerations in X-Ray Treatment of Ovaries in Cancer of the Breast." He maintains that such treatment, even though involving sterilization, does not amount to the direct sterilization condemned by the Holy Office in 1940. A similar position was taken in these notes last year,[64] and in the *Linacre Quarterly*.[65] More or less by way of reply to Father Kremer, Father Honoratus Bonzelet, O.F.M., calls attention to some practical points in this connection in "The Morality of Indirect Sterilization."[66] He agrees that the use of the rays to treat breast cancer is not necessarily a directly sterilizing procedure but holds that in the present state of medical science there may not be in practice sufficient reason to permit the evil effect (sterility): first, because the good effect, the alleviation of cancer, is so problematical, and second, because there is often at hand another means, surgical excision of the cancer, which will leave intact the power of fecundity. He notes also the danger of injustice to the mother, because "artificial induction of the menopause—the ordinary result of such interference—oftentimes brings about grave repercussions on the patient's health and may have deleterious effects on her mind."

All would agree with Father Bonzelet, of course, in requiring a proportionately grave cause, in order to permit the sterilizing effect, and I think he has done a service by reminding us that this condition for the use of the

[63] CVIII (April, 1943), 271–73.
[64] Cf. THEOLOGICAL STUDIES, III (1942), 592.
[65] X (1942), 4 ff.
[66] *Ecclesiastical Review*, CIX (Aug., 1943), 125–27.

principle of the double effect must not be lost sight of in practice. But it seems to me that when we, as theologians, write on questions of this kind we are too ready to view the medical profession as adversaries of Catholic teaching, who have little regard for the value and sacred character of the child-bearing function. This, I think, is an exaggeration, and in cases where there is no contraceptive intent on the part of the woman or the doctor, we can almost take it for granted that the responsible medical man is just as anxious to preserve the generative function in his patients as moralists would be. They are better judges than we are of the deleterious effects of an artificially induced menopause, as against the deleterious effects of a surgical operation to remove a cancer. In my opinion, therefore, once it is clear that there is no contraceptive intent, and no directly sterilizing procedure, the judgment as to the proportionate cause is chiefly a medical one. I say chiefly, because there is the danger that irresponsible doctors will experiment on a patient, especially a public charity case, and neglect to take into account the sacred value of the reproductive function. And, in considering the proportionately grave cause which would permit sterilization, they might be led too much by the estimate the patient herself puts on preserving her fertility. On the other hand, I think that when it is merely a question of proportionate cause common sense tells us that it takes much less cause to permit the sterilization of a woman who has almost reached the menopause, or of a man who has already ceased to be fertile, than in the case of a younger person. And so I cannot agree with the position that in the case of an old man irradiation and ligature of the *vasa deferentia*, as treatment for enlarged prostate, can be resorted to only in the case of those who could scarcely stand the major operation. It seems to me that a lesser reason than danger of death would justify such an operation, especially in the case of persons who are already sterile anyway.

The investigation of human fertility has occupied the medical profession to an increased extent of late years, and since some of the methods of testing for fertility involve immoral procedures, the article written by Father J. J. Clifford, S.J., on "Sterility Tests and Their Morality" is very welcome.[67] The article is thorough and should be read by all who have dealings with medical men. Father Clifford sums up: "(1) Masturbation may not be used to procure specimens of seed. (2) All forms of onanism, either instrumental or non-instrumental, are immoral means of seed procurement. *Disagreement on lawfulness:* (1) Extraction of the seed from the vagina, or the cervix, or the uterus. (2) Expression of the seed from the testicles or epididymus by aspiration, or from the vesicle by rectal massage. (3) In

[67] *Ecclesiastical Review*, CVII (1942), 358–67.

other words, all removal of seed from the genital tract of the male or the female whether it is licit or not is a disputed question. *Methods not discussed by manualists:* (1) Perforated condom appears licit to correct hypospadias. (2) Perforated condom appears licit for specimen collection. (3) The use of a vaginal cup to save seed seems lawful."

Catholic nurses are sometimes asked to assist at illicit operations. An article in the *Homiletic and Pastoral Review*[68] had held the view that assistance in a given case would be lawful because co-operation was only material and was sufficiently excused. A communication to the same periodical[69] disagrees with the solution of the case on the grounds that nowadays there is not a sufficiently grave excusing cause. "It appears that a Catholic nurse, ... will in practical cases and as a rule be required to desist from material co-operation with a serious crime. She will need to look for new employment, which can be found without too great difficulty." In reply to this point of view another correspondent writes to the editors in the following vein:

> Morally illicit operations are performed in our public hospitals.... Far from withdrawing from such institutions Catholics should try to merit their way into positions of prominence. They can then use their influence to put a stop to operations opposed to divine moral law.... Certainly Catholic nurses in a public hospital can do their share.... This is not a pious hope; it is a fact of experience. In view of this possibility of ending morally illicit operations, may we not find therein a justifying reason for the continued presence of Catholic nurses in public hospitals, even though they are occasionally called upon to give material cooperation in morally illicit operations?[70]

JUSTICE

An excellent study, *Professional Secrecy in the Light of Moral Principles*,[71] by Robert E. Regan, O.S.A., is reviewed elsewhere in this issue. There is an interesting discussion of the contractual basis for the obligation of professional secrecy, which all admit to be one of justice. The author states the objections against this view very fully. That there is an explicit or at least an implicit actual contract to keep the secret in the great majority of cases is undoubtedly true, and this has led the theologians to put the obligation from justice on a contractual basis. But there are cases where it is hard to find any actual contract, even an implicit one. For instance, a doctor undertakes the care of a patient found unconscious. In such a case the obligation in justice both to care for the patient and protect his secrets is

[68] XLIII (1942), 47–52.
[69] XLIII (Jan., 1943), 359–60.
[70] XLIII (April, 1943), 650.
[71] Washington, D. C.: Augustinian Press, 1943.

admitted by all. But there is no actual contract. And it does not seem to be sufficient to appeal to the interpretative will of the client, as the basis of a contractual right. It is true that a contract is a more secure basis of secrecy for the client. But when there is no contract in fact, not even an implicit one, calling the relationship contractual will not supply the security. A similar statement might be made with regard to the term "onerous contract." In the case of doctors and lawyers there is, in the majority of cases, an actual contract which confers advantages on both sides. Hence the theologians appeal to this contract as the basis for the obligation. (The obligation is generally more stringent than it would be in a unilateral contract.) But in the cases where no such contract exists the difficulty of finding a basis for the obligation is not solved by substituting another term, like "bilateral," or by appealing to an onerous contract that is not there.

In the exceptional cases which are hard to explain, is it not enough to appeal to the nature of the secret (more or less as Tiberghien does) and the nature of the professional relationship and find there a basis in commutative justice? This relationship arises not by actual contract but by the mere fact that the doctor undertakes to exercise his profession in behalf of the client. It is a quasi-contract, if you will, in the nature of *gestio negotiorum*. Compare the finder of a lost article who acquires a new obligation in justice to care for it for the owner once he takes possession of it.[72] The *gestio negotiorum* idea is embodied both in the common law and the civil law, and perhaps the theologians were influenced by it in formulating the rights and duties of a finder. But they seem to lay down these duties as of justice and as of natural law. I suggest that the solution of the difficulty proposed by Father Regan in his valuable monograph might be sought along these lines.

Another point taken up by Father Regan is the morality of reading the private papers and private letters of others. When religious submit themselves to the obedience of their order or congregation they generally give up their right of privacy in this regard. Their superiors generally have the right of inspection or censorship both of the letters sent out by their subjects, and of the letters received by them. An answer to a question in the *Review for Religious*[73] recalls this principle while discussing the obligation of superiors to mail letters promptly. (The obligation varies with "the importance of the matter to the writer, addressee, or both.") It would be interesting to see a fuller discussion of the question of the right to privacy of the sender of letters to a religious. He has not entered religion, and in some circumstances

[72] Cf. J. F. C., "The Rights of a Finder," *Conference Bulletin of the Archdiocese of New York*, XX (March, 1943), 14.

[73] II (March, 1943), 143.

cannot be presumed to know that the letters sent to religious are subject to inspection. Perhaps the answer will be found in an analogy between the rights that parents have over their children, and religious superiors over their subjects. And since it is easier to pose questions than to answer them, one more problem of professional secrecy may be broached: to what extent are religious superiors entitled to know (e.g., from the community doctor) the medical secrets of their subjects? Has the religious given up his right to privacy in this regard?

It is remarkable to note how many questions concerning justice have been treated in the *Irish Ecclesiastical Record* during the past year. Since they are both of practical and speculative interest we shall point out some of them here.

Father McCarthy has answered at length questions on the family wage as due in strict justice, and to what extent that conclusion can be drawn from the encyclicals.[74] A practical case in which an insurance agent, miserably underpaid, has evolved a foolproof system of reimbursing himself, is answered, with all due caution, in favor of the agent, as far as the obligation of making restitution is concerned; but the advice for the future is given, that even though it is a clear case of injustice, the agent is to be exhorted to desist from compensating himself occultly.[75] Another case, involving a will which violated obligations of piety of the testator, raised the question of making use of occult compensation to recover a debt owed not in strict justice but in piety. The case is complicated by the fact that the compensation is attempted against the estate of a deceased parent. Fr. McCarthy concludes not only that the debt of piety burdens the family property after the death of the parent, but that in the exceptional circumstances of the case occult compensation is justifiable. In the course of his reply he discusses the difficult question put by his correspondent: "How can we reconcile these two principles. . . that it is not theft to take from a man that which he is bound in *piety* to give, and that occult compensation may not be made if there is not a question of a real debt based on a *strict right*."[76] I do not notice any reference to Vermeersch, *Quaestiones de Justitia*,[77] where in discussing the definition of theft he adds a "Parergon" on the meaning of the words *rationabiliter invitus*, in which Fr. McCarthy might have found additional support for his view.

Of still more topical interest is Fr. McCarthy's discussion of the legal

[74] Cf. *Irish Ecclesiastical Record*, LX (1942), 433–38.
[75] Cf. *ibid.*, LXI (May, 1943), 339–42. [76] *Ibid.*, LXI (June, 1943), 414–18.
[77] *Quaestiones de Justitia*, n. 150.

price of tea in Ireland, where a ceiling price is set by the government.[78] The case as first presented was that of a storekeeper who was charging ten shillings a pound for tea when the legal price set by the government (on account of the war) was four shillings. Fr. McCarthy argues strongly, claiming the unanimous support of theologians, that such a legal price binds in conscience and in commutative justice, and that the storekeeper is bound to restitution. A correspondent's objections to this solution are answered at length and the position taken reasserted. Finally a case involving tea smuggled from northern Ireland is solved. One of the added questions in this case is whether the additional cost and risk of smuggling the tea provides a title for exceeding the price fixed by law. So far as commutative justice is concerned, Fr. McCarthy allows the vendor to sell the tea at what it cost him, plus the profit per pound allowed in the legal price, plus extra costs of transportation, but excluding, of course, the cost of bribery, if any.

I have merely indicated in the most general way the matters treated in these interesting and acute discussions. They are of special interest to us in the United States now that we have ceiling prices fixed for many foods and other articles. Do the OPA ceiling prices bind the consciences of the vendors and do they bind them in commutative justice with a consequent obligation of restitution? I have not seen this question discussed by American moralists and I do not intend to attempt an answer to it here. Much will depend on one's general attitude toward the law of the land. If one begins with the proposition advanced by one writer: "It is solidly probable that in the United States of America, all merely civil laws are purely penal,"[79] then one will end with no obligation in conscience at all, I suppose. But surely this proposition goes altogether too far. Is it not insincere to insist continually that Catholics make the best citizens because their religion and conscience bid them obey the laws, and then allow Catholics to act on the assumption that all civil laws are purely penal? And this is all the more true when we remember that some writers have watered down the obligation of penal laws to such an extent that a man can even escape from the officers of the law who have arrested him for a violation, and be without sin, as long as he does not harm them by violence. This leaves no obligation in conscience at all so far as the civil law is concerned, seeing that the natural law itself binds a man to this much.

[78] Cf. *Irish Ecclesiastical Record,* LX (1942), 298–300, 438–44; LXI (March, 1943), 202–6.

[79] Andrew F. Browne, C.SS.R., *Handbook of Notes on Theology* (St. Louis: Blackwell Wielandy Co., 1931), p. 7.

But supposing one were to take the opposite approach, and assert that civil laws *per se* bind in conscience and can bind in commutative justice. And let us suppose further that, the presumption being in favor of the law, the OPA prices bind in conscience and in commutative justice. What arguments are likely to be offered against this position? I mention some possible ones to show that the case is not simple. The case in the United States seems to me very different from that in Ireland.

First the competence of the OPA to fix a legal price may be questioned. Though the Constitution does not explicitly forbid Congress to delegate its legislative powers, the principle is deeply rooted in our constitutional law that the power of Congress to legislate is delegated (by the people) and that this power cannot be subdelegated. The NRA (the Schechter case) was declared invalid principally because of an unconstitutional delegation of the legislative function found therein by the Supreme Court. It is very unlikely, however, that the present court would invalidate the Emergency Price Control Act under which OPA operates in fixing the ceilings.

Others might argue that the price ceilings actually determined on are unjust because they so frequently make it impossible for the seller to make even a small profit. Or the theory might be advanced that since the object of the legislation is to control inflation it would be impossible to conclude that it binds from commutative justice. Fr. McCarthy answered this argument in the Irish case by getting a statement from the authorities that the purpose of the act was to prevent injustice. It would be much harder in this country to get at the intent of the legislator, because the Act of Congress is so general, and passed by so many legislators, and the actual price legislation is drawn up by many experts and given the force of law by the signature of the regional director of OPA in each section of the country.

But the most likely argument to be advanced will be that the law, though emanating from the proper authority and just in itself, is merely a penal law. The authority of Father Vermeersch will probably be invoked, since he was much inclined to admit that modern civil legislation was merely penal. Then, too, the jurisprudential atmosphere of the United States has been such for the last generation that large numbers of our legislators can be presumed to be infected with the idea that law is divorced from morality. This is particularly true of the younger generation, many of whom are influential in the administrative agencies, and who were brought up to worship Holmes, an out-and-out advocate of this theory. "Listen, young feller," he said to a young lawyer one day, "I'm not on the bench to do justice, but to play the game according to the rules.... The law is one thing; justice, as you use the

word, is another."[80] And although the theory one holds about lawmaking is one thing, and the intention one has in making a law or fixing a price is another, it will be argued that the prevailing views of the amorality of law are so strong that a presumption in favor of its purely penal character is raised. Furthermore, the judgment of the popular conscience will be invoked. In matters of rationing there is certainly very little evidence that the ordinary violator considers himself to be guilty of sin. As to the ceiling prices, it will be necessary to consult the views not only of the sellers, who will naturally speak *pro domo sua,* but especially of buyers who are, in a sense, coerced to pay prices above the ceiling, in order to make any fair judgment of the popular conscience.

I believe all the above-suggested arguments have their weaknesses, but until the matter has been further discussed I would not feel justified in refusing absolution to one who would not make restitution of the prices he had charged above the ceiling, merely on the ground that they were above the ceiling. Of course they might be unjust prices on other grounds.[81]

A series of four articles entitled "Some Recent Catholic Opinions on Interest-Taking" is contributed by Rev. P. Conway, M.A., D. Ph., to the *Irish Ecclesiastical Record.*[82] Father Conway draws attention to a rather sizable section of Catholic opinion, some of it merely popular and unprofessional, but some of such quality as to deserve serious attention, which is dissatisfied with the placid acquiescence of modern moralists in the present system of interest-taking. He examines their views critically, sympathetically, and with an air of quiet competence which inclines the reader to judge that here is a man who knows what he is talking about. But in spite of the non-technical language of the articles one would need to be an economist as well as a moralist to pass judgment on them. It is clear that the author believes that the interest system is in need of drastic reform. He points out serious weaknesses in the "titles" used to justify interest-taking, at least as regards the bulk of lending in the world of finance today. And he seems to agree in large measure with the speculative conclusions of the Catholics (Belloc, Hollis, and others) whose views he expounds. But he preserves throughout a sane reserve as to immediate practical applications. "We

[80] *Yankee Lawyer* (New York: Scribner's Sons, 1943), p. 442; see also an excellent, thoroughgoing study by P. L. Gregg, S.J., "The Pragmatism of Mr. Justice Holmes," *Georgetown Law Journal,* XXXI (March, 1943), 262 ff.

[81] In the *Catholic Review* (Baltimore, October 22, 1943), Archbishop Curley writes a signed editorial, entitled, "Expose the Black Marketers," which deals with the morality of buying and selling in a black market.

[82] LX (1942), 161–66, 400–6; LXI (Jan., 1943), 15–22; LXI (Feb., 1943), 73–83.

must again remind the reader that the preceding exposition is not meant to cast any doubts of a practical nature upon the legitimacy of our prevailing casuistry. If *per impossibile* Pat Murphy should develop a scruple about the interest he receives upon his bank deposit or his War Bonds, there is abundant authority for a liberal solution of his case. From the point of view of the confessional no difficulty exists." Nevertheless, the articles deserve the attention—and will certainly sustain it—even of the practical moralist. Father Conway closes with some considerations to be proposed to the radical young people who may have taken up some of these new opinions. These remarks are calculated to temper their enthusiasm with a regard for the realities of the world we live in, whether moral, social, or economic.

HOLY EUCHARIST

In the *Ecclesiastical Review*,[83] the Reverend John Vismara describes "Holy Communion Clubs" which have been organized in his parish to promote frequent and weekday Holy Communions on the part of the children. The plan includes organization into "Communion Gangs" and a more or less public record is kept of the faithfulness with which the members of the gang keep up their promise of Communion once a week on a weekday. In the same review,[84] Father Darrel F. X. Finnegan, S.J., takes exception to this procedure as contravening the Reserved Instruction of the Sacred Congregation of the Sacraments, Dec. 8, 1938.[85] Dr. Vismara's reply (in the same issue) is reassuring, inasmuch as he has taken care to safeguard against any danger of sacrilegious Communion; and his own experience leads him to believe that this danger is slight in the circumstances of the Communion clubs which he directs. Without wishing to negative in any sense the great spiritual good which is done by this apostolic work of his, it seems (to the present writer, at least) that some features of this plan are at variance with the Instruction. It is not enough to make sure that the dangers envisaged by the law are precluded; one must conform to a law passed in view of a common danger even when that danger is absent in a particular case (can. 21). However, the execution and application of the Instruction is a matter for the Ordinary's judgment, and it is not my intention to pass judgment on the particular circumstances of this zealous work of Dr. Vismara. The Instruction is not so clear that it prevents discussion; my object is to get at its meaning, if possible.

Father Daniel D. Higgins, C.SS.R., "Written Confessions for Absolu-

[83] CVII (1942), 382–87. [84] CIX (August, 1943), 128–31.

[85] Cf. Theological Studies, III (1942), 601–2.

tion,"[86] makes a very strong case against the writing down of their confessions by deaf-mutes. The abuses connected with this practice are indeed startling, especially in the case of children, whose written confessions are sometimes shown to the teacher beforehand that she may correct them! Other similar abuses and dangers are common. Father Higgins insists, rightly, that there is no obligation to write down these confessions, because of the danger of revelation, which he considers to be always present. "Not only are deaf-mutes not obliged to write their confessions, but like all other persons they should be discouraged from writing them. They should never write down any grievous sin (if they have committed any) or anything that might hurt their good name or the good name of the deaf-mutes as a class, because of the danger of manifestation which is always present." I would be tempted to modify the "never" and the "always" to allow for exceptional circumstances, but the general rule laid down by Father Higgins—and he speaks from experience—seems altogether sound. In the same review, Father Theodore A. Opdenaker makes many practical suggestions for "The Pastor and His Deaf Parishioners."[87]

Father McCarthy answers a question that was discussed in one of the American reviews a year or so ago, as to the meaning of "Offering Holy Communion for Others."[88] He explains the sense in which the *ex opere operantis* fruits of Holy Communion can be applied to others and continues: "It would be more accurate and, in fact, in perfect harmony with exact doctrine, if even a layman were to speak of offering his Mass or hearing Mass for the benefit of another. A layman can make this offering in a very real sense. In addition to the priest, who, in the person and by the priestly power of Christ, and as the deputed minister of the Church, makes the sacrificial oblation, all the faithful who are present participate in a special way in the offering of the Mass. They are real though secondary offerers."

In an effort to bring home to the faithful their privilege and their duty to participate actively in the Holy Sacrifice, the leaders of the liturgical movement have fostered the Dialog Mass and the use of the Missal. Perhaps there have been some abuses in the matter. Father Joseph P. Donovan, C.M., in the *Homiletic and Pastoral Review*,[89] is asked a question about reading the entire canon word for word from the pulpit, in English, while Mass is going on. He condemns the practice, as was to be expected, but along with the condemnation offers some general observations on the liturgical movement which are not calculated to meet the approval of all.

[86] *Homiletic and Pastoral Review*, XLIII (June, 1943), 782–85.
[87] XLIII (July, 1943), 901–6.
[88] *Irish Ecclesiastical Record*, XLI (March, 1943), 200–2.
[89] XLIII (June, 1943), 836–37.

In fact a correspondent was later moved to remonstrate. Father Donovan asks, "Why this intemperate zeal in compelling young and old alike to use the Missal?" etc.

There are many perhaps who are not aware of the extent to which in late years the Holy See has given its encouragement (subject to approbation by the Ordinary) to the use of the Dialog Mass. Father Gerald Ellard, S.J., writes a timely article on the subject in relation to those Jesuit schools where it is practiced.[90] His book *The Dialog Mass*[91] gives complete documentation on the attitude of the Holy See. Some who have been apathetic with regard to the Dialog Mass may have been misled by the idea that it is an innovation. But its roots are deep in Christian tradition. And if the ideal sought for so long by the Holy See, the participation of the people in the singing of High Mass, is ever to be attained, the Dialog Mass seems almost a necessary means to reach that ideal. The use of the vernacular in liturgical services is another point that will be increasingly discussed. The *Denver Catholic Register*[92] reports from London: "The movement to solicit permission to extend the use of English in the liturgy has taken definite shape with the formation of the English Liturgy Society which has as its object 'to promote the use of the mother tongue in public worship, so far as is consonant with the doctrines and tradition of the church.' "

In the *Hibbert Journal*,[93] attention is called to a discussion in the Anglican Church anent lay participation in the celebration of the Eucharist, which could hardly be considered a problem within the household of faith. A book by the Rev. W. J. Sparrow-Simpson, *The Ministry of the Eucharist*, discusses the question: "Can a lay person 'acting with due intention' celebrate the Eucharist under special circumstances? This directly involves the priesthood. Dr. Sparrow-Simpson maintains strictly that the episcopal transmission of ministry is of Divine intention, and that non-episcopal ministries merely served a valuable purpose 'under conditions of the sixteenth century, in which certain of these conceptions arose.' . . . The vital question is obvious: if no person who is not a 'priest' may celebrate the Eucharist, and no person who is not episcopally ordained is a 'priest,' then in the event of 'Reunion,' a non-conformist minister who has not been reordained episcopally may not celebrate the Eucharist."

It may come as a surprise to hear that even in Catholic circles the question has been discussed as to the absolute necessity of episcopal ordination. In Rome some years ago, C. Baisi wrote a dissertation, *Il ministro straordinario*

[90] "Dialog Mass: a Halfway Mark," *Jesuit Educational Quarterly*, VI (Oct., 1943), 83–87.

[91] New York: Longmans, Green and Co., 1942.

[92] XIX (Oct. 24, 1943), 1, col. 8 ad calc. [93] XLI (April, 1943), 276.

degli ordini sacramentali,[94] in which he claimed that a priest with special authorization of the Pope can ordain to the diaconate and to the priesthood. The grounds of the claim are principally historical, and are rejected by Meinrad Benz, O.S.B., who reviews the book in *Divus Thomas.*[95]

In these pages last year it was proposed as a solidly probable and practically safe opinion that during war time in the United States one may eat and drink until one o'clock by the clock without violating the Eucharistic fast (and so of the other obligations mentioned in canon 33 §1). Since that time other opinions have been expressed, but I find nothing in them that destroys the probability of the arguments set forth at length in THEOLOGICAL STUDIES.[96] Dr. Donovan writes in the *Homiletic and Pastoral Review* on "Standard Time and Sentimentality,"[97] and again a longer piece on "The Story of Standard Time."[98] A detailed answer to his arguments is not called for, it seems to me. His principal point is that the old Standard Time, or Zone Time, is now no longer legal in this country at all, and cannot therefore be considered a legal time in the sense in which the word legal is used in canon 33. This is not the case, however, as the following reasons show.

1) Canon 33 admits the existence of an ordinary legal time as well as an extraordinary legal time, and there is nothing in the canon which excludes the use of the time which is ordinarily legal, during the interval when some extraordinary time is adopted. For instance, from 1918 to 1921, the Federal law which instituted the old Standard or Zone Time, as the ordinary legal time for this country, also provided for an extraordinary legal time during the summer months. This was called Daylight Saving Time, and was just as legal, just as obligatory for the whole United States as the War Time is now. But did anybody think that it *abolished* the Standard Time during the summer months? Did anyone think that it was not permitted to make use of the option of canon 33 and eat and drink until one o'clock by the clock in those days? Perhaps there were some who thought so, but unless I am greatly mistaken the common practice was otherwise.

In 1921 the Daylight Saving part of the Act was repealed and it was left to the individual states to do as they pleased about introducing it. In the states which did introduce it, everyone allowed the use of the old Standard, not I think, by appealing to the peculiar division of sovereignty in our country which made possible two legal times in the same territory, but by appealing to the choice which canon 33 allowed between legal ordinary and

[94] Roma: A. L. C. I., 1935. [95] XX (1942), 309–11. [96] III (1942), 604–7.
[97] XLIII (March, 1943), 543–44. [98] XLIII (August, 1943), 990–95.

legal extraordinary time. But, whatever the grounds of the argument were, it remains true that canon 33 can be legitimately interpreted to give a choice between the time that is ordinarily legal, even though temporarily supplanted, and the time that is introduced as an emergency measure. It is obvious, of course, that War Time is an extraordinary, merely temporary, arrangement. The Act itself arranges for its automatic cessation six months after the war is over. I have already explained, last year, that the 1925 response of the Code Commission did not necessarily have the meaning that Zone Time becomes illegal when extraordinary time is introduced.

2) By legal time some authors understand a time which is obligatory by law here and now, at least for some acts. But there is no reason why the term in canon 33 has to be taken so restrictedly. The intent of the canon is to give a broad option, and we are justified in reading the word legal in a broad sense, so long as we do not strain its meaning. Since the Act of 1918 establishing old Standard Time as legal in this country is still on the books and has not been repealed, but only temporarily suspended, it remains true that the old Standard Time is still recognized by law as the fundamental reckoning point for this country. This makes it a legal time within the meaning of the canon.

3) Finally, the existence of old Standard Time as a legal time is recognized in this country at the present time by the U. S. Navy. I am informed by a professor of navigation who teaches this very matter to young naval officers: "The official time used by the Navy is *zone time*. . . . Thus in communications going from the first naval district (New England) to the second (New York) generally zone time is used." (The Navy also uses Greenwich for some purposes, and War Time in navy yards, etc.) I do not believe it is necessary to find actual official use of Zone Time, such as the Navy has, in order to show that it is still legal within the meaning of canon 33, but I mention the point merely as confirmatory.

The conclusion from all this, concurred in by many others, is that we are justified in using the old Standard or Zone Time even while War Time is in effect. Hence one may eat and drink until one o'clock by the clock, without violating the Eucharistic fast.