

CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY, 1944

FUNDAMENTAL MORAL

Does moral obligation in its essence, the very idea of moral *ought*, include the imposition of the will of a superior on an inferior? Last year in these notes I cited an opinion that answered this question with an emphatic negative.¹ It seems to me that the question has a fairly close bearing on the validity of the argument from conscience for the existence of God. Rev. James O'Rourke, C.C., writing on "Newman's Moral Governor," points out how strongly Newman relied on the moral argument.² "Newman's contention is plain and unvarnished. It is the view of the average man—not of the philosopher. Man has by nature a conscience. In that fact, and in that alone, lies *the* argument for a God. It is at once the proof and the warrant of God's existence." After explaining why Newman took this approach (to combat perverted notions of morality like those given currency by Shaftesbury) and how Newman established the "fact of conscience" and argued from it, he comes to the conclusion that the argument is valid.

Newman's argument from conscience has been said to be too subjective to carry conviction. But this is to beg the whole question. Conscience of its very nature is subjective. It is nevertheless, at the same time a universal fact of human experience. . . . Newman is the one philosopher who has detected the inherent strength of this approach. The objective reasonings of cosmologists are all very well in their way. But they address themselves merely to the intellect of man.

As a religious thinker Newman elected "to choose as conclusive argument for God's existence that which cometh by way of the moral rather than of the intellectual side of man." The article leaves one to wonder what distinction exists between man's moral and man's intellectual make-up, or whether the implication is that an argument may convince without appealing to man's intellectual side.

Whether morality and religion are intrinsically connected at all is discussed from a non-Catholic point of view by Rev. R. G. Norburn in "The Interconnection of Faith and Morals."³ He tells us that "the so-called

¹ THEOLOGICAL STUDIES, IV (Dec., 1943), 563, citing from Father Walter Farrell's *A Companion to the Summa* (New York: Sheed and Ward, 1939), II, 384.

² *Irish Ecclesiastical Record*, LXIII (May, 1944), 329-35.

³ *Philosophy*, XVIII (Nov., 1943), 253-64.

Moral Argument has been a battle-ground" since the time of Kant. "In our day at least three eminent Gifford lecturers have attested the view that the facts of the moral life" warrant definite theistic conclusions. On the other hand Professor N. Hartmann holds the opinion "that far from morality implying any sort of theistic conclusion, in actual fact a living authentic morality suggests quite the opposite and seemingly postulates the non-existence of God." The author disagrees with this extreme view on practical moral grounds, but maintains nevertheless that "*there remains a gap between morality and religion which logic cannot bridge. . . .* Indeed I think that the whole attempt to demonstrate a logical connection *from* morality to religion is *bound* to fail. For having once separated morality from religion . . . and having held them up before the mind as two separate and individual concepts, have we not sundered and destroyed what is, at the moment of experience a living whole?" Then he discusses three ordinary human experiences in the moral sphere which he calls 1) the I-Thou relationship, 2) the sense of vocation in the consciousness of duty, and 3) the experience of sinful guilt. His analysis of these experiences leads him to conclude that they partake in varying degrees of both morality and religion in one religio-moral experience. "This does not justify us in drawing the theistic conclusion straight away without further ado. . . . But the theistic hypothesis certainly fits *these* experiences," whereas naturalistic or pantheistic monism has to distort or falsify their content. And so if we believe in Theism on other grounds these experiences will corroborate that belief. Dr. Norburn concludes further that once you separate the fused religio-moral components of these experiences, even for conceptual purposes, then you are forced to the admission "that there are some duties which would still remain absolute even though there were no personal Absolute or living God of whose will and nature they could be an expression."

In another discussion, "Ethics or Christian Ethics," Professor E. S. Waterhouse remarks incidentally: "Moral law must be regarded as based not on the experience of man but on the source from which man himself proceeds, whether that source is called God or not. Personally I would say God outright and be done with it."⁴ The main point of the article is the contention that ethics in general should not be studied and treated in text-books, independently of the manifest and manifold Christian influences which have shaped the ethics of the Western world. He remarks that familiar textbooks like those of Muirhead or MacKenzie refer rarely to Christ, continually to Kant and Mill. "The reunion of ethics with the Christian ethics, which historically did so much to enrich ethical thought will make

⁴ *Philosophy*, XVIII (Apr., 1943), 50-59.

for the lasting enrichment of both." I do not believe this divorce has ever taken place in the content of the ethics which Catholic philosophers have taught traditionally. However, the use of Christian revelation as a merely "negative norm" has led sometimes to an overemphasis on reason as the source of our ethical doctrines. In the case of students who go on from philosophy to the study of theology this is not important, but in the case of college boys it may lead to too great confidence in the argument from reason, and a disposition to prefer reason, even their own, to the authority of revelation which is back of the Church's practical moral teaching.

A book of C. S. Lewis, *The Abolition of Man*, which I have not seen yet in this country, is reviewed enthusiastically by Philip Leon in the *Hibbert Journal*.⁵

Mr. Lewis takes as his text an elementary text book which under the guise of teaching boys and girls English, really tries to debunk both basic traditional morality and the very notion of *ought* or categorical imperative itself, reducing it to mere subjectivity. He shows that the authors of the book are debunking only other people's morality or system of values, while dogmatically accepting their own. . . . Mr. Lewis addresses himself to teachers of literature who only pretend to teach it and who actually teach morality, or rather, immorality.

For they suffer from the moral trauma of the age, and believe that man makes morality. "Wisdom consists in seeing the indisputableness both of the Moral Law and of certain moral laws: ('If a man's mind' says Mr. Lewis, 'is open on these things, let his mouth at least be shut.')

Among those whose mind is not open and whose mouth is not shut on

⁵ *The Abolition of Man*, or Reflections on Education with Special Reference to the Teaching of English in the Upper Forms of Schools (London: Humphrey Milford, 1943), reviewed in the *Hibbert Journal*, XLII (Apr., 1944), 280-82. An interesting article on the "religious attitude" as contrasted with the "irreligious attitude" appears in *The Thomist*, VII (Oct., 1944), 429-57: "The Humanitarian Versus the Religious Attitude," by Aurel Kolnai. The author prescind for the most part from the distinctively Catholic religious attitude, and shows that the humanitarian attitude which places man at the center of things leads to "progress" in the wrong direction. Man must surrender to the moral and spiritual Reality outside and above him, rather than dream of controlling moral and spiritual forces on the model of the material ones. The *reductio ad absurdum* of the purely humanitarian viewpoint of religion may be seen in a brief article which is apparently meant to be taken seriously: "Religion as Fact and as Fancy. A Naturalist's View," by Alan Devoe, in *The Humanist*, IV (Autumn, 1944), 129-30. One sentence will give the general flavor. "The desire of the corpuscle to flow harmoniously in the veins of the primally intuited greater corpus is the religious impulse." *The Humanist* is edited by Edwin H. Wilson, and contains anti-Catholic material, and a contribution from one of the ex-priests connected with *The Converted Catholic*.

matters of this kind we might cite Dr. Julian Huxley. Dr. S. H. Mellone, commenting rather tartly on Huxley's *On Living in a Revolution*, says:

Whatever Thomas Henry Huxley's reaction to this would have been [his grandson's imaginary advice to read Freud] we may safely say at the present time that moral *obligation* cannot possibly be extracted from the Freudian theory of the repression of 'sexual' and other impulses repugnant to tendencies of the conscious self. . . . The razor-edged intelligence of his grandfather would have reminded Dr. Huxley that [no *rights* at all] can be derived from the bare facts of biological adaptation: science may observe the emergence of moral values, but it cannot vindicate them.⁶

Amongst Catholic moralists we do not find much writing on the fundamentals of the science, at least not in the current literature. Their agreement on fundamentals obviates that necessity perhaps, or their writing is aimed rather at the utility of the clergy. When the busy curate opens his Tanqueray or his Arregui, it is not generally for the purpose of getting at the essence of morality. A new and attractive reprint of Arregui's ever popular *Summarium Theologiae Moralis* has been issued this year by the Newman Bookshop, Westminster, Md., making it available once more on this side of the water after an interruption of several years.⁷

"Every system of theology can be characterized by its conception of sin." Such are the opening words of a series of articles in *Bibliotheca Sacra*, entitled "Thirty-three Words for Sin in the New Testament."⁸ The author, Dr. John F. Walvoord, continues: "It is, therefore, a matter of great importance that the words used in the Holy Scriptures for sin in its various aspects be carefully studied with a view to establishing distinctions and conclusions which are fundamental to the study of Hamartiology and which bear an important relation to the doctrine of salvation." The articles discuss carefully the meanings of all these generic terms for sin in the New Testament, and distinguish them from one another to the extent that they are distinguishable. As Dr. Walvoord remarks: "Fundamentally this is the task of the lexicographer, but it is impossible for either the lexicographer or the theologian to work alone, as the work of either is colored by the work of the other." And of course it goes without saying that the work of the theologian will be colored by the theological system to which he subscribes.

Dom Mark Pontifex writes on "Sin and Imperfection," in the *Down-*

⁶ *Hibbert Journal*, XLII (July, 1944), 368, Survey of Literature.

⁷ Another new edition of a well known work of a different character is Jaime Balmes' *Lógica y Ética* (Santiago de Chile: Ed. Zig-Zag, 1943, 254 pp.).

⁸ *Bibliotheca Sacra*, C (1943), 164.

*side Review.*⁹ The first part of the article reviews the distinction between mortal and venial sin, as found in St. Thomas and expounded by Billot, and by Father Th. Deman in his long article on sin in the *Dictionnaire de théologie catholique*. After wrestling with the old problem as to how there can be such a thing as venial sin, the writer turns to the question "whether there is any distinction between venial sins and imperfections, whether there exist actions of such a kind that they are less perfect than other actions which might have been performed in their place, but which are not sins." The author summarizes the views of E. Hugueny, who contends (in the *Dictionnaire*) that there is no such distinction and that the imperfection as distinct from venial sin is only "une fiction sans objectivité," and thereupon takes up the opposite side of the case, supporting it by positive analysis and argument, and replying to the arguments of Hugueny.

Two years ago we mentioned the articles by Father J. C. Osbourn, O.P., on this subject. The articles have since appeared as a book, *The Morality of Imperfections*, which is No. 1 in a contemplated series of Thomistic Studies.¹⁰ Father Osbourn believes that the positive moral imperfection cannot be squared with the doctrine of St. Thomas, or the principles of theology. Among the reviewers of the book, Father Charles Bruehl apparently concedes that the author has proved his point.¹¹ Father A. H. Bachhuber says that the author establishes the conclusion that according to the doctrine of St. Thomas such imperfections are sins. But he is not convinced by the arguments on the merits of the question itself.¹² Dr. James V. Mullaney does not believe that there is "any text from St. Thomas quoted that can be satisfactorily interpreted in a sense favorable to Father Osbourn's thesis"—and he gives examples of what he considers a misinterpretation of St. Thomas. Dr. Mullaney concludes: "Only a bold reader will categorically deny that Father Osbourn has proved his point. The rest of us who find ourselves unable to assent to his thesis will be satisfied for the time with doubting."¹³ I must confess that in spite of Father Osbourn's brilliant study, I have to count myself amongst the doubters. To say that a positive moral imperfection is displeasing to God but is not a sin does seem like a "logical *tour de force*, if not . . . downright illogical," as Father Bruehl phrases it. On the other hand is there not something similarly mysterious in the accepted notion that religious are obliged by their rules, but not obliged under pain of sin? Is that mysterious obligation

⁹ XLII (Apr., 1944), 95-101.

¹⁰ Washington, D. C.: Dominican House of Studies, 1943.

¹¹ *Homiletic and Pastoral Review*, XLIV (July, 1944), 794.

¹² *Modern Schoolman*, XXI (Mar., 1944), 179-80.

¹³ *Thought*, XIX (Sept., 1944), 560-62.

merely that of a penal law with a purely juridical character? In view of the objections offered by some of the reviewers, and considering the centuries-old standing of the more lenient opinion, and in view especially of the practical difficulties in the direction of souls which would result, I am sure, from the more severe opinion, I feel justified in awaiting a more completely cogent demonstration. The age-old disputes amongst Catholics, and between Catholics and others, as to the nature of sin itself, and of venial sin, and of obligation, and of imperfection, are a clear indication that we are dealing here with a difficult and mystifying problem. Father Osbourn is to be congratulated for his courage in attacking it and his success in presenting it for the consideration of moralists.

CHASTITY

Even Nicolai Hartmann, not a Christian and not believing in a personal God, realized that among the contributions of Christianity to ethics was "the fundamental moral value of purity which the ancient world did not know."¹⁴ And the esteem of purity has always been closely connected with the esteem of womanhood. In rabbinical times, before Christ, the status of Jewish women was distinctly inferior to that of men. But owing to the high value placed on marriage and the family "the position of woman among the Jews was in some respects more elevated than was the case among many other Oriental nations." Sister M. Rose Agnes, O.F.M., details the disabilities under which Jewish women suffered in the domestic, social, political, legal, economic and even the religious sphere.¹⁵ In modern times in the Western World only the English common law has exhibited extreme harshness in dealing with the rights of women.

It was the advent of Our Lord that shocked men into new ideas about womanhood. Our Lord's attitude was "completely at variance with the views of both the Jewish Rabbi and the pagan philosopher. Ignoring all ideas of woman's subjection, and the conventions based on such notions, He treated woman as man's equal, morally and spiritually, in the matter of marriage and divorce; and He recognized her right as a rational being and a human personality to intellectual development and moral freedom."¹⁶ The author develops this proposition at some length. It is a favorite theme, but is treated here with more scholarly and apposite documentation than

¹⁴ *Philosophy*, XVIII (Apr., 1943), 53; quoted from "Ethics and Christian Ethics," by E. S. Waterhouse.

¹⁵ "The Status of the Jewish Woman at the Time of Christ," *Journal of Religious Instruction*, XIV (Sept., 1943), 53-62.

¹⁶ *Ibid.* (Nov., 1943), 295-303.

has come to my attention elsewhere. St. Paul expressed the fundamental principle of Our Lord's teaching when he wrote to the Galatians (3: 28): "All you who have been baptized in Christ's name, have put on the person of Christ: no more Jew or Gentile, no more slave and freeman, no more male and female; you are all one person in Jesus Christ."¹⁷

How could Our Lord do otherwise than extol the virtue of womanhood, when he had chosen Mary for the honor of being His own mother, the mother of God. She has ever been the symbol of chastity for Christian men and women. Her vow of virginity, traditionally accepted by Catholics, is ably defended against a few modern objectors by Father John J. Collins, S.J., in "Our Lady's Vow of Virginity (Luke 1: 34)."¹⁸ He shows that the esteem of virginity was not unheard of amongst the Jews at the time of Christ, and that in any case the exceptional character of Our Lady's calling—to be the Mother of God—explains her sacrifice of ordinary motherhood. The real "emancipation" of women began with her dignity and Our Lord's teaching. The pure ideals of Patristic times, of true chivalry, and of Catholic youth today can be traced to the pre-eminence of Our Lady, and the elevation of womanhood by her Son.

There is a modern misconception which sometimes identifies morality with purity. I mentioned a work in these pages three years ago which disposed of this error: *Der Primat der Liebe*—the primacy of love as opposed to the primacy of chastity.¹⁹ But modern usage continues at times to confuse sex morality with all morality. William Cecil Headrick, in "Morals: Aspects and Prospects," uses the word "morals" as almost a synonym for chastity.²⁰ After talking of "upset established patterns of moral conduct," and betraying some conventional misunderstandings of the meaning and value of purity, he concludes that the future of American moral standards looks bright. He makes a constructive suggestion when he advocates younger marriages. I was surprised in Italy, at an audience which the Pope gave to newlyweds, to mark their relatively advanced years. Later experience has convinced me that a serious danger to chastity exists in our own country on this score, due to the educational system and the economic set-up. Not hasty marriages, but much earlier ones are of prime importance from the point of view of purity, of true self-giving love, and of the future good of the race.

There are other thinkers who throw aside the idea that personal purity

¹⁷ Translation from Ronald Knox's new version of the *New Testament* (New York: Sheed and Ward, 1944).

¹⁸ *Catholic Biblical Quarterly*, V (Oct., 1943), 371-80.

¹⁹ *THEOLOGICAL STUDIES*, III (Dec., 1941), 538.

²⁰ *Current History*, VII (Sept., 1944), 181-85.

is a fundamental moral ideal. They have deserted or have never known Christianity, but their voice is strong. There is a radical antithesis between most non-Christian thought and feeling, and the unanimous spirit of Catholic Christianity on the subject of purity. Arnold Lunn tells of an occasion when he could not get a Protestant minister of his acquaintance to admit that fornication is always wrong. It depended on "the views of the persons concerned."

The reviewing of modern literature, most of which is non-Christian in outlook, presents a serious problem for Catholics whose job requires them to direct publicly the reading of others, or at least to pass public literary judgment from a Catholic point of view on the current productions. Father Harold C. Gardiner, S.J., literary critic of *America*, has written a pamphlet to meet this problem: *Tenets for Readers and Reviewers*.²¹ It contains five principles for the moral evaluation of books, especially novels. The first, "Objective Charity," calls for a charitable treatment of the author himself. The book is to be reviewed, not the author. The second: "Parts do not condemn the whole." Although one could hardly assent to the implication that the axiom "Bonum ex integra causa, malum ex quocumque defectu" is merely a metaphysical and not a moral principle, one can readily agree with Father Gardiner that defects or flaws in a book do not necessarily make it worthy of complete condemnation. A human act is "malus ex quocumque defectu," and the reading of a book is a series of human acts any one of which may be vitiated, but to apply the axiom to the book itself only causes moral confusion. The difficulty practically is in deciding when the flaws in a book are so numerous or so important that the whole book can no longer be recommended at all. I would agree unhesitatingly that *A Tree Grows in Brooklyn* does not merit any such general condemnation.

Neither would I agree that a book of that type must be considered as simply condemned by the 1927 instruction of the Holy Office on sensual and sensual-mystical literature.²² Father Kilian J. Henrich, O.F.M.Cap., contends that from this instruction "... it appears that a classification of objectionable books as spotted, for adults and the educated, cannot be maintained, because these discriminations are based on excuses which are invalid. The objectionable parts of such books vitiate the entire material of the books, since the good cannot be had without the bad. . . . The Holy Office clearly disapproves of all excuses and subterfuges sometimes found

²¹ New York: America Press, 1944.

²² AAS, XIX (1927), 186-89; translated by Bouscaren in *Canon Law Digest*, I, under canon 1399.

in Catholic publications or issued in pamphlet form palliating and compromising with evil in books."²³ Father Hennrich has found a great deal more in this instruction than I can find in it.²⁴ His interpretation of it, and of the problem itself, seems oversimplified to me. His object is to put an end to compromise and settle the whole problem with one sweeping generalization. I wish that the solution of moral problems were as obnoxious to complete simplification as he appears to consider this one.²⁵

The third principle is that "Sin is to be recognized as such," at least "in the minimum sense of seeing in it an element of confusion, discord, and the basis of conflict." This way of putting it does not seem to demand that the author recognize moral evil, which alone, after all, is sin as such. The fact is that many authors do not recognize it, or write as though they did not. The result is that their work is permeated with a non-Christian, implicitly anti-Christian atmosphere and philosophy. I am sure that Father Gardiner and I would agree on the dangers involved in reading material of this kind. He points them out in the pamphlet. Father John S. Kennedy, too, has portrayed them effectively in "Our People's Reading."²⁶ The Fathers of the Church did not mince matters in dealing with the pagan literature of their own and earlier times. They were dealing as we are today, all too often, with the enemy. The radical opposition between the Christian view of life and that of a great deal of modern literature is all too apparent.

²³ *Homiletic and Pastoral Review*, XLV (Nov., 1944), 117-21. This article gives in English the entire text of the instruction referred to above.

²⁴ Father Bouscaren's translation of the Instruction, made use of by Father Hennrich, reads at one point: "...all books which are *tainted* by immorality, and which of set purpose or openly attack the integrity of morals..." The Latin reads: "...libri pravitare *infecti*, qui morum integritatem data opera vel ex professo laederent..." (Italics mine)

²⁵ Father Hennrich does not refer to Father Gardiner's pamphlet by name nor does he say explicitly that this pamphlet contains the kind of excuses and subterfuges which the Instruction of the Holy Office disapproves. But it is entirely reasonable to surmise that this is what he has in mind. If so, why not say so, giving the reasons for the accusation? Incidentally, his views seem to be at variance with the Instruction in one particular. He says: "To mention any spotted or condemned book in a Catholic periodical is often merely an incentive for many people to read the book." The Instruction says that Ordinaries "should not fail to denounce those books in their diocesan papers as condemned..." And later: "Ordinaries must not fail to declare openly... what books by name are forbidden by the law itself" and should even issue a decree specially prohibiting a book in some cases. Perhaps the author means that unmentionable books should be mentioned only by the bishops, who can give an authoritative decision as to how the law applies to them.

²⁶ *Ecclesiastical Review*, CX (Apr., 1944), 270-77.

In my opinion that opposition must be continually emphasized when it appears in current literature, in order to safeguard the multitudes of the unwary. It is the unhappy lot of the Catholic critic, it seems to me, that he must on principle find fault with, and point out dangerous defects in such a large proportion of the literature which is submitted to him for sympathetic treatment. And his task is not made any easier by those Catholics, some of whom should know better, who seem to see red and lose all sense of proportion as soon as the word sex is mentioned.

The fourth principle insists that there be "No Tempting Descriptions of Sin." This applies especially or more frequently in sexual matters, and the development of the point by Father Gardiner seems to me to be very judicious. The difficulty in these matters is the impossibility of estimating what is a temptation for the average individual. I think that professional celibates, as a class, are particularly unfitted for making the estimate. They may be average individuals in their class, but they are not in an average class. On the other hand professional critics and literary men also have their peculiar limitations. Their job is to read all sorts of things day in and day out. *Ab assuetis non fit passio*. There is some truth, therefore, in what Dr. Austen J. App says in his article: "How to Judge a Novel Ethically": "There is a way of judging a novel ethically. And this way is more the province of the literary critic than of the theologian."²⁷ But I would not agree that the practical appraisal of literary works with a view to morality was outside the province of the theologian. In his article, Dr. App lays down nine rules of criticism. His principles will probably stand up, but I shall not be surprised if some of his applications are criticized.

The fifth principle set forth by Father Gardiner is that it is not the function of fiction to teach. He points out the mistakes of those who look for too much of a direct moral lesson or direct instruction in works of art. The fact remains however that even literary books are powerful teachers, and that very many of them teach insidiously and powerfully what is not true. That is one of the reasons why we find novels on the Index, and, in the Code, principles of such generality that they apply to novels as well as other works. Father Gardiner concludes his very useful pamphlet by stating that a charitable, temperate judgment of books on the part of Catholics will not involve "yielding the outposts to the children of this world; it is a matter of knowing principles clearly and holding them tenaciously, but of being judicious in their application. Catholic critics and

²⁷ *Catholic Educational Review*, XLII (Oct., 1944), 463-74; cf. also, by the same author: "Presenting Sin and Temptation in Literature," *Catholic World*, CLVIII (Dec., 1943), 246-54.

readers must, to pull their weight, begin and continue, with God's help, to judge books on that basis."²⁸

An example of the sharp cleavage between Catholic thinking and that of most of their neighbors in the matter of purity came to public notice lately when the United States Health Service promoted an advertising campaign designed to reduce venereal disease. Protests by Catholic organizations forced the War Advertising Council to suspend its sponsorship of the campaign. The reason for the Catholic protests was the character of the campaign material, which included the broadcasting of the sentiment that there is no shame attached to venereal disease, and the high-pressured plea to talk about venereal disease everywhere, or at any time, and in all kinds of company. The *New Republic* remarks editorially that the Catholic organizations "say that they have stopped the campaign because they thought the advertising copy should talk more about the moral issues involved. The net effect, however, is to leave the public with the impression that Catholics are strangely calm about the danger of venereal disease. We cannot believe this is true. . . ."²⁹

An editorial in *Editor and Publisher* says that the churches are not much help, though they should be, in the matter of sexual information with a view to preventing disease. "The subject of venereal disease can no longer be taboo. It must be brought out into the open for discussion the same as any other important health problem. . . . We believe that the protesting groups in this controversy owe it to the Public Health Service to suggest an alternative campaign. . . ."³⁰ Editorialists who write like this are 1) "strangely calm" about the moral issues involved; 2) unaware of or unsympathetic with fundamental Catholic views on chastity; 3) mistaken in the idea that the Catholic Church has a vocation to prevent physical disease or an obligation to propose alternative medical plans for getting rid of disease; 4) completely oblivious of the immense contribution to public health which is made, especially by the Catholic Church, in the daily teaching, preaching, writing, and confessional counselling that intercourse of the unmarried is always and seriously sinful. The vast majority of cases of venereal infection (amongst all those who would be reached by the proposed advertising) are the result of illicit intercourse. Even medical authorities insist that the best and only completely safe way of avoiding

²⁸ Some practical problems regarding the permission university students need in order to read forbidden books in connection with their studies are treated by W. Conway in the *Irish Ecclesiastical Record*, LXIII (Mar., 1944), 199-200.

²⁹ *New Republic*, CXI (Oct. 9, 1944), 446, Editorial: "Catholics and Venereal Disease."

³⁰ *Editor and Publisher*, LXXVII (Sept. 30, 1944), 34, Editorial: "The V-D Campaign."

infection is continence. The Catholic Church makes her primary and appropriate contribution to every venereal disease campaign by preaching this continence as demanded by the law of God. It is not for us but for the medical authorities to propose an alternative medical plan. Catholicism is not a social service religion. If they propose a plan which is morally decent, as this one was not, they will not find Catholics slow to cooperate.

As an example of the kind of popular, but dignified and scientific teaching which Catholic moralists make use of to keep people from sexual contamination, I should like to mention again Father Gerald Kelly's outstanding pamphlet: *Modern Youth and Chastity*, now published for twenty-five cents by the Queen's Work Press. A non-Catholic judge of a juvenile court in a large city has this to say of it: "I have just finished *Modern Youth and Chastity*. It is a remarkable piece of work. It is so clear. By this I mean not only that the ideas are clearly expressed. I mean that the whole subject looks clear and clean like a seascape on a Northwest day. It's direct, simple, dignified, and inspiring. Of course it's a Catholic book and much of it rests squarely on Catholic belief. To me this made no difference for the words carried authority in themselves; and I should think no sincere young man or woman could read the book without recognizing its truth even if he did not accept the Authority of the Church. It's a strong and gentle book."

CONTRACEPTION

The well-organized campaign for "Planned Parenthood," under the honorary chairmanship of Margaret Sanger, continues to be one of the most powerful attacks on the chastity of the nation. The pamphlet publications contain the kind of non-moral emotional material which is well calculated to attract followers.³¹ On the back of a letter sent to clergymen there are mentioned fifteen titles on various aspects of planned parenthood which are selected from a list of fifty articles which appeared between July, 1943, and June, 1944, in national magazines. Some of these magazines, like *Readers' Digest*, *Time*, and *Woman's Home Companion*, have an immense popular circulation. One of the articles recommended is "The Catholics and Birth Control" by J. H. J. Upham, M.D., president of the Planned Parenthood Federation. It appeared in *American Mercury*, February, 1944, and is an unusually convincing confirmation of the suspicion that unfair misrepresentation of the Catholic position is part of the tactics of the birth-

³¹ For instance, *Dear Doctor* (Planned Parenthood Federation of America Inc., 501 Madison Ave., New York) contains excerpts from touching letters received from women in poor health.

controllers. A scientific article on the various methods of birth control was written by R. L. Dickinson, M.D., for the December, 1943, issue of the *Journal of the American Medical Association*: "Contraceptive Control." It contains much of the same material that was published previously, with 50 illustrations, under the title, *Techniques of Contraception Control*.³² This 56-page pamphlet is also issued by the Planned Parenthood Federation, and was sent through the mails to doctors. It contains a scientific description of all the known effective means of preventing conception, with advice as to the indications for use. It is meant for practicing physicians.

Among the favorite points of propaganda used by birth-controllers in the past has been the claim that infants born after short intervals had a markedly high rate of mortality from all causes. This claim can now no longer be made. Dr. Nicholas J. Eastman, professor of obstetrics at Johns Hopkins, has conducted an investigation based on the case histories of 5,158 obstetric patients. His results show that "infants born from 12 to 24 months after a previous viable delivery (that is during the second year) have at least as low a stillbirth and neo-natal mortality as do infants born after longer intervals." He shows further that "the longer the interval between birth, the more likely the mother is to suffer from some form of hypertensive toxemia of pregnancy." He concludes:

Child spacing, by definition means maternal aging; and after a certain optimum period, probably in the early twenties, maternal aging means inevitably somewhat higher risks both to mother and child. All experience and all statistics support this statement. . . . Whatever advantage is gained by a rest period of several years between births seems to be offset, and in some respects more than counterbalanced, by the aging factor. For the best maternal and fetal outlook we are inclined to believe that youth is a better ally than child spacing.³³

The decline of the birth rate in this country, and in other industrial nations, is a source of deep concern to almost all population experts. (The opinion of Guy Irving Burch, that four-child families would be bad for the United States, is exceptional). "The western races are facing an increased degree of sterility amongst women so devastating in its potential effects that it is likely in the near future to become the main issue of social policy."³⁴ The Catholic birth rate is declining, too, though it is difficult to estimate

³² A practical manual issued by the Planned Parenthood Federation of America Inc. (2d. ed.; Baltimore: Williams and Wilkins Co., 1942).

³³ *American Journal of Obstetrics and Gynecology*, XLVII (Apr., 1944), as condensed in the *Catholic Digest*, VIII (July, 1944), 71-73.

³⁴ H. I. Sinclair, "The Future of Our Population," *New Zealand Tablet*, Feb. 16, 1944, and reprinted in *The Catholic Mind*, XLII (July, 1944), 401-6.

the amount of this decline as against the general decline.³⁵ And according to Wilson H. Grabill of the U. S. Census Bureau, we must be ready after the war for a continued decline "unless there are some basic changes in the pattern of family limitation, which has continued even during the war-time 'baby-boom.' The events of the last few years should not lull us with a false sense that the problems of a declining birth rate have been solved."³⁶

But Catholics sometimes speak as though the whole problem of declining birth rate were due to the deliberate practice of birth control. A corrective to this exaggerated point of view is supplied by Fr. J. L. Russell, S.J., in "Non-Voluntary Factors in Population Decline."³⁷ The problem is by no means a simple one. And for Catholic apologists it is made more complex by the endorsement given by many Catholic authorities to the use of the safe period as a means of birth prevention. If we are going to point to the declining birth rate as an argument against contraception, we should use the same argument against periodic continence—especially if, as some have claimed, this latter method of prevention is equally effective with the forbidden methods. A clinical study by Stephen Fleck, Elizabeth F. Snedeker, and John Rock, made a few years ago, concluded "that the safe-period method constitutes a workable form of contraception for a selected group of women. On the other hand, it is doubtful whether the method is reliable enough for individual cases in which contraception is an essential safeguard of the patients' health."³⁸

The same Dr. Rock, in conjunction with Dr. Arthur T. Hertig, has written: "Information Regarding the Time of Human Ovulation Derived from a Study of 3 Unfertilized and 11 Fertilized Ova."³⁹ The data they secured from this study "indicate that ovulation takes place about 14 days before the first day of the next expected period." This study, therefore, is a further confirmation of the theories of Ogino and Knaus.

The whole question of the morality of using the safe period received thorough study by Fr. Orville N. Griese in his doctoral dissertation, *The Morality of Periodic Continence*.⁴⁰ He has collected all the authorities and

³⁵ Sister Leo Marie, O. P., "Is the Catholic Birth Rate Declining?," *American Catholic Sociological Review*, V (Oct., 1944), 177-84.

³⁶ "Effect of the War on the Birth Rate and Postwar Fertility Prospects," *American Journal of Sociology*, L (Sept., 1944), 107-11.

³⁷ *Clergy Review*, XXIV (Sept., 1944), 385-94; this article is well worth reading.

³⁸ "The Contraceptive Safe Period. A Clinical Study," *New England Journal of Medicine*, CCXXIII (1940), 1005-9. Dr. Rock was one of the ten initiating petitioners for the birth control amendment in Massachusetts a few years ago. The Catholic hierarchy and Catholics generally opposed the amendment.

³⁹ *American Journal of Obstetrics and Gynecology*, XLVII (Mar., 1944), 343-56.

⁴⁰ Washington, D. C.: Catholic University of America Press, 1942.

studied the question from many angles. Hence his work, with its references to practically all the relevant modern material, is very valuable to the moralist. One of the principal conclusions of his study is put in the form of this thesis: "The practice of periodic continence according to the 'safe-period' method, considered as a system in marital relations is objectively unlawful,—although it can be justified in individual cases if there is a just cause. In other words, such a practice, objectively considered, is *per se illicitum, per accidens autem licitum.*" This thesis, though supported by arguments drawn from scripture, the Fathers, and from theological science, represents a minority view among present-day theologians. It seems to me that the arguments adduced prove too much, especially that drawn from the Fathers. For instance, St. Augustine and many others looked at the use of marriage in such a way that they condemned, sometimes very severely, the use of marriage during pregnancy, and considered intercourse to be venially sinful for the party who employed it as a remedy for concupiscence when for any reason procreation was impossible or excluded from the intent. Furthermore, St. Augustine spoke of this very practice of using the safe period to avoid conception, and condemned it so strongly (making a harlot of one's wife, etc.) that he must have considered it mortally sinful.^{40a} If St. Augustine was right in this matter, modern theologians will have to change a great many of their practical conclusions.

The whole question is intimately bound up with the fundamental meaning and content of the proposition that "the primary end of marriage is procreation, and the other ends are subordinate to it." We shall return to this point later. But apart from all disputes and problems, Father Griese's work deserves high praise, especially because it reminds the theologians so convincingly that the Catholic ideal of marriage is fertility, and warns against the abuse of broadcasting the safe period. Vermeersch pointed out how anomalous it is for priests to become "the counsellors of infertility." Finally there is the obvious danger that the indiscriminating public, and even those who are well able to discriminate, will fail to see the moral difference between the forbidden methods of birth control and the safe period technique. It is rather difficult for Catholics to be in good faith on the question of birth control, and if they are, it would only be in an extremely rare case that the confessor could leave them in good faith. Father Connell expounds these points clearly in answer to a question.⁴¹ But the imprudent broadcasting of the safe period doctrine might easily increase the number of those Catholics "who cannot see the Church's position," or who

^{40a} *De moribus Manichaeorum*, II, 18, 65 (PL, XXXII, 1373).

⁴¹ *Ecclesiastical Review*, CXI (Sept., 1944), 229-30.

really become convinced that birth control is permissible. The result would be more headaches for confessors who realize the seriousness of their obligations in this matter, and more pretexts for those confessors (if there are any) who, despite the solemn words of Pius XI, continue to keep silence, or connive at this frequently confessed sin, by vague and inconclusive answers to the penitents' questions.⁴²

THE CATHOLIC DOCTOR

The appearance of a new edition of Father A. Bonnar's splendid book, *The Catholic Doctor*, makes timely a review of some moral problems which in various ways are connected with the practice of medicine.⁴³

"The Catholic Attitude to Psychiatry" is discussed by an Irish priest.⁴⁴ He insists that the priest recognize the competent psychiatrist in his own field, avoid the mistake of invading that field himself, and guard against the moral dangers which are often involved in treatment according to the principles of the "New Psychology." Another priest has written a small book, *Catholic Thought and Modern Psychology*, which is "an attempt to bring the Analytical Psychology of Jung into harmony with Catholic thought." A reviewer in *Irish Ecclesiastical Record* believes that the attempt is unsuccessful, that "the application of the theory in the field of Biblical exegesis leads to startling results," and that "the scholastic tenets are inaccurately expressed."⁴⁵

It cannot be stated too often that there are moral dangers inherent in the psychoanalytic method. On the other hand, priests who care for souls have frequent need of referring them to competent psychiatrists. Among those who often need such treatment are alcoholics. The School of Alcohol Studies of the Laboratory of Applied Physiology at Yale University conducted its second summer session during July and August this year. It is noteworthy that the session took place at the Divinity School, and that one-third of the student body (of 147) were pastors of churches. Among the student body there were also educators, lawyers, physicians, social workers, and members of Alcoholics Anonymous. The Federal Council of Churches aided the school in securing strong church representation in the

⁴² Fr. Joseph A. M. Quigley, "The Use of Contraceptives," *Ecclesiastical Review*, CIX (Nov., 1943), 386-89, discusses in answer to a question the conditions under which a husband may co-operate with his wife when he knows she makes use of contraceptives.

⁴³ A. Bonnar, O.F.M., *The Catholic Doctor* (3d ed.; London: Burns, Oates and Washbourne, 1944). In this country the book was published by Kenedy, New York, 1938.

⁴⁴ Rev. J. McLoughlin in *Irish Ecclesiastical Record*, LXIII (June, 1944), 371-76.

⁴⁵ W. P. Wittcutt, *Catholic Thought and Modern Psychology* (London: Burns, Oates and Washbourne); reviewed in the *Irish Ecclesiastical Record*, LXIV, (July, 1944), 70.

summer-school student body.⁴⁶ It is very difficult, especially since the war, to find Catholic psychiatrists to whom to refer penitents whose difficulties are on the mental side. Frequently they will not go to a non-Catholic, or the problem is such that the confessor is hesitant about entrusting the case to a non-Catholic. It would be of immense advantage to morality if our Catholic medical schools could attract more Catholic students to the study of psychiatry. The shortage of Catholic psychiatrists is acute, and the war will increase the number of mental sufferers.⁴⁷

A problem which is new to me is raised by the publication in *Science* this summer of a report of artificial human fertilization.⁴⁸ "In Vitro Fertilization and Cleavage of Human Ovarian Eggs," by Dr. John Rock and Dr. Miriam F. Menkin, describes how eggs were removed from human patients (in the course of surgery for other purposes) and exposed to spermatozoa under the microscope. The method of obtaining the spermatozoa is not described. In the course of the investigations, extending over six years, "nearly 800 human follicular eggs have been isolated and studied . . . , of these 138 have been observed after exposure to spermatozoa." In three or four cases the experimenters believe they have been successful in bringing about the fertilization under the microscope. Two eggs reached the two-cell stage, and two reached the three-cell stage, but one of these latter is not described in the report. "We observed two eggs in the two-cell stage 40½ and 45 hours respectively, following contact with spermatozoa. . . . Our two eggs [the other two] were seen in the three-cell stage 46 hours after exposure to the spermatozoa."

These experiments were quickly reported in more popular publications, such as *Science News Letter* and *Newsweek*.⁴⁹ Father Joseph P. Donovan, C.M., roundly condemns the experiment, in answer to a question. He says: "Test-tube conception and test-tube murder are the last word of a dying civilization."⁵⁰ It was not clear to me from the description that the

⁴⁶ "Report on School of Alcohol Studies," *Federal Council Bulletin*, XXVII (Sept., 1944), 9.

⁴⁷ Commander F. J. Braceland, "Psychiatric Problems in War and Peace," *America*, LXXI (Sept. 23, 1944), 588. Macmillan announces the following important work: *Mental Abnormality and Crime*, English Studies in Criminal Science, edited by L. Radzinowicz, LL.D., and J. W. C. Turner, M.A., LL.B. The publisher's blurb calls it "an authoritative book covering the whole field of the relationship between mental defectiveness and crime, published under the auspices of the Cambridge (England) Department of Criminal Science but universal in its application. Charts. \$5.00."

⁴⁸ *Science*, C (Aug. 4, 1944), 105-7.

⁴⁹ "Artificial Fertilization," *Science News Letter*, XLVI (Aug. 12, 1944), 99; "Laboratory Conception," in *Newsweek*, XXIV (Aug. 14, 1944), 74.

⁵⁰ *Homiletic and Pastoral Review*, XLV (Oct., 1944), 59-60.

experimenters purposely put an end to whatever life there was in the fertilized eggs. I thought they tried to keep them alive as long as they could, but knew with certainty that they could not live long.

What is to be said of the morality of this experimentation? The question is of peculiar importance because the principal experimenter, Dr. John Rock, is a well known Catholic. First of all, if the spermatozoa are obtained by masturbation, as they usually are for experimental purposes, that part of the procedure is unquestionably and intrinsically wrong. All Catholic moralists are unanimous on the point, and Roman responses confirm the doctrine so clearly that one would have to refuse absolution to an experimenter who intended to obtain spermatozoa in this way. As to the removal of eggs from the woman during the course of an operation for just this purpose, though not a strict mutilation, it is doubtful whether mere experimentation could justify it. If the eggs are removed in the course of surgery necessary for some other purpose, the further question arises whether the patients' permission has been asked. I feel sure that many of the patients referred to as "the surgical material available at the Free Hospital for Women" would object to having any such experimentation done with the products of their ovaries. And certainly any Catholic patient who knew that the teachings of Catholic theology condemned the experimentation as immoral would have a right and even a duty to object against such use being made of her organs and their products. I do not know what the practice is at the Brookline Free Hospital for Women. It is so common nowadays for certain doctors, even under the most respectable auspices, to invade the rights of patients, especially charity cases, take their blood for purely experimental purposes without their permission, or otherwise experiment upon them, that this phase of the subject may not even have occurred to the experimenters. But to obtain these eggs, for such a purpose, without the patient's intelligent consent, would be an obviously immoral practice.

As regards the experiment itself, I am indebted to Father Gerald Kelly, S.J., for the following opinion, in which I concur.

Even when fertilization takes place within the body of the mother, we do not know with speculative certitude just when the human soul is infused. But as a practical rule we must consider that the soul is infused at the moment fertilization takes place, and the fertilized ovum must be treated as a human being. It does not necessarily follow, of course, that, if the soul is infused at the moment of fertilization within the mother, it is also infused when fertilization is brought about *in vitro*—because it may be that, according to God's providence, the soul

is created only when the ovum is fertilized within the mother. However, we simply do not know about this, and it seems to me that we must follow the same practical principle: namely, human generation begins with the union of ovum and sperm—that is, when the union of these two produces a new living thing, that thing must be considered as human. In other words, as far as we know, the union of ovum and sperm in such a way that a new living thing is produced is the first step in human generation—and this uniting of ovum and sperm must be termed a *human generative act*.

It seems to me that we have to hold to the foregoing principle until it is proved that human life is not present and will not be present in the ovum fertilized *in vitro*. And granted this principle, such fertilization *in vitro* presents two grave moral problems:

1) Being a generative act, it is never permissible except in the case of two persons who are legitimately man and wife. In other words, if the ovum and sperm are not contributed by two people who are mutually and respectively wife and husband, the process is just as unjustifiable as fornication.⁵¹

2) Even in the case of husband and wife, a generative act of this kind cannot be considered as permissible. It seems to be about the same thing as an abortion. Abortion is the expulsion of a non-viable fetus; fertilization *in vitro* simply pushes the 'expulsion' back to the very beginning. It seems to me that if it is intrinsically evil to perform an act the direct object of which is to remove a fetus from its natural habitat to an atmosphere in which it cannot live, it is *a fortiori* intrinsically evil to start human life in conditions which *per se* militate against survival. In conclusion, therefore, the experiment is either wrong or suspect in what concerns the manner of obtaining the ovum and sperm—and it seems to be definitely and intrinsically wrong in itself.

I will be very much surprised if any Catholic moralist can find any justification for this kind of experimentation. The only thing moralists might dispute would be whether such experimenters should be refused the reception of the sacraments or whether they could somehow or other be absolved until ecclesiastical authority has passed on this particular point.

Dr. Cornelius T. O'Connor and Dr. Arthur J. Gorman of St. Elizabeth's Hospital, Boston, have written a brief paper, "The Treatment of Hydrocephalus in Cephalic Presentation."⁵²

⁵¹ Cf. Gerald Kelly, S. J., "The Morality of Artificial Fecundation," *Ecclesiastical Review*, CI (Aug., 1939), 109-18, develops the argument. A sensational and demoralizing account of a case of artificial fecundation appears in *Life Story Magazine*, November, 1944: "I Had a Test-tube Baby," by an anonymous author. The magazine is the "true confession" type, and as is well known a great many of the "true" stories in these magazines are made up out of whole cloth. I call attention to this cheap performance merely to emphasize the fact that this type of experimentation easily lends itself to abuse.

⁵² *American Journal of Obstetrics and Gynecology*, XLIII (March, 1942), 521-24.

The treatment they recommend is "intraventricular tap and drainage per vaginam with a spinal needle." The claim is made that this treatment is safer and simpler than those recommended in the current texts. But the principal point of interest for the moralist is that their technique apparently does not conflict with any principle of Catholic teaching. And since it is simple enough to be used by house officers and general practitioners, who still deliver most women, it is very useful for Catholic doctors to be made aware of it. The moralist does not attempt to decide, of course, on the medical advantage of one technique over another. But when the question is whether or not a given technique amounts to direct killing or not, then it is the province of the moralist who understands all the physical facts to pass judgment as to the morality. The solicitude of the generality of Catholic medical men to confine their practice within the bounds that Catholic moral principles may set is well illustrated by this excellent contribution.

Dr. O'Connor proposes another very interesting problem in obstetrics, one on which he would welcome the comments of moralists.

Is it permissible when a repeat cesarean section is performed, to perform, in addition, a hysterectomy on the grounds that the cesarean section *and hysterectomy* are twice as safe, i.e. had a mortality for the mother only one-half as great as that of the cesarean section *without* the removal of the uterus?

Another way of putting the question is:

May the patient who is coming up for her third, fourth, or fifth cesarean section, and who already has a duty to her living children, select the more radical operation because it is safer *for her* [then and there], even though such operation does entail the removal of the uterus and a resulting sterility? Or must this patient subject herself to an operation which carries twice the mortality rate for the sake of preserving the child-bearing function?

Dr. O'Connor's study of the literature convinces him that as a matter of fact the radical operation would involve only 1% mortality, whereas the conservative one means 2% mortality at best, and in some circumstances a great deal more. Besides, the convalescences after the radical operation are very much smoother. In certain classes of patients, e.g. those suffering from nephritis, the cesarean hysterectomy is even more favorable from the standpoint of mortality. Naturally, any discussion of this problem by moralists must take for granted the supposition of the case, namely, that the radical operation is *de facto* twice as safe for the mother as far as danger of death is concerned, and considerably safer as far as complications during convalescence are concerned. It is to be noted also that Dr. O'Connor

envisages a case in which a woman has already had children, to whom she owes maternal duties.

The first question is whether such a hysterectomy is a direct sterilization (of the kind forbidden by the decree of the Holy Office in 1940). Obviously not. The operation is not performed in order to make the patient sterile, but in order to guard her own health here and now. Everyone agrees, I think, that neither the decree of 1940 nor the accepted principles forbid an operation which extirpates the testes, ovaries, tubes, or uterus, if its object is to safeguard the patient's present health, and if it does not attain this object by means of making future conception impossible.

The question of the liceity of the operation, therefore, seems to reduce itself to estimating whether there is a sufficiently grave cause in the circumstances to permit the loss of the child-bearing function. Is the difference between 2% mortality and 1% mortality a serious matter? If one were to look at the question from the opposite side one might say: the conservative technique is 98% safe and the radical procedure is 99% safe. This very slight increase in safety is not enough to justify the sterilization. But to a surgeon the difference between 1% and 2% mortality is a very important, in fact a decisive difference. "Twice as good a chance to survive" is also a very big thing to the patient, and that is exactly what is represented by the difference between 1% and 2% mortality. Theologians recognize that a 1% danger of death is a very real danger, and teach that persons who are undergoing an operation involving that amount of danger, or even less, are to be given the sacraments as persons who are truly in danger of death. Such persons are entitled to all the privileges which canon law allows *in periculo mortis*. Now, it seems to me that a danger of death twice as great as that is objectively a very important and serious matter, constituting a sufficient reason for permitting sterilization. It does not take as grave a cause to permit sterilization as it does to permit an operation the indirect effect of which would be the loss of an innocent life. In the latter case, only a high degree of necessity in order to save the life of one, e.g., the mother, would justify the loss of the child's life.

Besides, since there is no question of direct sterilization, it is perfectly permissible, in estimating proportionate cause, to include the consideration that the woman has already had children to whom she has duties. In other words, it requires a less serious cause to permit the sterilization of one who has already done her part in reproducing the race than of one who has never had children. Furthermore, a mother with duties toward living children has an added obligation to safeguard her life and health so that she may care for them.

My opinion on the abstract question, therefore, is that the operation is permissible. In concrete practice I would make this qualification: 1) The patient must consent to the more radical procedure, realizing that it involves sterility. 2) The doctor must judge as best he can, that in this particular case the radical procedure is twice as safe. It does not follow from the fact that over-all statistics show a 1% as against a 2% mortality that therefore the danger is only half as great in a given case. For the physician may know enough about this particular patient's condition, or may know enough about his own skill and other such circumstances, to make the general statistics inapplicable to this patient. But when the general statistical probabilities are the best knowledge he has to go by, then it seems to me that the difference of 1% and 2% mortality is sufficient reason for permitting sterilization. I propose this opinion tentatively, and would welcome opinions of moralists on the subject.

In the *Homiletic*, Fr. Donovan answers two questions on sterilization after several cesarean pregnancies.⁵³ The first of them (the second is very similar) reads: "A married woman has had several cesarean sections and is soon to have another and competent doctors tell her she cannot have another child without evident danger to life. Is this woman morally free to follow the advice of physicians and let herself be sterilized when the next section is performed?" Fr. Donovan answers in the negative, because the purpose of the operation is contraceptive. A somewhat similar case was answered along the same lines in these pages two years ago.⁵⁴ The question was raised whether it would be licit to excise a uterus which is in such a weakened and abnormal or pathological condition due to previous injuries in childbirth, that another pregnancy would result in grave danger to the mother's life. By way of rebuttal to my position that such excision would be direct contraceptive sterilization, because its purpose was to prevent future conceptions, the following line of analogies has been suggested to me for the sake of argument by a professor of moral theology. "Suppose a man's eye is diseased in such a way that he must always keep it closed and never use it. When he opens it or lets light into it, the result is painful and dangerous. Would you allow him to remove this eye, useless for its natural purposes, and put in an artificial one? Would you let a man remove both his eyes in such circumstances? Suppose a doctor in the course of an operation discovers that one Fallopian tube is so weakened and diseased that it cannot function normally, and in case of a future pregnancy

⁵³ *Homiletic and Pastoral Review*, XLIV (Dec., 1943), 216; and XLIV (May, 1944), 609.

⁵⁴ THEOLOGICAL STUDIES, III (Dec., 1942), 592-93.

would be a serious threat to the mother. May he take it out, leaving the other tube intact? And suppose that a few years later, operating again on the same patient, he finds the other tube in the same condition, may he take it out?"

Whatever may be said about the operation on the eyes or on the one Fallopian tube, it still seems to me that once you get to the final tube, and remove it in order to avoid the dangers which will accompany future conception, you have a case of the direct sterilization condemned by the decree of 1940, and generally by moralists. The supposition implicit in the above analogies is that the principles which apply to mutilation in general apply equally to the mutilation of the generative organs. I do not think this point is obvious. In connection with the transplantation of organs, Father Bert Cunningham comes to the conclusion that such mutilations for the good of the neighbor are permissible generally, but he makes an important exception. Although he would permit the transplanting of one ovary, or one testicle, he would not permit the removal of both because it involves direct sterilization and would seem to contravene the 1940 decree.

We must remember that any infringement of the sex powers involves the danger of abuse. Everything connected with sex is surrounded with special laws which guard against any infringement of its domain. . . . From the arguments previously enunciated it would seem to follow that a man could allow the direct mutilation of his sex organs to the extent of sterilization for the good of the neighbor, just as he may permit or effect direct mutilation of other members when such an action is ordained towards the good of the neighbor. However, in view of the pronouncement of the Holy Office one cannot state this as an absolute conclusion. Because the Church, authentically interpreting the Natural Law, determines that direct sterilization is illicit, it would seem safer to maintain that a donation towards an isoplast which effectively renders the donor sterile is illicit.⁵⁵

Father Cunningham's doctoral dissertation, *The Morality of Organic Transplantation*, published this year, will be ready for distribution early in 1945. It discusses transplantations of various organs, especially corneas and ovaries. After a careful investigation of the notion of mutilation in theological history, the author formulates his definition of it: "Grave mutilation in the strict sense is present when, either by excision or by some equivalent wounding action, a distinct organ or member of the body is removed or its distinctive function is inhibited totally." The second chapter gives the "Traditional Teaching on the Morality of Mutilation." Then follow "The Surgical Aspects of Transplantation" and "The Morality

⁵⁵ *The Morality of Organic Transplantation*, by Rev. Bert J. Cunningham, C. M. (Washington, D. C.: Catholic University of America Press, 1944).

of Homologous Transplantation." This chapter gives the heart of the author's argumentation in favor of the general liceity of such transplants when done out of charity for the neighbor, or, with sufficient reason, for other causes. "*Per se operations which involve the transplantation of organs or of sections thereof are licit; they involve no opposition to the natural or supernatural moral law.*" But two exceptions are noted: an operation which would expose the donor to certain or very probable death, and the directly sterilizing procedure mentioned above. This fine study will be useful to every moralist, for its review of the principles and for its practical, solid treatment of a modern problem hitherto largely neglected.

A question submitted to the *Ecclesiastical Review* suggests many problems which occur when physicians are public officials or are under orders in the Army and Navy. The question is: "In a state in which civil law prescribes the sterilization of certain classes of the mentally defective, may a Catholic doctor, in the service of the state, perform this operation if otherwise he would be dismissed from a lucrative position?" The answer, of course, is that this is illicit in all circumstances.⁵⁶ But what if there were question of sterilizing a criminal as a punishment for crime, let us say in a State where the intent of the sterilization law is partly punitive, partly eugenic. Could a Catholic doctor carry out the sentence of the judge, not intending the operation as a eugenic procedure but merely in its punitive aspect? His argument would be that punitive sterilization has not been condemned by the Church. In fact, Pius XI took special pains not to condemn it in the Encyclical *Casti Connubii*. I merely suggest this as an example of a problem which might confront a State medical officer.

Another example is this: Army and Navy regulations *require* medical officers to give prophylactic treatment to Army and Navy personnel when they request it after exposure. Suppose a WAC or a WAVE presents herself at the "pro" station and asks for treatment. The prophylaxis, which must be applied within two hours to be effective at all (and the sooner the better), is also contraceptive in its effect. May the medical officer, in order to avoid court-martial, make use of the principle of the double effect and apply the prophylaxis, merely permitting the contraceptive effect? In an answer in the *Irish Ecclesiastical Record*, Father J. McCarthy seems to have no doubt that the principle of the double effect is inapplicable in a similar case. He quotes Davis: "Satis absurde dicitur uxorem posse licite lotionem adhibere ad enecandum germen syphiliticum quod simul cum viri semine, utique syphilitici, vaginam intrat, nam medicamentum quod germen syphiliticum enecat semen etiam enecat, et semen prius enecatur quoniam

⁵⁶ *Ecclesiastical Review*, CX (Feb., 1944), 147.

est germinis syphilitici vehiculum."⁵⁷ I leave it to the doctors to decide whether the entire danger of contagion comes from syphilitic germs contained in the seed, and to decide whether the living spermatozoa or the body of the seminal fluid, which is not alive in any sense, is the vehicle of the syphilitic germ. But even supposing that the sole danger of contagion comes from the germs carried by the spermatozoa, I still see no reason why the application of a prophylactic remedy is necessarily and intrinsically immoral. There is a direct and immediate attack on disease germs. The killing of the spermatozoa is equally immediate, but I cannot see that it is a means to the prophylaxis. It seems to be merely an unavoidable concomitant. And so, in a case where the other requirements of the principle of the double effect are fulfilled, perhaps it would be permissible to make use of a remedy which was unavoidably contraceptive too. Thus the Army doctor whose official duty requires him to administer such a remedy might be excused.

But how about the woman? I believe that when she sins, foreseeing the necessity of prophylaxis which will also be contraceptive, she incurs the guilt of contraception. And in practice in a case like the one described above, I believe her intent would be directly contraceptive anyway in almost every case. The moral problem in her case is a straightforward one—onanistic fornication.

Medical officers on Army and Navy posts also have to care for officers' wives at times, and are asked to give contraceptive advice, or even to fit a contraceptive diaphragm. To comply with such a request would always be wrong. No excuse of official orders would justify such cooperation in contraception. It seems to be formal cooperation.

Another problem arises when a medical officer in charge of venereal disease is required to carry out official orders and policies in this matter. It is part of the official policy apparently to urge continence as the best preventive, but then to give advice and instruction as to the best methods of prophylaxis in case of exposure. In practice the policy sometimes degenerates. One publication at a southern Army camp contained an insert, composed by the medical officers, which included the slogan, "By continence or prophylaxis, let's all help to beat the Axis!" The method that medical officers are expected to advise includes the wearing of a condom, and they are supposed to give detailed instructions how to use it effectively and dispose of it safely, besides, of course, being required to keep a supply

⁵⁷ Davis, *Moral and Pastoral Theology*, IV, 252 (p. 248 in the first edition); quoted in *Irish Ecclesiastical Record*, LXI (Apr., 1943), 267-68. And compare *THEOLOGICAL STUDIES*, IV (Dec., 1943), 581-82.

of condoms always available, and to make known the availability to men going on leave. How can it ever be permissible to advise anyone (even if he is already determined to sin) to sin onanistically? If there is any way here of avoiding the clash between moral principles and Army and Navy practice, it escapes me.

A final difficulty already encountered by some of our Catholic medical officers in the service is that of controlling or regulating prostitution. An officer in charge of the venereal disease program may have it in his power to put the red light district, if there is one, off bounds. But he may also feel that such a procedure will increase the disease rate because it disperses the prostitutes and makes it impossible to insure the necessary prophylactic measures. Hence the question arises whether he may passively tolerate the increase of sin for the sake of decreasing the incidence of disease. His obligation to prevent the disease (by legitimate means) is one of justice. His obligation of preventing the sins of the men is one of charity and chastity; it is not part of his office, except as a man and a Christian. And so I do not believe any categorical answer can be given to the question when it is put in that general form. I can imagine circumstances where a medical officer would not be obliged to intervene positively by putting the houses off bounds.

But, generally speaking, it seems to be the experience of our officials that toleration of "regulated" prostitution does not lower but raises the disease rate.

The Navy Department in 1917 discovered that the venereal rate for the marines stationed in Haiti was 170.56 per 1000. Officers determined to take action and set up a regulated medically supervised area which was known as the Barahona district. But after a year of operation, the rate shot up to 243.36 per 1000, breaking all records, and the experiment came to an end. An even more dramatic illustration of the effects of legalized prostitution is supplied by San Antonio, Texas. . . . Venereal hospital admissions in the San Antonio area were three times higher than those of the Army as a whole." After closing up the houses "the Army venereal rate went down precipitously. . . . Specifically in Nov. 1941 when the campaign began, the rate was 89 new cases per 1000. A year later the rate was down to 13.8 per 1000. Despite such conclusive evidence of the folly of legalized prostitution, some Army officers still believe in segregation.⁵⁸

⁵⁸ Samuel Tennenbaum, "Venereal Disease and War," *American Mercury*, LIX (Nov., 1944), 578-82; and compare the monograph of the physician Luigi Scremin, "Considerazioni Morali sulla Tolleranza del Meretricio," an appendix to *Miscellanea Vermeersch* (Rome, 1935).

When the regulation and control of houses of prostitution includes the setting up of "pro" stations within each house, and stationing service police within the house, whose job it is to lead the erring service man directly from the door of the prostitute's room to the "pro" station on the same premises, we can hardly speak any longer of passive toleration of prostitution. To me this system seems to include a practical invitation to sin safely, and would inevitably foster the notion that fornication is officially approved.

Catholic medical officers whose position requires them to control venereal disease should be instructed clearly on the right and wrong of these matters when it is possible to see clearly and without danger of theological dispute what is right and what is wrong. Tact and ingenuity on their part will often prevent unpleasant clashes with higher authority. But their rights of conscience are paramount, and at times they may have to assert them boldly at whatever cost. In doing so they would be immensely strengthened if their position was approved and defended by the ecclesiastical military authorities. And no doubt, if some practices were made known publicly, the families of the boys in the service would lend them their hearty moral support.

An extremely important and, in fact, indispensable article for Catholic obstetricians appears in the September number of the *American Journal of Obstetrics and Gynecology*: "A Consideration of Therapeutic Abortion," by Dr. S. A. Cosgrove and Dr. Patricia A. Carter of the Margaret Hague Maternity Hospital in Jersey City.⁵⁹ The thesis of the authors is that the medical profession is bound by its own principles to approach the question of abortion from an ethical point of view. And since neither the law, nor any universally accepted religious principles, supplies a solution of the problem, the profession itself should establish standards in the matter. Dr. Cosgrove maintains that no sufficient guidance is given in medical schools, and that as a result a large number of entirely unjustifiable abortions are performed, not by racketeers, but by respectable physicians. In Johns Hopkins Hospital, for instance, in 1941 to 1942 almost 3% of the deliveries were aborted, and other hospitals showed a rather high percentage of therapeutic abortions. But in the Hague hospital, where Dr. Cosgrove practices, the percentage of abortions for the years 1931 to 1943 was 0.006, or 1 in 16,750 cases. Dr. Cosgrove says: "From our own experience I believe that by stricter adherence to the ethical basis I have tried to outline, and with a closer scrutiny of the so-called indications for abortion, the

⁵⁹ *American Journal of Obstetrics and Gynecology*, XLII (Sept., 1944), 299-314.

actual necessity therefor would be very much reduced." He then lists and discusses the more common indications: hyperemesis gravidarum, toxemia of pregnancy, fixed hypertension, heart disease, pulmonary tuberculosis. The paper closes with the remark that treatment of these patients is more expensive than aborting them, hence socio-economic assistance "becomes a primary necessity of any program for the control of the abortion evil."

Now what is the ethical basis outlined by Dr. Cosgrove?

1) Physiologically the unborn human being at any time after conception is an entity with all the potential life possibilities of any other creature. 2) It is entitled to the protection of those life potentialities as surely as is any other human being. 3) It is the duty of the profession to save human life. Effort to save human life, however, must not deliberately and of itself jeopardize the life of another individual, nor even the same individual. . . . It is recognized that it is not legitimate . . . to employ a means of therapy so formidable that its inherent risk is significantly large in relation to its potential salvage possibilities.

Dr. Cosgrove therefore does not hesitate to call therapeutic abortion murder. But he distinguishes between justifiable murder (when the presence of the fetus is "a definite, direct and imminent threat to the mother's life" and abortion the "only direct therapeutic resource to avert that jeopardy"), and unjustifiable murder (all other cases of so-called therapeutic abortion). Perhaps the term "justifiable murder" is unfortunate for Dr. Cosgrove's own purposes, since it is so universally restricted in the language of ethics and morality to unjustifiable killing. But the main point is that in 67,000 deliveries, over a period of 12 years, the Hague hospital has resorted to this "justifiable murder" in only 4 cases. Catholic moral teaching would not agree, of course, that any direct killing of innocent life was ever justifiable. But Dr. Cosgrove's experience (which I have no doubt would be confirmed, for instance, by that of Dr. Frederick L. Good of the Boston City Hospital, or Dr. Cornelius T. O'Connor of St. Elizabeth's) is an impressive testimony to the claim of Catholics that most so-called therapeutic abortions are not really necessary to the life of the mother.

The following points may be noted in connection with the article: 1) It is an exaggeration to say that under the English common law "the unborn child, prior to quickening, has no entity, no legal existence, therefore no rights," etc. The discriminating dissent of the Chief Justice of New Jersey, Thos. J. Brogan, in the case of *Stemmer v. Kline* in 1942, makes this point clear. 2) The article contains a brief résumé of the legal control of therapeutic abortion in several States, showing that it is altogether vague and insufficient, in comparison with the safeguards against other kinds of "justifiable murder," e.g., killing in self-defense, and "legal execution-

murder." 3) The discussion of the doctors present when the article was read (before the New York Obstetrical Society, March 14, 1944) is appended. It is enlightening, but unfortunately incomplete. 4) In order to make Dr. Cosgrove's statistics still more telling, it would be necessary to know the follow-up histories of the 67,000 deliveries he records, and see whether, in the light of their subsequent condition, some of them should have been (on his principles) "justifiably" aborted.

I believe this article is of substantial importance to Catholic practitioners, though of course one must leave to the medical profession the decision on the medical questions involved. It is in agreement with Catholic principles on all but one point, and it recommends, on medical as well as ethical grounds, a practice which is almost completely in accordance with our morality.

PENANCE

Fr. Joseph P. Donovan, C.M., has written two very useful and timely articles on the obligation of the confessor as a doctor of the soul.⁶⁰ He cites the example of an oculist, who "once told me that his own timidity towards a disobedient patient almost brought that patient to blindness." He recalls the necessity of questions in order to discover whether a penitent (six months away, with several sins of the abuse of marriage) is truly repentant or "just an unregenerated repeater." And for children, "stealing a half-dollar periodically from parents is not a trivial matter if later the habit may develop into a proximate occasion of serious sin." He recommends that priests who consider themselves heroic when they hear confessions for five hours emulate the industry and tirelessness of physicians and other professional men. And he is especially insistent that we get away from the practice of "Cocklebur John, the Man of One Medicine," who always gives so many *Our Father's*, *Hail Mary's*, or rosaries as a penance. He suggests fitting the penance to the sin, and making it something important in the mind of the penitent. For instance, one might impose upon an alcoholic recidivist total abstinence for a given period, refusing absolution unless this penance is accepted.

I would not favor this particular expedient, but many of Fr. Donovan's suggestions for different and more effective penances are useful. The fact of the matter is that in our days the practice of the Church in the matter of penances simply cannot be compared to the practice in early times. There is no reason to think we should now imitate the severity of the early Chris-

⁶⁰ "Soul Doctors Giving Bread Pills," *Homiletic and Pastoral Review*, XLIV (May, 1944), 598-602; and "Cocklebur John, the Man of One Medicine," *ibid.*, XLIV (June, 1944), 652-57.

tians. But there certainly is reason to fear the opposite extreme, a lazy laxity which may endanger the soul of the penitent. Then, too, the extreme necessities of war time have made it necessary for the chaplains to limit their spiritual advice to a minimum, and even to dispense with complete integrity in many cases. A recent instruction of the Sacred Penitentiary reviews the safeguards with which general absolution must be surrounded.⁶¹ The instruction will help to avert any relaxation on the part of priests or penitents which, after the war is over, might tempt them to continue a "speed in execution" which only war-time necessities can justify.

In "Did St. Alphonsus Ever Refuse Absolution?"⁶² Fr. James A. Cleary, C.S.S.R., tells us that "one hears it quite commonly asserted in clerical circles that St. Alphonsus never—or scarcely ever—deferred absolution" in practice, though according to his teaching postponement in certain cases is a salutary and necessary remedy. Fr. Cleary on examination of the historical evidence comes to the conclusion that "it is beyond all doubt that St. Alphonsus often deferred absolution, and for a period exceeding fifteen days." The saint in his old age once remarked that "he did not remember having ever sent away anyone without absolution. . . . He would welcome sinners with kindness and inspire them with confidence in the Precious Blood of Jesus Christ. . . . And thus encouraged they used to *come back* to him penitent and contrite." It was a mistranslation of this passage which led to the widespread error that the saint never refused absolution.

The Absolution of Recidivists in the Sacrament of Penance is a doctoral dissertation on the subject.⁶³ The author, Fr. Raymond F. O'Brien, C.M., studies the theological principles carefully, describes the various schools of thought, and favors the teaching of St. Alphonsus with regard to moral certainty as to the disposition of the penitent, but he thinks it likely that those who disagree with St. Alphonsus in the matter act for the most part substantially in accordance with his views. A work of this kind is another proof of the debt which American moralists, and moralists the world over, owe to the studies being carried on at the Catholic University of America.

Fr. Eugene Dooley, O.M.I., deals with the question of *copia confessarii* as that term is used in can. 807.⁶⁴ He gives a practical and solid explanation of the circumstances, in a parish house for example, which would excuse a priest from confessing to his fellow curates, or to his pastor. There are not many such circumstances, of course, but I think that Father Dooley

⁶¹ AAS, XXXVI (May 20, 1944), 155-56; there is a translation of this Instruction in the *Homiletic and Pastoral Review*, XLV (Nov., 1944), 134-35.

⁶² *Irish Ecclesiastical Record*, LXII (Dec., 1943), 389-91.

⁶³ Washington, D. C.: Catholic University of America Press, 1943.

⁶⁴ "Priests in the Confessional," *Ecclesiastical Review*, CIX (Nov., 1943), 366-73.

would agree with the principal conclusions of Father Hilary R. Werts's longer article, "Insuperable Embarrassment and Confession," which appeared about the same time in *THEOLOGICAL STUDIES*.⁶⁵ Father Francis J. Connell, C.S.S.R., on the other hand, believes that in some respects Father Werts's views are too lenient and would tend to laxity.⁶⁶ My own opinion is that any exceptions at all in the matter of integrity can be easily abused, but that some exceptions are indubitably taught by the consensus of theologians, and that Father Werts does not go too far in applying their principles to the cases he discusses. At all events, his scholarly article should be carefully studied by anyone who is interested in the problem.

Father Gerald Kelly, S.J., has also treated briefly the question of insuperable embarrassment or shame, in explaining for religious teachers, whether priests, brothers or nuns, the "Law of Integral Confession."⁶⁷ The question of exceptions to the law of integrity is always a ticklish one and the *Review for Religious* is to be congratulated on the straightforward manner in which it presents this problem and many others of a like kind. Such a policy, far from disedifying, will build up in religious readers their religious fervor and devotion, basing it on the solid ground of simple theological truth. Another example of this policy is found in the long and accurate answer to the old question: What constitutes grave matter in a violation of the vow of poverty?⁶⁸

Even the careful confessor is sometimes perplexed about the disposition of Titius in a case like the following. "Titius has sinned gravely and habitually with Sempronia, who is now dead. Though resolving not to sin for the future with other persons, and realizing the impossibility of ever sinning again with Sempronia, he says that he would continue his manner of life with her if she were still alive." Canon E. J. Mahoney says that if Titius merely has an intellectual conviction, based on the knowledge of his own weakness, that he would sin again in the impossible supposition of Sempronia's return, the confessor may regard him as sufficiently disposed. But if his words mean that he has not detested the past sin, and is now, as it were, *proposing* to sin again in the impossible supposition of Sempronia's return, then he is obviously undisposed for absolution.⁶⁹ The distinction is between "I would sin again" as an intellectual act, and "I would sin again" as a disposition of the will here and now. In practice the difficulty is to make a true psychological estimate. But all are agreed, I think, that the

⁶⁵ *THEOLOGICAL STUDIES*, IV (Dec., 1943), 511-24.

⁶⁶ "Recent Moral Theology," *Ecclesiastical Review*, CXI (Aug., 1944), 104-13.

⁶⁷ *Review for Religious*, II (Nov. 15, 1943), 363-72.

⁶⁸ *Ibid.*, III (July 15, 1944), 282-88.

⁶⁹ *Clergy Review*, XXIV (July, 1944), 332-33.

conjuring up of very difficult or impossible circumstances as a test of sincerity is both unwise, and likely to fail as a test. The imagination becomes so disturbed by such phantasies that it is impossible to decide anything.

A similar difficulty is experienced by penitents who say, "How can I be truly and sincerely sorry if I keep away from sin only because I am afraid of the pains of hell? If I am sincere, must I not admit that if there were no hell I would go on sinning?" The following illustrations have sometimes helped to explain the difference between *timor simpliciter servilis* and *timor serviliter servilis*.

Suppose you were a storekeeper in a sea-coast city and had your store windows lighted up with brilliant neon lights. The dim-out laws are introduced by the Army, and heavy fines threatened against violators. You dim out your lights because you fear the fines, still wishing in your heart you had the lights, for they bring in business, and you do not believe the laws are necessary anyway. In such a case you are not sorry that you had the lights before; you merely submit to the compulsion of the dim-out through servile fear of the fine. You would like to have the lights back if you could.

But suppose you are a storekeeper in similar circumstances and you have been very careless about keeping your sidewalks clear of rubbish and debris. A new city ordinance is passed requiring, under penalties, that you sweep your sidewalk every morning. Your fear of the fine rouses you from your laziness, and you comply with the law. In such a case, the fear of punishment moves you to act, but you do not keep in your heart an affection for the thing you had to get rid of. You would not have the rubbish back, even if you could. For rubbish means disorder, and in itself is something hateful and well worth getting rid of. . . . The possibility that if the ordinance were repealed you might go back to your old laziness is immaterial in judging your present state of mind.⁷⁰

These examples are useful only in showing what the minimum requirements of sorrow are. In practice we should urge people to perfect contrition. Father J. McCarthy believes that perfect contrition may easily be present in the following examples (submitted by a questioner): 1) A man in mortal sin decides to fight manfully out of love of our Lord, who died for him on the Cross, against some present temptation. He does fight and overcomes the temptation. 2) A man in mortal sin is asked for an alms. Recalling the assurance "As long as you did it for one of these, the least of my brethren you did it for me," and reminding himself of all he owes to our Lord, he gives the alms.⁷¹ Since there are good grounds for believing that perfect contrition and the remission of all mortal sins may

⁷⁰ *Messenger of the Sacred Heart* (New York), LXXVIII (Oct., 1943), 13-14.

⁷¹ *Irish Ecclesiastical Record*, LXIII (May, 1944), 337-41.

be included in such acts, it would be well to instruct the faithful along these lines, especially since the verbal formulae of various acts of contrition can become somewhat meaningless through repetition. Of course, such instructions would include the necessity of confessing all mortal sins, and in particular, of confessing them before going to Holy Communion.

As a means of helping religious penitents, and devout penitents generally, in eliciting meaningful acts of contrition, Father Gerald Kelly, S.J., has written two articles for the *Review for Religious*.⁷² The first of these, "Good Confessions and Better Confessions," lays down four fundamental rules and then gives a practical explanation of them; the second, "Are You Sorry for Your Sins?" makes a detailed examination of the elements of contrition. The doctrine of Trent and of the theologians is presented in a solid but nonacademic fashion, and the author suggests that "many would find it fruitful to make a meditative act of contrition occasionally—for example during the morning meditation on confession day." An article of this kind provides the matter for meditation.

The confessors of religious penitents, and sometimes of lay penitents, are frequently asked for advice about meditation and mental prayer. The following references may be useful: "Prayer Difficulties of Religious Penitents" by Gabriel Diefenbach, O.F.M.Cap.;⁷³ *Difficulties in Mental Prayer*, by Eugene Boylan, O.Cist.R.;⁷⁴ "Intret in Conspectu Tuo," by Arthur H. Chandler, O.P.;⁷⁵ "The Spiritual Care of Religious," by William F. Allen;⁷⁶ and *The Ascetical Life*, by Pascal P. Parente.⁷⁷ This last-named work, published this year by the Associate Professor of Ascetical Theology at Catholic University, will be particularly helpful to priests who are called upon to be ordinary or extraordinary confessors of religious, and to retreat masters of religious.

As a change from the usual routine of meditation, or as an incentive to renew and refurbish a neglected ideal, the confessor may often recommend the meditative, i.e. prayerful reading of books or articles which avoid dry speculation and rhetorical bombast, but provide solid matter for reflection: read a sentence, then pray over it. Examples are the notes on the *Hail Mary* in the *Clergy Review*;⁷⁸ the meditations based on the seasonal liturgy that appear regularly in *Orate Fratres*; articles like those of Father William

⁷² III (May 15, 1944), 145-57; and III (Sept. 15, 1944), 335-48.

⁷³ *Homiletic and Pastoral Review*, XLIV (July, 1944), 742-45.

⁷⁴ Dublin: Gill, 1943.

⁷⁵ *Homiletic and Pastoral Review*, XLIV (Febr., 1944), 360-64.

⁷⁶ *Ecclesiastical Review*, CX (Febr., 1944), 119-23.

⁷⁷ St. Louis: Herder, 1944.

⁷⁸ *Clergy Review*, XXIV (May, June, July, 1944).

Carroll, S.J., on the sermons of St. Leo the Great and St. Augustine, and on "Medieval Preaching on the Holy Angels." This latter series appears in the *Homiletic*,⁷⁹ and in it the counsellor of religious will find excellent material for his own preaching as well as food for meditation. The author of these articles does us a special service by bringing before us in readable and attractive form the thoughts that inspired the Fathers of our faith, and which they shared with their listeners.

The reading of Scripture after the manner of St. Ignatius' third method of prayer, or some modification of it, is also a means of reviving or revitalizing the daily meditation. But in the case of the Old Testament the passages should be carefully selected for this purpose. Otherwise the religious may merely distract himself with speculations of an unfruitful kind.⁸⁰

The New Testament is much more familiar to most religious and for that reason its well remembered phrases fail at times to evoke in the mind any vivid or deeply felt response. I do not think this could be said, however, if one were reading Msgr. Ronald Knox's new translation of the New Testament.⁸¹ Whatever else it is, it is really new. Scripture scholars may debate a point here and there, but no one can read it without realizing, perhaps for the first time, that the Gospel is good news. No more suitable gift to priests and religious could be suggested than this new translation. The Epistles are especially recommended for purposes of meditation.

Of all the helps to meditation for religious persons and for the devout laity which I have seen this year, none has impressed me more than Mary Perkins' new book: *Speaking of How to Pray*.⁸² Her thesis is twofold. First, dogmas come before liturgies: and so she expounds with clarity and competence the theological basis of our spiritual life. Secondly, the Church knows best how to pray; and so she turns to the official liturgical prayers of the Church as models for our guidance in prayer. The confessor of religious may find these hints useful (if he first reads the texts referred to) in helping his penitents in one of their chief concerns.

⁷⁹ *Homiletic and Pastoral Review*, XLIV (Dec., 1943; Febr., 1944) and XLV (Oct., Nov., 1944).

⁸⁰ Cf. Daniel Duffy D.D., "On Reading the Old Testament," *Irish Ecclesiastical Record*, LXIII (Jan., 1944), 39-47; see also John L. McKenzie S.J., "The Imprecations of the Psalter," *Ecclesiastical Review*, CXI (Aug., 1944), 81-96.

⁸¹ New York: Sheed and Ward, 1944, \$3.00.

⁸² New York: Sheed and Ward, 1944, \$2.75. Another book which gives very clear and "teachable" answers on a difficult subject connected with prayer is by John V. Matthews, S.J., *With the Help of Thy Grace* (Westminster, Md.: Newman Book Shop, 1944, \$1.50). It is an excellent brief treatment of actual grace in question and answer form.

MATRIMONY

An evolutionist like Bertrand Russell broadcasts a "theory on the nature and properties of marriage in wholesale contempt of every law, human, natural, and divine, save the unfounded law of universal evolution." Fr. Henry A. Szwaja, C.R., summarizes the radical teaching of this modern prophet in "Evolution Unwraps Marriage." The evolutionist argues that "marriage is on the wane [as a custom, or institution] and before long will be spoken of in the past tense."⁸³ Catholics are more immediately concerned with the decline of Christian marriage, and particularly with the dangers to the faith and to marriage itself that are inseparable from the increase in mixed marriages. In the *Catholic Directory* many dioceses list the total number of marriages each year, and also the number of mixed marriages. The proportion of the latter is astoundingly high. Perhaps it is partially explained by the fact that diocesan records of mixed marriages are apt to be more complete.⁸⁴

As a practical means of combating this evil, and of fulfilling the obligation imposed by can. 1064, 1°, Father A. Gits, S.J., suggests regular instruction in the weekly parish notices. Once the parties fall in love, or believe themselves to be in love, it is almost a hopeless task to try to dissuade them. The weekly notice would have the advantage of driving the lesson home before it is too late, and its very regularity would prevent some of the impatience and complaints which a sermon or pastoral letter on the subject arouses. One priest in England uses this weekly notice: "The Church has always forbidden mixed marriages and considers them unlawful and pernicious. Catholics therefore should avoid familiar friendship with non-Catholics of the opposite sex. If such a friendship has been formed the Catholic ought honorably to inform the non-Catholic of the Church's law forbidding mixed marriages. The non-Catholic should then be encouraged to interview a priest as soon as possible with a view to receiving instructions about the Faith. If this offer be refused, the Catholic in a spirit of loyalty to Christ ought to break off the friendship. Catholic parents, you are warned of your very grave responsibility in this matter."⁸⁵ The content

⁸³ *Ecclesiastical Review*, CIX (Dec., 1943), 459-66.

⁸⁴ A limited survey in the South showed a large proportion of mixed marriages and a large number of cases in which the Catholic party had lost the faith; cf. Sister Leo Marie, O.P., "Is the Catholic Birth Rate Declining?," *American Catholic Sociological Review*, V(Oct., 1944), 182.

⁸⁵ A. Gits, S.J., "Instruction of the Faithful on Mixed Marriages," *Clergy Review*, XXIV (Aug., 1944), 355-58.

and wording of such an announcement would have to be modified according to the locality, but the idea seems to be a very practical one.⁸⁶

Previously, in this journal, the question of Doms's theory of marriage has been discussed at length.⁸⁷ Father Bernard J. F. Lonergan, S.J., wrote in these pages on "Finality, Love, Marriage" with a view to laying the foundation of a more consistent philosophical approach to the problems which, he believes, have their root in the development of biological science.⁸⁸ Father Lonergan does not, of course, desert the traditional terminology and doctrine on "primary" and "secondary" ends of marriage, but he recognizes that "objection to the use of the terms 'primary' and 'secondary' has this much justification, that considerable care is required to use them properly."⁸⁹ He analyzes some of the meanings given to these terms and uses them himself at times in the sense of "more essential" and "less essential" ends. His distinction between horizontal and vertical finality, though couched in unusual terms, is not, I think, a departure from tradition. Indeed the scope of his paper is to give a "speculative outline that would manifest some of the assimilative capacity of traditional views." His article contains thoughtful and very stimulating material and should not be overlooked, especially by anyone who is interested in the philosophical analysis of that many-sided and confusing problem of the finality of marriage.

An important decree of the Holy Office this year has reasserted in the traditional terminology the essential subordination of the secondary ends to the primary end of marriage. It is aimed apparently at Dr. Doms and others who have written in similar vein about the personalist values in marriage. The importance of the document warrants its reproduction here.

⁸⁶ The certainty that the guarantees will be fulfilled is a requirement that may trouble pastors who apply for a dispensation. Canon Mahoney gives sound advice on this point in *Clergy Review*, XXIV (July, 1944), 328-29. On the relation of the guarantees to the validity of the marriage, see W. Conway, *Irish Ecclesiastical Record*, LXIII (June, 1944), 413. Canon Mahoney believes probable the opinion that the Code does not require canonical form that a marriage be putative. Hence the children of an invalid civil marriage between a Catholic and a non-Catholic might be canonically legitimate on the grounds that they were the offspring of a putative marriage; cf. can. 1015, §4, and can. 1114; also *Clergy Review*, XXIV (June, 1944), 278-79.

⁸⁷ THEOLOGICAL STUDIES, III (Sept., 1942), 333-74.

⁸⁸ *Ibid.*, IV (Dec., 1943), 477-510.

⁸⁹ *Ibid.*, p. 507, n. 75. On p. 487, n. 34, Father Lonergan expresses the opinion that in interpreting the meaning of *Casti Connubii* the question of the mind and intention of the theologians who collaborated in the writing of the encyclical is "only remotely relevant."² I had quoted Father Hürth's opinion as to the meaning of the much discussed passage which is Doms's and Krempel's starting point, saying that his opinion had peculiar weight.

De matrimonii finibus eorumque relatione et ordine his postremis annis nonnulla typis edita prodierunt, quae vel asserunt finem primum matrimonii non esse prolis generationem, vel fines secundarios non esse fini primario subordinatos, sed ab eo independentes.

Hisc in elucubrationibus primarius coniugii finis alius ab aliis designatur, ut ex. gr.: coniugum per omnimodam vitae actionisque communionem complementum ac personalis perfectio; coniugum mutuus amor atque unio fovenda ac perficienda per psychicam et somaticam propriae personae traditionem: et huiusmodi alia plura.

In iisdem scriptis interdum, verbis in documentis Ecclesiae occurrentibus (uti sunt v. gr. 'finis, primarius, secundarius') sensus tribuitur qui cum his vocibus, secundum communem theologorum usum, non congruit.

Novatus hic cogitandi et loquendi modus natus est ad errores et incertitudines fovendas: quibus avertendis prospicientes Emi. ac Revmi. Patres huius Supremae Sacrae Congregationis, rebus fidei et morum tutandis praepositi, in consessu plenario feriae IV, die 29 Martii 1944 habito, proposito sibi dubio: "An admitti possit quorundam recentiorum sententia, qui vel negant finem primum matrimonii esse prolis generationem et educationem, vel docent fines secundarios fini primario non esse essentialiter subordinatos, sed esse aequae principales et independentes"; respondendum decreverunt: Negative.⁹⁰

Dr. Doms in his work, *Vom Sinn und Zweck der Ehe*, did not depart entirely from the doctrine of primary and secondary ends in marriage, but he came close to it. Another work, *Die Zweckfrage der Ehe in Neuer Beleuchtung*, by Bernhardin Krempel, C.P.,⁹¹ was much more explicit in its rejection of traditional views.

Father B. Lavaud, O.P., who wrote in both *The Thomist* and the *Revue Thomiste* on the personalist concept of marriage, is quoted on the jacket of the book to the effect that Fr. Krempel's treatise is "probably the decisive work on this much controverted subject." Father Hieronymus Wilms,

It is an open secret that Hürth worked on the encyclical, and that Pius XI had so much regard for his mind and intention that when Vatican Latinists failed to give proper expression to it in one important particular, the Pope ordered the passage changed. The *Acta* was already in print, and the change was inserted as a special note in the following fascicle. It appears now in *AAS*, XXII, 604, and deals with punitive sterilization. To me this incident indicates that the mind and intent of the theologians who composed the encyclical are very much to the point. I think also that to imply that the objective meaning of a document differs considerably from the meaning which the writers of the document had in mind hardly does justice to the competence of the writers. It is entirely legitimate, for instance, in interpreting the decrees of the Council of Trent, to find out if possible what the theologians who worded the decrees, but had no legislative authority, meant.

⁹⁰ *AAS*, XXXVI (1944), 103.

⁹¹ Zürich and Köln: Benziger, 1941.

O.P., on the other hand, rejects Krempel's thesis in a long critical review.⁹² His objections, many of them well taken, do not seem to me, however, to go to the heart of the matter, or show an appreciation of the real difficulty of the problem.

Fr. Krempel's book applies Thomistic metaphysics tirelessly, one almost said ruthlessly, to the question: what is the end of marriage? He finds the solution in the nature of the two sexes, and throughout the discussion both of the nature of sex, and of the nature of marriage makes use of the Scholastic teaching on relations. He considers that can. 1013 uses the phrase "finis primarius," etc. in the sense of "principal advantage" of marriage—it is not meant to be a speculative determination of the "end" taken in a strict sense. And throughout the book he makes it clear that procreation should not be considered the primary end of marriage. He makes the life-union of the sexes the one specific end of marriage.⁹³

The decree cited above is rather carefully worded, but I have no doubt it was aimed at books like Fr. Krempel's (especially since I know of one author writing along these lines who was forbidden by the Holy See to publish further editions of his work until it was corrected). However the decree does not define "primary" and "secondary" for us; it merely states that modern writers have used the words in a sense which is at variance with common theological usage.^{93a} It is not unlikely that practical questions on the use of marriage, the nature of the marriage act, impotency, contraception, etc., were among the considerations that led the Holy Office to speak out against any teaching that might undermine procreation as the primary end of marriage. In the future discussion of the difficult problems of the finality of marriage (for it still requires solution) we will have this guidance of the Holy Office to keep us from going off the track. The decree, approved by the Pope, is clearly a warning to anyone who would exaggerate the "personalist" conception of marriage.

Since can. 1081, §2, makes the "jus in corpus in ordine ad actus per se aptos ad proles generationem" the essential object of matrimonial consent, there is an obvious and fundamental connection between the primary end of marriage, the essence of marriage, and the true definition of the marriage act. The phrase "actus per se aptus ad generationem proles" describes the marriage act in a general way, but not with sufficient precision to settle

⁹² *Divus Thomas*, XX (March, 1942), 92-97.

⁹³ Krempel, n. 364. See also the following passages: nn. 17, 98, 403, 443, note 1, 444, 447, 460, 498, etc.

^{93a} But for an explanation of these points cf. a Rota decision published in *AAS*, XXXVI (1944), 179, and esp. 184 ff.

the innumerable disputes about the nature of impotence, the use of marriage in various cases of partial physical disability, and the lawfulness of various kinds of cooperation with an onanistic partner. A couple may be capable of procreation by artificial fecundation even though incapable of it through normal intercourse. On the other hand a couple may be capable of intercourse but because of age or physical defects so incapable of procreation that only a miracle could give them children. In other words, an act may be so defective in its relation to procreation that the latter is physically impossible. But it is still an "actus per se aptus ad procreationem prolis" within the meaning of the canon—for example, in the case of an old man known with certainty to be sterile, or of a woman whose womb has been removed. Modern surgical procedures have raised some questions for the moralist and canonist as a result of these seeming inconsistencies.

What is to be said of the marriageability of a woman who has an artificial vagina? The lack of an inner vaginal canal is not altogether a medical rarity, though naturally it is not of every-day occurrence. One well-known clinic in the United States has observed over 100 cases of this kind, 36 of them in a space of six and one-half years. These latter 36 cases as well as many of the others have been successfully operated, and an artificial vagina constructed, enabling the patient to lead a normal married life. Some of the operations have taken place under Catholic hospital auspices.

In the more frequent type of case the patient lacks the internal organs (womb, tubes, ovaries), but the external genitalia are normal, the secondary sex characteristics are normal, and she is capable of normal sexual feeling. But the inner part of the vaginal canal is lacking. The opening into the vagina is present, and the hymen may be there, but the opening is only one-half inch or so deep. The operation consists in plastic surgery (various techniques have been adopted, some more successful than others), by which an artificial passage of normal length is constructed, and intercourse which is comparable to normal intercourse for both husband and wife is made possible.

Such a woman is certainly impotent before she is operated on. But is she certainly impotent after the operation has been performed? The decisions of the Rota requiring that the vagina be a canal, i.e., a passage open at the inner end, are not very conclusive because they are flatly contradicted by other decisions of the same court. One Rota decision in 1929 decided a case involving an artificial vagina, holding that the woman was impotent.⁹⁴ But the constructed passage was only about two inches long,

⁹⁴ *Decisiones*, XXI (1929), 406 ff. The attempted construction of the vagina had taken place in 1918, long before the present technique was developed.

and the decision was based partly on the fact that the artificial organ was a "sacca clausa." This reason is not a decisive one in the jurisprudence of the Rota itself.⁹⁵

I do not know of any practical argument that can be brought forward to prove that a woman who has been successfully operated on is certainly impotent. It is not to the point to say that she cannot attain the essential end of marriage—meaning procreation. This is true of many other women to whom we readily concede marriageability. Nor does it solve the problem to say her intercourse would not be "per se aptus ad generationem." That expression is obviously indecisive in this context, and begs the question which is still in dispute amongst canonists and in the courts: Just what is an "actus per se aptus ad generationem"? Nor can it be maintained that in such a case the so-called vagina is not really a vagina at all, but merely an opening which might have been made in some other part of the body. A knowledge of the physiology of this type of case immediately disposes of that contention. There is a partial vagina there to begin with, and all the other external genitalia are intact. Finally, as noted above, the fact that the constructed organ is a "sacca clausa" is by no means decisive. The vagina of a woman who has had a hysterectomy before marriage is a "sacca clausa" but she cannot be called impotent and incapable of marriage on that account.

I would conclude, then, subject to correction, that such a case does not involve certain impotence and hence the woman has the right to get married in virtue of can. 1068, §2, which throws the burden of proving impotence with certainty on anyone who would impede a marriage on that score. After the marriage takes place the question arises in practice only when the parties seek to dissolve their marriage; and that problem can be settled only by the ecclesiastical court. But before the marriage takes place, I do not know how anyone would set about getting an authoritative decision as to whether a woman in those circumstances is impotent. Nor, in view of the strong case that can be made to show that she is not impotent, do I believe there is any obligation on anyone to attempt to get such a decision. In practice, however, many other considerations would determine the pastoral advice to be given on such a prospective marriage.

Six years ago two New York surgeons published a paper entitled "A Three-Stage Operation for the Repair of Hypospadias."⁹⁶ Some of the cases they have treated would be, before the operations, certainly impotent

⁹⁵ *Decisiones*, XVI (1924), 26, 393; XVIII (1926), 407; XVII (1925), 423.

⁹⁶ Oswald Swinney Lowsley and Colin Luke Begg, in *Journal of the American Medical Association*, CX (Feb., 1938), 487-93.

canonically. One of the cases described is that of a young man now (1944) 26 years old. Until he was five he was thought to be a girl by his family and by the physicians attending the case. As the result of 16 operations (many of them minor plastic procedures), "a new urethra was made, his imprisoned penis released, his false vagina removed, and the undescended testicles reduced to their proper place . . . He gets erections in his newly constructed penis but as yet [1938—when he was 19] has never experienced sexual desire." The latest report on this case is that he is a sergeant in the Army and is just recently very happily married. This kind of reconstruction work can undoubtedly remove canonical impotence in some cases. The spectacular case described appears to be one of them, but more detailed information would be required in order to pass judgment on it from the canonists' view point. The article of Dr. Lowsley and Dr. Begg contains illustrations and a chart-diagram which summarizes their results in 10 interesting cases (some of them not complete at time of publication).

A subject of more universal interest and practical importance is the much mooted question whether a doubly vasectomized man is impotent. Father Edward H. Nowlan, S.J., has written a doctoral dissertation entitled, "Double Vasectomy and Its Relation to Marital Impotence," the principal parts of which will be published in 1945. His work contains an investigation of the medical and physiological aspects of the case which is far more competent and complete than anything that has hitherto been brought to the attention of canonists and moralists. Partly from a consideration of these physiological facts (which were badly misunderstood by Father Ferreres, the principal influence in determining the trend of modern canonical opinion on this point), and more particularly from a consideration of the theological principles involved, the author decides that the doubly vasectomized man is not impotent, or at least not certainly impotent, and hence has the right to marry. The dissertation contains a very thorough discussion of the *Cum Frequenter* of Sixtus V.

In conjunction with his study two cases were sent to about one hundred canonists and moralists, including chancellors and their assistants, professors in theological seminaries, and doctors of canon law serving on diocesan matrimonial boards. The cases follow:

I. Titius confesses that before his marriage he was doubly vasectomized. The doctor cut the vas deferens and buried the ends, making sure they could not grow together again. Now Titius has read that he was impotent at the time of his marriage because of this operation. He is very much in love with his wife and wants to know if he can continue to have intercourse with her. She asks for it regularly. II. Sempronius confesses that he has had an operation of double

vasectomy just like that of Titius. He is engaged to be married, and has read that he is impotent. He now asks whether he is certainly impotent.

The total number of canonists and moralists effectively polled on the question was about sixty-five. Many of the answers were qualified in various ways, especially with regard to the possibility of remedying the condition of Titius and Sempronius by surgical intervention. But on the basis of one supposition only, namely that the cases had been pronounced irremediable by competent medical authority, the results were as follows: 32 would permit intercourse in Case I, even though Titius is and was before his marriage permanently vasectomized. 21 would deny the right of such intercourse, on the ground that the marriage has been invalid from the beginning, due to the certain existence of antecedent and perpetual impotence. In Case II, 30 would permit the marriage even though Sempronius is known to be in an irremediably vasectomized condition. 22 would forbid the marriage on the ground that Sempronius is antecedently and perpetually impotent, and this for certain.

Father Nowlan's thesis did not depend, of course, on the outcome of this limited poll, but the answers received were extremely helpful and enlightening both on the merits of the question and the state of opinion in the United States.

The author's conclusions are proposed as follows:

The permanently vasectomized man seems capable of contracting marriage because, according to the present state of canonical knowledge, his impotence is not certain. We base this conclusion on the following premises: 1. Such a large number of reputable canonists deny or doubt his impotence that it constitutes solid extrinsic probability against the existence of the impediment. In accordance with canon 1068, §2, such probability would demand that the marriage be permitted. [Besides the theologians polled privately, the author lists the following authorities as holding the impotence to be only doubtful: Vermeersch, Donovan, Gemelli, Labouré, Creusen, Woywod, Yanguas, Iorio, Viglino, La-Rochelle, Fink, Ryan, Clifford, Arendt, Mulder, Grosam, Chretien, Pescetta-Gennaro, Regatillo, Nau, Schmitt and Prümmer.] 2. Study of the "Cum Frequenter" of Sixtus V, the chief canonical ground for a conclusion of impotence, reveals that it probably does not apply to his case. 3. Considerations of the physiological state of the vasectomized man in relation to the ends of marriage, and of the nature and required certitude of impediments from the natural law, induce the conclusion that greater certitude of impotence than is presently had is necessary in order to bar the vasectomized man from marriage. 4. Analogies with the canonical treatment of the spayed woman, with other sterilization methods, and with the question of permitting the use of marriage under various circumstances provide suasive reasons for holding the vasectomized man to be potent.

5. Although Rota decisions over a period of years have tended to hold for certain impotence, recent responses from Roman congregations make a future change of Rota opinion seem not unlikely.^{96a}

In the case of vasectomized persons, or women who have undergone sterilization, a moral problem arises if they have been the sinful cause of their own sterility. Father John J. Clifford, S.J., of Mundelein has given a scholarly and practical answer to the problem in "Marital Rights of the Sinfully Sterilized."⁹⁷ He explains the distinction between sin and the effect of sin according to the classical authors, and after discussing modern opinions on the question (which are not very numerous or complete) arrives at the following conclusions. The conclusions are proposed in the supposition that the sinful act has been repented of.

(1) No obligation to undergo remedial surgery exists in any case of vasectomy. [This is based on the opinion that remedial surgery is almost certain to be ineffective. Others believe there is good probability of successful repair.] (2) No obligation thereto exists in any case of oöphorectomy, excision of the tubes, excision of tubal cornua, burial of uterine ends, bisection of the tube with cautery, bilateral salpingectomy—in a word, all uses of the scalpel. (3) In simple ligation of the fallopian tubes, a divergence of opinion prevents the imposition of a moral obligation.

Father Clifford previously wrote on the morality of sterility tests,⁹⁸—an article of great practical value to theologians and Catholic doctors.

The *Jewish Quarterly Review* contains two articles by Dr. Boaz Cohen on "The Relationship of Jewish to Roman Law."⁹⁹ The erudite author makes some incidental references to the use of marriage in ancient times that may be of interest to the modern moralist.

With reference to the marital duties of the husband [Gibbon] observes as follows: 'The inclination of the Roman husband discharged or withheld the conjugal debt so scrupulously exacted by Athenian and Jewish Law. Solon requires three payments per month. By the Mishna, a daily debt was imposed on an idle, vigorous young man; twice a week on a citizen; once on a peasant; once in thirty days on a camel driver; once in six months on a seaman. But the student or doctor was free from tribute. . . . Polygamy divided, without multiplying the duties of the husband.'

^{96a} But cf. *AAS*, XXXVI (1944), 187.

⁹⁷ *THEOLOGICAL STUDIES*, V (June, 1944), 141-58.

⁹⁸ "Sterility Tests and Their Morality," *Ecclesiastical Review*, CVII (1942), 358-67.

⁹⁹ *Jewish Quarterly Review*, XXXIV (Jan., 1944), 267-80; *ibid.* (Apr., 1944), 409-24.

Dr. Cohen notes that the rendering of the Mishna is partly fanciful and was borrowed by Gibbon from Selden's *Uxor Hebraica*.¹⁰⁰ No one can fail to note that the rights of the wife were distinctly secondary in those ancient times. Other points of similarity and dissimilarity between Jewish and Roman law and morals are discussed in the essays, but the author concludes:

To sum up, since a critical comparison between Roman and Jewish Law has hardly been inaugurated, it would be premature to make any statement on the question whether the Jews and the Romans had profited to any great extent from each other's legal experiences. But it is safe to assert that a scientific and comparative inquiry between the two great systems of law that have wielded such a considerable influence upon Western civilization, would result in an enhanced understanding of the great contributions made by the Jews and the Romans to the thought, the culture, and the legal science and institutions of Europe.

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¹⁰⁰ Ed. Wittenberg, 1712, p. 250. See also *Marriage Laws in the Bible and the Talmud*, by Louis M. Epstein (Cambridge: Harvard University Press, 1942).