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Medico-Moral Notes

by

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FEE-SPLITTING

I AM OFTEN asked by doctors what the moral theologians have to say about fee-splitting. Most of the moralists treat the subject with the greatest brevity, if at all; but one (Payen, in his *Déontologie médicale*, n. 542) discusses the topic at some length. It may be of interest and profit to give here a digest of Payen's remarks; and I believe it would considerably enhance the interest and profit if my physician readers would send in their own comments on this outline—I mean comments which concern actual problems as we face them in our country today. For myself, I have no personal knowledge of doctors' fees. When I am ill, I am simply deluged with professional courtesy and there are no fees to split.

Payen defines fee-splitting as the dividing of honoraria by physicians who care for the same patient. His definition does not indicate whether the division is secret, but his explanation makes it sufficiently clear that he means the division of honoraria without the knowledge of the patient. This practice, he says, is (1) sometimes *unjust*; (2) always *dangerous*; and (3) always *beneath the dignity* of the medical profession.

1) *Unjust*: Payen suggests four cases in which real injustice is done. In the first of these cases, the attending physician calls in a consultant, a specialist, or a surgeon, and then demands a part of the honorarium that these men justly charge. Here it is the attending physician who commits the injustice and the other physician who is made the victim.

In Payen's second case, the attending physician refers the patient to a surgeon (or some other specialist); and the surgeon charges more than his ordinary fee so that he can give the excess to the attending physician. The supposition in this case is that the surgeon is a capable man. A third example changes this case somewhat by having the attending physician send the patient to a less capable surgeon because this man is willing to give the attending physician a bigger share of the fee. The fourth and final example of injustice concerns the sending of the patient to a surgeon for an operation that is either unnecessary or even contraindicated. Obviously, in these three cases the victim is the patient, who is forced to pay more than he should and

(in the third and fourth cases) whose bodily welfare is subordinated to money.

2) *Dangerous*: Payen admits that fee-splitting does not necessarily entail any of the injustices mentioned above. But the practice is dangerous, he says, because it easily creates the temptation of taking advantage of the patient or of making a victim out of a young physician.

3) *Beneath the dignity of the profession*: There are several reasons for this. First, any practice which is so much open to abuse is not consonant with the standards of a highly-respected profession. Secondly, since the division of the fee is like a "commission," it converts a profession into a business. Furthermore, the actual practice of fee-splitting by even a small number of physicians reflects unfavorably on the whole profession, because when people discover it they readily conclude that it is a common practice and their esteem of and confidence in the profession is diminished or destroyed.

The foregoing is a representative statement of the moral theology of fee-splitting. I believe that most, if not all, medical associations have provisions consonant with this statement. However, as I said earlier, comments, especially in the form of practical problems and suggestions, would be appreciated.

CARE OF THE DYING

My first experience with the writings of Walter C. Alvarez, M. D., was a decidedly distasteful one; I read his article in defense of euthanasia in *GP*, September, 1950. I am happy to report that my latest experience is much more pleasant. The general tone of his article, "Care of the Dying," in the *A.M.A. Journal*, September 13, 1952, pp. 86-91, is very wholesome; in it he faces some very difficult problems and suggests solutions that are in agreement with good morals. I should like to indicate here some of the points that especially impressed me when I read the article.

In general, Doctor Alvarez favors telling the dying where they stand. He says that in his experience he has found that most of them want to know the truth. The advantage that he stresses is the fact that, knowing the truth, they can properly arrange their material affairs. This is one reason why our hospital code requires that dying patients be notified of their condition; but of course our primary reason is to enable the patient to make proper spiritual preparation for death. Although Doctor Alvarez does not stress this reason, he does not neglect it.

Regarding elderly patients who might be in the class of "slowly

dying but not incapacitated," Doctor Alvarez is not in favor of putting them on strict diets and of depriving them of little comforts such as their pipe and a bit of Scotch. On the basis of moral theology, I would agree with him. For the aged, this drastic changing of the pattern of their life is such an inconvenience that it may well be called an extraordinary means of prolonging life (if it really does prolong their lives) and the doctor has no obligation of resorting to it unless the patients themselves want it. The old people usually do not want it, as Doctor Alvarez shows in his article.

Toward the end of the article the author raises the question of radical surgery for carcinoma when the chance of saving life is small, and of the possible prolonging of life by a gastroenterostomy or an enteroanastomosis. In such cases, he says, the wishes of the patients are to be consulted; some patients would prefer not to have such operations, and their wishes should be respected. I believe that any Catholic moralist would agree with this. These operations are clearly extraordinary means of preserving life; a patient is not obliged to submit to them, and the doctor has no obligation to perform them unless the patient wishes them.

One of the most delicate of the moral problems of modern medicine concerns "carrying out efforts at resuscitation with oxygen and endless injection of stimulants" in the case of an old person who is close to death. This is a matter on which we do not have any perfectly clear moral norms. Certainly good nursing care and the alleviation of pain must always be provided; but on the further question of prolonging life, especially of comatose patients, by artificial means such as oxygen, blood transfusions, intravenous feeding, and so forth, there is room for legitimate differences of opinion among conscientious physicians. Doctor Alvarez believes that the wishes of the family are to be ascertained; for himself he does not favor the prolonged attempt at resuscitation in these cases.

It might be of interest to compare Doctor Alvarez' view with a solution given by an eminent Catholic moralist in far-off Australia. The *Australian Catholic Record*, for October, 1951, contains this request: "I would be grateful for a short treatment on the obligation to feed by artificial means an unconscious senile patient, whose life expectancy is limited to a few weeks." Answering the request, Monsignor James Madden makes the customary distinction between ordinary and extraordinary means of preserving life and then applies the distinction to artificial feeding. For a patient with a hope of recovery, he says, such feeding is an ordinary means. But, he adds, "an unconscious patient, whose days are limited by reason of the very nature of his disease, is in a different

category; and it seems to us that artificial feeding would be an extraordinary means of keeping him alive. There would be no obligation on his relatives, etc., to ask that it be done, though they may request that the spark of life, even in an incurable, unconscious person, be kept burning by use of this means."

As I have said, the moral problem of the duty of preserving life by the use of artificial means is both delicate and difficult. I have already published two articles on the subject in the Jesuit quarterly, *Theological Studies* (for June 1950, and December, 1951); and I am now beginning some articles on the same topic in *Hospital Progress*. There must be some reasonable norm between a species of euthanasia on the one hand and meticulous uselessness on the other, but it is by no means easy to define the norm.

RHYTHM

In my article in the May, 1952, number of *Linacre Quarterly* I commented on the papal statement that married people who use their rights have a positive duty to contribute to the conservation of the human race. I suggested that this statement might be open to two interpretations: first, that the duty itself is unlimited, and that the only limitations would come from the excusing causes mentioned by the Holy Father in his allocution of October 29, 1951; and secondly, that the duty itself, like other social duties, is a limited one. I expressed a preference for the second interpretation and proposed that a reasonable limit to the *obligation* to procreate might be a family of four or five children. I expressed this same opinion in *America*, May 3, 1952; and in both my articles I asked for discussion of the opinion.

In general, the reception of my opinion by moral theologians has been very gratifying. Besides receiving many letters favoring the view I had expressed, I was also present at a meeting of moralists at which the opinion was discussed, with a very large majority of the moralists declaring themselves to be at least substantially in favor of it. Several, of course, expressed disagreement. Among these was Father Francis J. Connell, C.S.S.R., who has very graciously accepted my invitation to discuss the problem, and who answered a question concerning it in the August, 1952, number of *The American Ecclesiastical Review* (pp. 136-141). Before I refer to Father Connell's objections to my position, I should like to quote the question he was given to answer. It reads:

"In recent articles . . . Fr. Gerald Kelly, S.J., has proposed the opinion that the use of periodic continence (rhythm) is permitted to any couple, provided they have brought four or five children into the world,

even though no other justifying reason is present. What is to be said of this interpretation of the Pope's instruction on this matter . . . ?"

Now let me quote my own words when I explained the consequences of the opinion I was proposing:

"If this second interpretation of the duty to procreate were taken as a sort of working norm of obligation, it would allow for the following practical rules: To have more than four or five children is an ideal which should be encouraged. To use the rhythm to limit the family to four or five children is permissible, even without special excusing causes, *provided both parties are willing and able to practice it*. To use rhythm to limit the family to less than four children requires one of the justifying reasons mentioned by the Pope."

A comparison of the question with my own words reveals that the question entirely omits the conditions I have italicized. Yet these italicized words are of great importance because they show that, when we are considering the licitness of the use of rhythm, we must consider not merely the duty to procreate, but marriage *in its totality*. It is true that the opinion we are discussing concerns precisely the duty to procreate, which pertains to the primary end of marriage; but it is also true that any translation of the opinion into the practical order must not be divorced from the *mutuality* of the marriage contract or from the *secondary end* of marriage. By the marriage contract itself, both husband and wife guarantee to satisfy the reasonable sexual desires of each other; and regardless of the size of their family neither may unreasonably force the practice of rhythm on the other. Moreover, one of the secondary ends of marriage is mutual helpfulness; the marriage act itself is to help them to grow in love and union. The other secondary end is what theologians call *remedium concupiscentiae*; and this means that the proper use of the marriage act is the ordinary way for married people to avoid illicit sexual acts. The necessity of safeguarding these secondary ends also sets limits to the use of rhythm.

Despite the faulty wording of the question, Father Connell himself does not ignore my qualifying clauses. In fact, one of his main objections against my opinion of the limited obligation to procreate takes account of most of my qualifications. He proposes the case of a healthy couple, apparently married in the early twenties, who, though able to have and support children, mutually agree to practice rhythm during the first ten years of their married life, e.g., till the age of thirty-three or thirty-four. "According to the opinion of Fr. Kelly," he writes, "it would seem that they would be free from even venial sin during these years while they are avoiding the primary end of marriage, as long

as they have the intention of eventually procreating and raising the required number of children, have a reasonably good hope of attaining this objective and are not in grave danger of incontinence or injustice. I would hesitate to regard such a situation as compatible, not merely with the ideals, but even with the duties of Christian marriage."

I said that Father Connell has regard for *most* of my qualifications. He omits the condition concerning mutual helpfulness; this couple must also have the assurance that during the years of practicing rhythm they will preserve the union of hearts that belongs to marriage. Put in a nutshell, therefore, and with this added condition, the objection says: "In Father Kelly's opinion, a young married couple, healthy and able to have children, would not sin by mutually agreeing to practice rhythm till the age of thirty-three or thirty-four, *if* they have reasonable assurance that they will have four or five children after that time, and *if* they have a reasonable assurance that they will avoid sins against chastity, and *if* they have reasonable assurance that they will preserve the mutual love that is the secondary end of marriage."

Granted all these *if's*, the objection correctly interprets my opinion. And it does not shake my confidence in the opinion itself. But does not this concatenation of *if's* create a case that is almost purely hypothetical, a case so rare that it is practically outside the normal laws of human conduct? How many young couples can have a reasonable assurance that, after having practiced the rhythm during ten or more of the best child-bearing years of their lives, they will yet have a family of four or five children after they are thirty-three or thirty-four? (Let the doctors answer that one.) And how many young couples can have a reasonable security that while practicing the rhythm during their youth they will at the same time avoid perils to chastity and to their mutual union of hearts? I will answer that by saying that it is the rare couple that can avoid these perils without the special grace of God. All in all, therefore, I would say that the objection seems to be a straw man, because it neglects the fact that my theory about the limited duty to procreate must be applied *realistically* with reference to the totality of marital duties.

Father Connell also believes that my theory does not take sufficient account of the duty to *increase* the human race and particularly to increase the number of *Christians*. For instance, he cites the Latin of a part of the following passage from Pius XI's encyclical on Christian Marriage:

"But Christian parents must also understand that they are destined not only to *propagate* and preserve the human race on earth, indeed not

only to educate any kind of worshippers of the true God, but children who are to become members of the Church of Christ, to raise up fellow-citizens of the Saints and members of God's household, that the worshippers of God and Our Saviour *may daily increase.*" (NCWC edition of the text issued by the Vatican Polyglot Press, p. 7.)

Father Connell apparently believes that the words italicized (by himself) in this passage mean that Christian parents have the duty to *greatly* increase the number of Christians in the world by means of child-bearing. I can only say that, as far as I know, this is a novel interpretation of the passage. Everything said in this passage seems to me to be sufficiently fulfilled by my theory, which insists on the duty to procreate, and which suggests a number of children that allows for at least a moderate increase in the population.

Moreover, for the benefit of those who might fear that the following of my opinion would unduly limit either the world's population or the growth of Christ's Church, let me point to the fact that in this country, where the normal family is much below what I have suggested as the limit of the procreative duty, we are growing very fast. Also, despite the fact that wars and disease have plagued this world from the beginning, the population keeps moving on. Again, it must be remembered that, as I have pointed out in the foregoing paragraph, the use of rhythm is circumscribed at least to some degree by the necessity of keeping it within the totality of marital duties. Finally, even though four or five children be the limit of their child-bearing duty, many Christian parents will gladly go beyond the call of duty and have larger families.

Toward the end of his discussion Father Connell suggests two intriguing problems for those favoring my theory to solve. First, "if three of a couple's five young children perish in an accident, are they obliged to try to have three more?" I would answer this by saying that as far as their duty to procreate is concerned, they have no further obligation, because this duty is computed in terms of the normal requirements of society and the computation allows for such things as accidental deaths. They must, however, take the necessary means of preserving their mutual love and avoiding unchastity.

"If a young widower with five children marries again, must he add another five to his quota?" This is the second of Father Connell's intriguing problems. I am willing to venture an answer. I would say that in this second marriage, the duty which precisely concerns the primary end of marriage is sufficiently fulfilled by *educating* the five children; and

the morality of using rhythm would therefore be judged solely in the light of its conformity with other duties of the married state.

THE DOCTOR AND RHYTHM

Father Connell has some other points that will be better treated elsewhere. I have chosen the foregoing points for mention here because I believe that my remarks complement and help to explain what I have previously written in this review and because I believe that much of what I have said can be translated into practice by doctors in some of the problems they must face.

One question that I am often asked by doctors is this: "Am I morally justified in recommending rhythm when I see that some condition seriously affecting the mother's health calls for the avoidance of further child-bearing or for the greater spacing of children?" The answer to this is that the doctor is not only justified, but in many cases it is his duty, to point out the danger of further child-bearing or of too-rapid child-bearing, when such danger actually exists. And it seems to me that in such cases it is usually unwise merely to point out these dangers and to do nothing more. When a doctor simply tells a young couple, "You ought not to have any more children," or "You ought to wait a few years before having your next baby," he is apt to leave them stranded, if I may use the expression. They do not know what to do, and they may take this as a sort of invitation to practice contraception.

In such cases the doctor ought to help the couple to practice rhythm. Yet, here again, if the help merely consists in instruction on the physiological and biological aspects of rhythm, the couple is still apt to be stranded. As I have pointed out earlier in these notes, the practice of rhythm must fit into the totality of married life, otherwise the attempt to use it may result in disaster. Some young couples who are physically able to practice rhythm find that its use results in severe psychological strain and moral danger. They grow cold towards one another and they experience many temptations against chastity, and thus disturbing family tensions are created.

Every married couple that sets out to practice rhythm, even with the most cogent reasons, should be made aware of these psychological and moral dangers from the very beginning, and should be helped to make the mutual adjustments that will enable them to preserve and even increase their love and to strengthen one another against temptations to any form of unchastity. A sympathetic doctor can do much for such a couple, and he can do even more when he enlists, or has them enlist, the help of an understanding spiritual adviser.

Another question often asked by doctors is this: "Suppose that a young woman, apparently healthy, comes to me either shortly before her marriage or shortly afterwards, and asks for instruction in the practice of rhythm? Am I allowed to give such instruction?" From the point of view of what is *allowed*, my answer would be a simple "Yes." Instruction on the rhythm is instruction on nature's own way of functioning and there is no moral wrong in either giving or acquiring the knowledge. Whether or not they intend to use it, married people have a right to this knowledge, and the proper place to obtain it is from the medical profession. As Pius XII said to the midwives—and he was really speaking to the entire medical profession—"It is your office, not that of the priest, to instruct married people either when they come for private consultations or through serious publications on the biological and technical aspects of the theory."

A full answer to this question, however, is not given merely by saying what is *allowable*. It seems to me that a zealous doctor might take advantage of a request like this to do a great deal of good, if he would tactfully inquire of the young woman whether she intends to use rhythm at the very beginning of her marriage. I suggest this approach because I think that not a few young couples plan to use rhythm because they have an exaggerated fear of child-birth or an exaggerated notion of the financial requirements involved in having children. A doctor whose tactful questions would bring out points like this could then, with equal tact, proceed to dissipate these exaggerated fears or notions and thus help the couple to start marriage with the proper idea of child-bearing and its blessings.

Pertinent to this topic of the doctor and rhythm, I should like to call attention to an excellent editorial entitled, "Gynaecology—Two Problems," in *The Catholic Medical Quarterly*, April, 1952. The editorial calls attention to the third section of the papal allocution of October 29, 1951, and sees in it two challenges to the Catholic physician.

The first challenge concerns rhythm. If further research is to be done on "cyclic variations in fertility," it must be done by physicians who realize that there is a profound moral difference between rhythm and contraception; it will hardly be done by those who see in these things only "differences of technique." And if deserving married people are to be helped in the practice of rhythm, this help must be given by physicians who realize that profound moral values are at stake, as well as peace of mind. "To a varying extent," the editorial says, "the reliability of the infertile period depends upon factors which are peculiar to the individual patient and a doctor's advice is therefore always involved. To us at least

it seems highly undesirable that patients should be left to solve so complex a problem as this by the unaided use of charts and calendars that make no allowance for individual circumstances and physiological peculiarities that only a medical practitioner can assess with accuracy."

The second challenge concerns the papal statement that in cases which demand it, even *absolute* continence is possible through co-operation with divine grace. This is a hard saying to many; and against it they raise the cry that abstention from intercourse causes mental breakdowns. The defense of the psychological sanity of the Catholic teaching on this subject is a challenge to Catholic medical men. The editorial accepts this challenge and has a strong statement against the defeatist attitude. Here is a partial quotation from this splendid statement:

"To claim it is impossible to give up what one desires without a mental breakdown is not only not compatible with the conclusions of reliable psychiatrists, but is in fact directly contrary to them. It is in addition contrary to any valid understanding of the dignity and responsibility of adult human beings and to the evidence of history. Within recall even of the most limited memories we have had an example of the separation of husbands and wives on a scale that has few parallels, and no one suggested at the time that one of the results of conscription would be that half the nation would be psychotics or adulterers. It may be objected that there the separation was a physical one enforced from outside and not the result of a personal decision. But such an objection begs the question in that it apparently assumes that what men and women may legitimately be expected to do for a national cause they may not be expected to do out of regard for moral principles, and it appears also to be founded on the wholly invalid assumption that men are capable of giving up only what they are physically incapable of having. The fact is that hundreds of thousands of married couples lived apart, at times no doubt they found it extremely difficult to do so, but the majority succeeded without either mental or moral collapse. The majority returned to continue a married life in no way impaired by its temporary suspension and the minority whose marriages broke down and in due course ended in divorce were heirs to a policy that has all along been a denial of man's ability to repair a damaged relationship and restore it to a state of harmony."

As I have mentioned before, *The Catholic Medical Quarterly* is published by the Catholic Physicians' Guilds in England. I had intended citing here a number of other items culled from the issues of the past year; but I have already used sufficient space. Once more, however, I should like to recommend this publication to American Catholic physicians. Subscriptions should be sent to: Treasurer of the Guild, 29 Blenheim Road, London, S. W. 20, England. Annual subscription price is \$2.50.