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Medical Law and Morality

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MEDICAL LAW AND MORALITY*

IN SEPTEMBER, 1949, We had the pleasure of receiving and speaking to the participants in the fourth International Congress of Catholic Doctors.¹ At that time, We noted how preoccupied Catholic doctors were with keeping abreast of important theoretical and practical advances in modern medicine. We mentioned also how anxious they were to put this new knowledge to use in preventing and combating disease and suffering. In this respect they are faithful to the great principle of science and the medical art: Lend aid and heal; do not harm and do not kill.

We added that the Catholic doctor, if he is to be obedient to his faith and conscience, must be ready to place at the disposal of others not his knowledge and skill only, but his heart and his devotedness as well.

Medicine and the Service of God

The doctor maintains a respectful reserve toward the human body because he knows that it is animated by a spirit, an immortal soul, which in combination with the body forms a single nature entirely subordinate to the religious and moral order. The Catholic doctor realizes that both his patient and he himself are ruled by conscience and the will of God; but he also knows that all nature's resources have been placed at his disposal by the Creator in order that he may be able to protect and defend men against illness and infirmity. He does not divinize nature and medicine nor does he make them absolutes, but he does see in them the reflection of the grandeur and goodness of God and subordinates them entirely to His service.

* An address by Pope Pius XII to the Seventh International Congress of Catholic Doctors, delivered Sept. 11, 1956. Reprinted with permission from *THE POPE SPEAKS*, Winter 1956-57, p. 261.

¹ XI DISCORSI E RADIOMESSAGGI 221-25.

The Position of the Catholic Doctor

Furthermore, when We summed up the position of the Catholic doctor with respect to medicine's great progress in the investigation and the employment of nature and its forces, We said:

What is it that the doctor who is worthy of his vocation does? He avails himself of these very forces, these natural properties, so as to achieve through them cures, health, strength, and often, what is even more valuable, the prevention of sickness, contagion, and epidemics. He holds captive the powerful force of radioactivity and uses it against diseases which resist other treatment. The properties of the most virulent poisons are used to prepare efficacious remedies; further still, the bacteria of the most dangerous diseases are used in many ways in serotherapy and vaccination.

Finally, natural and Christian morality maintain their imprescriptible rights throughout. It is from these rights, and not from any considerations guided by sentiment, or materialistic or naturalistic philanthropy, that the essential principles of medical ethics are drawn: the dignity of the human body, the pre-eminence of the soul over the body, the brotherhood of all men and the sovereign dominion of God over life and destiny.²

We are pleased at the present moment that We can address you in your seventh International Congress, even though it be from a great distance, and manifest Our interest in your work. Since you have chosen as your theme, "The Doctor and Law," We should like, first of all, to discuss with you the source and origin of medical law.

SOURCE AND ORIGIN OF MEDICAL LAW

I. Without going into long theoretical considerations, We should like to repeat and

² *Id.* at 223.

confirm what We have often said and what Our predecessors never failed to teach: the right to life, the right to the integrity of body and of life, the right to the care which is necessary for these things, the right to be protected from the dangers threatening them — all these are rights given man by God, not by another man or group of men, not by the State or any union of States, nor, finally, by any political authority.

Man and Society

The individual receives this right in and for himself first, then in relation to other men and to society. He receives it not only in the order of present action, but in the order of finality as well. It is a deviation from the clearly expressed teaching of the popes to consider man in his relation to society as though he were inserted into the "organic thought of the physical organism"; a single physical member doubtless has a certain existence peculiar to itself, but, as such, it in no way exists for itself; it is absorbed finally by the arrangement of the whole organism. The principle, *civitas propter civem, non cives propter civitatem* [the city for the citizen's sake, not conversely — Ed.], is an ancient heritage of Catholic tradition. It has been repeated in the teachings of Popes Leo XIII, Pius X, and Pius XI, not in any casual way, but explicitly, in strong and precise terms.

The individual is not only anterior to society by reason of his origin; he is superior to it in virtue of his destiny as well. Society, to the formation and development of which individuals are ordered, is merely the universal means intended by nature to bring people into contact with one another.

Part and Whole

The relation here of part to whole is entirely different from that which exists in the physical body. When man is born into society, he is already provided with independent rights by the Creator; he carries on his activity by giving and receiving, and through his collaboration with other men he creates values and obtains results which, by himself, he could not effect nor even, as an individual, transmit. These new values show that society has its own pre-eminence and dignity; but this does not bring about a change in the relation We pointed out above because these higher values (society itself, for instance), are in their turn put in relation by nature to the individual and to people in general.

We may not grant to speculation the unlimited right to systematize and to construct, even when such theorizing coincides with Papal pronouncements, in matters concerning fundamental questions of law in general.

It is in no way proved that the point of departure and the foundation for the whole juridic structure and the justification of law is the realization, willed by the Creator, of perfect human nature, and that this end demands the subordination of the individual to the society upon which he immediately depends, of this society to a higher society, and so on to the perfect society, the state.

This manner of considering things is contrary to statements which the very recent popes have made on the subject. And it is not at all permissible to draw a distinction in the thought of the popes between the order of actual realization and that of purpose. The popes have understood and have

wished it understood from one as from the other what is the fundamental principle on the origin of the right to life.

There is no denying that many people consider the principle of totality³ the determining factor in comprehending the relation which joins the individual and society. But serious objections arise from the application of the principle of totality to concrete considerations of the origin and limits of the right to life which we are now discussing.

The first point that is lost sight of is that the principle of totality is valueless except as it is applied to the whole as such in relation to any part as such; that is the question of law. But that of fact presents itself too: is there a relationship of part to whole between the two terms we are discussing here? And if there is, what precisely is it?

In Our allocution of September 14, 1952, when the point under consideration was the precise limitation of society's rights to the body and life of the physical person, We explained the meaning and importance of the principle of totality and We expressly warned against the wrong application of the principle.⁴

³ This is the principle which asserts that the part exists for the whole, the good of the part is subordinated to the good of the whole, and the whole as the determining factor for the part can dispose of the part in its own interest. See the address referred to in footnote 4 for a further discussion by the Pope of the difficulties inherent in interpreting the principle and some of the precautions which must be observed in applying the principle.

⁴ XIV DISCORSI E RADIOMESSAGGI, 328f. An English translation of this message is available in an NCWC (1312 Massachusetts Avenue, N.W., Washington, D.C.) pamphlet entitled *THE MORAL LIMITS OF MEDICAL RESEARCH AND TREATMENT*.

**POSITION OF THE DOCTOR
WITH REGARD TO THE
LAW AND MORALITY**

II. The principal point of this address, however, and one which We should like to develop at some length, is the position of the doctor with regard to the law and morality. Almost everything We have said to doctors has touched on this twofold matter, which comes up in other professions as well. If the theme of your congress is "The Doctor and Law," the word "law" here does not exclude morality, since you intend to study them in their reciprocal relations. Both morality and law have their own proper character which must be safeguarded; they express the order of conscience and that of law, and their relationship forbids that we separate them or thoroughly fuse them.

MEDICAL MORALITY

Morality has, as its end, the fixing of man's internal and external conscious attitude toward the lofty obligations which proceed from the essential condition of human nature: obligations toward God and religion; toward oneself and one's neighbor, which would be a matter of individuals, classes, and collective groups, and the community understood in the juridic sense; obligations in the almost unlimited sphere of material affairs.

Objective Morality

Each man, whether he be doctor or military man, scholar or man of action, is constrained by morality to regulate his acts according to the list of obligations just mentioned. That presupposes that a man must know these obligations or, if he is not already aware of them, must study into

them. It follows that though the moral decision proceeds from man as subject, it does not depend upon his pleasure or caprice but is directed by certain objective criteria. That is what the spontaneous question "Why?" expresses, in the man who is conscientious in his own regard. He wants to know the objective norms governing any of his proposed actions.

It is enough to observe the conscientious doctor going about his daily professional routine to see how medical morality directs his activity. Such a man makes a careful diagnosis, weighs the facts, calls upon his knowledge, has recourse to publications or articles on the subject. He may consult with other doctors. He then decides, takes action, and observes further developments.

But medical morality goes further still. A good number of norms touching upon medical practice may be found in the Ten Commandments as sound reason understands them and the Church explains them. In Our allocution of September 14, 1952, which We mentioned earlier,⁵ in which We discussed the limits of research and medical practice (the use of modern discoveries in particular), and in the addresses of October 29, and November 27, 1951,⁶ We indicated certain areas in which morality should restrain medicine.

The Restraints of Morality

It is also necessary to take into account demands made upon the doctor by the

⁵ *Ibid.*

⁶ XIII DISCORSI E RADIOMESSAGGI, 333-53, 413-18. The addresses of October 29, 1951, and November 27, 1951, are available in English translation in an NCWC pamphlet entitled *MORAL QUESTIONS AFFECTING MARRIED LIFE*.

patient, his family and other interested groups — demands which depend upon convention for their resolution, or upon precedent.

It could be a question of religious, moral, philosophic, or social ideas upon which the doctor is asked to base his judgment or at least to adapt his ideas, but which are contrary to his convictions as a Christian.

He may be asked, for reasons medically comprehensible on other grounds, to go ahead with euthanasia, or to interrupt pregnancy, or to give practical assistance where contraception is concerned, always in cases of objectively serious diagnoses.

Here the doctor finds himself face to face with the obligation to respect medical morality which lays down unconditional prescriptions for the Christian doctor in every case where the norm of morality is unconditional, absolutely clear and certain.

This observance of the moral law does not ultimately entail any harm to the interests of science nor those of the patient nor of the community, which is to say the "*bonum commune*."

Nor should the doctor follow his own tastes or whims in looking for a solution in unusual cases; and far less should he consent to or compromise on requests or wishes which are basically immoral. On the contrary, he should follow the dictates of a conscience illumined by objective norms, and think of God to Whom he will have to make an accounting.

Thanks to this objective orientation of conscience, the Christian doctor will be able to keep from falling into that condemned system known as "situation ethics."

MEDICAL LAW

By medical law, one means the body of laws which, in the body politic, refer to the

person and activity of the doctor, the observance of which may be enforced by the strength of civil law. These norms may either be immediately formulated or promulgated by civil authority, or they may merely be authorized or sanctioned by it.

Law may also be understood as the "*iustum*," by which we mean that which each one has a right to as his own according to the rules of justice, whether or not he may be able to enforce his right.

Or we may consider law subjectively, as a dominion which is recognized by the moral order and which the subject of the law exercises over an object of this law, in virtue of which the subject may demand the "*iustum*" from whoever owes it to him. This subjective law is also capable of profiting by the use of force.

Medical law may not repudiate either of these two conceptions of law, nor may it disregard them.

It is the first meaning of medical law upon which we shall dwell.

The Need for Medical Law

There is a need for such law, since the person and activities of the doctor bring to bear such an influence on the peace and security of life in the community that the absence, vagueness, or lack of coercive power of these norms could not be consistent with the good of the whole.

Obligations based solely on morality are too indefinite in the concrete situations of life, and are capable of too many different interpretations for us to be able to depend upon them alone for order in society. They must, therefore, be complemented and their outlines sharpened by positive law. A doctor's training, his theoretical and practical knowledge, the care and scrutiny

which are necessary in this matter for the common good — all this must be firmly set up; but they are not sufficiently concretized by the moral order, which, moreover, does not have at its disposal the power of coercion.

Because of the values which are entrusted to the doctor by the individual and society, we see that there can be no doubt concerning the necessity of medical law. This point has its confirmation in the fact that all civilized countries have such a law, though its formulation may differ more or less notably according to circumstances.

Content of Medical Law

The material content of medical law is determined primarily by its intrinsic end. The first point is to decide what concessions are to be made to the doctor and what constraints placed upon him, so that he may fulfill the end of his vocation: Lend aid and heal; do not harm and do not kill.

The same principle allows us to establish the obligations of individuals and society to the doctor, insofar as these obligations are connected with medical law. Obviously, it would be unreasonable and impossible to wish to define and regulate everything that could be of help to the doctor by these laws, or to stipulate all the demands which could be made upon him.

Generally speaking a superabundance of laws should be avoided, since even in antiquity this situation was considered a sign of a State's decadence — in Tacitus' pithy phrase: "*corruptissima re publica plurimae leges.*"⁷

We must allow a certain leeway for the doctor's own decisions and expect that

people will themselves see to certain things in medical matters without expecting the law to cover every case in advance.

For certain things, moreover, the law could not provide without running into opposition from doctors, legislators, or private citizens. Frequently, such laws will represent compromises between irreconcilable adversaries or will have been imposed by the strength of the majority.

Since these laws will sometimes contain sections which are objectively immoral or anti-Christian, and may not be approved or followed by the Catholic doctor without going against his conscience, another point comes up: what attitude must the Catholic doctor assume towards medical law, which is the code of his profession?

RELATIONS BETWEEN MEDICAL LAW AND MEDICAL MORALITY

Having discussed medical morality and medical law separately, We come to Our third point, which is the relation between the two: are they on an equal footing, or is one subordinate to the other?

Subordination of Medical Law to Medical Morality

In one sense, we could say that each is master in its own sphere and is autonomous as far as the other is concerned. But this is only partly true, because positive law has neither strength nor operative force except to the extent that it is recognized by God, the final and supreme Source of all law. Furthermore, God can never support by His authority a law which contradicts Himself or the moral order which He Himself has established and made obligatory.

The consequence is that medical law is subordinate to medical morality which is

⁷ ANNALES lib. III, n. 27.

an expression of the divinely willed moral order.

Medical law, therefore, can never permit a doctor or a patient to practice direct euthanasia, nor may the doctor ever practice it upon himself or anyone else. The same is also true with regard to the direct suppression of a fetus, and any medical acts which contradict the clearly manifested law of God. In all these cases, medical law has no authority nor is the doctor bound to obey it. On the contrary, he should not even take it into account. He is forbidden all formal cooperation, while any material cooperation must follow the general norms laid down under "*cooperatio materialis*." Medical law which disregards morality or opposes it is intrinsically contradictory and it is useless for anyone to dally with it.

In other situations, all conflict between law and morality must be avoided, and one should investigate how they complement and support one another while each maintains its peculiar character. If they are made too subject, one to the other, we quickly see how the moral sense lapses into juridicism, legalism, or minimalism. This situation would be far from fitting since the intention of the doctor and patient is the preponderant element, giving direction to everything else.

Rigorism

Another result could be that juridic obligation, springing from the domain of morality, could have too strong an influence on conscience, and the result would be an insupportable rigorism. Or, it could happen that the blind sovereignty of law takes the place of morality and reduces it to a universal and conscientious adherence to legal prescriptions.

Individualism

On the other hand, however, we must guard against too wide a separation between law and morality. The danger here would be individualism, because too close a concentration on moral factors makes one lose sight of the objective data which would be clearly covered by law. The result in this case would be a false and overly subjective "situation ethics."

Juridic Positivism

Contrariwise, when law is too much divorced from morality, the tendency is toward a juridic positivism which is exaggerated and even extreme, and which, in many cases, would be a real danger to the decisions and action of the doctor.

We have in mind more than one code of medical law in which, although definite indications and certain guarantees are present, the direct interruption of pregnancy is authorized or even prescribed; or in questions of medical secrecy, or when the doctor is called to give expert testimony in legal procedure, the norms laid down by political authority are the only ones considered valid and obligatory.

These then are the ways in which the role of morality is seriously under-emphasized and the personal dignity of the doctor offended as far as medical law is concerned.

INTERNATIONAL COLLABORATION

III. For Our third point, We should like especially to justify and explicitly recommend international cooperation.

The attempt at rapprochement and cooperation makes itself felt in several different areas. As you yourselves have pointed

out in your program, it begins with a deep change in all human relations and its ultimate reason lies in the very nature of man.

A Law of Nature

It is the consequence of a law of nature which flows from man's common origin with other men and urges him to undertake a common cause with the help of all the creatures living on earth.

Even though one sometimes sees a passionately systematic drive to return to the isolation of the past, it becomes increasingly impossible, as time goes on, for nations to shut themselves up.

Everything that happens in one country effects a reaction in the others, and we have to remind ourselves that mankind and nations are like a living body whose circulatory and lymphatic systems keep all the parts in touch with one another. In the same way, there are international currents with which one cannot fail to be in contact or take into account.

The Catholic Doctor

But We have a particular reason for praising your international Association and hoping for its progress. It is because you are all Catholic doctors. Of course, just because you are Catholics does not mean you practice a special type of medicine, but you do have a particular way of considering your professional problems. On an occasion which brings you all together like this one, it is important to become acquainted with, and to hear some of your colleagues of international scientific reputation, men who do not consider their activity as scholars and doctors hindered by their convictions and their Christian way of life. Such contact is extremely valuable,

especially if it is gotten at meetings which draw people from different countries.

For the Catholic doctor who practices in an environment which is not Catholic, and among doctors who are not, there is a liberating influence in such a congress as this. He is released from a feeling of inferiority, his outlook is broadened, and his courage strengthened. It is for this reason that We hope you will be able to organize frequent congresses like this one.

Frequency of Juridic Problems

As your previous meetings have been told, juridic questions are not the only ones which concern you; they are not even your chief reason for meeting. But these points come up today with a frequency that forces one to treat them explicitly. In the program of your present congress it says: "The doctor's role is related to law, civil as well as public, national as well as international." You outline these juridic functions and highlight the precise relations between law and morality.

It is perfectly true that juridic affairs are not the proper interest of the doctor, but there are other international meetings which have proven the necessity of coming to grips with these problems and finding practical solutions. And they have been successful.

Words of Caution and Encouragement

We heartily approve your carrying this work further. But you must beware of a double danger: that of taking on too much preparatory work, and having too many goals. When We read your program, We admired your courage and zeal for work, but wondered, "Is this realizable in prac-

(Continued on page 280)

bingo evil in itself.²⁵ The moral problems surrounding gambling are basically rooted in and flow from the individual himself. Nevertheless, granting this, many would further argue that bingo is undesirable in that it attracts criminals and criminal participation, defrauds the players and tends to become a big business.²⁶

It is submitted, however, that New York, although allowing legalized gambling on a limited basis, has enacted sufficient measures to prevent commercialized gambling. Under the proposed bingo laws, it will be difficult, if not impossible, for organized crime, criminals and other undesired elements to participate in the operation of bingo games. Furthermore, the proposed law will prevent organized syndicates from operating and diverting the proceeds of such games to their use. If, under the rigid supervision of the local and state-wide authorities, the present laws prove inadequate, they are empowered to enact laws of a more stringent nature.

MEDICAL LAW (*Continued*)

tice?" The mentality of modern man leads him to search for breadth, unity and simplicity; beginning with an established point of departure, he wishes to deduce all the rest, and arrive at a goal which is fixed by

²⁵ See Ludwig & Hughes, *Bingo, Morality and the Criminal Law*, 1 CATHOLIC LAWYER 8, 12, 16, 18 (Jan. 1955).

²⁶ *Id.* at 20.

the very nature of things and which is clearly in view. It thus becomes easier to gain a mastery over the great number of problems which remain to be solved. We hope that you will succeed in bringing this breadth, unity and simplicity to the treatment of the juridic problems which you are forced to deal with nowadays as doctors. If you do this, you will indeed have accomplished great and useful things.

It remains for Us only to wish that your work make encouraging progress and be highly successful. You will certainly not reach your goal in a few days; but you will get closer to that goal, and you will doubtless be aided by the Truth, Wisdom and Knowledge of God. As a token of these blessings from God, We give Our Apostolic Benediction to you, and to all who benefit from your learning and devotion.

DEMOCRATIC STATE (*Continued*)

present themselves are infinitely various and while those forms recur in a multitude of combinations that may encourage, fascinate, interest or even appal, the dilemma itself seems always to be conditioned by the answer that you will choose to give the central question, what is the purpose and what the value of human personality? The huge engines that society constructs must serve some purpose that lies outside the fame of their inventors or the delight of their engineers in the spectacle of their technical accomplishment. Do not let us forget that Law is one of those engines.