

The Catholic Lawyer

Volume 7
Number 1 *Volume 7, Winter 1961, Number 1*

Article 2

Editorial Comment

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Editorial Comment

The currency of at least one of the articles in this issue of *The Catholic Lawyer* has been established beyond question. As we go to press, oral arguments have just been completed before the United States Supreme Court in a case dealing with the constitutionality of Connecticut's birth control laws. These laws prohibit the use of contraceptive devices or drugs and make it illegal for physicians to prescribe them. The pending case was the inspiration for the article by Richard Regan, S.J., entitled "The Connecticut Birth Control Ban and Public Morals," which appears on the immediately following pages.

It is interesting to note that during the oral arguments Chief Justice Earl Warren questioned the right of a state to prohibit a physician from advising, or a person from using, contraceptive devices when health is involved. The fundamental issue involved, however, as the writer points out, is the nature and extent of the power of the state over public morals. Readers will appreciate his frank and legalistic appraisal of the problem and his very interesting conclusions.

Elsewhere in this issue there appears a very excellent note on a type of juridical positivism which was originally written in Latin by Peter Huizing, S.J. The translation was made by William C. Cunningham, S.J., at the request of the Editor. The attention of the reader is called to the fact that this article could well be read together with an article by Father William F. Cahill dealing with the "Iniquitous Law" which appeared in the Spring 1959 issue of *The Catholic Lawyer*. Both articles complement each other in respect to the dangers inherent in a positivistic approach to law.

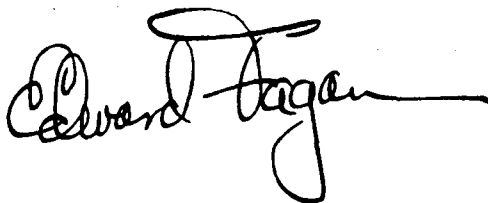
Professor Spitzer's article, "The Refugee — War Claims and International Law," is printed with his express request that it be called to the attention of those Catholic jurists who are experts in the area of international law. In this way he seeks to obtain their reaction and initiate a discussion on the subject which could possibly crystallize.

certain principles for the codification of the entire problem in the form of internationally accepted rules.

The article by Gordon Martin, entitled "Enforceability of Ante-Nuptial Promises to Raise Children in a Particular Religion," was suggested for inclusion by one of our advisors, Robert Drinan, S.J., whose "Religion and the State" also appears in this issue. The following Decree on ante-nuptial promises in mixed marriages which was issued by the Holy Office on January 14, 1932 should be read however in conjunction with Mr. Martin's material to permit full coverage of the subject from a Catholic point of view:

It sometimes happens that so-called mixed marriages between a Catholic and a non-Catholic, whether baptized or not baptized, are contracted, after the required guarantees are given indeed, but in such a manner that their fulfillment, especially as regards the Catholic education of the offspring of both sexes, cannot effectively be enforced in some regions because the civil laws oppose it; or even that it can be easily hindered by a local secular authority or an heretical minister, even against the will of the parents.

Lest so important a precept of natural and divine law be frustrated to the great detriment of innocent souls, the Most Eminent and Most Reverend Cardinals charged with safeguarding the integrity of faith and morals, in a plenary meeting held Wednesday, the thirteenth day of January, 1932, having also in mind our Holy Father's recent encyclical letter beginning *Casti connubii*, considered it their strict duty to call the attention of all Bishops and likewise of pastors and others mentioned in canon 1044, who are empowered to dispense from the impediments of mixed religion and disparity of cult, and to oblige them in conscience never to grant such dispensations, unless the couple to be married first give the guarantees, the faithful fulfillment of which no one can hinder, not even by the force of the civil laws to which one or the other may be subject and which are in force in the place of their present residence or (if it be foreseen that they may perhaps betake themselves elsewhere) in the place of their future residence; otherwise the dispensation itself shall be wholly null and invalid.¹



EDITOR

¹ *Acta Apostolicae Sedis*, xxiv (1932) 15.