PERMISSION TO READ PROHIBITED BOOKS

It is significant that the Holy See has never found it necessary to issue a clarification of those canons which determine either the effects of the ecclesiastical prohibition of books (can. 1398) or the conditions of their automatic prohibition (can. 1399). To be sure, there have been explanations of certain terms used in particular decrees of condemnation;[1] and there are, of course, difficulties in the application of the law to concrete cases, and even some obscurities regarding the extent and computation of its moral consequences. But the significance of this official silence on the basic constituents of the present discipline is that the law as such has proved substantially satisfactory. And since the rules of the Code were derived almost verbatim from the Apostolic Constitution of Leo XIII, *Officiorum ac munerum*, Jan. 25, 1897,[2] it may be concluded that for more than sixty years (very active years, too, in every aspect of intellectual progress) the canonical prohibition of books as presently formulated has provided a norm neither excessively detailed nor excessively vague, neither unduly repressive of scholarly enterprise nor inadequate to its protective function.

Yet while remarking that the formulation of the law has not required amendment or revision, it may be permitted respectfully to raise the question whether the observance of the law might not be greatly promoted at the present time if permission to read prohibited books were more conveniently obtainable in deserving cases.

To say that the prohibition of books would be better observed if permission to read them were more available is not a contradiction. In the light of the intimate sense of the law, it is quite intelligible. Canonists commonly note that the proscription of books is not an absolute prohibition, like the forbidding of meat on Friday. The latter, as law, is unconditional. It yields indeed to an excuse or dispensation, in both of which the law, by way of exception, is not observed. But the prohibition of books is conditional. What is prohibited is their use without dependence upon the judgment and consent of a competent superior. "The prohibition of books has this effect that, in the absence of proper permission, the book may not be read, nor kept, nor sold, nor translated into another language, nor in any way communicated to others."[3] One who reads such books with legitimate permission, therefore, is not escaping the law but fulfilling it.

[1] On the sense of the expression "opera omnia," for instance, cf. *Index librorum prohibitorum*, "Praenotanda" (Vatican, 1948) p. 2.

[2] Cf. *Codicis iuris canonici fontes* 3, n. 632, pp. 502–12.

[3] Can. 1398, § 1: "Prohibitio librorum id efficit ut liber sine debita licentia nec edi, nec legi, nec retineri, nec vendi, nec in aliam linguam verti, nec ullo modo cum aliis communicari possit."

The distinction is not purely academic. In the present context it is highly suggestive. For in making the reading of certain books dependent upon permission, the law implicitly recognizes the existence of subjects having at the same time a need for such reading as a means to legitimate objectives and a capacity to do so without prejudice to the purpose of the law. This is suggestive because the whole idea of the present note is not that there should be any relaxation or modification of the law itself, but that the needs of our time have given rise to certain difficulties in its observance, to which a solution may possibly lie in a more extensive communication of the faculty to grant permission.

Whatever may be the merits on either side of the current discussion about the actual existence of American Catholic scholarship, at least it is agreed by all parties that there should be scholarship among Catholics: scholarship of a high order, of a recognized nature, and of a rather general diffusion. This implies not only the question of leadership, but also and more generally the matter of procedure according to methods and standards reasonably demanded in our time by all scholars, Catholic and non-Catholic alike. Now there is, of course, nothing new in the principle that proficiency in a field of learning postulates not only a knowledge of the actual truths or tenets of that subject at any given time but also a familiarity with its history and development as represented in the writings of its most influential spokesmen. The new element in the modern picture, which gives rise to the new problem in the matter of prohibited books, is the coincidence of two phenomena scarcely predictable at the time of Leo XIII or of the codification: the vast increase in the number of students engaged in advanced studies of all kinds and the emphatic insistence of contemporary scholarship upon immediate contact with original sources.

By way of a single illustration, one is simply not considered to have come to grips dialectically with Descartes—as indeed one has not—if one has encountered his system only in the reporting of a professor or in the paraphrasing of a textbook, however fair and reliable both of these sources actually may be. In the light of this not unreasonable attitude, even when allowance is made for the strict interpretation of prohibitions whether by law or by decree, one can appreciate the situation which confronts the prospective scholar, even in a Catholic college or university, in such currently intense areas as philosophy, theology, Sacred Scripture, psychology and psychiatry, sociology, history, education, and literature.

In the discipline of the Code, as in the Constitution of Leo XIII, the power of granting permission to subjects who have such legitimate needs as those sketched above is reserved per se to the Holy See. In urgent cases, however, local and religious ordinaries have the faculty of permitting their

respective subjects to read particularly designated titles.[4] By a special quinquennial concession of the Holy Office, local ordinaries may grant more general and habitual permission to qualified individuals, exclusive of certain classifications and under strict conditions of duration, motive, circumstances, and mode of exercise.[5] The apostolic delegate enjoys a much more extensive faculty, limited only by the norms observed in the practice of the Holy Office.[6] Hence, apart from the case of texts and translations of Sacred Scripture, excepted in favor of those engaged in biblical or other theological studies,[7] and apart from certain special and rare particular indults, the permission at issue can be obtained, in the present discipline, only from the Holy See, one's proper ordinary, or the apostolic delegate. Practically this means that it will be obtained from, or through the intervention and recommendation of, one's proper ordinary.

[4] Can. 1402, § 1: "Ordinarii licentiam, ad libros quod attinet ipso iure vel decreto Sedis Apostolicae prohibitos, concedere suis subditis valent pro singulis tantum libris atque in casibus dumtaxat urgentibus."

[5] Cf. quinquennial faculties of local ordinaries: latest formula for the United States; faculties from the Holy Office, n. 1: "The faculty of granting for not more than three years permission to read or keep, with precautions, however, lest they fall into the hands of other persons, forbidden books and papers, excepting works which professedly advocate heresy or schism, or which attempt to undermine the very foundations of religion, or which are professedly obscene; the permission to be granted to their own subjects individually, and only with discrimination and for just and reasonable cause (cf. c. 1402, § 2); that is, to such persons only as really need to read the said books and papers, either in order to refute them, or in the exercise of their own lawful functions, or in the pursuit of a lawful course of studies. (OFFICIAL NOTE. The above faculty is granted to Bishops to be exercised by them personally; hence not to be delegated to anyone; and moreover with a grave responsibility in conscience upon the Bishops as regards the real concurrence of all the above-mentioned conditions.)" *Canon Law Digest: Supplement through 1956*, by T. L. Bouscaren, S.J., and J. I. O'Connor, S.J. (Milwaukee, 1957), at canon 66.

[6] Cf. faculties of apostolic delegates, n. 14: "To grant, in accordance with the Constitution, *Officiorum ac munerum* [cf. supra n. 2], permission to keep and read forbidden books and papers, with such precautions and restrictions as shall seem necessary or useful in individual cases, and which shall be in accordance with the practice of the Holy Office." *Canon Law Digest* 1 (1934) 178.

[7] Can. 1400: "Usus librorum de quibus in can. 1399, n. 1, ac librorum editorum contra praescriptum can. 1391, iis dumtaxat permittitur qui studiis theologicis vel biblicis quovis modo operam dant, dummodo iidem libri fideliter et integre editi sint neque impugnentur in eorum prolegomenis aut adnotationibus catholicae fidei dogmata." (Can. 1399: "Ipso iure prohibentur: 1° Editiones textus originalis et antiquarum versionum catholicarum sacrae Scripturae, etiam Ecclesiae Orientalis, ab acatholicis quibuslibet publicatae; itemque eiusdem versiones in quamvis linguam, ab eisdem confectae vel editae." Can. 1391: "Versiones sacrarum Scripturarum in linguam vernaculam typis imprimi nequeunt, nisi sint a Sede Apostolica probatae, aut nisi edantur sub vigilantia Episcoporum et cum adnotationibus praecipue excerptis ex sanctis Ecclesiae Patribus atque ex doctis catholicisque scriptoribus.")

It is altogether consonant with the delicacy of the matter and the magisterial office of the bishop that the authority to judge the subject's motives and capacities and to determine the norms and conditions under which permission may be given should rest primarily with the ordinaries.[8] It is no contradiction of this principle to call attention realistically to certain difficulties arising from the exclusively immediate exercise of this authority on their part. The principal difficulties are, I believe, reducible to three: the time element in the processing of a request and reply, the reticence of the general faithful in the matter of recourse to chanceries, and the understandable reluctance of ordinaries to grant permission to petitioners whose needs and qualifications are not personally familiar to them.

To appreciate the significance of the time element, it must be remembered that the available time is not the interval between the assignment and the deadline, which frequently is quite short, but the period remaining after the subject actually recognizes the need for permission, which commonly is very much shorter. In such a situation, to be sure, the immediate necessity of the student may be met by presumed permission, or by epikeia, or by a judgment that in such circumstances he is excused from the need of permission.[9] But all of these solutions are evidently less desirable than the normal observance of the law and, what is worse, if the subject applies them without consultation even of a priest or confessor (as in all legality he may), the reading is done without any of that control, guidance, or direction which is the real purpose of the law. There is a further pastoral inconvenience in these solutions, that the subject, while perhaps objectively justified, will commonly not be so well versed in the juridical niceties of the case as to free himself wholly from a subjective sense of guilt or, at the least, a gnawing spiritual anxiety.

In many cases, of course, there is adequate time for recourse to the chancery. But for the average layman, writing to the chancery is an adventure so extraordinary as to constitute a serious psychological barrier. The ordinary faithful, whose canonical needs are normally satisfied by the pastor or confessor and for whom the chancery is the office of great and public affairs, is unfortunately apt not to appreciate the pastoral solicitude of the bishop toward the less spectacular aspects of his private interior life. The

[8] Cf. can. 1326: "Episcopi quoque, licet singuli vel etiam in Conciliis particularibus congregati infallibilitate docendi non polleant, fidelium tamen suis curis commissorum, sub auctoritate Romani Pontificis, veri doctores seu magistri sunt."

[9] Thus, summarily, Noldin: "Necessitas tamen aut magna utilitas legendi librum prohibitum ab observatione legis excusat, saltem ubi non suppetit occasio petendi licentiam." H. Noldin, S.J., *Summa theologiae moralis* 2 (31st ed., by G. Heinzel, S.J.; Innsbruck, 1957) n. 710. For a more detailed discussion of the point, cf., e.g., A. Vermeersch, S.J., *De prohibitione et censura librorum* (2nd ed.; Tournai, 1898) n. 34.

point deserves consideration not because it is reasonable but because it is real; because it is an occasion, in more ways than one, for the neglect of permission in many instances in which it could and should be obtained, and indeed would be if it were obtainable from sources with which the faithful experience more familiar contact.

Even when the petition is actually received by the chancery, there remains the difficulty that the petitioner will generally be unknown to the ordinary. Now the prohibition of books, whether by law or by decree, is not relative; it binds even those for whom the reading would not constitute an actual danger to faith or morals.[10] The permission to read them, on the other hand, is necessarily relative; it supposes a judgment that the subject can do so without serious risk. Of course, the efficacy of permission is always qualified by this condition anyway;[11] but the grantor is not thereby relieved of his responsibility of verifying it as far as possible. Indeed this is the intention of the law, to reserve to the superior the first, supervisory judgment whether the book can be read with safety by a particular subject. But this decision postulates a greater degree of intercommunication between grantor and subject than is commonly feasible by letter. It is for this reason, presumably, that the practice of the Holy Office, in cases submitted to Rome, is to require the commendation of a superior or confessor, and, when the petitioner is a woman, not to grant permission directly but to empower a confessor prudently to allow the reading of individual works.[12] Or, on the diocesan level, one means in use is to have the petitioner select and indicate some priest who will act as director of the reading.

This frequent reliance upon the judgment of the confessor, on the part of the Holy See and in chancery practice, suggests that a remedy for the more general problem of our day may be found in the delegation to confessors of the power to grant the permission themselves. They would be acting, of course, as the representatives of the ordinary, approved and empowered by him in the act of conferring diocesan faculties, and governed by such norms, conditions, and limits as he may see fit to issue.

Surely if the three considerations discussed above as obstacles to the realization of the law in the present discipline have evinced a need for relief, they have at the same time, by their very nature, pointed to the confessor as the most effective solution. It would be rare that a student or

[10] Cf. can. 21: "Leges latae ad praecavendum periculum generale, urgent, etiamsi in casu peculiari periculum non adsit."

[11] Cf. can. 1405, § 1: "Licentia a quovis obtenta nullo modo quis eximitur a prohibitione iuris naturalis legendi libros qui ipsi proximum spirituale periculum praestant."

[12] Cf. A. Vermeersch, S.J., and J. Creusen, S.J., *Epitome iuris canonici* 2 (7th ed.; Mechlin-Rome, 1954) n. 736.

other person with cause for reading proscribed matter would not have time to approach a confessor, at least in the extrasacramental forum. The comparative facility and psychological ease with which the faithful have access to their confessor would provide assurance that those cases in which permission should be obtained would be actually submitted to judgment. And the personal contact with the confessor is an effective means of evaluating whether a particular book is or is not, by reason of content, prohibited matter; whether the subject has a proportionate motive for the reading; and especially whether, on the basis of disposition, education, experience, and other considerations, the subject can safely read, or continue to read, the works in question. Because an examination of this sort would take time, incidentally, as well as for greater facility of access, it would seem preferable that the faculty not be restricted to the sacramental forum.

The reposing of a power of this nature in the hands of confessors is not exorbitant or unprecedented in the current canonical system. When the welfare of souls has seemed to require it, powers of equal or even greater moment have been delegated to the confessor. There are, for example, the extraordinary faculties of confessors in urgent cases to dispense from irregularities and matrimonial impediments, to absolve reserved sins and censures, to suspend or dispense from vindicative penalties.[13] True, these are emergency powers. Instances of the delegation of comparably important faculties for habitual use are the powers to dispense from private nonreserved vows and from the obligations of sacred times (fast and abstinence, hearing of Mass, avoidance of servile work). Both these faculties, granted by the Code only to local ordinaries, pastors, and religious superiors in exempt clerical institutes, have become in relatively recent times the common possession of most confessors through their incorporation in the majority of diocesan *pagellae*.[14] And evidently the judgment of permissibility is not an intrinsically hierarchical function; in actual practice it frequently devolves upon the confessor in the end.

But the realization of the proposal that confessors be authorized to permit the reading of prohibited books is not as simple a matter as the generalization of the power to dispense from fast and abstinence or from private, nonreserved vows. Of the two faculties which our bishops have in the matter, their ordinary power, granted by the Code and therefore capable of delegation, is valid only for urgent cases, while the quinquennial indult, which

[13] Cf. canons 990, § 2; 1043–45; 900, 2°; 2254; 2290.

[14] Can. 1313; 1245, §§ 1, 3. Cf. J. Snee, S.J., and J. D. Clark, S.J., "A Synthesis of the Diocesan Faculties in the United States," THEOLOGICAL STUDIES 9 (1948) 375, 372–73; the pertinent numbers are 354–57 and 312–35.

is not limited to emergencies, cannot be subdelegated.[15] It is necessary, therefore, to distinguish between the limited relief immediately possible, and what we may call the more adequate solution ultimately desirable.

The partial relief, which could even now be provided at the discretion of the ordinaries, would consist in the delegation to confessors (by addition to the diocesan *pagella*, for instance) of the faculty which the ordinaries themselves enjoy from canon 1402, § 1.[16] Since this is a case of ordinary jurisdiction not expressly limited in the law, it is evident that the faculty can be delegated wholly and habitually in this way.[17] The power of the confessor would thus be bounded by the same limits and, unless further restricted in the act of delegation, enjoy the same extension as the ordinary power of the bishop. Concerning the conditions and scope of this faculty the following observations may be in order at this point.

First, the use of the faculty is dependent upon the condition of urgency ("in casibus dumtaxat urgentibus"). The urgency envisioned in the canon is any circumstance, especially lack of time, which would make it impossible or notably difficult to obtain permission from the Holy See by ordinary means of communication. The faculty could be so delegated as to have the same significance in the case of the confessor. Of course, it could also be so delegated as to be valid only when there is no opportunity for recourse even to the ordinary; but there is no canonical need for this restriction, and the communication of the faculty as it stands would go much further toward relieving the actual problem.

Secondly, in the mode of its exercise the faculty of canon 1402, § 1 is limited to particular titles ("pro singulis tantum libris"). That is not to say that a separate and distinct access to the confessor would be required for each book or article involved. The sense is rather that permission could not be given in general to read prohibited books, or for all prohibited books in one's field of study, or for all non-Catholic commentaries on Sacred Scripture, or similar generic ideas, but would have to be obtained specifically for each work to be read, whether designated by name or by other individuating notes, whether one at a time or several at once.

Thirdly, in its scope or extension this faculty does not exclude any category of prohibited books, whether prohibited by name, as in the Index, or by description, as in canon 1399; whether prohibited by reason of authorship, or of purpose, or of content. The only necessary qualification in this

[15] Cf. supra nn. 4 and 5.

[16] Can. 1402, § 1 (supra n. 4).

[17] Cf. can. 197, § 1: "Potestas iurisdictionis ordinaria ea est quae ipso iure adnexa est officio. . . ." Can. 199, § 1: "Qui iurisdictionis potestatem habet ordinariam, potest eam alteri ex toto vel ex parte delegare, nisi aliud expresse iure caveatur."

respect is the exclusion by the natural law itself of any reading which constitutes a serious and proximate hazard to faith or morals for the individual reader.[18] But this is not properly a limitation of the faculty in question, which of its nature refers exclusively to prohibitions and permissions of positive ecclesiastical law.

With specific reference to works professedly obscene,[19] it may be observed in passing that they are neither explicitly nor implicitly excluded from this faculty. In so far as these might constitute a danger for a particular reader, they are forbidden by the natural law. But works may be prohibited, under the canon, by reason of the author's intent and the writing's tenor without being actually a menace to every reader. In such cases the book is prohibited by canon law only, and permission to read it is possible. There was, in fact, a general permission provided in the Constitution of Leo XIII (but not in the Code) by which masters and others with a professional interest in literature were allowed to read unexpurgated editions of classical works, ancient or modern, per se prohibited by reason of obscenity.[20] While the present practice of the Holy See is to exclude such books from its habitual concessions,[21] it is not so imperative that they be kept out of a faculty of the present sort, in which the merits of the case must be examined in each instance. Legitimate and reasonable occasions for such permission can occur.

Thus, it is suggested, a substantial part of the present difficulty in the observance of the law could be remedied by means already at the disposal of the ordinaries. But for the confessor to be adequately equipped to deal with the matter in general, and not merely in emergency cases, an entirely new faculty would have to be obtained and communicated. Not only does the existing quinquennial faculty of the ordinaries exclude subdelegation, but this faculty itself does not seem to be quite the desirable thing to place in the hands of confessors. It is a power to permit the reading of unspecified prohibited literature for a period of three years, to the exclusion of such categories of writing as one would rarely have a legitimate cause for habit-

[18] Cf. can. 1405, § 1 (supra n. 11).

[19] Can. 1399, 9°: "Ipso iure prohibentur . . . libri qui res lascivas seu obscenas ex professo tractant, narrant, aut docent."

[20] Const. Apost. *Officiorum ac munerum*, Decreta generalia, art. 10: "Libri auctorum sive antiquorum, sive recentiorum, quos classicos vocant, si hac ipsa turpitudinis labe infecti sunt [qui res lascivas seu obscenas ex professo tractant, narrant, aut docent: art. 9] propter sermonis elegantiam et proprietatem, iis tantum permittuntur, quos officii aut magisterii ratio excusat: nulla tamen ratione pueris aut adolescentibus, nisi solerti cura expurgati, tradendi aut praelegendi sunt." *C. I. C. fontes* 3, p. 507. Cf. Vermeersch, *De prohibitione librorum*, n. 16.

[21] Cf. supra n. 5.

ually reading.[22] In other words, it is apparently designed for such persons as editors, critics, reviewers, professors, research scholars, and other special classes of reader who might have rather frequent need for reading the less obnoxious categories of prohibited works, and for whom recourse to a chancery might not be such a formidable obstacle. The confessor, on the other hand, would not need power to grant general or habitual permissions. The facility of access to him would make feasible the obtaining of particular and specific permissions, as in the faculty of canon 1402, § 1. In view of the purpose of the law, moreover, this would seem the more appropriate procedure with the generality of petitioners. In such a system, too, it would not be necessary to exclude absolutely whole categories of books, as in the quinquennial faculty, since an individual need of that sort could exceptionally occur and the confessor could judge the motivation and security of the subject.

It is suggested, therefore, that the adequate and ultimate solution of the problem would consist not in securing a mere modification of the quinquennial faculty so as to permit its subdelegation, but in petitioning the Holy See for a new indult, in content and scope identical with the faculty of canon 1402, § 1 as reported above, but not limited to cases of urgency and not excluding subdelegation. Merely for the sake of concretizing my own concept of the faculty contemplated here, the following formulation of the text, from the viewpoint of the petitioning superior, is offered as a sample:

Permittendi subditis suis, sive per se sive per sacerdotes sibi probatos, etiam extra casus urgentes, ut libros ipso iure vel Sedis Apostolicae decreto prohibitos retineant atque legant; quae licentia, pro singulis tantum libris valitura, nonnisi cum delectu et iusta ac rationabili causa concedatur, salvis praescriptis can. 1405, § 1 et 1403, § 2.[23]

The function of the ecclesiastical prohibition of books, as of all canon law, is to promote the salvation and sanctification of souls. Specifically, it is designed to protect the faithful from writings judged a threat to faith or morals generally, by requiring that the subject satisfy the competent superior, if he can, of his ability to read them without serious personal danger, and of a motive proportionate to the residual risk. That is, after all, the

[22] Cf. supra n. 5: "... excepting works which professedly advocate heresy or schism, or which attempt to undermine the very foundations of religion, or which are professedly obscene...."

[23] As far as possible the language of the Code has been retained, as in can. 1402, §§ 1–2. (Can. 1405, § 1 [supra n. 11]; can. 1403, § 2: "Insuper gravi praecepto tenentur [qui facultatem consecuti sunt] libros prohibitos ita custodiendi, ut hi ad aliorum manus non perveniant.")

basic sense of the prohibition of books and of permission to use them. The facility with which this permission should be available, in order to secure the observance and finality of the law, will vary according to concrete circumstances of time and place. The authoritative judgment in the matter belongs, of course, to ecclesiastical superiors. The point of the present note is simply to suggest that an extension of the power to grant permission, such that all confessors could do so in individual cases, would seem to be not a relaxation or mitigation of the law but, in the light of our contemporary needs and problems, a contribution to the more perfect execution of the law and the more effective achievement of its end.

Woodstock College JOHN J. REED, S.J.