PROBLEMS OF PROHIBITED BOOKS: AN EXPLORATORY DISCUSSION

The problem to be explored in the present section of our discussion is the directly canonical problem. I speak of the canonical "problem," rather than of problems, because, given that a certain book is prohibited, by decree or by law, and that one has cause to read it nevertheless, canonically there is only one problem: how can one legitimately do so? My plan is first to review briefly the actual state of the answer to that question today, and then to attempt a little exploration of potential answers of the future.

Basically there are three modes in which the prohibition may cease or fail to apply: by exception provided in the law itself, by permission of competent authority, and by excusation according to general principles of law.

By provision of can. 1401 Cardinals, bishops (including titulars), and all ordinaries (local and religious) are simply exempt from the prohibition of books. Another exception—a very pertinent one today—is made in can. 1400 with regard to such texts and translations of Sacred Scripture as, having been edited or translated by non-Catholics (cf. 1399, 1°) or by anyone without the prescribed authorization (cf. 1391), would be *per se* prohibited reading (cf. 1399, 5°). The exception is valid only for editions of the Sacred Books themselves, whether in the original, in the ancient versions, or in vernacular translations; it does not apply to annotations or commentaries on the text, nor to other works on the subject of Scripture which might be forbidden under one or another provision of the law.[1]

[1] Concretely, this would not remove the prohibition of unapproved annotations or commentaries on the text by any author (1399, 5°; 1385, § 1, 1°) or of such non-Catholic writings about the Scriptures as would constitute works treating professedly the subject of religion of which it could not be said that they contained morally nothing contrary to Catholic faith (can. 1399, 4°). Note that it is supposed, as a condition, that the text is edited with fidelity and integrity, and that the introductions and annotations do not indulge in attacks upon Catholic dogmas.

This concession is granted in favor of those who are engaged in any way in theological or biblical studies ("qui studiis theologicis vel biblicis quovis modo operam dant"). The term "quovis modo" indicates that the concept of occupation in theological or biblical studies is to be broadly interpreted. For priests, to whom the continued and continuous pursuit of scientific theology and scripture is recommended both by law (cf. can. 129) and by many an exhortation of the Roman Pontiffs, this condition would scarcely ever be lacking.[2] In view of the present-day concept and objective of college theology, I should think the concession obtained also for the students of a Catholic college or university in connection with, and for the duration of, their formal theology course. Private, informal projects on the part of other lay groups or individuals, provided the notion of "study" be guaranteed by the guidance of a professional moderator, could also be brought under a broad interpretation of the clause. But I doubt it could be pushed much further without divesting the prohibition in this matter of all real sense and function.

Apart from the aforesaid exceptions of can. 1400-1401, normally prohibited literature may not be read without permission. It is interesting—today, indeed, it may appear even startling—that in the law of the Code the only ordinary source of permission, even for a single prohibited pamphlet, is the Holy See itself. One may still obtain permission there, of course. For certain habitual permissions one must still apply there.[3] But in most cases the Apostolic Delegate will be competent in virtue of his delegated faculties, which are limited only by the principle of conformity to the practice of the Holy Office (regarding the recommendations to be presented, the precautions to be taken, and the exclusion, apart from rare exceptions, of works professedly obscene).[4] Since, however, application either to the Holy See or to the Apostolic Delegate will normally be made only through one's own Ordinary and only for such

2 Cf. A. Vermeersch, and J. Creusen, *Epitome iuris canonici* 2, 7th ed., 1954, n. 735.

3 Cf., e.g., can. 1404.

4 Cf. faculties of Apostolic Delegate, n. 14; T. L. Bouscaren, *Canon Law Digest,* 1, 1934, 178; A. Vermeersch, S.J., "Facultatum quae, post Codicem, Legatis Apostolicis concedi consueverunt breve Commentarium," *Periodica* 12 (1923-24), 87-88.

permissions as he himself cannot grant, it will be sufficient, I believe, and more practical, to concentrate our more detailed attention on the extent and limitations of the powers of Ordinaries, by law or by delegated faculties, in the matter of prohibited books.

By law (can. 1402, § 1) all Ordinaries have the power to grant permission for particular titles in urgent cases; in their quinquennial faculties local Ordinaries receive the power to grant general permissions apart from urgency. Let us compare these two powers a little more in detail.

The faculty of the Code is given to all Ordinaries, including the major superiors of exempt clerical institutes of religious (can. 198) with a view to their own subjects. The quinquennial faculty, obviously, goes only to local Ordinaries. But religious institutes may have other faculties to provide for the more habitual needs of their own members.

The faculty of the Code applies only in cases of urgency, i.e., when there would not be time to recur, by ordinary means of communication, to the Holy See itself. The quinquennial faculty is valid at all times.

The quinquennial faculty may be used to permit whole categories of literature without further specification of titles (e.g., any books or magazines by non-Catholics professedly treating of religion); and this may be allowed for a period of three years at a time. For use of the faculty of the Code each work must be designated and permitted singly, i.e., by title or some other individuating note, to the exclusion of general and habitual permission ("pro singulis tantum libris").

The faculty of the Code, however, is given without any limitation of matter, i.e., it is valid for the permission of any reading prohibited only by positive law. The quinquennial faculty may not be used for works "which professedly advocate heresy or schism, or which attempt to undermine the foundations of religion, or which are professedly obscene."[5]

Most significant, perhaps, for our purposes is the fact that the faculty of the general law, as an ordinary power (*potestas ordinaria*),

[5] *Canon Law Digest* 4 (1958), 69.

can be delegated by the superior to be exercised by others (can. 199, § 1). The quinquennial faculty is limited by the express provision that it be exercised by the bishops personally, and may not be subdelegated to anyone.[6]

In summary, the comparative advantages are these: the quinquennial faculty does not postulate urgency and is not limited to individual titles; the faculty of the Code is valid for all species of books and admits of delegation.

Finally there is the principle of excusation. That is to say that while the prohibition does not cease, in any particular case, whenever the reading would not be actually harmful to the individual involved,[7] it will cease if the failure to read a certain item would result in an inconvenience extrinsic to the law and of moderately serious proportions. This inconvenience might be a positive damage or the loss of a prospective good; it might be foreseen with certainty or only with reasonable probability; it might be in the temporal order or in the spiritual; a hardship to oneself or to others (e.g., the urgency of a refutation); and so on, according to the usual conditions of excusation. But on the basis of this principle I do not believe it would be accurate to say either that one is excused whenever there is no opportunity to obtain permission, or that one is excused whenever one has adequate motive for the reading. The motive alone does not excuse from the law; for the law can be observed (and therefore should be observed) as long as permission can be obtained at the expense of a proportionate effort. Nor is one automatically excused whenever permission is unobtainable; for a law does not cease contrarily unless it entails some hardship commensurate with the obligation, which in this case is, in general, grave. I doubt, for instance, whether the sole inclusion of a certain author on one's college reading list would automatically constitute an excusing cause, in the absence of any appreciable sanction for failure to read the assignment.

Technically, of course, there is also the possibility of presuming a permission. But from the fact that the authorities do not elaborate

[6] *Ibid.*, 70.

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

the point distinctly in this matter, I suspect they mean to require about the same conditions for a validly presumed permission as would suffice to excuse from the prohibition itself, or else that the presumption is wholly relative to the attitude and practice of the superior whose permission is to be presumed.

I imagine, however, that at the moment we are more interested in the means by which the normal observance of the law might be made more feasible than in the circumstances in which its non-observance may be judged excusable. And at this point we begin the more forward-looking portion of the present offering. Of the two general devices by which the observance of the law might be facilitated—i.e., by modifying the substance of the law itself or by extending to a greater number of persons the power to grant permissions—I have chosen the latter as, for me at least, a more manageable and practical topic of discussion. Specifically, there are two questions: how can this faculty be extended; and to whom might it be most satisfactorily extended?[8]

Such an extension might be made, for instance, by a new law. Quite possibly suggestions will be made to the forthcoming ecumenical council for one form or another of relief along these lines. In that connection what we shall say about the person who might conveniently have such powers will be pertinent. But the problems exist today; the council—even if it is going to descend to such detailed points of discipline rather than transmit them to that eventual review of the Code of Canon Law to which the Holy Father has also referred—the council is still very much in the future.

A more immediate relief could be provided by the delegation of faculties which either exist already or might be obtainable from the Holy See. It will be remembered that of the two faculties currently enjoyed by local Ordinaries, the quinquennial faculty is valid for general concessions and non-urgent cases, but cannot be subdelegated; whereas the faculty of canon 1402, § 1 can be delegated (e.g., along with other diocesan faculties in the *pagella*) but supposes a

[8] Some of the points which follow have been elaborated more at length in an earlier note of mine on this subject, "Permission to Read Prohibited Books," *Theological Studies* 19 (1958), 586-95. Other points have been developed more extensively in the present paper.

case of urgency and must be granted specifically for each item desired. To be able to delegate power for habitual and general permissions, therefore, or even for particular ones apart from urgent cases, the Ordinaries would have to petition the Holy See for a new indult to that effect. Whether it would be granted or not is another question. I have not found in published sources any precedent for such a concession.

We should not, however, overlook or underestimate the potentialities of the concession which does already exist in the Code, and which can be delegated.[9] When one considers that a "case of urgency," in the sense of the canon, means a case in which there is no opportunity to recur, by ordinary means of communication, to the Holy See, it appears that a notable percentage of the actual cases occurring in our experience do come under the purview of the canon. It follows that if this faculty were communicated broadly enough to be available with the facility required by its limitation to particular titles, it would make a substantial difference in the status of the problem.

But even supposing that a wider diffusion of the power to grant permission is desirable, the further question remains: to whom might it be most effectively communicated, with a view to the execution and finality of the law? At this point, of course, opinions may differ. My plan is to present a positive proposal, which may serve at least as a basis—or target—for discussion.

By way of preamble to my answer, there are two points which I believe should weigh very heavily in the selection of the preferable subject for the power at issue. The first point is that the granting of permission to read forbidden books cannot be mechanical or indiscriminate. If every request is to be automatically allowed, the whole requirement of previous permission becomes redundant. Since the purpose of the prohibition is the protection of the faithful from spiritual danger, the conceding of permission necessarily implies

[9] Can. 1402, § 1. The possibility of delegating this faculty, clearly contained in the principle of can. 199, § 1, has been explicitly mentioned by Vermeersch-Creusen, *op. cit.*, n. 736; J. Abbo and J. Hannan, *The Sacred Canons,* 2nd ed., 1957, 639; E. Regatillo, *Casos canonico-morales* 3, 2nd ed., 1960, 560; and others.

some assurance of the absence of that danger in the case at hand; which in turn necessarily implies some sort of judgment relative to the individual involved. For the verification of the necessary conditions the grantor may, and usually must, depend upon the testimony of the subject, but it is a concession made upon the basis of a personal and particular evaluation of the petitioner (cf. "cum delectu," in can. 1402, § 2).

From this same point my second preliminary observation follows more or less as a corollary. It is that the one empowered to give permission ought to be someone whose relationship to the petitioner is such that a personal interrogation on the level of conscience is both possible and proper.

It is principally for these two reasons that I think all confessors as such might conveniently receive the power, whether by law or by delegation, to permit the retaining and reading of prohibited books in individual cases. By "all confessors as such" I mean any priest who has, with respect to the petitioner, the jurisdiction necessary to hear his confession, whether actual confession takes place or not. By "individual cases" I mean that for each item to be read a distinct request would be made, whether on separate occasions or several at a time, as in the provision of canon 1402, § 1, "pro singulis tantum libris."

Surely the feasibility of personal evaluation is much greater if confessors generally have this faculty than if it is allowed only, for instance, to the superior or Newman Club chaplain of a large college or university. Instead of the subject's merely checking a form to the effect that he thinks the reading will not harm him, the confessor could inquire into the basis of this confidence—in background, education, previous experience, adjuncts of the reading, etc. Similarly he could judge whether there is a true need at stake, or whether the reading could be omitted without any real loss.

Surely, too, it is more congruous that the self-revelation involved be made to a self-chosen director of conscience than necessarily to one's professors, for instance, or other conceivable subjects of delegation toward whom the student's relationship is academic or juridic rather than spiritual.

Again, there are many needing such permissions nowadays who

are not in colleges and universities; for whom the communication of these faculties only to superiors, chaplains, and professors would be no help at all.

These *a priori* considerations are enforced, I believe, by what is known to be the frequent practice of the Holy See and of some chanceries: either to pre-require the recommendation of a confessor (submitted, however, not by the confessor but by the subject), or to grant the permission to the confessor to be communicated, at his discretion, to the subject.[10]

Further, the fact that the eucharistic legislation of 1953 (the Apostolic Constitution *Christus Dominus*) employed the mediation of the confessor as such for the use of its privileges, the fact that confessors are empowered by the law to do such things as commuting the conditions for indulgences and resolving the problems arising in urgent cases of irregularities, matrimonial impediments, and reserved sins and penalties,[11] and the fact that local Ordinaries, in the diocesan *pagellae,* not uncommonly delegate to all confessors the power of dispensing from fast, abstinence, and the observance of holy days—all these provisions indicate, I believe, a tendency in current ecclesiastical discipline, that the faithful should seek and be able to find the solution to their ordinary, or at least their urgent, canonical problems in the spiritual father of their choice.

It has been objected that the prohibition of books is too difficult a matter canonically to expect every confessor to be capable of administering this law. Curiously, one of the features I find most appealing in the proposal is that it would greatly facilitate the application of the law, precisely from the point of view of its complexity. From the fact that a law, as law, is difficult, it does not follow that the administration of that law must be difficult. If a priest is going to have to refer a petitioner to the chancery or submit him to any other onerous process, he must be very sure that the book in question is actually prohibited. It is at that point and for that reason that a difficulty in the law becomes a problem in practice. But if the priest consulted had the power to grant permission

10 Cf. Vermeersch-Creusen, *op. cit.,* 736; Regatillo, *op. cit.,* 560.
11 Cf. canons 935; 990, § 2; 1043-45; 900, 2°; 2254; 2290.

himself, in obscure cases he could simply satisfy himself on the motivation and qualifications of the subject, and give permission *ad cautelam*. It is not, therefore, as if priests generally were expected suddenly to become expert in a complicated area which they could previously more or less ignore. In these days it is already necessary that all priests be substantially familiar with the law of prohibited books. If they should have the faculty to manage deserving cases themselves instead of referring every one to higher authority or to a few select delegates, I do not think more than ordinary learning would be required, and I do think the administration of the law would be rather improved than worsened.

But, of course, the authoritative judgment in the matter belongs to ecclesiastical superiors. It is with respectful deference to their discretion that I have offered my ideas for your consideration.

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