

## MORAL PROBLEMS IN BUSINESS PRACTICE

I should like to emphasize from the outset that this paper does not pretend to settle anything. Its purpose is simply to stimulate the interest of competent theologians in the moral problems of modern business practice.

### I. *General Observations*

While it is beyond the precise scope of this panel discussion, I think it is necessary to paint a backdrop against which particular problems must be viewed. I will comment here on a few of the elements of the backdrop which strike me as very important. Other elements, I am sure, could be mentioned.

1. *The moral condition of American business.* It is quite useless to make a moral judgement about a phenomenon which one knows little about. In the area of business ethics, the theologian needs studies that will acquaint him with the complex factual material on which to base his judgement. Over the past few decades a rash of popular "sociological" books and articles have scolded America for being "fat, sassy and materialistic." Many of these books and articles, even if best sellers, offer precious little for serious study. But I think there have been some significant studies too. I shall not attempt to compile the bibliography here, but I would like to call attention to the type I am referring to.

Some twenty years ago Edwin Sutherland introduced a new phrase into the American vocabulary: white-collar crime. The term "may be defined as a crime committed by a person of respectability and high social status in the course of his occupation."<sup>1</sup> Sutherland amassed a large amount of reliable data in areas such as embezzlement, fraud, restraint of trade, and misrepresentation in advertising. The record of illegal business practices by seventy of the country's

<sup>1</sup> E. Sutherland, *White Collar Crime*, The Dryden Press, 1949, 9. See the same author's "White Collar Criminality," *American Sociological Review*, Feb. 1940, 1-12. See also N. Jaspens and H. Black, *The Thief in the White Collar*, Lippincott, 1960. The two books are dissimilar in many ways, but both focus attention on the well-educated, upper-class thief.

largest corporations over a period of forty years was startling. These corporations had been found guilty of violating laws against restraint of trade 307 times; of violating laws against infringement of patents 222 times; of violating the National Labor Relations law 158 times; of violating laws against misrepresentation in advertising 97 times; and of violating other business laws 196 times. Every one of the corporations had violated one or more of the laws. Sutherland estimated that the financial cost of white-collar crime is probably several times as great as the financial cost of all the crimes which are ordinarily regarded as the "crime problem." While Sutherland's interest is primarily a scientific theory of criminology, and while his material is out of date now, his approach and insights will, I think, be of value to the moralist.

In 1960, Frank Gibney, a New York magazine writer, issued his book called, significantly, *The Operators*.<sup>2</sup> This is an abundantly documented, almost incredible report on contemporary American society. Gibney's work is remotely similar to Sutherland's but much more extensive and much less concerned with scientific sociological theories. The author offers the reader an analysis of the *Genial Society*, takes him into the hidden recesses of industry, labor, and government. Drawing largely from public documents, Gibney examines the ever-expanding categories of "sharppers, takers, fixers, pitchmen, corporate manipulators, crooked labor bosses, expense account padders and tax dodgers." It is Gibney's contention, based not on fantasies but on facts, that the climate of the business world is heavy with fraud and dishonesty, graft and embezzlement. And, in his view, the habit of fraud is growing: the dishonesties of "honest" men, especially men who hold responsible positions in the business world, are growing in magnitude every year. "Never in our history has the practice of fraud been so dignified by constant use and acceptance."<sup>3</sup> It is particularly noteworthy that the reviewers of this book, while they did not agree unanimously with Gibney's reflections or solutions, did not challenge his facts. A thoughtful reading of this

<sup>2</sup> Harper and Brothers, 1960. This book raises many questions which have not, to my knowledge, been answered by moralists.

<sup>3</sup> *Ibid.*, 6.

book will, it seems to me, offset any temptation on the part of the moralist to oversimplify.

Just a few weeks ago a current concrete example of the unhealthy climate of the business world appeared in the "electrical conspiracies." Newspapers and magazines told the complex story of price fixing, bid rigging, market division, and other violations of anti-trust laws, involving huge sums of money and perpetrated by men who were considered pillars of their communities. Moreover, the Justice Department has hinted that other scandals might come soon, that the nation was "swimming in immoral business practices," that white-collar crime was thriving in the United States as never before.<sup>4</sup>

In citing the above material, I am not condemning American business out of hand. I am only suggesting that the moralist try to acquaint himself with the facts. For purposes of this paper, however, I am assuming (not proving) that the extent and seriousness of immoral business practices constitutes a major moral problem at the present time.

2. *The condition of American morality.* Confronted with the widespread existence of immoral business practices, the theologian is goaded to ask himself: How does one account for the flagrant violations of ethics and morality in the business world? What are the roots of the problem? It is beyond the scope of this paper, and beyond me, to attempt a complete answer to these questions. I am convinced, however, that the questions must be considered in a very broad context. In the next few sections of this paper I shall hardly tell theologians anything strikingly new. I am only trying to construct the framework in which, in my view anyway, the moral problems of business must be considered.

At the risk of being designated a prophet of doom or a maiden aunt petulantly scolding the world, I submit that at the heart of the problem of immorality in business is the consistent decline of American morality generally. I am aware that one cannot indict a

<sup>4</sup> A rather complete article on the background and complexities of these recent events is, R. A. Smith, "The Incredible Electrical Conspiracy," *Fortune*, April 1961, 132ff. and May 1961, 161ff. I am also indebted to B. Rossiter of the *Washington Post* for information and suggestions on this topic.

whole society; and I have no intention to do so. I know, too, that sweeping generalizations are almost never accurate. But I believe there is a good body of evidence which prompts one to think (with Donald McDonald) that the "descending curve" of morality on which we have been tightrope-walking is getting steeper all the time.<sup>5</sup> I see no point in arguing "cases" here; that is, I give an example of widespread immoral conduct and someone else retorts with an example of widespread virtue. My initial concern is not so much with conduct as with the very meaning of morality. There is validity, I think, in pointing out that there is not only a breakdown in moral behavior (hasn't every age known this?), but a retreat from moral values and standards, even the most basic. In 1951, the American Bishops compared the situation facing us today with the one which faced the Roman Empire fifteen hundred years ago. "The problems of the Empire closely resemble those that sorely face us now—barbarism on the outside, refined materialism and moral decay within."

There are many threads to the pattern of declining morality I refer to. There is, for example, the thread of *moral ambiguity*, a kind of confusion and bewilderment before moral questions. I do not mean to quote out of context, but John Courtney Murray, speaking of the "newer American morality" and the problem of foreign policy, delivers a penetrating insight on ambiguity:

Whereas the old morality saw things as so simple that moral judgement was always easy, the new morality sees things as so complicated that moral judgement becomes practically impossible. The final category of moral judgement is not "right" or "wrong" but "ambiguous" . . . .

Under the theory of "moral ambiguity," all norms vanish amid the multiplying paradoxes; and all discrimination is

<sup>5</sup> "The Descending Curve," *America*, Aug. 27, 1960, 557-558. A lively discussion by seven distinguished laymen followed this article and is presented in "Seven Laymen Discuss Morality," *America*, Oct. 1, 1960, 10-13. It is well to remember that the good old days of frontier morality were not always as good as they seem on television. I am told that men like Vanderbilt, Henry Ford I etc. held that "good business is good ethics," not the other way around. Cf. J. Kelly, "Trends in Moral Standards of Business Today," *Catholic Business Educational Review*, June 1954.

swallowed up in the cavernous interior of the constantly recurring verdict: "This action is morally ambiguous."<sup>6</sup>

In the approach of the "ambiguists," supreme stress is placed on the very complex, existential, social pressures exerted on modern man. In business, for example, where the socio-economic pressures are certainly real, one hears often the judgement that "He had to do it" or "He has no choice" or "You can't beat the system . . . avoid the rat-race . . . buck the management . . ." etc.

Closely allied with this is the subtle, *practical* influence of *situation ethics*. It has been said that existentialism has attracted little attention in the United States, and more as a conversational piece than anything else. But "situationism," the moral offspring of the existential philosophy, has fared somewhat better. I would agree with John Lynch, S.J., that ". . . many people, and perhaps even some priests, do make practical moral decisions which seem to betray a mentality which is very close to situationism. There perhaps lies our particular problem."<sup>7</sup>

Further, I would say that there is a much stronger *empirical* or *scientific* morality abroad than many Catholics seem willing to admit. This is the morality that emerges from the sociological survey, the statistical table, the laboratory experiment. I am not, of course, condemning the behavioral sciences; they have much to offer. That these sciences, notably sociology and dynamic psychology, *can* be reconciled with sound ethics has been shown again and again. My only point here is that the "scientific" morality has a nice following in the United States. A growing body of literature, more sophisticated than in an earlier age, makes it evident, I think, that a solid minority at least of American intellectuals do not consider the moral law anything more than group opinion or socially recognized patterns of behavior.

Then too, we have the ever-present modern Machiavellianism.<sup>8</sup> This is the present "dog-eat-dog" approach. Most men, the argument

<sup>6</sup> *We Hold These Truths*, Sheed and Ward, 1960, 278 and 292.

<sup>7</sup> "Notes on Moral Theology," *Theological Studies*, June 1958, 168.

<sup>8</sup> Cf. H. Johnston, *Business Ethics*, Pitman, 1956, 12-16, for a fuller development of the idea briefly mentioned here. Johnston's book, incidentally, is an excellent college text.

runs, are not good; most men are selfish and chiefly concerned about "what's in it for me?" Since this is the "realistic" truth, the hard facts of life, the man who wants "to make a profession of goodness in everything must necessarily come to grief among so many who are not good." If a man wants to be a success, he must play the game by the existing rules, not by some ideal rules that won't work. The successful man must "learn how not to be good." It is interesting to note the number of times the men involved in the electrical conspiracies used the argument "everybody's doing it." How can one be a successful business man if one doesn't play the game the way others play it? From a moral point of view, of course, such an argument gets us absolutely nowhere.

Two other threads of the pattern are worth mentioning. I would characterize them by the phrases "religion without morality" and "morality without sin." I shall not develop these concepts here, but an accurate analysis of American morality would have to come to grips with these rather baffling developments.

The point of mentioning these threads of morality in this paper is a practical one. Unless there is some agreement on at least the most fundamental and minimal requirements of morality, it is difficult to see how any codes of business ethics can amount to anything more than rules of good sportsmanship. Good sportsmanship doesn't seem to stand well the strains imposed on it in times of crisis or severe pressure. Without some consensus on principle, the discussions of businessmen will inevitably end up on shifting sands. In his excellent article in *Social Order*, Monsignor George Higgins draws attention to the *Patterns of Economic Justice, a Catholic, Jewish and Protestant Declaration*, eight general principles agreed upon in 1946 by representatives of the three faiths as being fundamental moral bases of economic life. Monsignor Higgins is convinced that there is at present "widespread agreement" among Catholic, Protestant and Jewish students of social ethics on these principles. I sincerely hope Monsignor Higgins is right.<sup>9</sup>

<sup>9</sup> This article by Monsignor Higgins, "Morals and Economic Life," *Social Order*, Sept. 1960, 304-317, deserves serious attention. I am indebted to Monsignor Higgins for a personal interview and for many suggestions and references, some of which I was unfortunately not able to pursue.

3. *Public morality.* In spite of the above, there are no doubt many Americans who have a sound concept of the fundamental meaning of morality. They are faced with a different problem: the problem of "double morality."

The various spheres of human existence, the "temporal realities," e.g. politics, science, business, are values in themselves. They possess a certain legitimate autonomy. It would be erroneous to think that *all* aspects of these realities fall under the direct authority of ethics, or under the direct authority of the Church.<sup>10</sup>

Yet it is basic to Catholic moral teaching that these spheres of human existence are not absolute values. They do not possess absolute autonomy. The recent popes, discussing the social question, have repeatedly emphasized that, while the Church does not claim the right to teach authoritatively in these spheres concerning technique and instrumentality, she does claim a right to speak on those matters within these spheres which fall under the moral law.<sup>11</sup> In other words, these spheres of human activity cannot be completely divorced from the moral order. "For always and everywhere it is the human person that acts, and his decisions, one and all, are subject to the moral law. They must be carried out and answered for as human acts."<sup>12</sup>

Pius XII seemed to consider this one of the most important lessons which modern man must learn. "Many and serious are the problems in the social field. Whether they be merely social, or socio-political, they pertain to the moral order, are of concern to consciences and the salvation of men. . . ." <sup>13</sup> "Necessarily and continually human life, both private and public, finds itself in contact with the law and spirit of Christ."<sup>14</sup>

<sup>10</sup> On this see the discussion of J. Messner, *Social Ethics*, Herder Book Co., 1957, 69-73.

<sup>11</sup> For example, Pius XI in *Quadregesimo Anno* discusses the authority of the Church in social and economic matters. N.C.W.C. translation, # 41-43.

<sup>12</sup> E. Welty, *A Handbook of Christian Social Ethics*, Herder and Herder, 1960, I, 13. Welty's entire discussion is excellent.

<sup>13</sup> Pius XII, November 2, 1954. N.C.W.C. translation, 13. This document on the authority of the Church in temporal affairs is significant for business ethics.

<sup>14</sup> Pius XII, October 14, 1951. N.C.W.C. translation, 11.

Yet there is the historically recurring tendency for men to accept, and indeed defend, a double standard of morality. On this Johannes Messner writes:

The maxim of "double morality" belongs to the fundamentals of individualist liberalism, willingly adopted by modern collectivism. *Public and private life*, it says, *are subject to different ethical principles*. Moral considerations that may be useful in civil life can only have the result of hampering achievement in political and economic life as well as in science, art and literature. "You cannot build railways with biblical quotations," as was said in the hey-day of liberalism.<sup>15</sup>

Human experience seems to indicate that even persons who are quite moral in their personal lives and individual dealings with other people may act very differently as members of a corporation or a business enterprise. Herbert Johnston, who has had considerable experience teaching business students, in discussing why he thinks a particular course in business ethics is necessary, writes:

Another reason why true moral principles are so seldom or so poorly applied to business situations is that *many students are convinced that there is not such application to be made*, that the economic order is closed, and has no relation to the moral order. Perhaps this *strangely widespread conviction* is in part caused by prevailing attitudes that "business is business," and that in the hard realities of a competitive society there is no room for moral niceties.<sup>16</sup>

Businessmen with whom I have talked feel that there is more than a little of the "compartmented mentality" among American businessmen. The separation of business life from private life and personal convictions is an ever-present temptation to the businessman. Closing his rather complete study of the electrical conspiracies, Richard Smith observes: "Plainly there was an egregious management failure. But there was also *a failure to connect ordinary morals and business morals*; the men involved apparently figured there was a difference."<sup>17</sup>

Having said this, I must again caution the moralist against over-

<sup>15</sup> Messner, 69. Emphasis added.

<sup>16</sup> H. Johnston, *Business Ethics*, vii. Emphasis added.

<sup>17</sup> R. Smith, *Fortune*, May 1961, 224. Emphasis added.



simplification. It is certainly not as simple (uncomplicated) to exercise public morality as it is to exercise private or individual morality. Messner points out that "natural law doctrine has always held that there are two moralities operative in human life, though only one moral order." Thus, "minimum morality characterizes the social sphere," whereas "the personal sphere is, in essence, dominated by maximum morality."<sup>18</sup> Moreover, the moral person does not, in his public life, operate in a vacuum. The economic institution in which the American businessman operates is an extremely complex thing. The "system" is not especially conducive to the practice of virtue. It is, in the view of some people at least, "a system in which everybody is related to people through his relationship to a strictly impersonal, strictly objective, strictly abstract thing, the 'organization,' the 'corporation,' the 'government agency' etc."<sup>19</sup> While not pleading ambiguity, the moralist must recognize that there is more to the businessman's problem of public morality than meets the eye. And this brings me to the last general observation that I should like to mention.

4. *The role of the moral theologian.* Granted that a man understands the fundamental principles of morality, and granted that he is striving to be conscientious in his public life as well as in his private life (personally I have no doubt that there are, as Mr. Hayes says, a tremendous number of businessmen who are very sincere and who want to operate on the highest moral plane), where does he get correct moral guidance for the numerous decisions that he must make? As in other spheres of moral theology, the moralist has been under fire for what some consider his refusal to grapple "realistically" (it is the favorite word!) with the ethical problems of *modern* business practice. There is no denying, if one recalls names such as John A. Ryan, John Cronin, Raymond Miller and a host of others, that American moralists have made some significant contributions in such fundamental areas as capital-labor relations, the living wage, private property and the like. Yet the voice of the critic is heard in the

<sup>18</sup> Messner, 71-72.

<sup>19</sup> P. Drucker, "The Employee Society," *American Journal of Sociology*, Jan. 1953, 358. Cf. also E. Mayo, *The Social Problems of an Industrial Civilization*, Harvard University, 1945.

land, because (it is stated) there are many new, intricate, typically American questions which moralists have approached only reluctantly, if at all. Perhaps the best way to indicate the general view of the critics, among whom are both Catholic and non-Catholic thinkers, is to say that there is evidence of "theological lag" in the field of business ethics.

In sociology, William Ogburn developed the concept of "cultural lag." That is, one part of modern culture (often a non-material element, such as education) may tend to lag behind or change less rapidly than another part (often a material or technological element, such as electronic brains). This lag may exist for a number of years and may easily induce serious maladjustments in the culture as a whole.<sup>20</sup>

Transferring this concept into the realm of moral theology, critics say that business practice in the United States has been changing rapidly especially since the second World War, but the moral treatment of these problems (in periodical literature as well as in the manuals) has lagged noticeably behind. There is a tendency to keep answering questions that have already been answered, rather than to attack the burning issues of the day. In a stimulating and controversial article, John Cogley insisted several years ago that American theologians are failing to provide direction and moral guidance to the real people of our times, "and this is so because the theologians so rarely enter into the muddy waters of contemporary conditions that most of their writings seem irrelevant."<sup>21</sup> Cogley pointed out three specific areas which need the special attention of American theologians: church-state relations; nuclear warfare; and business

<sup>20</sup> Cf. W. Ogburn, *Social Change*, Viding, 1950.

<sup>21</sup> J. Cogley, "Wanted, Theologians," *Commonweal*, May 22, 1959, 204. Having completed the text of my paper, I saw the remarks of J. Lynch, S.J., "Notes on Moral Theology," *Theological Studies*, June 1961, 238-241. His comments on several articles included in this paper. His remarks are especially clear and forceful. The following quotation is indicative: "It might be noted in addition that there is little or nothing more that theologians can in conscience offer when, for instance in answer to their considered opinion that one or another business practice is objectively immoral, they are told pragmatically that, because everybody does it, abandonment of the custom by a relative few would be economic suicide."

ethics. On the subject of business ethics Cogley does not mince words:

The other day I sat in a meeting attended by a group of business and professional men. The talk turned to the relationship between religion and modern society. One after another the men present stated that they found the advice of theologians practically useless. For the moral problems they face do not conform to simple choices of good and evil but are enmeshed in moral ambiguity, and in such cases the theologians are usually tongue-tied.

Most in the group claimed they would eagerly welcome real guidance from religious spokesmen. However, the Church and its theologians, in the view of most of them, are hopelessly out of touch with reality. "When I need moral guidance," one man said, "the last place in the world I would go for it is to the Church." Another said, "If I took the advice of the clergy I would either be out of business in a month or be involved in twice as many moral perplexities as I started out with."<sup>22</sup>

Mr. Cogley is careful to point out that these are not men who believe there is no connection between morals and business, that they do not fit the secularist stereotype "thundered against in a thousand sermons and editorials" (and in #3 above). These are men hungry for guidance, who "ask for bread and are given a stone."

Whatever may be said about the clear note of exaggeration in the above statements, they impress upon us the great need there is for a new cultivation of business ethics. I think a parallel may be drawn between the sphere of business and the sphere of medicine. There is no shortage of treatises on medical ethics. Moralists long ago recognized that the problems of medicine are intricate, that certain moralists must specialize in a reasonably complete knowledge of the facts about certain surgical and medical procedures, and then present a moral evaluation. Moralists realized also that there was no question of standing still in medical ethics, that constant effort had to be made to learn about the ever-changing methods and techniques, that last year's article may be out of date this year. Business ethics needs the same thorough treatment, needs its specialists who are familiar with the real world and the "muddy waters" of Ameri-

<sup>22</sup> *Ibid*, 204.

can business. General norms are not sufficient for even the sincere and conscientious businessman; he needs the help of experts to make the necessary applications.

The businessmen themselves must bear part of the responsibility for the situation they complain about. Monsignor George Higgins makes a worthwhile observation when he says:

Frankly, if I may good-naturedly turn the tables on those who enjoy criticizing the vagueness of some theologians and the slide-rule casuistry of others, I must say that I think the time has come for American management to start drawing up its code of ethics, with the advice of counsel of theologians, to be sure, but without waiting for the theologians to lead them into the church by the hand.<sup>23</sup>

Francis Connell, C.S.S.R., makes a similar point when he suggests that one reason why moralists do not provide more answers to problems raised by modern business methods is that "we are seldom questioned on these problems either by those engaged in business or those who teach business courses. . . . I cannot help contrasting this attitude with that of Catholics engaged in the medical profession."<sup>24</sup>

In short, cooperation is of the essence. Edward Jamieson, national chairman of the Catholic Employers and Managers Study Groups, after focusing attention on the fact that most decisions made by businessmen have a moral element and that it is practically impossible for a busy manager to develop on his own the necessary application of good moral principles, concludes: "What we need is closer cooperation among businessmen, moralists, and Catholic social scientists, to formulate, grasp, and refine our guiding principles."<sup>25</sup> Before offering some practical suggestions on this score, I should like, in accord with the purposes of this paper, to call attention to some particular problems.

<sup>23</sup> G. Higgins, *art cit.*, 310.

<sup>24</sup> Address to Business Education Clinic, Catholic University of America, June 21, 1953. I am grateful to Father Connell for the use of his personal files and for his kind advice on several questions. But I wouldn't want anyone to blame him for the deficiencies of this paper.

<sup>25</sup> Quoted in *The National Register*.

## II. *Some Particular Problems*

Simply to catalog all the particular moral problems related to American business practice would be a worthy enterprise. In the time at my disposal I will comment on a few of the problems frequently raised by businessmen, especially those proposed by Mr. Arthur Hayes, the distinguished lay member of this panel. If I have cautioned the moralist about over-simplification, I can only plead guilty myself. As in the first part of this paper, my purpose is not to attempt total answers, but to ask some questions and stimulate discussion.

1. *Lack of uniformity among theologians.* A continuing puzzle to many businessmen (as well as to other laymen) is the lack of uniformity and agreement in the solutions given by various theologians. To be sure, this is exaggerated at times, and there are some old wives' tales and false impressions that never die.<sup>26</sup> But there is some justification for the puzzle too. We who have studied moral theology, who have sat through long discussions on probabilism, equiprobabilism, and probabiorism are familiar with the historical and scholarly reasons why moralists sometimes differ in their solutions to practical moral problems. But for the layman, who has not been trained in moral theology, the conflicts and differences of opinion yield only an image of confusion and bewilderment. And this lack of agreement is especially noticeable in a society like ours, where Catholic periodicals with differing approaches are abundant and where not one but a dozen priests may be easily questioned on the same problem. I wish I could offer the layman a simple solution to his problem, but I am afraid the "moral systems" are going to be around for a long time. The layman's problem would be eased considerably by a broader education in fundamental moral theology. A balanced understanding of what Catholic theologians must agree on, of what they may differ on, and why, would certainly be helpful. It would also help if priests would avoid giving "handfuls of conclusions" with practically no indication of the reasons and approaches underlying the conclusions.

In this connection, I should like to make a comment on the penal

<sup>26</sup> For example, that Redemptorist moralists have vinegar in their veins!

law theory. This theory seems especially baffling to businessmen. Theologians are well aware of the continuing debate on this phenomenon. No matter what the personal wishes of some of us might be, there is little likelihood that the penal law theory will pass away. Edward Dunn, S.J., in his thorough article of a few years ago, concluded that the penal law theory "is now, and probably will remain, 'in possession'."<sup>27</sup> It is my impression that American Catholics, perhaps for historical reasons, look upon all just laws with single-eyed simplicity and believe that they should be respected and obeyed as a matter of conscience. In my experience, it is not easy to get the ordinary lay student or adult to "see" the penal law theory. In fact, a number of recognized moralists give advice to the effect that pastors and confessors ought not ordinarily teach the penal law theory to their people. On this Matthew Herron, T.O.R., writes:

No one will question the prudence of those theologians who advise pastors and confessors to be careful and in general not to teach the penal law theory to the people. But the question naturally arises: Of what value is a principle in moral theology which cannot be put into practice? The theologians admit that it is too dangerous to teach it. Then, is it not also useless?<sup>28</sup>

The defenders of the penal law theory have answered this objection a number of times, but the answers leave me unsatisfied. As I see it, we cannot have it both ways. If respected theologians are going to use the penal law theory to solve practical cases, ought not the theory be explained to people at some length? In our day a moralist cannot dictate a simple conclusion to intelligent people and expect them to embrace it, no questions asked. With no desire to belittle the wisdom of the masters, I think the theologian or confessor who adopts the penal law theory in practice *should* explain his position. Then, at least, the lack of uniformity and agreement will not seem merely arbitrary.

2. *Taxes*. Much printer's ink has been spilled over the moral

<sup>27</sup> "In Defense of the Penal Law," *Theological Studies*, March 1957, 41-59. Fr. Dunn refers to a number of other recent studies.

<sup>28</sup> Quoted by Dunn, p. 54. Cf. also, Merkelbach, Aertnys-Damen, Genicot-Salsmans.

obligation of paying just taxes. But the question still comes up frequently in serious conversation with businessmen. Mr. Hayes remarks (and he is giving this as an example of the "great diversity of opinions" among professional theologians): "A theologian recently told me that misrepresentation on an income tax up to 30% by such devices as overstating contributions and so forth was not morally wrong because the law expected that when it was written; whereas other theologians said that it was morally wrong and an injustice to those taxpayers who must pay a disproportionate share." As a matter of fact, of course, there is even greater diversity of opinion than this.<sup>29</sup> No attempt will be made here to treat the whole problem of taxes and morality. I would like, however, to suggest a few reflections.

In the United States two opinions regarding the payment of taxes seem to be quoted most frequently. And two theologians, Henry Davis, S.J., and Francis Connell, C.S.S.R., are quoted often enough as proponents of the two schools of thought. Father Davis is usually cited as a proponent of the penal law theory in regard to taxation. He clearly holds that "in England the obligation is certainly penal only."<sup>30</sup> He says further: "In most states nowadays, and prescinding from periods of urgent need and imminent danger, it is questionable whether this obligation is more than penal." Fr. Connell, while acknowledging that some theologians uphold the penal law theory, says that "the far more probable opinion" and the opinion "that should be followed" is that the payment of taxes binds in conscience, out of legal justice, "so that it would be a grave sin to refuse to pay a just tax bill for a sizable amount."<sup>31</sup> Fr. Connell then adds: ". . . it

<sup>29</sup> A quite thorough discussion of principal opinions is found in M. Crowe, C.S.S.R., *The Moral Obligation of Paying Just Taxes*, Catholic University of America, 1944.

<sup>30</sup> H. Davis, S.J., *Moral and Pastoral Theology*, Sheed and Ward, 1938, II, 338. Davis writes a sentence relevant to my previous discussion: "Nevertheless, whatever may be held in point of theory as defensible, Catholics should err on the side of strictness, for even the statement, and still more the putting into practice of the complete doctrine of taxation, are apt to give scandal and do harm to religion" (p. 339).

<sup>31</sup> F. J. Connell, C.S.S.R., *Morals in Politics and Professions*, Newman, 1955, 68; *Outlines of Moral Theology*, Bruce, 1958, 115-116. Cf. the comments of G. Kelly, S.J., "Notes on Moral Theology," *Theological Studies*, March 1947, 110-111.

seems probable that one would not fail against this virtue (legal justice) if he used stratagem to diminish his tax bill *to some extent*, since the rates are based on the supposition that there will be some evasion on the part of many."<sup>32</sup>

It is clear that Fr. Davis and Fr. Connell are primarily concerned with *justice* (and restitution) in their treatment of this question. But it should also be noted that these men are conscious of the requirements of other moral virtues that may be involved. Thus, Davis states:

Nevertheless, there is no possible excuse for studied evasion of taxes, and therefore though, *past factum*, it is not necessary to urge restitution, *ante factum*, citizens should be urged to pay their share of the taxes. No countenance can be given to the employment of *fraud*, *deceit* or *lying*, in the matter of income-tax returns. But such acts are not clearly sins against *justice* and do not necessarily entail restitution; *they are usually sins against truthfulness, and no confessor can ever condone them* under any circumstances.<sup>33</sup>

And Fr. Connell, having stated his opinion as given above, adds: "Needless to say, this involves at least a falsehood, and is surely not to be recommended."<sup>34</sup>

I think the point is important. If these opinions are not fully explained, they give the impression that these men are approving of (or at least not disapproving of) deceit, lying, misrepresentation of facts etc. While Fr. Davis and Fr. Connell would allow using "legal loop holes" to diminish a tax bill, neither would allow any falsification of statements or misrepresentation of facts.

Even theologians who do not follow the penal law theory on taxes are lenient in allowing evasion of a tax burden, even up to 30%, as Mr. Hayes has quoted. I see several problems here. In our country it is rather difficult, I think, to come up with a stratagem or subterfuge which would not at the same time involve falsification of facts or misrepresentation of the truth. Perhaps a precocious taxpayer could devise a mental reservation, but it is by no means easy.

<sup>32</sup> *Outlines of Moral Theology*, 115.

<sup>33</sup> Davis, 339.

<sup>34</sup> *Outlines of Moral Theology*, 116.



This practice is often justified by pointing out that the government expects many citizens to use evasion and hence regulates the tax quota accordingly. This is probably true. But I am not sure I see the argument. Department stores know that some people will steal goods; they make allowances for this; they usually raise prices slightly to cover their losses—but none of this *justifies* the person who steals. To hear some people talk, you would be led to believe that the government *intends* taxpayers to cheat on taxes. This is ridiculous. The legislators *intend* that everybody pay his just share.<sup>35</sup>

The argument is also used that there is a great deal of dishonesty and waste on the part of the government—therefore the public need not worry about a full payment of taxes. I think this reasoning creates a vicious circle. If I avoid my share of taxes on this principle, I am not affecting the dishonesty in government; I am only throwing a larger burden on someone else. Gibney states: "Statisticians have calculated that honest payment by everybody would enable the government to decrease the general tax burden by 40%."<sup>36</sup> If this is true, there seems to me to be some kind of legal injustice in this conduct. Besides, ought not the taxpayers use the democratic, political processes to "clean up the government." Evading taxes, so that they become higher and higher, so that the "honest taxpayer" is really taken advantage of, solves nothing.<sup>37</sup>

3. *Expense Accounts.* The "Expense Account Aristocracy," a relatively new element in American society, has grown to maturity in recent times. It is presently estimated that between 5 and 10

<sup>35</sup> Cf. H. Johnston, "Problems in Conscience," *The Catholic World*, June 1957, 201-202. In the August and October issues, Mr. Johnston continued his fine discussion of various moral problems in business.

<sup>36</sup> *The Operators*, 201.

<sup>37</sup> J. Cronin, S.S., *Social Principles and Economic Life*, Bruce 1959, 266. Fr. Cronin writes: "In modern democratic societies, taxes should be more nearly tied to the needs of the common good and hence involve the virtue of social justice. If the citizen feels that his contributions are being misused, he can use political means for correcting the abuses. Accordingly, it follows that social (contributive) justice demands that citizens pay taxes as a matter of conscience. The contrary view, practiced in many countries, leads to many injustices and unfair distribution of tax burdens. A democratic political society can hardly thrive if large groups of citizens fail to contribute to the needs of the nation."

billion dollars a year are totaled up on the "swindle sheet," as the expense account is significantly called. The expense account, together with its offspring the credit card, is now a definite part of the American socio-economic pattern. There are restaurants, night clubs, theaters etc. which would promptly fold if expense-account trade were suddenly stopped. Moreover, there would be fewer lodges built, fewer European vacations taken, fewer yachts launched.

It seems almost fruitless to dwell on the casuistry of expense accounts. Expense-accountism is to a large extent a cultural problem; it is a symptom of our moral fiber, a symbol of our values, one result of technological and economic factors that have formed the society we know. Yet, for our purposes, an examination of a few cases may serve to stimulate discussion.

There are different kinds of expense accounts. The *per diem* account presents no particular moral problem. In this arrangement the employee is allotted a specific amount of money for expenses, e.g., \$12 a day. He has no obligation to submit an itemized account. If by economizing he does not use all the money for expenses, he may still accept the standard amount. (Government employees assure me that there is no question of making anything on *their per diem!*)

Another type of expense account is the one used by many salesmen, public relations men etc. After a business trip these men submit an expense sheet itemizing how much they spent and for what. They then receive reimbursement. I will offer no statistics, but the custom of "padding" such accounts, sometimes for very sizable amounts, seems fairly common. I see no moral justification for this practice. To demand and receive compensation for expenses which one did not incur is surely a violation of justice, an offense against the seventh commandment of God. In deliberately misrepresenting facts, in presenting a falsified statement, the "padder" is indulging in deceit and lying. Whatever ambiguity is claimed for this case must, it seems to me, disappear before the simple imperatives of justice and truth.

It is frequently asserted that "everybody does it this way" and "the boss knows it is going on." The fact that everybody does it, even if it were true, makes no difference at all to the objective morality of the practice. Of course, it might easily be a strong influence

on the individual, especially the person whose moral education has been poor and who is accustomed to think of "mores" as morals.

The fact that "the boss knows it is going on" introduces another aspect of the problem. The rise of expense-accountism is, as Mr. Hayes points out, closely connected with the problem of taxation, especially the personal income tax and the heavy tax on corporation profits. From this angle, there can be a kind of collusion or tacit agreement between the employer and employee. However, if it is true that the "boss" looks the other way, it might be asked who the "boss" is and what right he has to look the other way. Some "bosses" are decidedly generous with other people's money. His silence, moreover, might not be approval at all, but simply a kind of necessary prudence or "sportsmanship" or defeatism. As Fr. Connell points out, "the presumption is that the employer abstains from any effort to check the custom because he feels that any such attempt would be useless since the salesman will outwit him in any event."<sup>38</sup> In this case, the "approval of the boss" would hardly modify the immoral conduct of the employee.

On the assumption that there is a real agreement between the employer and employee, the purpose of which is to evade part of the tax burden, then the question seems to take us back to the obligation of paying just taxes, which has already been touched on.

From a different point of view, Fr. Connell has stated that "if it could be proved that the employee not only knows about the 'padding' but also agrees to it," the practice would be permissible. "This might be the case," he says "if the salary paid to the salesman is definitely lower than a just wage, for in that case the employer should agree to some compensation in the form of 'padding.' But there must be a clear case of underpayment before this argument is used."<sup>39</sup>

There are other expense account problems, and I hope they will be discussed from the floor.

4. *Employer—Employee.* Mr. Hayes has asked a number of questions about the employer-employee relationship, especially in

<sup>38</sup> F. J. Connell, C.S.S.R., "The Padded Expense Account," *The Ligourian*, October 1956, 595.

<sup>39</sup> *Ibid*, 596.

regard to morality. It is commonly agreed that the employer, from the very nature of the employment contract, must provide *moral* conditions of work which are helpful and not detrimental to his employees. Therefore, clearly, if an employee's immorality affects the other employees, especially in any open and public way, if his conduct or speech is objectively an occasion of another's spiritual ruin, the employer has an obligation to rectify the situation, even to the point of dismissal, if necessary.

But if the employee's conduct does not affect his work and does not seriously affect the morals of other employees, the employer has neither the duty nor the right to extend his authority outside the business situation. In a pluralistic society like ours, where approaches to morality are so varied, the Catholic employer would be infringing on the individual liberty of his employees if he insisted that his own moral code be accepted by all. It is worth noticing, however, that in many cases a man's personal immorality *will de facto* exert a deleterious influence on other employees or bring opprobrium on the business establishment. In such cases, the employer should attempt to correct his employee, but if he persists in his immoral conduct the employer would be doing no injustice by firing him. In fact, the employer would be failing in duty if he did not fire him, unless a serious excusing cause were present.<sup>40</sup>

5. *Racial Discrimination.* I had originally hoped to comment extensively on several general questions regarding segregation in hiring.<sup>41</sup> Some Catholics take a strange stand on this question. They insist that no particular applicant has a right to any particular job. The employer is free to hire whom he will. It is true that man's right to employment is a general natural right, the normal means of attaining some of man's existential ends. It would be difficult to find a reason supporting the *right* of any *individual, qua individual*, to any particular job. But if an employer's refusal to hire a particular person is based solely on his policy of refusing employment to Negroes, he is making use of a policy which violates charity and social justice. Negroes have a right to secure a job on a non-discrim-

<sup>40</sup> Cf. Aertnys-Damen, I, #559.

<sup>41</sup> Cf. the extensive treatment of racial justice by J. Cronin, *op. cit.*, especially 329, and 331-333. Cf. also H. Johnston, *Business Ethics*, 91-93.

inatory basis; they have a right to be considered on their merits; they have a right to equal opportunity. The policy of excluding Negroes from full opportunity because of race *forces* them to accept substitute jobs below their potential earnings. It also hurts their families. Negroes need employment and have a right to it, according to their abilities. To deprive a group of basic rights is contrary to the common good and opposed to social justice.

Some employers do not wish to discriminate themselves, but maintain they are forced to do so for purely economic and business reasons. If such an employer is morally certain that hiring Negroes *would* lead to drastic consequences (sometimes this is exaggerated), then he would be temporarily excused from the demands of social justice in his employment policies. But he is still obliged to work steadily, by personal example and other means at his disposal, to change the conditions that foster such discrimination. The Christian employer will use prudence, of course, but he will not allow prudence to become a veil for injustice.

Mr. Hayes asks about a particular case. "As a businessman, you would like to belong to the X Club. But the X Club refuses *membership* to people of Jewish descent or to Negroes. Is your membership aiding and encouraging the club in its practice? Let us say that your patronage gives prestige to and is valuable to the restaurant. Do you have any obligation to avoid patronizing the restaurant which adheres to the segregation line? Must you give your preference to the restaurant that does not discriminate against any race or creed?"

A distinction has to be made between an ordinary restaurant and a private club. "The doctrine of equality" writes Fr. Cronin, "implies non-discriminatory access to any . . . facility available to the general white public on the basis of willingness to pay the costs involved. Examples would be department stores, restaurants, motion picture houses, and hotels."<sup>42</sup> It seems to me that the consistent and valuable patronage of a businessman (especially of some prestige) would certainly be encouraging the restaurant in its policy of discrimination. Such a businessman has a clear opportunity of promot-

<sup>42</sup> Cronin, *op. cit.*, 329.

ing social justice by opposing the policy of the restaurant and avoiding it if it continues this policy.

Regarding private clubs, Fr. Cronin says: "No minority or other group has the right to complain when strictly private and primarily social groups restrict membership or invitations to congenial persons. This applies to private homes, clubs, and private societies."<sup>43</sup> There is certainly nothing wrong in seeking special company for social relationships. But in choosing special companions or groups of companions, the motivation is very important. Rejection of others, purely on the basis of race or color, is not a Christian motivation. I do not think the Christian businessman has any clear moral obligation to resign from private clubs which adhere to segregation, but I would certainly encourage him to do so if possible. It is a practical opportunity to implement Christian social charity.

6. *Price-Fixing*. Since the price-fixing "conspiracies" are in the air at present, I would like to make a few observations. I have not seen a "miniature treatise" on this subject in the periodical literature, but I would encourage any enterprising theologian, schooled in economics, to attempt one. Perhaps, however, it would be impossible to write a miniature treatise. For this question takes us into the much broader subject of the socio-economic order, into the Christian social principles stated by the recent popes and commented on in numerous excellent studies. Price-fixing, in the usage here, refers not to governmental control of prices, but to the efforts of private organizations to fix prices or to restrict the freedom of the market. The price-fixing maneuvers of the electrical companies were certainly *illegal*—a violation of the Sherman Antitrust Act. This act of Congress (1890) prohibits combinations or conspiracies in restraint of interstate or foreign trade, and forbids monopoly or the attempt to monopolize.

One of the major duties of business is "to charge fair prices for its products." The complete concept of the "fair" or "just" price is too complex to be treated here. But moralists agree that one of the major dangers to the fair price is the private monopoly. The monopoly which fixes the price of articles at a price above the maximum fair price (*summum pretium*) is unjust. A conspiracy among several

<sup>43</sup> *Ibid*, 329.

firms to sell above the maximum fair price also entails a violation of justice.<sup>44</sup>

I am not familiar enough with all the facts of the recent electrical conspiracy to make a sound judgement on it. But in the wake of these incidents, I would like to raise one particular question. What would be a sound moral evaluation of the Sherman Antitrust laws? Among businessmen the general sentiment is that these laws are anachronistic. I am told on good authority that a number of businessmen are cynical about these laws and do not feel guilty when they violate them. "I think it would be fair to say," writes Monsignor Higgins, "that many of those who publicly support the philosophy of anti-trust legislation really don't believe in it and violate it—with a good conscience—whenever they can do so with impunity."<sup>45</sup>

Msgr. Higgins, while not condoning "the kind of illegal price-fixing recently uncovered which is admittedly indefensible," seems dubious about the underlying philosophy of the Sherman anti-trust laws. In the previously quoted column, he continues:

Anti-trust legislation would be a good thing if its only purpose were to prevent monopoly in the anti-social sense in which that word is usually understood. But for many people that isn't its only purpose. Its underlying purpose, according to Stocking and Watkins (*Monopoly and Free Enterprise*), is to perpetuate the "impersonal" laws of competition as the directing principles of economic life.

"If society," they say, "is to rely on private enterprise to serve it, all obstacles to its competitive operation must be clearly recognized and rigorously repressed, however sacred may be the vested interests at stake. In its own interest, the public cannot tolerate private groups—either labor or business—strong enough to control markets and disrupt the economy. Monopoly power, in labor's hands or capital's or jointly exercised, is inimical to the general welfare and to democracy."<sup>46</sup>

Monsignor Higgins takes exception to the words "all obstacles" in the above citation. Presumably included in this would be "any

<sup>44</sup> Cf. Damen, I, 941. And Davis, II, 389.

<sup>45</sup> "The Yardstick," March 20, 1961.

<sup>46</sup> *Ibid.*

attempt whatever on the part of labor and management, in cooperation with the government, to establish social justice by regulating competition in the interest of the common good. *It would include the so-called Industry Council System as advocated in the social encyclicals and would make a virtue out of uninhibited price warfare.*"<sup>47</sup>

This last point was suggested some years ago by John P. Walsh, O.M.I., in his doctoral dissertation at the Gregorian University.<sup>48</sup> In discussing the relationship between the Industry Council Plan and the Sherman Act policy, Fr. Walsh found serious defects in the Sherman Act. Its spirit is one of individualism, and unrestrained competition and can hardly be reconciled with the social teaching of the Church. He conceded, however, that with new inspiration, with a more effective expression of the principle of State intervention, it could be considered "a short-range remedy for unfair competition, intended as an intermediate step in the direction of the natural social order, i.e., the Industry Council Plan."<sup>49</sup> A fuller discussion of this topic among moralists would be profitable.

Other particular problems such as advertising, and entertainment, would demand more time and space than is now available.

### III. *Practical Suggestions*

I shall keep these final remarks brief. Although the suggestions here offered may seem naive or trite, I offer them mainly in the hope that others will come up with more sophisticated and urgent ones.

1. *The seminary curriculum.* Mr. Hayes asks: "Where does the businessman go for enlightenment?" In partial answer to his question he says: "It is obvious that his confessor or pastor cannot be equipped to decide moral issues on today's intricate business problems." Chances are, however, that confessors and pastors could be somewhat better equipped than presently if, in the seminary cur-

<sup>47</sup> *Ibid.*

<sup>48</sup> *The Basic Principles of the Industry Council Plan of Pius XI and of the Policy of the Sherman Act*, Gregorian University, 1950. I have only an abstract which appeared originally in *Revue de l'Université d'Ottawa*, Jan.-Mar., April-June, 1951.

<sup>49</sup> *Ibid.*, p. 61.



riculum, greater emphasis were placed on modern *American* business problems. It is a favorite sport, I know, for people to recommend more and better courses for the struggling seminarian. And the professor of moral theology is always being told how to teach his course. I am not necessarily suggesting a new course in business ethics, but could not the treatise *De justitia* be somewhat emended? Isn't much of the material in the standard manual of historical interest or geared to a different age? Isn't precious time lost on disputes that have little relevance to our society?

2. *Specialists*. I think most would agree that there is need for more moral theologians to pursue graduate study and research in this field. This would demand some work in economics and perhaps in industrial sociology, as well as some experience in the inner workings of American business. It would cost money. If businessmen are sincere in their requests for theological guidance, they might implement their requests by providing funds to help make the necessary theological research available to qualified men. Such practical cooperation could produce rich results.

3. *Literature*. A twenty-year review of *Theological Studies* "Notes on Moral Theology," which offers excellent comments on significant articles, as well as a review of the *Catholic Periodical Index* reveals a noticeable lack of literature on problems of business ethics. *Social Order* is one of the few magazines that consistently features high-class articles directly or indirectly relevant to the subject of business ethics. Unfortunately, Catholic newspapers and periodicals of a popular nature tend to come alive to this subject chiefly when "scandals" are in the news. I suggest that problems (and especially attitudes) in this area are of greater urgency and interest than many of the topics so frequently treated.

4. *Codes of Ethics*. Sincere businessmen themselves should take the initiative in developing their codes of ethics. Some years ago Mr. Godfrey P. Schmidt strongly recommended a rather detailed plan to bring together moral theologians, labor experts, lawyers, industrialists etc. to discuss and solve the many social problems of modern life. The plan was recognized as good in theory, but impossible of fulfillment. But, perhaps, on a more modest scale, businessmen could invite moral theologians and philosophers to participate in their

efforts to construct codes of business ethics. The businessmen would, of course, bring their acute knowledge of facts and the "cases" that need solution. The philosophers and theologians would bring the absolutely necessary principles and insights of speculative theology and metaphysics. Such cooperation, even on a small scale, would surely produce worthwhile results.

5. *Personal Commitment.* But, unless businessmen are willing to stand upon moral truth even in face of economic loss, unless the desire to get rich quickly or to get something for nothing or for very little is subordinated to moral values, unless the businessman recognizes his handling of temporal realities as an integral part of his Christian vocation, no practical efforts will have any meaningful or lasting effect. There is no short cut to moral virtue. There is no substitute for personal commitment to the truth that nothing is of value if a man suffers the loss of his own soul or contributes to the loss of others.

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