

Marriage Courts; Obscenity; Human Rights; Religious Freedom; Insanity and Responsibility; Pacem in Terris

Follow this and additional works at: <https://scholarship.law.stjohns.edu/tcl>

This In Other Publications is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

IN OTHER PUBLICATIONS

Marriage Courts

An interesting and provocative editorial entitled "Bottleneck in Marriage Cases" by Reverend Albert Bauman, O.S.B., is featured in the March 1964 issue of the *St. Joseph* magazine.

Observing first that perhaps the most urgent of all needed reforms in the Church concerns the interminable delays in marriage courts, both diocesan and Roman, the editorial asks — who is to blame?

Father Bauman points out that the first thing to note is that the delays do not necessarily occur in Rome. In fact, the feeling among canon lawyers is that the difficulties can very seldom be blamed on officials in Rome. When cases are properly presented, decisions are quick and easy. It is the cases which require correspondence with the parties concerned and with priests and officials in chancery offices that run on for months and even years. When new evidence is required, it has to be rounded up by busy priests who have a hundred other things on their minds. Sometimes those involved are hard to find, and reluctant to testify when they are finally found.

The Church is very careful about marriage cases. When the divine law is involved and when a sacrament is in question, great care must be taken to base every decision on the best possible presentation of all the facts in the case.

In the opinion of Father Bauman, it

would be an immense benefit to all concerned if there were more experts in the canon law of marriage. Perhaps a greater effort could be made to train men for this exacting work. They might even be laymen, if enough can be found who are interested and willing to take on the work.

To carry this idea a step further he suggests the possibility of having law offices that specialize in this type of case. A corps of lay and/or clerical experts in marriage law might help to clear up the backlog of cases that is said to exist. Then they could relieve overburdened diocesan offices of much of the grief connected with marriage cases.

Discreet advertising in publications for the clergy would soon get the word around, and a full-time practice might be built up. Of course, expenses of lay attorneys would go up, too, but not more than expenses for other legal proceedings.

Such an office of canon law specialists in various phases of the marriage law of the Church could be a boon to the chancery offices of small dioceses. Small dioceses could avoid altogether the expense of sending priests to universities for advanced studies in canon law. In these small dioceses, even after the priest is trained, he rarely gets enough work to keep up in his field. When a case is presented he has to work twice as hard as the man who is continually handling this type of work.

Another development which could ease the whole situation considerably would be the establishment in the United States of a special marriage court to try cases that would ordinarily have to be sent to Rome. This, Father states, could save time and effort all around. This suggestion is not as revolutionary as it may sound. Since 1947 (and before 1933) Spain has had its own court of appeals for many so-called "Roman cases:" a local Rota (as the Roman marriage court is called) to save the trouble of appeals to the highest tribunal in Rome—except for extraordinary cases.

Father Bauman concludes that lay people would still have the right to appeal to Rome, as they have now, when they feel they are not receiving justice where they live. This is, of course, a last resort and should not be used lightly.

The laity already have the right to go to any priest who will present their case, or to any attorney. An experienced attorney might be of considerable help. At least he would be familiar with some of the legal procedures and the laws of evidence. Perhaps he might get interested enough to specialize in canon law, as some laymen already do.

There is plenty of business. Of all the legal tangles people get themselves involved in, marriage cases are one of the most common. In many of these cases the eternal salvation of souls is at stake and they need all the help they can get.

Obscenity

The frequently heard argument that pornography and obscenity have not been established medically as being necessarily harmful to a minor was answered recently by Dr. Nicholas G. Frignito, Medical Director and Chief Psychiatrist of the County

Court of Philadelphia. Dr. Frignito made his refutation in an address delivered to the East Orange, New Jersey Decent Literature Committee on January 21 of this year.

Dr. Frignito said, in part, that in the years 1949 to 1959, the Philadelphia County Court had a rise in the number of its cases which was greater than the total number of cases in the almost half century since the court's beginning in 1917. Represented in the increase are more sexual offenses, offenses of physical assault and other public indecencies.

In the Criminal Division, the total number of cases rose from 3,687 in 1949 to 5,555 in 1959, an increase of 50 per cent. Fornication, bastardy cases and neglect to support illegitimate children rose from 1,173 to 2,590 or 120.8 per cent. In 1949 in the Juvenile Division, there were 22,251 cases and in 1959 a total of 32,003 cases, a rise of 43.8 per cent.

In the Misdemeanor Division, dealing with the young adult, disorderly street walking and related sex offenses, vagrancy, drunkenness, indecent assault, rape, exhibitionism, promiscuity and other sexual offenses, men's cases rose from 859 in 1949 to 1,364 in 1959, an increase of 55.5 per cent. These figures are comparable with other community reports. In too many instances, the increase in sexual offenses can be attributed to the persistent and constant exposure and use of obscene matter in all forms.

Many of the delinquents coming to the attention of the court for repeated truancy, incorrigibility, robbery, larceny, burglary, carrying concealed and deadly weapons are avid readers of crime stories, masochistic and fetishistic magazines, obscene comic books and lewd stories.

Delinquents are more frequently involved

with eroticism than others. More than 50 per cent admit to heterosexual experiences, sexual promiscuity and 24 to 30 per cent admit homosexual contacts. Delinquent boys and girls begin homosexual and heterosexual activities in their early teen years.

The most singular factor inducing the adolescent to sexual activities is pornography: the lewd picture, the smutty storybook, the obscenely pictured playing card, indecent films, the girlie magazines. All these are readily available to children from the seventh grade into high school. Such items can be purchased from older persons in school areas, local stores or newsstands. Pornography fosters impure habits and desires. Physical damage frequently results from sexual misconduct. In the Philadelphia area, venereal disease has increased approximately 300 per cent in the past five years. It is not difficult to imagine the devastating effect on the intellectual, emotional and moral development of these victims.

According to Dr. Frignito, pornography can cause sexually aggressive acts and in some instances lead to the slaying of the victim. This is particularly true when delinquents have been erotically stimulated by smut books devoted to flagellations, sadism and masochistic rituals. The court records verify this.

The increase in sexual offenses among adults, especially homosexuality, is directly attributed to the availability of magazines devoted exclusively to this perversion. This type of book is openly displayed on newsstands and magazine racks.

The incidence of incestuous assaults is much higher than reported. Psychiatrists, physicians, social workers, police and other authorities charged with the care of girls know this. Approximately 30 per cent of institutionalized adolescent girls were so

abused, and many revealed that the offending parent or sibling regularly read smutty books or had lewd photographs.

Dr. Frignito concludes that it is absurd and fallacious to say eradication of pornography is suppression of sex knowledge, or that smut reading is a practical and sage outlet for the sexually aggressive who would otherwise act out their inclinations. The reading of erotica is not a harmless psychological aphrodisiac; it is a serious danger to the community. Pornography is a scheme of avaricious and depraved psychopathic persons to enrich themselves.

Along the same lines, in an article published by the Associated Press in December, Will Durant, philosopher-historian asks: Have we too much freedom? Have we so long ridiculed authority in the family, discipline in education, rules in art, decency in conduct, and law in the state that our liberation has brought us close to chaos in the family and the school, in morals, arts, ideas, and government? We forgot to make ourselves intelligent when we made ourselves free.

Should we be free to sell, to any minor who has the price, the most obscene — the most deliberately and mercenarily obscene — book of the eighteenth century, while we deplore the spread of crime, unwed motherhood, and venereal disease among our youth?

Dr. Durant states that public opinion has been guilty of criminal and cowardly silence in the face of growing crime, moral disorder, and deteriorating taste. We have been afraid to speak out lest we be considered old-fashioned and incapable of adjusting ourselves to changing norms and ways.

We tolerate and allow our children to be formed by pictures that habituate them to crime and violence, to the cheap heroism of flaunting a gun. We give not only money

but honors to writers who peddle sexual stimulation.

He ends with the request that we speak out: "Let us say, humbly and publicly, that we resent corruption in politics, dishonesty in business, faithlessness in marriage, pornography in literature, meaninglessness in art."

Human Rights

Reverend Albert Verdoodt writing in the December issue of *Migration News* presents a scholarly critique of the Universal Declaration of Human Rights on the occasion of the fifteenth anniversary of its adoption by the General Assembly of the United Nations.

Father Verdoodt first gives a brief description of the Declaration. He compares it to the vast portico of a temple of which the parvis is formed by the Preamble affirming the unity of the human family and of which the foundation is constituted by the general principles of liberty, equality, nondiscrimination and fraternity proclaimed in articles 1 and 2. Four columns of equal importance support the portico.

The first is that of rights and liberties of a personal order (articles 3 to 11 included): life, liberty, security and dignity of person, equal protection of the law, guarantees against slavery, torture, arbitrary arrest and detention, and legal recourse in case of violation. The second column concerns the rights of the individual in his relationship with groups of which he is a member and things of the exterior world (articles 12 to 17 included). Man and woman on an equal footing have the right to get married, to found a family, to have a home, a residence, and asylum in case of persecution. Every human being has the right to be a member of a city, to be a citizen of a country, and to

manage what has become his own property.

The third pillar is that of spiritual faculties, public liberties and fundamental political rights (articles 18 to 22 included): freedom of thought, conscience and religion: freedom of opinion, expression, assembly, association; the right to take part in public affairs, and to participate in periodical and real elections. The will of the people is proclaimed the basis of authority of government.

The fourth pillar, symmetrical to the first, the strength of which is equal to the others, is that of economic, social and cultural rights (articles 22 to 27 included): right to work, free choice of employment, social security, freedom of trade union; right to education, to leisure, to cultural life, and to the protection of intellectual and artistic creation.

On these four columns a facade had to be set to mark the links between society and the individual. Articles 28 to 30 affirm the necessity of an international social order so that the rights and freedoms of the person may have their full effect. They also proclaim the existence of the duties of the individual toward the community, they fix the bounds beyond which man cannot go; he has duties to the community, he should respect the rights and freedoms of others; he cannot make attempts against the just requirements of morality, public order and well-being in a democratic society, nor against the aims and principles of the United Nations. Thus does the Declaration mark a continuous movement from the individual toward the social.

Father Verdoodt then asks:

Considering that "Pacem in Terris" is at the same time more complete and possesses a sounder philosophical basis than the United Nations Declaration, which should satisfy

both Western and Marxist concepts, should a Catholic come to the conclusion that the Declaration of 1948 does not deserve so much honor?

It does not seem so. In fact, John XXIII does not hesitate to declare in his last Encyclical that,

an act of the highest importance performed by the United Nations Organization was the Universal Declaration of Human Rights. . . . Some objections and reservations were raised regarding certain points in the Declaration. There is no doubt however, that the document represents an important step on the path towards the juridical-political organization of the world community. . . .

The Pope does not specify what these reservations are. There is one, however, which is easily discerned. Article 16, paragraph 3 of the Declaration without expressing a direct opinion on the dissolubility of marriage, implies it indirectly in mentioning the "equal rights" of the spouses "during the marriage and at its dissolution." This wording has nevertheless the merit of excluding the unilateral repudiation accepted by traditional Moslem law. But for the rest, one must recognize that this is the very first time that a document of the Church acclaims a declaration of human rights so solemnly. The main reason would seem to be, from the context, that the Declaration may form the common denominator, the ground for an understanding where men of different ideologies can meet. Already in *Man and the State* Jacques Maritain wrote that "men presently opposed in their theoretical concepts may arrive at a purely practical agreement on the enumeration of human rights." Consequently, let us hope that the celebration of the fifteenth anniversary of the proclamation of the Universal

Declaration of Human Rights may really contribute to their coming soon — to say it again in the terms used in *Pacem in Terris*:

the day when the United Nations Organization will effectively guarantee the rights of the human being which derive directly from our natural dignity and which for this reason are universal, inviolate and inalienable.

Religious Freedom

The December 21 issue of the *London Tablet* contains an admirable summary of the schema on religious freedom which will be considered at sometime in the future by the Ecumenical Council. It also features the comments of Father John Courtney Murray on the subject made at the time the schema was introduced.

The two texts discussed are Chapter Five of the Decree on Ecumenism, entitled *On Religious Freedom* and the lengthy *relatio* of Bishop de Smedt of Bruges, Belgium. The latter document was, in a sense, the more important. The doctrine in the text was identical with the doctrine expressed in *Pacem in Terris*. The text represented the end of a lengthy development of theological thought on the matter, and the Encyclical confirmed the validity of this development.

There were two essential points of doctrine: first, every man by right of nature (*iure naturae*) had the right to the free exercise of religion in society according to the dictates of his personal conscience, and this right belonged essentially to the dignity of the human person as such; and secondly, the juridical consequences of this were that an obligation fell on other men in society, and upon the state in particular to acknowledge this personal right, to respect it in practice, and to promote its free exercise.

Bishop de Smedt gave four reasons for the proclamation of this doctrine, all of

them deriving from the concrete situation of the world today. First, it is necessary today to state the true doctrine of the Church with regard to religious freedom in society, since the doctrine had been clarified by theological reflection and political experience over the past few generations. Secondly, it is

necessary today for the Church to assume a universal patronage of the dignity of the human person and of man's essential freedoms, in an age in which totalitarian tyranny has imposed itself upon nearly half of the human race.

Thirdly, we are living in the age of the religiously pluralist society, where men of all religions and of no religion have to live together, and it is therefore necessary for the Church to show the way to justice and peace in society. Finally, we are living in an age of ecumenical hope, and the only path to Christian unity lies along the road of social, civil, political and religious freedom.

The *relatio* then cleared up the misconceptions with regard to religious freedom which had been the heritage of the nineteenth-century conflict between the Church and the laic ideology issuing from the Enlightenment and the French Revolution: namely, religious freedom did not mean that the human conscience was not bound by any divine laws but only by such norms as it individually created for itself; nor did it mean that all religions were equally true or equally false, nor that there was any objective criterion of truth.

The decree undertook to define the attitude that Catholics ought to maintain and exhibit towards all men. This was based on the Catholic doctrine with regard to the necessary freedom of the act of Christian faith:

God our Father through Christ our Lord spoke freely to men His word of salvation, which is a word of truth and love, an invitation to an interpersonal relationship between man and the one God, living and true, who is Father, Son and Holy Spirit. God's word was freely spoken; it is for man to respond to it freely. The response, whether acceptance or rejection, is a matter of personal responsibility. No man may abdicate this responsibility. No man may assume this responsibility for another, but only for himself. . . . Hence no man, and certainly no Christian, may bring to bear any kind of coercion, physical or moral or legal, on another. This would be to contravene the essential law of the divine economy of salvation, which is that men must accept God's gift of grace freely, or not at all. Therefore the theology of the act of faith obliges Christians to an attitude of respect and reverence toward others who do not share their faith. This is not religious indifferentism. One does not affirm that truth and error are equal in the sight of God. One must, however, affirm the dignity of the human person and the freedom of the act of personal religious decision.

Though Father Courtney Murray thought the conception of religious freedom contained in the text was true as far as it went, he did not think it adequate:

One must have in mind that it will be the duty of the Council to establish the formula "religious freedom" within the Christian vocabulary, to define or describe its full sense and meaning, and to do this in such a way that there may be at least general agreement among Christians.

The difficult area was the place of religious freedom in society. What were the principles according to which the social exercise of the right to religious freedom might be justly and legitimately limited? What was the competence of civil government in regard to the exercise of the right? What were the

canons of jurisprudence that must control the use of the coercive weapon of law in this most sensitive field? In his opinion the decree was not sufficiently clear in its dealing with these questions of the social and legal limitations of the right to religious freedom: questions that were awkward, but which could not be avoided. Rightly, it asserted that the right was subject to some legitimate restrictions. But it said that these restrictions might be imposed in the name of the common good, or in the name of the rights of others. This, Father John Courtney Murray thought, was too vague. An appeal to the common good

may be no more than the invocation of a *raison d'état*, which is dangerous doctrine. Moreover, the allegation of the rights of others . . . may be no more than a veiled invocation of the rights of the majority, which is again a dangerous doctrine.

The *relatio* had been somewhat more satisfactory. It made clear that the primary element in the common good consisted in the

legal protection and promotion of the whole order of personal rights and freedoms which are proper to the human person as such. Therefore the *relatio* also makes clear that an infringement of the personal right of man, including notably his right to religious freedom, cannot be justified by an appeal to the common good. Such an infringement of personal rights would be a violation of the common good itself.

He thought, however, that a further step should be taken and the political principle invoked that political authority is incompetent in the field of religion, particularly when there is question of religion in society.

This principle, which asserts the incompetence of secular political authority in the field of religion, is deeply imbedded in the true political tradition of the Christian West.

It is also affirmed within the theological tradition of the Church.

It was true that the principle had been obscured in Europe for centuries, but the true tradition was preserved in the American constitutional system.

The *relatio* also dealt with the theological problem that the affirmation of *Pacem in Terris* with regard to the right to religious freedom, and the juridical consequences of this right seemed at first sight to be directly contrary to certain utterances of the Church in the nineteenth century. The problem had been dealt with in the only legitimate way: by regarding it as a problem of true and genuine development, both in the doctrine of the Church and in her pastoral solicitude for the dignity and freedom of man.

Finally, two questions faced the Council: whether the Church should

extend her pastoral solicitude beyond her own boundaries and assume an active patronage of the freedom of the human person, who was created by God as His image, who was redeemed by the blood of Christ, who stands today under a massive threat to everything that human dignity and personal freedom mean . . . and whether the assumption of this universal pastoral solicitude was warranted or grounded in the doctrinal tradition of the Church?

Father Murray thought that the answer must be affirmative, if only "the tradition of the Church is understood to be what it is, namely, a tradition of growth in fuller understanding of the truth."

Insanity and Responsibility

Readers of *The Catholic Lawyer* who were attracted by the topics covered in the symposium on *Mental Disease and Criminal Responsibility*, which appeared in 1958, will be equally interested in a recent article on the M'Naghten Rules printed in the Decem-

ber 1963 issue of *The Record* — a magazine published by the New York City Bar Association. Written by Justice Samuel Hofstadter and Miss Shirley Levittan, the article argues in favor of retaining the M'Naghten Rules in face of recent trends to the contrary.

Basically, the imposition of legal sanctions on criminals is now regarded as having at least three purposes: (1) isolation of the offender to prevent criminal conduct by him during his imprisonment; (2) deterrence of others with tendencies toward the same type of criminal conduct and deterrence of the offender after release; and (3) rehabilitation by appropriate means whenever possible.

In all events, society must and is entitled to protect itself against a repetition of offense. The prime objective having been accomplished, the law may thereafter, and, then, only, address itself to considerations affecting the individual. Hence, whatever the mainspring of an anti-social act, the perpetrator must be rendered beyond the capacity to renew it.

The difficulty with recurrent efforts at a reformulation of the M'Naghten Rules, so the article states, is that they do not start with a reorientation of the frame of reference of the problem. They blur the three objectives of legal judgment to which we have already adverted. And if we add a fourth objective urged by some respectable students of the subject, *i.e.*, society's vindication of its norms of conduct, confusion becomes yet more confounded.

To deal with the problem of insanity in the present climate of enlightened legal processes, sociological impulses and medical learning (especially in the field of psychiatry which is still in a state of seminal development), requires getting away entirely from abstract principles, and, more immediately, procedures heretofore obtaining. This

means that a mere attempt at verbal redefinition of criminal responsibility is doomed to failure. We must start with society's effecting its various purposes — by the agency of law. It will appear at once that a reformulation alone by a judge to a jury of what insanity exculpates is a futility. To give meaning — and substance — to any formulation requires a different frame of procedure. To attempt to square the circle by semantic acrobatics, however well-intentioned, will not avail.

Rather than fuse, in whole or in part, the medical and legal approach with their divergent points of view, we must separate them by establishing the sequence in the application of the principles which complete these disciplines.

To this end the authors propose that when a defendant who has pleaded insanity is found guilty of the act charged after a trial based on the conventional rules now obtaining, *i.e.*, the M'Naghten Rules, he shall not be sentenced by the judge presiding at the trial but his disposition shall be relegated to a wholly separate and different forum from that of the trial court. Such a forum would be a Board of Disposition composed of judicial, medical and lay representation. It would consider all evidence, medical, scientific and sociological, including additional facts not adduced — or even admissible — at the trial, as a basis for the final judgment of disposition. After such a hearing, the Board would determine whether, in the case of a capital offense, the death penalty should apply, whether the accused should be sentenced to serve his term in a correctional institution, or whether he should be confined for treatment and custody to a mental institution — and for what period and on what conditions.

The very existence of such a Board thus

constituted enables the formulation of a new departure in the law: the adjudication and confinement as “criminally insane” of a person with a history of repeated convictions for anti-social behavior before he has committed the extreme and final act of violence. It is the corollary proposal of the authors that when one charged with a crime has a history of repeated criminal convictions, and, in due course, is thereafter convicted of the immediate crime charged, the trial court should be empowered, on its own motion or on the recommendation of the jury, instead of immediately sentencing the defendant, to refer him to a Board of Disposition. The Board would determine whether he is an habitual criminal whose mental processes, however perverted, cannot be deemed defective — in which case he would be returned to the trial court for sentencing; or whether he should be adjudicated as “criminally insane” and ordered confined to a special mental institution — from which he may be released only by procedures as deliberate as those by which he was confined.

The M’Naghten formula has been criticized as not consonant with modern psychiatry. But “insanity” as a defense in criminal actions must remain primarily a legal and not a medical concept. The fundamental question is not what is medical insanity but rather what is legal responsibility. There is no disease — “insanity.” There are gradations of mental imbalance and impairment. The rule of law must provide practical guidelines for the determination — by the jury — of the point in mental imbalance at which the defendant can no longer be considered responsible for his criminal act. Those who criticize the M’Naghten Rules base their opposition on the wholly specious premise that the problem is primarily medical rather than

a moral one embodied in the law. They take exception to the rules on the philosophic ground that they are based on concepts of “right” and “wrong” belonging to the realm of ethics — but should be based on medicine which is scientific. For these very reasons, however, the authors argue that the M’Naghten Rules are intrinsically sound. They do not purport to be based on medical criteria: their orientation is the social imperative of personal responsibility. They are not merely technical formulae articulated by the nineteenth-century legal mind. While given formulation a century ago, their underlying philosophy dates back not only to Aristotle and Plato but beyond that to the Biblical tradition — the twin sources of western civilization. It is essential pragmatically and even philosophically that the focal point of juridical determination remain the ultimate question of responsibility. For in our existential age, every man is held responsible for his own fate, and, as Sartre said, man is condemned to be free. The M’Naghten Rules articulate this semantically — and legally. The doctrine which they embody can safely remain the fountainhead of the law.

The authors conclude by stating that so long as present procedures obtain, the M’Naghten Rules, as complemented by legislation providing for wide latitude in psychiatric testimony and implemented by enlightened application, are the surest guidelines in determining whether a defendant is to be exculpated for mental incapacity. However, doctrinaire prepossession may not be suffered to bar advances in the law and its processes. Hence, they propose that if the defendant were found “not guilty by reason of insanity” he would be committed. If he were found guilty, the defendant would be referred to a Board of Disposition. On the basis of comprehensive information, the

Board would determine whether the defendant should be incarcerated in a penal institution (or, in a capital offense, if the death penalty should be imposed) or whether the defendant should be confined to a mental institution. A trial under the M'Naghten Rules is within the ambit of conventional justice. The proceedings before the Board allow for the expression of a humane disposition to compassion, if such is indicated.

Righteousness which exalts a society contemplates mercy. But it also contemplates judgment, *i.e.*, the application of justice. The impulse to compassion, however exalted in nature, is enacted by human faculties. As in every other phenomenon, however, it must conform to the rule of causality—in the law, this is ordered reason.

The truly ethical must be stern when necessary, even as it is merciful when indicated. For instance, the Ancient law proscribed the return of a fugitive slave to his master but commanded the return of a fugitive criminal to the authority of the State. And the sympathy which is so universal that it fails to distinguish "between the oppressor and the oppressed" is sheer sentimentality, according to a medieval jurist who was also a great saint—he held that such "mercy on sinners is cruelty to all creatures."

Pacem in Terris

The various objections to the late Pope John's encyclical on peace and world order, are effectively presented and answered in a recent, well-written article by Father Donald Campion in the February issue of *Catholic Mind*.

According to Father Campion whatever the merits that so many saw in the encyclical, one could anticipate hearing voices of dissent raised against it. With considerable insight, a group of French experts, gathered

for a discussion of the new papal letter shortly after its publication, pointed to the major sources from which criticism of the Pope and of his teaching would come. Briefly, they identified the following five groups.

1. Some fundamentalist or strongly conservative Protestant groups would be likely to reject the encyclical's optimism about man's capacity to order human society in any truly moral sense. (This prediction was quickly verified in the United States when the pronouncedly conservative Protestant journal *Christianity Today* set forth its respectful but highly critical editorial judgment on *Pacem in Terris*, a judgment which found the encyclical wanting on precisely this score of un-Christian optimism.)

2. Protestant intellectuals of another school, together with many secular scholars, would balk at the Pope's insistent stress on natural law as a point of departure in the ordering of human society or for the identification and defense of human rights. (This was precisely the note struck by two such distinguished Protestant scholars as Dean John C. Bennett and Reinhold Niebuhr in their comments on the encyclical for *Christianity and Crisis*.)

3. Certain nationalist groups in various countries could be expected to object to the papal support for a true world community and a corresponding world authority having some measure of standing over the Nation-States.

4. Some of the more rigidly doctrinaire Marxist circles expressed objection.

5. Some other elements, largely of the political right, and largely Catholic, also voiced criticism. (A few of these voices had early been raised against the encyclical on the basis of advance rumors concerning its contents; others had been conducting a

campaign of complaint against Vatican policies toward the Communist nations for some time, e.g., in the pages of *Il Borghese of Milan* or of the *National Review*.)

In reply to the above and further objections, Father Campion states as follows:

“1. There are those who have registered disappointment over specific items or aspects in the document, e.g., the Pope’s ‘failure’ to spell out a judgment on nuclear arms and atomic war in terms of the traditional ‘just war’ theory. A Canon Drinkwater in England, to be sure, could conclude that the Pope’s words on the subject ‘can only mean that atomic warfare is not morally lawful.’ Yet, Dr. Howard Schomer, head of a Protestant theological seminary in Chicago, writing in the *Christian Century*, could remark that ‘on no topic is... updating more clearly required than on the ancient theological doctrine of the “just war” and the resultant practice of the Church toward conscientious objectors.’

Personally, I incline to the view of some European Catholics, including the French Jesuit author on international relations, Fr. Robert Bosc. These see the Pope passing over in silence the theoretical distinction between a just and an unjust war. They go on to ask whether this is not simply because he recognizes that wars between nations have today become sociologically inadmissible (as had proved true centuries ago in the instance of wars between feudal lords), and that, thus, the issue of moral justification is no longer a real one. This is not to say that the conceptual framework of the ‘just war’ theory should be junked entirely. Its application may well prove necessary and fruitful in the larger task of rendering judgment on the exercise of power, in the sense of physical force, by an international authority.

2. Of a different nature are some more general complaints. These, as I noted above, have been directed in some instances to concrete actions of the Vatican in regard to the Kremlin and other Communist powers. The critics I refer to here would arrive at different prudential judgments on some of these policies, and on some of the orientations suggested by *Pacem in Terris*. Thus, Max Ascoli, for example, writing in the *Reporter*, would observe that the Pope ‘has taken a gigantic risk for his Church – and not only for his Church.’

Here also, one should perhaps include Robert Strausz-Hupé, who commented in the pages of the *Washington Post* that, if the encyclical’s remark about the possibility of a ‘drawing nearer together’ with opposing ideological groups means that ‘the Church must come to terms, as it has done in Poland, with a tyrannical regime, then this advice can pass for a practical, although perhaps unheroic, formula for survival.’ I judge from his remark that Prof. Strausz-Hupé would reject this.

3. Yet another type of objection along general lines came from critics represented in this country by some writers in the *National Review*. Frank S. Meyer would seem to suggest that Pope John stands guilty of ‘a supine refusal to carry out our moral responsibility to separate, as best we can in this world, right from wrong and to challenge the onrushing evil.’ And, in a passage which leaves one wondering how carefully the same writer read the encyclical, he queries: ‘Why, with all the references to the encyclicals of his recent predecessors, is there none to *Divini Redemptoris* of Pius XI?’ (For the record, one can find the encyclical *Divini Redemptoris* cited explicitly in footnotes 39, 46 and 47 of *Pacem in Terris*.)

Even more blunt is James Burnham, writing in the same publication, who answers his own question: 'Why is the Vatican putting forward a policy of peaceful co-existence?' He sees two possible explanations: 1) The Vatican may actually be deceived about the nature of the Communist enterprise and may actually believe that a *modus vivendi* can be reached with them; 2) the Vatican may have cynically concluded that the West is finished and that the Church must prepare itself for coming to terms with the new Caesar.

4. Possibly the most intriguing of Communist reservations concerning Pope John's encyclical appeared in the guise of an editor's note added to an abridged version of the encyclical when it was published in the Moscow weekly *Za Rubezhom*: 'The Editorial Board considers it necessary to emphasize that many statements of the encyclical are derived from the principles of the Catholic creed, which is incompatible with the solely scientific Marxist *Weltanschauung*.' One is tempted to find in this cautionary note some evidence that the editors in question foresaw the possibility described by Fr. John F. Cronin when he observed that 'the Church must reject communism as a system. But individual Communist leaders can change, as reason and common sense force them to a more correct view of human nature and society. The Pope is seeking, gently, gradually and prudently,

to encourage such change.'

5. There remains, finally, that group referred to in an irreverent manner by the British *New Statesman* when it remarked that 'like Khrushchev, Pope John has his hands full in keeping his "Chinese" in order.' The reference, of course, is to the 'ultras' among Catholics in many countries. I shall content myself with noting here that their approach to a document such as *Pacem in Terris* is often as ingenious as it is misguided. Perhaps, we will see someday an attempt to 'demythologize' this encyclical through a process comparable to that employed by a Catholic priest writing about Pope John's *Mater et Magistra* in the June issue of an American clerical journal, the *Homiletic and Pastoral Review*. His basic approach was to convey the impression that a sensible, original document had been drafted by the Pope's 'officially designated authors,' but that this text somehow became corrupted in 'a sort of shadowland' prior to actual publication. (This priest critic generously allows that the Pope is to be judged more the victim than the culprit when one assesses the blame for aberrations in the encyclical — aberrations here meaning, of course, the sections the critic doesn't like.) This interesting example of experimentation with the methodology of *Formgeschichte* criticism is, of course, another proof of the essential radicalism of some conservative mentalities."
