

# CONCORDIA THEOLOGICAL MONTHLY

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The Fourth Gospel Yesterday and Today  
JOHN W. MONTGOMERY

Polygamy and the Church  
WILLARD BURCE

Homiletics

Brief Studies

Book Review

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THE ROMAN CATHOLIC CHURCH AND  
THE PENALTY FOR HERESY

By C. U. Faye

In January of this year Augustin Cardinal Bea, German-born Jesuit Biblical scholar, confessor of the late Pope Pius XII, and president of the Vatican Secretariat for Promoting Christian Unity, announced that when the Second Vatican Council resumes sessions this fall his secretariat will submit a *schema* (or draft) of a decree which will proclaim his denomination's conviction that every man, believer and unbeliever alike, has the right to follow the dictates of his own conscience and the right to worship as he chooses without interference by the state. The occasion of the announcement was the eighth annual Agape of Brotherhood sponsored by the Roman Catholic International Pro Deo University in Rome. Present when the announcement was made were 200 Jews, Moslems, Latin and Eastern rite Roman Catholics, Eastern Orthodox, Baptists, Lutherans, and Waldensians. "To those who object that error does not have a right to exist," Cardinal Bea is quoted as having said, "we must answer that error is something abstract. The so-called wars of religion in the past were aberrations of a misunderstood love for truth." During these wars, he went on, "men tried to impose by force and in the name of truth certain convictions on other men, forgetting the no less fundamental value of the love of truth, that is, of man's freedom. This freedom means man's right to dispose freely of his own destiny according to his own conscience."<sup>1</sup>

That this approach may be part of a concerted drive within the Roman Catholic Church to modernize dated attitudes is sug-

<sup>1</sup> *Our Sunday Visitor*, "Operation Understanding" edition, LI, No. 40 (Feb. 3, 1963), 1A; *St. Louis Review*, XXIII, 3 (Jan. 18, 1963), 1.

gested by recent developments that reportedly have taken place in Spain. As far back as six years ago Spanish Foreign Minister Fernando María Castiella y Maíz began to sound out members of the Spanish Roman Catholic hierarchy on their attitude toward legislation which would ease the difficulties under which the three tenths of one percent of Spaniards who are not Roman Catholics must operate in Spain. At a private audience with Pope John XXIII in 1961 he gave the Pope a copy of a proposed bill that would grant certain freedoms to non-Roman Catholics in Spain. Last fall, in the course of the first session of the Second Vatican Council, Cardinal Bea is reported in the Pope's name to have urged the Spanish bishops to take a more ecumenical attitude toward Spain's non-Roman Catholics. In January of this year the four cardinals and 11 other ranking prelates who make up the Roman Catholic Metropolitan Council of Spain met in executive session and are reported to have approved in principle Foreign Minister Castiella's "statute for non-[Roman]Catholic religions." The proposed law denies non-Roman Catholics the right to proselytize, but it would grant the major non-Roman-Catholic church bodies judicial recognition as religious groups and would allow them to run their own schools and seminaries, to print and distribute their own translations of the Bible, and to operate hospitals and cemeteries. It would also grant to non-Roman Catholics the right to hold any civic office except that of Chief of State. Observers felt that the Cortes will almost certainly pass the bill.<sup>2</sup>

This seems to be a reversal of a position long regarded as characteristic of the Roman Catholic Church, according to which heretics are subject to severe penalties, including

<sup>2</sup> "Emancipation in Spain," in *Time*, LXXXI, 6 (Feb. 8, 1963), 35.

death. In support of this severe view Roman Catholic canonists who have adopted it have frequently referred to the assertion of St. Thomas Aquinas (1225?—74):

With regard to heretics two points must be observed: one, on their own side, the other, on the side of the Church. On their own side there is the sin, whereby they deserve not only to be separated from the Church by excommunication, but also to be severed from the world by death. For it is a much graver matter to corrupt the faith which quickens the soul, than to forge money, which supports temporal life. Wherefore if forgers of money and other evil-doers are forthwith condemned to death by the secular authority, much more reason is there for heretics, as soon as they are convicted of heresy, to be not only excommunicated but even put to death. On the part of the Church, however, there is mercy which looks to the conversion of the wanderer, wherefore she condemns not at once, but "after the first and second admonition," as the Apostle directs; after that, if he is yet stubborn, the Church no longer hoping for his conversion, looks to the salvation of others, by excommunicating him and separating him from the Church, and furthermore delivers him to the secular tribunal to be exterminated thereby from the world by death.<sup>3</sup>

Along the same line, Pope Leo X in the bull *Exsurge Domine* (June 16, 1520) described as the thirty-third of the "pestiferous errors which we can no longer tolerate" blessed Martin Luther's contention that "to burn heretics is contrary to the will of the Spirit."<sup>4</sup>

<sup>3</sup> Thomas Aquinas, *Summa theologiae*, II-II, xi, 3; 2d ed. of the Ottawa Institute of Mediaeval Studies, III (Ottawa: Commissio Piana, 1953), col. 1470b, cited according to the English translation of the Fathers of the English Dominican Province, *The "Summa Theologica" of Saint Thomas Aquinas*, IX (London: Burns, Oates, and Washbourne, [1917]), 154.

<sup>4</sup> Leo X, "Exsurge Domine," in *Documents of the Continental Reformation* ed. Beresford James Kidd (Oxford: Clarendon Press, 1911), No. 38, pp. 75, 78.

The decision against Luther which the Holy Roman Emperor Charles V announced at the Diet of Worms on April 19, 1521, reflects the same attitude. Roland H. Bainton describes the historic event in these words:

The emperor called in the electors and a number of the princes to ask their opinions. They requested time. "Very well," said the emperor, "I will give you my opinion," and he read to them a paper which he had written out himself in French. This was no speech composed by a secretary. The young Hapsburg was confessing his faith:

"I am descended from a long line of Christian emperors of this noble German nation, and of the Catholic kings of Spain, the archdukes of Austria, and the dukes of Burgundy. They were all faithful to the death to the Church of Rome, and they defended the Catholic faith and the honor of God. I have resolved to follow in their steps. A single friar who goes counter to all Christianity for a thousand years must be wrong. Therefore I am resolved to stake my lands, my friends, my body, my blood, my life, and my soul. Not only I, but you of this noble German nation, would be forever disgraced if by our negligence not only heresy but the very suspicion of heresy were to survive. After having heard yesterday the obstinate defense of Luther, I regret that I have so long delayed in proceeding against him and his false teaching. I will have no more to do with him. He may return under his safe conduct, but without preaching or making any tumult. I will proceed against him as a notorious heretic, and ask you to declare yourselves as you promised me."<sup>5</sup>

If Luther had not found refuge at the Wartburg and if instead the Emperor's minions had succeeded in arresting him and the Emperor had carried out his promise to "proceed against him as a notorious heretic,"

<sup>5</sup> Roland H. Bainton, *Here I Stand: A Life of Martin Luther* (New York: Abingdon-Cokesbury Press, 1950), p. 186.

Luther would have suffered the same penalty that John Hus had suffered in 1415 — he would have been burned at the stake.

The post-Tridentine Roman Catholic Church continued to defend the death penalty as a punishment for heresy. St. Robert Bellarmine, the great Jesuit cardinal-theologian of the late 16th century, following Galen's *Quod mores animi temperamentum sequantur*, writes:

The first reason [for executing heretics] is that wicked men might not harm good men nor the guiltless be oppressed by the guilty; and on this point murderers, adulterers, and thieves are in the judgment of everybody most justly killed. The second reason is that many may be corrected by the punishment of a few and that those who were unwilling to be of use to the community by living might confer benefit on it by dying; and also on this point we see that in the judgment of everybody certain horrifying crimes, such as necromancy and some unspeakable and unnatural practices, are most justly punished by death; these are most severely punished so that other people will understand that these crimes are horrible and will not dare to perform similar actions. The third reason is that to be killed is often useful to the very persons who are executed, namely when they are always growing worse and it is not likely that they will ever return to health of mind.<sup>6</sup>

Far less belligerent is the declaration of Henry Edward Cardinal Manning, Roman Catholic Archbishop of Westminster and the highest dignitary of his denomination in England, in 1875:

If tomorrow the [Roman] Catholics were the imperial race in the kingdom of Britain, they would not make use of their political power to disturb the religious position of our people, hereditarily a divided one. We should not close one church, one college, one school.

<sup>6</sup> Robert Bellarmine, *De laicis*, III, xxi; in *Opera omnia*, II (Naples: Giuseppe Juliano, 1857), 341. See also William Ralph Inge, *Outspoken Essays*, 2d ed. (London: Longmans, Green and Co., 1921), pp. 140, 141.

Our adversaries should have the same liberties as we enjoy as a minority.<sup>7</sup>

In evaluating this statement one might observe that in line with a conventional Roman Catholic distinction he is speaking of adversaries who as a result of a 300-year-old schism were presumed to be material heretics, rather than formal heretics who were revolting against a religion which they had once professed; that this is the personal opinion of a man educated at Oxford and deeply steeped in the Protestant traditions of his native England; and that he limits his remarks to the "kingdom of Britain."

In 1901 the Jesuit Marianus de Luca, professor of canon law at the Gregorian University in Rome, published his *Institutiones juris ecclesiastici publici*, prefaced by a long letter of personal praise from Pope Leo XIII. With reference to this work, George Gordon Coulton, who is not wholly unbiased himself, says:

[De Luca] is able, therefore, to quote with hearty approval the contention of the Blessed [now Saint] Robert Bellarmine, published at a time when half of Europe was in revolt against Rome, and therefore when most of these heretics had been born in heresy. I here reproduce de Luca's italics and capitals. "Experience teaches that there is no other remedy; for *the Church has gradually gone forward*, and has tried every remedy; *first she did but excommunicate; then she added a pecuniary fine; then exile; AT LAST SHE WAS COMPELLED TO COME TO DEATH*; for heretics scorn excommunication, and call it a cold thunderbolt; if you threaten a fine, they neither fear God nor regard man, knowing that there will be no lack of fools to believe in them and to support them; if you shut them in prison or send them into exile they

<sup>7</sup> Quoted in A. F. Carillo de Albornoz, *Roman Catholicism and Religious Liberty* (Geneva: The World Council of Churches, 1959), p. 13, at the hand of Charles Journet, "Droit de la vraie religion et tolérance civile des cultes," in *Nova et vetera*, XXVI, 1 (January-March 1951), 23.

corrupt their neighbours by speech, or distant folk by books; THEREFORE THE ONLY REMEDY IS TO SEND THEM WITHOUT DELAY TO THEIR OWN PLACE." . . . These orthodox and authoritative writings cannot be explained away. We may laugh at the practical impotence of such men as de Luca; but it is they who uphold the only orthodox and consistent principle; and their oponents are "modernists," "attempting to reconcile themselves with the spirit of the age by subterfuges which in Innocent's day would have sent them to the stake."<sup>8</sup>

Even Coulton, however, is compelled to admit (very grudgingly) that in the *Codex juris canonici* currently in force the Roman Catholic Church has changed its law on the death penalty for heresy:

The new *Codex* of Roman Church law, which was published in 1917, [going into effect at Pentecost 1918] to supersede the old *Corpus Juris Canonici*, contains a sentence to the following effect: "With respect to penalties of which this *Codex* makes no mention, whether they be spiritual or temporal, medicinal or what are called vindictive, and whether incurred by general law or by judgment of a court, let them be held as abrogated." (Canon No. 6, § 5) Here, then, for the first time in history, we have an official abandonment of temporal penalties against heretics; but not on principle; only as a matter of present-day practice. It is true that, since 1917 [1918] any Roman Catholic who inflicted upon a Protestant, for religion's sake, anything beyond excommunication or similar spiritual penalties, would be acting in violation of Papal law. Thus, by one stroke of the pen, Benedict XV here silently abolished half the penal legislation of Lucius III, Innocent III, and Gregory IX; but we must face the fact that the present Pope, or any of his successors, could at any moment revive the old penal laws by another stroke of the pen. He would have the modern consciences definitely against

him, but he would have equally definite support from centuries of [Roman] Catholic principle. For we have seen how clearly this punitive *right* of the Church is still asserted; this relaxation of 1917 [1918] has done nothing whatever to abrogate that principle; it simply concedes that the Church will not now do what, as a matter of fact, she is at present quite powerless to do; it is for practical purposes, like the promise of an octogenarian that he will not attempt to birch his son of forty.<sup>9</sup>

The Roman Catholic Church has always preferred to convert a heretic than execute him for heresy. We have in this country, the United States of America, ample evidence before our eyes that the Roman Church, by means of moral suasion, has grown mightily and has been very successful in her efforts to convert heretics. The same is true throughout the world, particularly in non-Roman-Catholic countries, of her missionary work, carried on by unselfish and devoted men and women, who give all, being ready to sacrifice even life itself on behalf of their denomination. Summing up, we may venture to say that the Roman Church will, as any other church or ideological group will, do all it can, *in accord with its principles*, to destroy heresy and promote orthodoxy, by methods as effective, as practicable, and as expedient as possible.

Returning now to the statements of Cardinal Bea with which this study begins, it could be maintained that it is not really necessary for the Second Vatican Council to proclaim that the Roman Catholic religion may not be promoted by force, since that has already been taken care of by section 5 of Canon 6 of the *Codex juris canonici* now in effect. Again, in dealing with heresy from the Roman Catholic point of view, a distinction must be made between material and formal heresy. Non-Roman Catholics today are generally regarded as material, rather

<sup>8</sup> George Gordon Coulton, *The Death Penalty for Heresy from 1184 to 1921 A.D.* (London: Simpkin, Marshall, Hamilton, Kent, and Co., 1921), pp. 30, 31.

<sup>9</sup> Coulton, p. 37; see also John A. Abbo and Jerome D. Hannan, *The Sacred Canons*, 2d ed., I (St. Louis: B. Herder Book Co., 1960), 10, 11.

than formal, heretics.<sup>10</sup> Finally, the Roman Catholic Church will always have among her learned theologians individuals both of the temper of Manning and Bea and of the temper of Bellarmine and de Luca.

Mankato, Minn.

SO FAR, SURPRISINGLY GOOD

By George A. Lindbeck

(Dr. Lindbeck, on leave from Yale University to serve as research director of the Lutheran World Federation's Commission on Inter-Confessional Research, is an LWF delegate observer to the Second Vatican Council.)

The way has been prepared for great and encouraging changes in the Roman Catholic Church by the first session of the Second Vatican Council.

This is the general opinion among the non-Catholics who were sent to observe the council by their respective church bodies in response to the invitation of the Vatican's Secretariat for the Promotion of Christian Unity.

While what follows are exclusively my own personal comments, they are made within the context of this favorable judg-

<sup>10</sup> See for instance William J. Whalen, *Separated Brethren: A Study of Non-Catholic Denominations in the United States* (Milwaukee: The Bruce Publishing Co., c. 1958), p. 2: "Practically all Protestants today are heretics only in the sense of being material heretics. They never professed the truths of the [Roman] Catholic faith themselves and have therefore not participated in the act of rejecting them. These Methodists and Lutherans and Baptists do not incur the guilt of formal heresy providing they do not doubt the validity of their own position." Gregory Baum, *That They May Be One: A Study of Papal Doctrine (Leo XIII—Pius XII)* (London: Bloomsbury Publishing Co., 1958), p. 48, describes contemporary "dissident" Christians as "heirs of schism and heresy." Otto Karrer, "Häresie," in *Handbuch katholischer Grundbegriffe*, ed. Heinrich Fries, I (Munich: Kösel Verlag, 1962), 619, asserts: "In the case of present-day Protestants one can speak of formal heresy at most in exceptional cases; their good faith must be presumed."

ment, which is shared also by my fellow observers from the Lutheran World Federation: Prof. K. E. Skydsgaard of the University of Copenhagen and those who served as his alternates, Dr. Vilmos Vajta of the federation's Department of Theology and, briefly, Prof. Walter Leibrecht of the Ecumenical Institute in Evanston, Ill.

Another Lutheran observer, Prof. Edmund Schlink of the University of Heidelberg, sent by the Protestant churches of Germany, also agrees that this first session went surprisingly well.

We may, therefore, hope that the second session of the council, scheduled to open next Sept. 8, will do much to reform the Roman Catholic Church in its worship, its theology and preaching, its organization, and in its relation to other churches and to the world.

This seems to be the desire of the majority of bishops. Many of them spoke up with a freedom which astonished the Roman Catholics themselves — as well as the observers — in criticism of most of the dominant trends in their church since the Reformation. They objected to the concentration of all power at Rome in the Vatican Curia and asked for the decentralization of the administration of the church. Not only the bishops, but also the laity — it was asserted — should be given more authority and responsibility.

Also deplored was the alliance with worldly power which has so often made the Roman Church an enemy of religious and political freedom. Some bishops attacked the loss of evangelical simplicity, the sumptuous and unintelligible Masses, and the catering to the rich, which has alienated the poor and the needy. They opposed the anti-ecumenical spirit and theology which have largely prevailed since the last two Roman Catholic councils — Trent, which ended in 1563, and the First Vatican Council, 1870.

Most of the bishops had not heard such strong opinions expressed by their colleagues

before, but as the more courageous and progressive spoke up, large numbers of others found themselves agreeing. So strong did this movement of constructive and Christian self-criticism prove to be that, unless future sessions of the council hinder it, we may expect an impressive renewal of the Roman Catholic Church in the years to come.

This is a much more optimistic forecast than most observers would have made before the opening of the council. Yet it must be remembered that it is only a forecast. So far, little has been definitely decided.

Only five of the 70-odd schemas prepared for the council have actually been discussed. Of these, only a portion of the one on the liturgy has been approved in final form. The remainder, with the exception of a minor one on modern means of communication, proved too conservative for the bishops. They will be redrafted during the nine-month interval between the sessions, and the total number of schemas will be reduced to 20.

At present no one knows how well this work of revision will be done, or what will happen to the new drafts once the council reassembles. The forces of reaction are still powerful.

Further, much depends on the health and future decisions of Pope John XXIII. He has shown great vision and courage in calling the council and allowing it freedom, but whether he—or a possible successor—will continue the present policies cannot of course be known with certainty, even though we may hope and pray.

*Two Errors: Overestimating and Underestimating*

Even at its most successful, this council will not bring the dramatic results which some have wrongly anticipated.

It will not, first of all, unite all Christian churches. Roman Catholics continue to claim that their dogmas are unalterable, while the churches of the Reformation are as firmly opposed as ever to what they consider the

dangers of recent Marian dogmas and papal infallibility.

In the second place, as many Roman Catholics themselves emphasize, a council cannot by itself create new life. Everything depends on how its decisions are carried out. For this, prayer, dedication, and openness to the guidance of the Holy Spirit are necessary.

Yet, while it is a mistake to expect too much from this council, it is equally wrong to underestimate the transformation which has already taken place. As has often been pointed out, the presence of non-Catholic observers in the secret assemblies of the Roman Catholic Church would have been unthinkable even a very few years ago. To be sure, the decision to invite them was in a way a response to similar invitations in the recent past to Roman Catholics from the World Council of Churches, but that does not make it any less important.

Some of the bishops have laughingly complained that we observers know more about what is happening than they do. There may be some truth in this. We have not only attended the same sessions—and been given the same documents—as they, but we have also had special briefings and translators to help us when the Latin used in the council sessions is difficult to understand. We have been consistently treated as Christian brothers whose common baptism and loyalty to Christ must be respected as more important than the differences which divide us, serious though these are.

Most moving of all, we have been entrusted to an astonishing extent with information about the inner difficulties of the Roman Catholic Church in the confidence that we will use this knowledge with Christian love and understanding rather than maliciously.

It should not be thought that this new Roman Catholic ecumenicism is simply a matter of kindly feelings, of greater friendliness. The ecumenicists among the bishops know very well that the improvement of

relations with other Christians requires hard work. It means, for example, taking seriously Protestant objections to the traditional Roman Catholic positions on religious liberty, on mixed marriages, even on proselytism in the mission fields. In view of the strength that these ecumenicists have shown, there is a real possibility that effective action will be taken on some of these points, especially on religious liberty.

Yet, important as ecumenical progress is, the most significant work of this council is in the inner, Christian renewal of the Roman Catholic Church itself. Thus the schema on liturgy, whose basic principles have already been approved, encourages the active participation of the congregation in worship, places greater emphasis than in the past on the centrality of Christ, on the Bible and on preaching, and opens the door to much greater use of the vernacular. All this may in the long run profoundly affect Catholic piety and life.

*Modern Biblical Research Wins a Victory*

However, it may well prove that the most decisive event of the first session was the outcome of the debate on Scripture and tradition. On Nov. 20, the progressives succeeded in rallying nearly two thirds of the 2,200 bishops present against a highly conservative schema on Scripture and tradition. "On this day," someone said, "the Catholic Church decided to enter the 20th century." The attempt to roll back the great advances made by Roman Catholic Biblical scholars in recent decades was defeated.

We may hope and pray that from now on these scholars will feel even freer to use the tools of modern research which are doing so much to help Christians of all denominations recover the full riches of the original Biblical message. This more than anything else can narrow the gap between the confessions.

In many areas, though of course not all, Protestant and Roman Catholic students of the Bible find themselves agreeing more and

more. The crucial controversies regarding faith, justification, merit, and works are being carried on with much greater mutual understanding as both sides recognize more fully the many dimensions of the New Testament message, and as they perceive that the eschatological hope for the salvation of the world—and not simply of individuals—is far more central to the Gospel than either side has traditionally taught.

Discussion is arising even on the doctrine of the church, for both Roman Catholics and Protestants are beginning to see that they have in the past failed in different ways to do justice to all that is involved in the unity which is in Christ.

This vote was important for the role of the Bible in the Roman Catholic Church in yet another way. What was rejected was also an effort to emphasize the independent importance of tradition over against Scripture. We may therefore hope that the revised statement will leave room for those Roman Catholics who are trying to give a real primacy to the Bible. There would be nothing novel in this. The weight of the first thousand years of church history is in favor of it.

What the bishops' decision favored, in other words, is not simply modernization in the understanding of the Bible, but the best kind of modernization—the kind which is also a return to the sources of the Christian faith. We do not know how far this return to the sources will go, but the door has been left open for at least some substantial improvement.

Even though these developments will not lead in the foreseeable future to the union of the churches, their importance for non-Catholics in general and Lutherans in particular is tremendous.

If the process which has now started continues, we may be confronted surprisingly soon with a transformed Catholicism which we shall have to recognize as much more clearly Christian than that to which we have

been accustomed. In some ways and places, it may become more effective than we are in bringing the good news of love, peace, and salvation to the world. Having overcome much of its authoritarian rigidity and intellectual arteriosclerosis, it may prove a much more uncomfortable and disturbing factor in our pastoral and theological work than it has been in most of the Protestant past.

If this happens, it will be all to the good. But it may take a very special measure of grace to recognize this and to respond as Christians should — with joy and willingness to learn, even while faithfully continuing to witness to those truths which have been committed to us, the heirs of the Reformation.

Rome, Italy

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*Miami, Fla.* — Members of the new Miami Lutheran Refugee Committee, an inter-Lu-

theran group which will administer a Lutheran Immigration Service aid program for needy Cubans, named an acting director and a temporary executive committee at an organization meeting here. The Rev. E. F. Gruell, a Lutheran Church — Missouri Synod pastor who served a mission congregation in Cuba and has been in charge of a relief center for refugees in the Miami area, was designated acting director of the expanded program.

The LIS has received grants from the National Lutheran Council, \$40,000, and the Board of World Relief of the Missouri Synod, \$30,000. These funds, with \$10,000 from the 1962 LIS budget, are earmarked for the first year of the program, which is designed to provide material aid and social services for about 700 families. The immigration service is jointly sponsored by the NLC and the Missouri Synod.