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THE STRUCTURE OF THE GILGAMESH EPIC

N.K. SANDARS, in the Introduction to his English translation of the *Gilgamesh Epic* (Penguin Books, 1960, reprinted 1962), describes it as 'the finest surviving poem from any period until the appearance of Homer's *Iliad*' (p. 8). And there will be general agreement with this judgement. Yet there have been surprisingly few attempts made to provide an analysis of its structure that sounds satisfactory. I suspect that this may be due on the one hand to the caution of scholars which keeps them from adventuring on ground where hypotheses have to be advanced on not completely solid evidence; and on the other to the haste with which writers who are not specialists in Semitic literature but want to use the material of the poem relevant to their own interests (e.g. depth psychology) accept or advance interpretations which cannot survive any close examination of the text. Hence, I think, the Epic has not been generally appreciated for its own sake, but has tended too often to be discussed either because of incidental features, such as the family-resemblance between its Deluge story and that in Genesis, or because of certain themes taken in isolation from their precise place in the structure of the poem. Sandars's *Introduction* not only avoids this, but also provides the right kind of background information and sensible comment which the reader requires in order to appreciate the poem. But even he considers that from a structural point of view, it is merely 'divided into loosely connected episodes covering the most important events in the life of the hero' (op. cit. p. 30). In his account of the story, he does bring out the central features of the episodes and provides a generally illuminating commentary on them. However, I think the poem has a much greater unity of structure, corresponding to a greater coherence of conception, (despite its being a compilation) than would appear even from Sandars's most useful introduction.

This is what I have tried to show in this essay viz., that Gilgamesh's life-journey is a 'progress'. Hence I have only repeated as much of the interpretation of particular episodes or figures as was necessary to bring out the place of each in the overall structure of the epic or, in other words, to show how each serves to advance the organically de-

veloping plot. Indeed, the general account of the structure of the epic which I give is not unlike that of Sandars; what I am adding consists mainly of the remarks intended to show that the succession of the episodes is not arbitrary, or even merely 'loosely-connected', but constitutes a sort of spiritual ascent from one level of experience to another, and that even apparently independent episodes, like the Flood narrative, serve (and not merely by 'accumulation') to develop the philosophic plot of the poem. In stressing this, I am aware that I may have made the Epic appear much more sophisticated than it in fact is. The picture of the human condition reflected in the substance of the poem is more brutal than will appear from my analysis of its structure. This, I think, has been conceived in *four* different ways:

1. R. Largement holds that the composition of the poem is a function of the Liturgy: 'Certaines grandes mythes, telles que *Gilgamesh* et *l'Enuma Elish* sont composites, groupant artificiellement des themes divers dont le lien est constitué non pas par la trame interne du recit mais par le cadre externe des cérémonies au cours desquelles elles doivent être récitées'. (*Histoire des Religions*, Bloud & Gay, Vol.4 p.153).

The general thesis that myths are related to rites for which they provide a kind of metaphysical substructure – the myth describing a primordial event which is realised anew through its ritual reenactment – has been sufficiently demonstrated by such students of comparative religion as Mircea Eliade and Van der Leeuw. But it is perhaps going too far to identify purely and simply 'mythology' with 'metaliturgy' as M. Largement does. (p. 164).

This essay will try to show that, at least in the particular case of the Gilgamesh epic, the episodes are not 'grouped artificially' but constitute a coherent progression built around a central theme to which the subsidiary themes are related in a harmonic fashion. This is, of course, not to deny that the sources of several episodes are divers; but the different elements have been cleverly orchestrated to form a unified whole. The 'anthology' is constructed around a central axis of thought.

2. Many have asserted that the epic is a Solar Myth. Thus F. Hommel confidently claims that: 'The twelve cantos of this magnificent poem stand in evident relation to the twelve signs of the Zodiac'. (Article '*Babylonia*', Dict. of the Bible (ed Hastings) p. 221). The relation, if it exists, is at least not as 'evident' as Mr. Hommel states, though the same claim, without any attempt at detailed demonstration is made by such authorities as Sir James Frazer, E.O. James, etc. Despite the fact that Gilgamesh is a servant of the sungod and that Shamash plays a considerable role in the poem, to interpret the whole poem as a solar

myth seems difficult: Gilgamesh's adventures appear to follow a different pattern to the sungod's. Further to identify the sections of the poem with parts of the sun's course hardly appears to illuminate its sense. Moreover, M. Virolleaud (*Legendes de Babylone et de Canaan*, p. 44) argues that the Zodiac is a much later invention and it is anachronistic to appeal to it for an explanation of the construction of the epic. The relation between the Gilgamesh Epic and Solar Myths is certainly more complex than that of a species to a genus. Some critics (e.g. de Liagre Böhr, *Das Problem Ewigen Lebens im Zyklos Und Epos des Gilgamesh*, Opera Minora, p. 234-262) claim there is evidence of a latent antagonism between different groups of gods reflected in the poem. It would, however, be misleading to try to over-rationalise the theology of the epic, and it might divert attention from the main theme which is concerned with Man.

3. The simplest account would be to assert, as Dr. Coutenau does, that the epic is merely an adventure story told purely for its entertainment value in the fashion of the Arabian Nights (L'Epopée de Gilgamesh p. 279) M. Coutenau easily disposes of some fanciful interpretations, and then concentrates on describing the historic and cultural context in which the poem was composed and, more questionably, on attempting to identify its geographical and other allusions with empirical data. Certain details which sound puzzling at first become in this way more comprehensible. But the point of view that the poem is inconsequential with regard to construction, will be automatically refuted should it prove possible to show that the poem has a sense and a structure (of whatever kind they be). To grasp its total significance, far from detracting from the imaginative appeal of the epic, may help to explain why it had such a hold on the minds of many peoples who lived far apart in space and time from the original milieu in which it was first composed.

4. The fourth point of view is that expressed by P. Grelot (RSR, Avril-Juin 1958, p. 202): 'On se tromperait lourdement si on lisait l'epopée de, Gilgamesh comme une oeuvre gratuite. Toute une conception de l'existence s'y exprime ... l'*epopée est en somme la traduction dramatisée d'une doctrine de la 'condition humaine'* qui s'impose à la pensée mesopotamienne à l'epoque meme ou les scribes sacerdotaux construisaent la synthése d'histoire sacrée recueillie dans le Pentateuque.'

The doctrine of which the epic is a dramatised form is perhaps best presented in these four lines:

Only the gods live forever with the Sun
Mere man, his days are numbered.
Whatever he may do, it is but wind:
Already here thou art afraid of death. (III 142-5)

To illustrate this doctrine, the poem describes throughout its length, Gilgamesh's search for an ever more abundant life which, however, is doomed to final frustration by death. C.G. Jung has said that 'The Epic of Gilgamesh describes the psychology of the power-complex with an unequalled mastery' (*L'homme à la decouverte de son âme*, p.205). This is true only if by 'power' is understood the control of the vital forces of man; for it is with these that Gilgamesh is concerned.

The Epic can be divided into two parts in each of which one term of the life/death antithesis is dominant.

The first six cantos describe essentially three victorious combats of Gilgamesh. In each, a crisis provoked by the gods threatens him with a paralysis of his vital energy. These threats, of increasing dimensions, are successively turned into stimuli towards more ambitious purposes. The challenge to the continuation of the kind of life he is leading at the crucial moment is met by a response consisting of a new search after a different and more intense kind of life. The possible (but hypothetical) interpretations of these three combats – against Enkidu, against Humbaba and against the Bull from Heaven – will be sketched later on.

The seventh and eighth cantos mark a turning-point in the poem. After his rejection of Ishtar's proposals, Gilgamesh is faced by a new crisis – provoked again by a direct intervention of the gods – which is of a different order to his previous ordeals. Gilgamesh is for the first time confronted with Death in a personal way. The special relationship between Enkidu and Gilgamesh will help explain why Gilgamesh is affected so personally by the death of his friend. There are long passages of lamentation and a description of the underworld, borrowed from another poem, Ishtar's descent into the underworld. From this point onwards there is, as it were a change of sign, from positive into negative: the erotic preoccupation which had run like a constant thread in the varied texture of the poem unifying together passages dealing with civilisation, social disorder, the fascination of foreign lands, relations between the gods and men and between men and animals, yields to an equally dominant obsession with death. After the departure of Enkidu, Gilgamesh is concerned not so much with the lust for life, the intensification of his existence, as with its indefinite continuation through the defeat of death. The same theme is continued but in a different key. The following cantos, describing essentially Gilgamesh's journey to the 'ancestor' Utnapishtim who holds the secret of immortality, consists again of three ordeals which Gilgamesh undergoes to reach his destination. The chief interest of this second part is its symbolic geography, the significance

of the setting of the paradisiac life from which mortals are excluded. It culminates in the account of the Deluge – again a borrowed story, like the evocation of the underworld, which is fitted into this broader context – Gilgamesh's failure in his enterprise, and (in the existing versions) his return to Uruk. Each of these episodes will be examined in turn to bring out the links between them and their place in the general structure of the epic.

PART ONE: LUST FOR LIFE

1. *The Struggle with Enkidu: from animal to human life.*

(a) Gilgamesh: the germ of corruption in his constitution.

The poem opens with a presentation of Gilgamesh in a rather paradoxical light. The gods have dowered him with all the gifts ever given to men, with an apparently inexhaustible energy. But precisely because of this superabundant energy, his rule has become tyrannical and intolerable. He is 'the shepherd of his people'. But the shepherd has become a menace to his sheep. This unbalance in Gilgamesh is reflected in the ambiguous attitude of his people, as expressed in this opening passage, towards him. His inner disorder is producing social disorder in Uruk.

What is the source of this disproportion between his ambitions, the object of which is still for the moment obscure, and the proper fulfilling of his function as a human ruler? It is to be sought in the first place, perhaps, in the constitution of Gilgamesh himself.

The Gilgamesh round whom the myth was spun appears to have been a historical person: he appears third in the list of the first dynasty of Uruk and apparently had come to power through his own prowess. But it is the hero of the myth who is more interesting to us than the historical person.

His name has not been adequately explained: some have thought it an abbreviation of Gibilgamesh, Gibil being the god of fire. Jepsen interpreted it as 'the suffering and joyful man' – a beautiful and significant name but an uncertain interpretation. Not much light on Gilgamesh's nature can therefore be obtained from his name.

His parentage is more illuminating. He is the son of Ninsun a priestess of Shamash, (the sungod and god of justice, who is Gilgamesh's patron) and an expert in the explanation of dreams through her being linked with Adad, patron of diviners. However his father was not Ninsun's consort Lugulbanda, but Lilla, believed by Dr. Coutenau and other scholars to be a demon. Hence Gilgamesh, we are told, is only two-thirds a god, while a third of him is human.

This human third in his make-up contains the germ of corruption, for the slightest particle of humanity implies mortality, as later on the Scorpion-man points out to his wife. This theandric character of Gilgamesh is, it seems, at the root of his restlessness and unbalance. His power may be great enough to enable him to pour scorn on a goddess, but (unless he were to be completely deified) the human element in him contains the seed of mortality and will prevent him from attaining the fullness of life without end to which he aspires.

Yet his power is so expansive that his people complain about it to the gods. This power expresses itself chiefly through his sexual energy. Uruk protests that he 'leaves no virgin to her lover.' (I ii 16, 17) And this is the best test of his power; for 'among primitive peoples virginity belongs to the powerful, both because the average man does not trust his own power to take it himself and also because it belongs by right to the most powerful' (van der Leeuw *La Religion dans son essence et ses manifestations*, p. 225). Thus Gilgamesh's universal deflowering of the virgins of Uruk is the expression of the absolutism to which his power aspired.

(b) Enkidu: Rival into Brother.

The gods agree with the people of Uruk that Gilgamesh's power must be restored to its relative status. The method chosen to bring this about fits in very well with Mesopotamian conceptions of cosmic government. Aruru, the creator of the human race, is asked by Anu to 'raise a rival' for Gilgamesh. The Mesopotamians held that no individual monarch was inviolable; for within the Pantheon itself any god might become supreme, and this would carry as its consequence the dominance of his human steward as ruler of his city over other rulers. Whenever a particular god or city became for some reason, unfit, it was 'smitten with weapons' and a rival raised to replace it as the holder of supreme honour. The gods' decision to raise a rival to check Gilgamesh's abusive power is quite normal; it is the peculiar character of the rival raised in this instance which is of special interest.

'The goddess shaped in her heart an image of Anu, the great god of heaven; she then dampened her hands, modelled the clay and spat on it. Thus she shaped Enkidu, the strong, the hero, progeny of clay, fashioned by Ninurta.' Enkidu is the direct and immediate creation of the god Aruru and of Ninurta, the god of war who had also assumed the personality of Ningirsu, lord of wells and irrigation works. He is Gilgamesh's 'primitive brother', he is made up entirely of brute strength. It does not seem excessive to consider Enkidu as representing, partially, Gilga-

mesh's alter ego: 'He is like Gilgamesh to a hair' (II v 15); but Enkidu's whole being consists of the animal energy which is part of Gilgamesh's make-up. Enkidu 'with the gazelles eats grass ... with the animals his heart delights at the water.' This familiarity and affinity with the wild animals does not necessarily class Enkidu as a subhuman creature. Wild animals were not necessarily considered very inferior to men. The fear which they inspired, on the contrary, the threat they represented to town-life, led to their being dowered with a sacred character. Indeed Mesopotamian deities were originally given animal forms. Enkidu through his association with them belongs to a milieu which is at once sacred and outside, potentially even hostile to, civilisation.

(c) The call of civilisation.

The poem describes how Enkidu is drawn from this state of externality and implicit hostility into urbanised life. The process is accomplished in three stages each of which is illustrative of the poem's philosophy.

(1) The first person to establish contact, in the name of civilised humanity, with Enkidu is a hunter. This is not due to accident or merely to the desire for verisimilitude. Van der Leeuw has said: 'The savage animal belongs to the desert, to those domains of this world where peace does not reign. To domesticate is a religious act; it initiates them to other powers than those of the desert ... Hunting is not an utilitarian institution, but rather a compassion between man and animal, a co-operation the aim of which may be either domestication or the sacred meal' in which latter case it is to be seen rather as 'a conflict of forces (op. cit. p.67) In the Gilgamesh epic, however, the hunter serves only to establish communication between Enkidu and Gilgamesh to whom he reports the existence of this creature in the desert.

(2) The next stage is the despatch of a hierodule who, through the instrumentality of 'that which is feminine in her' is to continue the process of his humanisation. Her role is again not simply a question of psychological realism, but has a symbolic value. 'Woman as hierodule, represents the community' remarks van der Leeuw (p. 225), referring to the Babylonian custom by which women had once a year to have intercourse with a stranger with the aim of increasing the power of her own community. Through his intercourse with the hierodule, Enkidu's strength is symbolically integrated into that of the urban group. The beasts depart from him, and he needs little persuasion to let himself be led to Gilgamesh and to enter the city of Uruk, glowingly presented to him by the hierodule.

(3) Enkidu's initiation into civilised community is accomplished by his struggle with Gilgamesh. At the 'door of the family house', at the threshold of one of those sexual orgies with which Gilgamesh was threatening the social order of Uruk, at this place of transition between outside and inside, Gilgamesh matches his strength against an indignant Enkidu, and triumphs.

At first it seems as if Gilgamesh's victory has frustrated the purpose of the gods; for the intended but defeated rival at once becomes his friend and 'servant'. It turns out, however, that the design of the gods has been fulfilled all the same in a paradoxical fashion; for the very fact that Enkidu has ceased to be an enemy and has become a friend produces a change in the behaviour-pattern of Gilgamesh himself. Henceforth, the combined energy of Enkidu and Gilgamesh is devoted to 'attack the lions so that the shepherds could rest at night.' (II iii 28-29). Enkidu has fulfilled the divine plan not by defeating Gilgamesh but by being himself defeated; not through the destruction of Gilgamesh's power, but through its conversion to higher ends.

Thus, for the first time we see this dialectic worked out in the poem. Before the appearance of Enkidu, Gilgamesh gave the impression of inner division and ambivalence, of an immensely gifted person devoting his gifts to inferior purposes. When Enkidu appears, he seems to embody exactly the lower tendencies of Gilgamesh. But once Enkidu has placed his powers 'in the service' of Gilgamesh, their action together appears perfectly 'integrated'. They turn away from the purely sexual exploits which were disturbing the social peace of Uruk to the protection of its honest inhabitants from the devastations of the animal world and the threat of beastliness against civilisation. The process of domestication and socialisation of the animal-man, with its twofold psychological and social dimensions, renders possible a fuller enjoyment of life for all. Gilgamesh's personal search has taken a new direction. Enkidu's conversion from barbarism to civilisation is coupled with a conversion of Gilgamesh's energy from disordered sexual ends to profitable social purposes. The social order of Uruk is restored at the same time as Gilgamesh's psychological balance through the simple transformation of Enkidu from a rival into a 'brother'.

2. *The struggle with Humbaba: the foreign threat to life.*

(a) Gilgamesh's struggle with and triumph over Enkidu is followed by a more bitter struggle and remarkable triumph over a creature still more redoubtable and 'divine', *Humbaba:* the giant employed by Enlil as

guardian of the Cedar Forest. The importance of this episode is evident from the length at which it is treated; it occupies three tablets.

Its motive and meaning are not made explicit in the poem; it is rather the mysteriousness of the enterprise which is dwelt upon. Gilgamesh and Enkidu having freed themselves from their more brutal tendencies and fused their forces decide: 'Let us destroy all the evil in the land!' This vast and ambitious aim is actually concretized in the decision to destroy Humbaba, 'whose mouth is fire and whose breath is *death*.' This agent of Enlil is obviously considered by them to be a force threatening the life of the land, but its nature is cryptic. Gilgamesh sets out 'to fight a battle which he does not know, to travel a road which he does not know.' (III ii 13-14). He knows only that it is the will of Shamash, his patron-god, and a path leading to glory.

In an attempt at unravelling the enigma of this expedition in the light of its geographical and cultural setting, Virolleaud (p. 39-43) tentatively suggests that the episode may represent a conflict between two cultures and two religions – that of the lowlands against the highlands. Gilgamesh and Enkidu leave their land and travel a considerable distance to reach the Cedar Forest which Enlil had appointed Humbaba to guard; they are filled with a mixture of fear and admiration at the tall trees which rise to the heavens. Because there are no forests in Mesopotamia the fearful mystery which forests naturally possessed was enhanced through their association with the forces threatening the life of the nation, lurking in foreign lands. Whether this sociological explanation is at its basis, or not the episode provides an early indication of the division within the Pantheon, of the respective domains of the different theocracies to which Shamash and Enlil belong, which again appears in later sections of the poem, as Grelot and de Liogre Böhr maintain. The themes which become dominant later are skilfully suggested in undertones from the start: subtly we are made to feel that the sungod's servant's triumph against the emissaries of the greater gods will, in the end, turn out to have been temporary.

The difficulty of the exploit is strongly stressed. Gilgamesh addresses a solemn prayer to Shamash for protection: his mother reproaches Shamash with having given her son a 'restless heart'. The prudent elders of Uruk advise him to stay at home. Enkidu himself is reticent – and we might well infer that this doubt corresponds to a certain hesitation within Gilgamesh's 'lower self'. (Cfr. IV, v where Gilgamesh needs encouragement) This hesitation acquires considerable importance later on.

Not only is Enkidu's hand paralysed as he seeks to open Humbaba's gate – a well-known symbol of force – as a punishment, or at least a consequence of his previous hesitation, but later he attributes the death he feels approaching to Shamash's displeasure at it. Enkidu, as again will be clear later on, has not been fully conquered by civilised life. He recoils before work and the need of effort to ensure sustenance. This persistent hankering after the gloryless ease of animal-like life prevents him from rising to the maximum human stature of 'god-like' heroism. His hesitation is both a symptom of loss of vital power and a cause of still further loss. At any rate it is not through his brute strength but through the superior determination of Gilgamesh that Humbaba will be defeated. The humanity of our heroes, which contains the seed of their mortality, is kept constantly before our eyes even in their most heroic exploits.

(b) The rejection of Ishtar.

Gilgamesh and Enkidu eventually secure a dramatic triumph over Humbaba who seeks to preserve his life at the price of his liberty; but Enkidu insists that he be put to death. This victory brings on the recurrent crisis through which Gilgamesh has to pass, and at the same time it brings out the close connection of the episode with the theme of sexual love as a source of life which gives its unity of feeling to this part of the poem. Again it comes with a delightful paradoxical turn typical of the masterly conception and construction of the Epic.

The last lines of the Humbaba episode are missing; but its sequel is that Ishtar throws herself at Gilgamesh's feet and begs him to become her husband. Gilgamesh insultingly refuses her, recalling at length her deceptions. His triumph has brought the temptation of regression into his former style of life in which he sought selfexpression through sexual excess. But now the man who regularly violated all the virgins of Uruk has become capable of rejecting Ishtar herself. He has risen above the deceitful pleasures she offers. He describes her in terms recalling those used in exorcisms of the demons 'Lamashtu' which so terrified the Mesopotamian imagination. A complete reversal of perspective has taken place in his psychology: the 'life' he is still more ardently seeking than ever before is to be found not through the conquest of Ishtar, for she offers pleasures which do not last, but through her total rejection. This marvellous metanoia is nonethlesse fraught with danger as the denouement is to demonstrate. Through the final katharsis Gilgamesh has come close to the limits of what is attainable by mortal human beings.

3. *The Struggle against the Celestial Bull.*

(a) The gods allow Gilgamesh a further outrage against their designs before deciding to impose a more thorough check on his soaring ambitions. Ishtar obtains from Anu the despatch of the 'Celestial Bull' against Gilgamesh and it makes a ravaging descent upon Uruk – but it, too, is finally killed by Gilgamesh. The killing of the Bull, whose associations with procreation are too well-known to require underlining, is described as if it had a quasi-sacrificial character. His heart is placed before the sun-god and an offering is made to Lugulbanda.* Meanwhile Ishtar organises lamentations and pronounces a terrible curse on Gilgamesh before the assembled people. Gilgamesh replies defiantly telling Ishtar that he would tear out her own thigh, if he could, as he had done to the bull. Such an act of hubris could scarcely pass without provoking divine punishment. Gilgamesh's expressed contempt for Ishtar, who represents within the framework of nature-cults the image of fertility, after his slaying of the Bull, is followed precisely by a loss of vital-force. Again this takes place in an at first surprising way – through the death of Enkidu.

(b) The death of Enkidu.

Ishtar had indeed asked for the death of Gilgamesh himself. This had provoked disagreement in the council of the gods – which in Mesopotamian eyes will be reflected in and responsible for disorder in human affairs. Eventually they decide that it is Enkidu who is to pay the penalty. The decision seems strange at first blush, but there are three considerations which should be kept in mind.

1. For the early Mesopotamians, justice was always somewhat arbitrary: the good life held the promise but not the certainty of tangible rewards.

2. Enkidu himself, as has already been hinted, regards his death as the punishment of his constant tendency towards regression into a subhuman life. When his dreams reveal prophetically to him his oncoming death, he again expresses his regret at having been seduced into the civilized world and his nostalgia for wild primitive life. Enkidu had found work hateful, the demands of human life exacting, and its sacrifices costly. He curses the hunter and the harlot who had been respon-

*M. Virolleaud asserts that Shamash plays no part in this episode and 'on dirait que Shamash se detourne du roi d'Ourouk qui vient d'encourir le ressentiment d'Ishtar et qu'il prend, lui Shamash, fait et cause pour la déesse' (p.44) This is contradicted by VII, 10-14 if Speiser's translation is accepted.

sible for his departure from the desert. Yet he recognises that this is an error; for Shamash later persuades him to turn the curse into a blessing; after all, a 'glorious' death, is better than a bestial death because one will live forever in the memory of the people. It is vacillation which in his weakness and weakness is itself a foretaste of death.

3. Some lines from the second tablet (V. 28 foll.) are worth remembering: 'For Ishhara the bed is laid out. Gilgamesh (----) at night (----) As he approaches Enkidu stands in the street to bar the way to Gilgamesh (----) in his night.' It was for this very purpose that Enkidu had been specially created and by now it has been thoroughly fulfilled: his raison d'être, as it were, has ceased to exist; nor is it so unnatural that his death should be a satisfactory means of Ishtar's receiving revenge. More profoundly, Enkidu was created with reference to Gilgamesh; through out his existence he is vitally linked to Gilgamesh; frequently they are called 'the two brothers'. It is comprehensible that his destruction should affect Gilgamesh deeply, for Enkidu had become almost part of himself. Through Enkidu's intermediary, the gods are also striking at Gilgamesh according to the principle which they enuntiate later in the context of the Deluge: 'Punish man lest he get too wild. But do not be too severe lest he perish' (Likewise before despatching the Bull, the gods had made sure that only part of the population would perish and that famine would not quite destroy Uruk as a result). There are other verbal parallels between the collective punishment of an over-bearing Humanity, through the destruction of a large part of it by means of the deluge, and the individual punishment of an overbearing Gilgamesh, through the destruction of Enkidu: for instance, both the gods and Gilgamesh (in the periods of six days and six nights of mourning which are observed in either case) lament over the fact that 'mankind had turned into clay' and that 'Enkidu had turned into clay', respectively, i.e. reverted to the inchoate state to which they belonged before creation. A whole tablet (VIII) is devoted to Gilgamesh's lamentations over Enkidu whose death involves Gilgamesh very personally indeed: 'Since he is gone, I find no life'. For to quote van der Leeuw, 'Death, as a weakening of power does not affect only the deceased but all those related to him – the deceased has carried power away with him; one must now communicate to life a new power'. It is this *new* power which Gilgamesh will seek throughout the rest of the poem. With the loss of Enkidu, Gilgamesh loses his previous desire of enjoying life at the purely human level; he can no longer be satisfied with a perishable glory; he needs nothing less than immortality.

It is, however, less death itself than the dream-vision of the underworld which Enkidu had revealed to him that frightens Gilgamesh: the complaint which he repeats to the celestial creatures met later on is that the glory which Enkidu had obtained in their joint enterprises did not imply a glorious afterlife. Annihilation would be better than a continued existence in a house from which no one ventured forth, a house of darkness where dust was food and clay served for sustenance unless nourishment was received from the living. Yet there lived the mighty rulers of the past, all the former representatives of Anu and Enlil – even Etana, the King who had ascended the skies on the wings of an eagle – deprived of the crowns, and serving instead of being served. Human glory was not enough to exempt one from such an existence which was a curse rather than a blessing. This disillusion with 'fame and a name' which had become his chief spur to action after his disillusion with sexual adventure leads him into a search for the thing which he now feels matters supremely: the means of an indefinite prolongation of his life. The vision of the underworld is once more not a picturesque description supplied for its own sake: it is the decisive argument which convinces Gilgamesh of the vanity of the human glory he had been pursuing, as the aim of life, in the previous episodes of the poem. Having already seen how each of these episodes was, by its subject-matter, closely connected with the central theme of the Epic and how the succession of episodes marked a progression leading finally to this dramatic crisis, which constitutes the turning-point of the poem, the whole of the first part, i.e. the picture of the most glorious earthly life and the payment which it receives in the afterworld, can be seen to have been necessary to provide the starting point of the second part.

PART TWO: THE DEFEAT OF DEATH

The second Part of the poem is occupied mainly by the account of Gilgamesh's journey to the dwelling-place of his ancestor Utnapishtim who holds the secret of immortality. He has to pass through three regions before getting there.

1. *Mount Mashu and the scorpion-men.*

Gilgamesh begins by travelling Westward and following the course of the sun (IX, iv, 46) so that the sungod can converse with him throughout the day's length. But Shamash's words are by no means encouraging: 'Gilgamesh where are you running to? The life you are seeking you will

not find!' Despite this pessimistic augur from his patron-god, Gilgamesh persists. He reaches Mount Mashu (i.e. Twins), the mountain which marks the limits of the inhabited world, not far from the circular ocean which surrounds the earth, Gilgamesh has thus travelled much farther than in his expedition against Humbaba and has arrived at the door of the divine domains. Mountains were, for the Mesopotamians, by nature, sacred; their peaks were the first to be created in the sense that they were the first to appear out of the chaos of the primordial waters. But the Mountain of Twins is not an ordinary mountain. 'Its summit supports the vault of heavens' and its base reaches down to the lower regions. It is the Western door of the world, the gateway through which the sun sets. These gates are guarded by the scorpion-men, two strange and huge creatures whose 'brilliance inspires fear and whose gaze is mortal'. Grelot likens them to the secondary gods who open the portals of the Mountains for the Sun rising between twin-peaks in archaic Mesopotamian glyptics.

Though, as the line just quoted indicates, the normal passage would involve death, the door of the mountain is opened for Gilgamesh and he follows a dark passage – apparently that of Shamash at night. T.H. Gaster (Les plusanciens contes de l'humanité, p. 57) concludes that Gilgamesh's route must be that which Shamash follows to reach the East for sunrise. But, as has been said before, the poem seems to have little direct likeness to solar myths. Grelot points out that Gilgamesh emerges by the banks of the Ocean, having crossed the limits of the world accessible to humans: 'Nobody has ever carried out this voyage; none have ever traversed the mountain paths' (IX iii 8-9), and concludes that the symbolical geography of the epic here derives its sense from empirical geography, since the 'Western Mountain' constituted for the Mesopotamians the final boundary of the known world. The point that interests us is that Gilgamesh has begun to travel outside the land of mortals. He walks in the Mountain for twelve double hours, and at the beginning we are told, 'Dense is the darkness and there is no light'. Gradually light filters through until at the twelfth double hour it is broad daylight. Grelot concludes (on evidence that is not explicit in the poem) that this is a land of perpetual day. At any rate, it is a celestial region, the marvels of which make the mortality of Gilgamesh all the more striking and painful. Night, the image of death, does not darken the land of the immortals. Gilgamesh's dazzlement shows that he is a stranger here; it is not the home of humans but of gods.

2. *The Garden of Precious Stones and the Barmaid Siduri.*

Having traversed the dark mountain, Gilgamesh finds himself in the land of delights – a marvellous garden where trees grow precious stones such as the lapislazuli, the blue-stone which enjoyed great prestige in Mesopotamia because of its cosmological significance: it is an image of the starry night and of the lunar god Sin, through connection with whom the stone is related to generation (Eliade p. 157) Other trees produce what look like bunches of grapes – the source doubtless of the ambrosiac drink which the celestial barmaid Siduri, whom Gilgamesh meets here, prepares for the gods. This garden is, however, not 'paradise', for Gilgamesh, after the tunnel of Night, has still a more difficult ordeal to go through before reaching Utnapishtim's dwelling-place – the crossing of the ocean of death. Largement relates the garden to the 'sacred wood' usually found on one of the seven storeys of the ziggurat, the symbolism of which is, according to him, the basis and central significance of *all* Mesopotamian mythology. If there is a reference to the Temple here, it fits in perfectly with the general drift of this part of the poem which is to stress that it is recourse to the will of the gods, through cultivating their friendliness, and not any human achievement however glorious, which might (perhaps) obtain the prize of immortality. At any rate, Siduri greets Gilgamesh with the leitmotiv of the advice which the celestial beings he encounters throughout the journey keep showering upon him: 'Gilgamesh, where are you running to? The life you are seeking you will not find. When the gods made man, they decreed death for man' (X iii, 3-5) Instead she urges him to rejoice in drink, women and the delights of the passing hour. It may be noted that this hedonistic advice is often offered to heroes in mythology as a *test*. Gilgamesh passes through it well; Siduri takes pity on him because of his determination and refers him to the boatman Urshanabi.

3. *The Waters of Death and the Boatman Urshanabi.*

'Diffucult is the passage and deep the waters of death which block the approaches' of the place where Utnapishtim dwells (X. ii, 21-25) Once more we are told that no human had ever crossed this ocean, but Gilgamesh, as advised, obtains the help of the boatman Urshanabi. The name 'Urshanabi' means 'servant of Ea': Shanabi meaning 'two-thirds' which was one of the names Ea, 'son of the depths of the ocean and god of Wisdom', A curious incident here takes place: close to the boatman are the 'shut-abne' – two stone-images which seem to belong to the

boat and to be endowed with a magic power which helped the boat cross the waters of death. Perhaps their point in the poem is to stress that it is the power of the gods and not human achievement which determines the efficacy of means towards ends in this domain. Gilgamesh in a sudden fury breaks them to bits. It is tempting to see in this burst of impatience his obstinate refusal to accept this fact. Staffs have therefore to be used, for to touch the water is death, and the voyage lasts a month and a half. The poem continues to insist on the inaccessibility of the island to humans and on its distance (e.g. XI, i), calling Utnapishtim himself 'the distant'. The island is situated 'in the distance, at the mouth of the rivers', (XI, 195) i.e. at the source of the rivers which give fertility to Mesopotamia. Utnapishtim (whose name means 'faithful to the signs of the gods') according to de Liogre Böhr, belongs to a different heroic universe to that of Gilgamesh. Gilgamesh is the faithful servant of Shamash, while Utnapishtim is a favourite of Ea. He is a figure borrowed from a different age and ideological context to embody the impossible dream of mortal men; he is the exceptional survivor from primordial times who renders more dramatic the destiny which his descendant cannot escape. It is precisely to establish this point that Utnapishtim gives his account of the deluge, the place of which in the poem, like that of the dream of the underworld, is not an accident.

4. *The Deluge.*

Mircea Eliade describes the place which the Deluge occupies in general in the mythological view of the world thus: 'Emptied of its creative seeds and forces humanity would become etiolated, decrepit and sterile. Instead of the slow regression into subhuman forms the deluge leads to an instantaneous reabsorption in the waters in which sins are purified and out of which a regenerated humanity will be born' (op. cit. p. 176) Though this is doubtless true in general, the Deluge in the Gilgamesh epic occurs to illustrate in concrete fashion something different. Just as the Epic does not have for its framework a solar myth, and yet the nature of the sungod is not irrelevant to the fortunes of his servant Gilgamesh, in a rather similar fashion the death-and-rebirth aspect of the Deluge, though not without interest in the context of the poem, is not its central feature in this instance. The Deluge finds its place very fittingly in the dramatic schema of the poem because it shows that Utnapishtim has secured immortality in virtue of a particular conjunction of events which was hardly repeatable and perhaps even unique. A special decree of the gods was responsible in a context of events which does

not resemble that of Gilgamesh. Utnapishtim had received a reward for his exceptional fidelity to the gods amidst an unfaithful people. A special favour of the gods spared him. He constructed his ark according to specific divine instructions. The saving ship was not an ordinary one: it is called an 'Ekallu', which means 'the great house' i.e. temple or palace. Its dimensions and shape recall the storeyed temples of Babylonia which makes Largement think that its aim is to extol the salvific power of the temple (art. cit. p. 153) Before landing Utnapishtim offers a sacrifice 'on the summit of the Ziggurat of the mountain'. 'The gods caught wind of the odour, the gods inhaled the good odour; the gods like flies clustered on the offering'. (XI, 157) Utnapishtim becomes one of their company: 'Previously Utnapishtim was a human; now Utnapishtim and his wife have become like us the gods'. (XI, 193-4). Gilgamesh, though he is the servant of Shamash, is not on such friendly terms with the greater gods Anu, Enlil and Ea. As Utnapishtim tells him: 'As for you, who will assemble the gods for your sake, so that you may find what you are looking for?' (XI, 197-8) The exploits of man are not enough to ensure this free gift of the gods. The deluge story is thus not a digression from the main theme, or incidental to it, but it brings out the contrast between the kinds of man Utnapishtim and Gilgamesh were, between the devout and obedient fidelity to the instructions of the greater gods of the older hero and the somewhat Promethean character of the younger who wishes, as it were, to steal the secret of immortality by his own endeavours. From this follows the consequent contrast between their fates.

5. *The failure of Gilgamesh and his return to Uruk.*

Utnapishtim is certain that Gilgamesh's search is vain and to prove it he imposes on him an impossible test. Gilgamesh's first hope is for immortality. In order to gain it, he is invited to lead as a trial the sleepless life of the immortals: 'Do not lie down for six days and six nights'. But Gilgamesh has hardly sat down crosslegged than, fatigued by his efforts, sleep, the image and presage of death, overwhelms him. Yet prompted by his wife to pity for Gilgamesh and admiration for his bravery in arriving thus far, Utnapishtim agrees to reveal an alternative secret – that of regeneration. Gilgamesh must 'wash his dirty fleece in water, cast off his skins to be carried away by the sea, dress a cloak of good health'. Next he is told, 'There is a plant immersed in the 'Apsu'; its root is like that of the 'nerprun'; its thorn like that of the rose pierces the hand'. Its name is 'the old man becomes young'. Gilgamesh is asked

to pluck it from the depths of the sea (XI 258-270) The Plant of Life is an idea easily arrived at: there are herbs which cure disease; by natural extension a plant is imagined which cures death itself and restores not only health but also youth. Equally naturally, the plant of life rises out of the water, the primordial and regenerative element. Gilgamesh succeeds in this supreme exploit; but he does not eat the herb immediately for he proposes to take it away with him and plant it in Uruk. He intends to convert a *personal* into a social benefit; it shows he still misunderstands the special character of divine gifts.

The poem now proceeds to an ironic but not despairing conclusion. On the first evening of his return journey, Gilgamesh seeks to refresh himself in a pool of water and while he is bathing the plant is stolen by a serpent. Because it crawls on earth, whence it is thought to be born, the serpent has been always especially associated with the mysteries of death. Because of its likeness to the phallus and the rarity of its carcass, it has been related to the mysteries of regeneration. The Epic provides an amusing, if somewhat acid, explanation of how the serpent obtained the secret of regeneration at the expense of man. It is a grim touch of humour which well illustrates the spirit of the epic: how chance, like a conjuror, magnifies in a tragicomic way a minor fault into a major disaster.

De Liogre Böhr has argued that the present conclusion is not the original one which described the death of the hero crowned with glory but still a perishable man. At present the last lines take us back to the introduction: the rhetorical device of 'inclusio' points the moral of the story: Immortality can only be secured through apotheosis, which depends entirely on the will of the gods. Humans must be content with merely human achievement. Gilgamesh had been accompanied on his return journey by a sailor, cursed by Utnapishtim, who becomes an eternal exile in this world. Gilgamesh proudly conducts the immortal spirit round the great walls he had constructed for his city Uruk. The pessimism is bitter-sweet. After the restlessness and élan of his excursion into the world of the immortals he returns to his commitments in the everyday life of men. The ending is not totally unhappy or devoid of hope: the initial sexual and social unbalance has been put in order and his ambitions moderated within human limits.

P. SERRACINO INGLOTT

MORALITY AND ECONOMIC DEVELOPMENT*

WHEN, nearly ten years ago, I first started studying philosophy, I remember asking one of my tutors over lunch what philosophy was actually all about. 'Imagine', he said referring to the table in front of him, 'that this table had no legs'. 'I am imagining', I said. 'Good. Imagine now that it had no surface and no sides'.

I looked hungrily at the dishes on the table – at which point, my professor, rather uncharitably said, 'Imagine now that there was nothing on the surface. What remains?'

'Nothing', I replied, eyeing the dishes even more hungrily. 'Good', he said. 'Now you know what philosophy is all about'.

This somewhat crude introduction to philosophy savoured more of a prologomenon to the Nihilism of Nieztsche than to the realism of Aquinas. I cannot imagine Aquinas being satisfied merely with the idea of food-dishes on a table. If we are to believe his biographers, the Angelic Doctor was enough of a realist and a gourmet to appreciate that man, although not living by bread alone, also lived by bread.

Aquinas was a realistic philosopher. Now a realistic economist is one who in showing men how to live by bread, keeps in mind that they do not live by bread alone. And it is the purpose of my paper this evening to relate the judgement on moral value to the judgement on economic value with special reference to a developing economy.

In assessing the relationship between ethics and economics, one has, in the first place, to distinguish between the two ends of these respective sciences. Ethics concerns the rightness or wrongness of all human acts in terms of man's nature as a rational being created to God's image and likeness. In so far as economic events are determined by man, then we can pass judgement on them concerning their value as human acts. Economic man is man, and no automaton; economic acts have consequently a moral value.

I stress this principle because it is considered old-fashioned by many economists who forget that antiques have become fashionable and economically valuable because they have an enduring beauty. And I lay special emphasis on it because development economists have the habit

* This paper was read during the academic celebrations in honour of St. Thomas Aquinas, held at the University Theatre on March 8th, 1965.

of tendering advice which often ignores the fact that man's material welfare is not synonymous with man's happiness.

Not that such economists do not themselves philosophize and pass value judgements. But rather, some of them assume that man is only rational when he is materialistic, and that to look at things spiritually, that is in a way that transcends matter, is irrational – forgetting, of course, that rationality is a faculty of the spirit (unless you have too much of it).

In fact many economic thinkers tend to base their principles on moral foundations. On one side, we have the Marxist school which claims that it is the State that determines the criterion of value, even though, of course, moral value as such has no meaning for a Marxist. On the other side, we have an increasing mass of economic thinkers who believe that it is the individual who establishes the ethical value of human acts. Both these schools of economic thought have many adherents today – the vogue today is to be an existential or agnostic economist, a vogue that in the Marxist case, had its source in Hegel, and in the school of economic individualism, in Adam Smith. It is pertinent to remember that Marx graduated in philosophy (wine-drinker that he was, his thesis was on Epicurus), and that Adam Smith was a professor of logic.

There is a third school of economic thought which is a happy medium between the two to which I have just alluded. It is characteristic of this school to lay stress on man's complex nature as a rational being, and as an individual, bestowed with the dignity of manhood, who is also a social animal; as living in society but transcending it because of the innate glory of his soul.

Aristotle himself, though obscurely because of his pagan background, recognized the cogency of this outlook on man in his economic life. But it was Aquinas, in medieval times, and the great Popes of the last seventy years, from Leo XIII to Paul VI, happily reigning, who have set down clearly and forcefully the relationship between morality and economic growth. And it was perhaps Pius XI in Quadragesimo Anno who synthetized the intimate correlation between economic and moral values.

'Though economic science and moral discipline', he writes, 'are guided each by its own principles in its own sphere, it is false to say that the two orders are so distinct and alien that the former (that is economics) in no way depends on the latter (that is ethics). The so-called laws of economics derived from the nature of earthly goods and

from the qualities of the human body and soul, determine what aims are unattainable and attainable in economic matters, and what means are thereby rendered necessary; while reason itself clearly deduces from the nature of things and from the individual and social character of man, what is the end and object of the whole economic order assigned by God the Creator'.

And further on, in the same Encyclical, he reiterates the same teaching that 'the economic and social organism will attain its end when it secures for all and each goods ... sufficient to supply all needs and an honest livelihood, and to uplift men to that higher level of prosperity and culture which, provided it be used with prudence, is ... of singular help to virtue'.

These principles have particular relevance to economic development. When an economist analyses a country or a region or a situation, he often has to determine the relationship between 'what is' and 'what is to be', and to do so he must pass judgements on 'what should be' and 'why it should be'. The student of economic development has to study the relationships between data and their dependent variables. The former imply facts concerning pupulation, consumption patterns, natural resources, factors of production, monetary and fiscal policies and the nature and extent of competition on the market. The latter, the variables, concern the prices of goods and services, the prices of the factors of production, the allocation of resources to the productive sectors, and the distribution of final products among the producers.

To assess what should be all in all the relationships between the data and the variables which I have just mentioned would call for a comprehensive judgement which is usually outside the scope of the development economist. In working out a development plan or in building a development theory, the economist normally uses only the more salient data. He analyses those which have immediate pertinence to his theory or to his plan, and excludes the influence of psychological and sociological factors. This may sometimes result in plans and theories which are economically sound but which are socially unacceptable, and the postulates of theories and the assumptions of development plans are often sociological generalizations bereft of objectivity. The classical theorists of economic growth have themselves not been immune from this tendency. The classical case, in the literal sense, is the great Marxian postulate that 'in every historical epoch the prevailing mode of economic production and exchange, and the social organization necessarily flowing from it, form the basis upon which is built up, and from

which alone can be explained, the political and intellectual history of that epoch'.

From this crude and unrealistic generalization, Marxism has derived its primary dogma of the decline of capitalism and the dictatorship of the proletariat. From it, too, the Marxists have derived their criterion of moral value as being determined by economic events, interpreted by that Norm of Moral Value which is the State.

But the difficulties between ethical and economic judgements are not confined to ideologies, but concern the very concept of economic life. Thus one of the fundamental moral judgements in economic development relates to the distinction between the 'economic sphere' and the 'milieu' or 'the surrounding world'.

Classical economists argued that man's economic behaviour was a manifestation of man's rational self-interest. Marx went further to reduce all human acts to forms of economic behaviour. And a more recent development theorist like Schumpeter has held that the criterion of man's economic behaviour is his 'conduct directed towards the acquisition of goods'. Schumpeter and many contemporary theorists of growth believe that the economist is limited exclusively to economic behaviour, and that moral and sociological considerations are outside the economist's terms of reference.

To avoid a conflict between the two spheres, the economist has to bear in mind that economic development principles are subject in their application to moral law. This criterion must be borne in mind when the development economist is selecting the data for his plans.

One of the most important moral judgements on data that the development economist has to make concerns the population, its tastes, attitudes and dispositions, and its social institutions. The classical theorists, in accepting the Malthusian theory of population, were postulating the concept of an optimum population. In a developing economy, where present resources are being exhausted, and where new resources are being tapped to derive new production, where new capital is being invested and accumulated, and where social attitudes are changing, there is little reason to believe that the population will remain stationary. Now the classical economists based their concept of an optimum population in a growing economy on three principal assumptions:

the existence of one single satisfactory index of the relationship between population and national welfare;

secondly, the principle of the division of labour;

thirdly, the law of diminishing returns.

These assumptions provide a good example of the issues to be tackled by the development economist in so far as ethics is concerned. The last two assumptions are obviously economic ones and pertain purely to economics. But the first postulate raises an important moral question. Can an optimum relationship between population and national welfare be measured by one criterion? Can one say that decisions affecting national economic policy should be determined solely by per capita real income, by per capita sonsumption or by per capita real wages? If one were to exclude a moral judgement, and consider man as a purely economic animal, the answer would be yes. But if we regard man as a being endowed with a spiritual dignity, we have to admit that we cannot advocate, such a single criterion, because per capita national income may be rising, while sectors of the population may, due to changes in the economic structure of the country be undergoing hardship.

Because of ethical reasons, neither can one advocate an economic policy which the planners may say 'in the long run' will lead to a higher standard of living though it will inflict some hardship in the short run. One cannot condemn a present generation to real hardship so that a future generation may enjoy more of the good things of life; nor can one, for economic reasons, wring injustice on one sector of the population so that another sector can be better off. It is useful to remember the saying of the great economist, Lord Keynes, that 'in the long run we are all dead'.

Again, one of the major principles of economic analysis enunciates that as income increases, consumption increases, but not proportionately. Here again, it is the task of economic science to determine whether the data concerning the various aggregates of consumption are valid; but it is the task of moral science to determine who is responsible for the changes in the change of taste among consumers. It is the task of ethics to determine whether the targets placed before consumers as an incentive towards economic development are morally right or not. It is part of the science of ethics to ascertain whether the images with which advertising baits the consumer are acceptable. And the relevance of a moral judgement pertains too to the problem of whether consumption should be constantly expanded at the expense of savings.

Closely related to the behaviour of people as consumers, is their attitude toward social organization and social institutions in so far as they are economic citizens. Classical economists believed that the market was a great instrument of social cohesion. Their concept of justice was limited to the act of exchange in a free market. In their

view, narrowing the freedom of the market would weaken the automatic power of the market to bring about economic adjustments, and that such a weakening would affect adversely the progress of the nation. Many Marxist theorists, rejecting the social injustice inherent in the classical position, went to the other extreme and believed that true economic development was only attainable through a completely planned economy where the individual was subordinated to the State.

The role of social institutions in economic development raises far more problems than we can tackle here. It seems to me that the ethical norm to be used in determining this role is that social institutions in a developing country should help men as individuals in the first place, and in the second place, as members of society.

This last aspect brings up the crucial problem of social justice in a developing economy. If a development plan is to be morally acceptable, it must be permeated with a spirit of justice. Justice implies balance, a balance between the productive sectors in so far as men are producers, a balance in the sacrifices to be borne by the different groups of the community, a balance in the prospects and opportunities and incentives offered to each individual in the community.

And social justice in developing planning and in the execution of plans for a developing country implies balance in the respective moral responsibilities of the entrepreneur, the consumer and the state; in the relationship between population and the labour force; in the division of labour. It implies that there be Christian attitudes towards work and towards leisure.

It ordains that the costs and the sacrifices of economic development be shared equally by all; and that there exists a right hierarchy of values implicit in the goals of economic development, goals that concern abundance, opportunity, security and freedom in relation to the ultimate goal of happiness in enjoying the good things of life because they are God's things.

For economic development should ultimately help men to reach more smoothly and more cheerfully the riches, the abundance and the freedom of the City of God.

SALVINO BUSUTTIL

IL PARROCO ALLA LUCE DEL DIRITTO ORIENTALE VIGENTE E DEL CIC

La promulgazione del Moto Proprio *'Cleri sanctitati'* e il Moto Proprio *'Postquam Apostolicis Litteris'*, che comprendono tutti insieme 813 canoni, e corrispondono al libro secondo del Codice di Diritto Canonico con 645 canoni, dovevano destare un fervido risveglio nello studio del Diritto Canonico Orientale, o per lo meno un più vivido e più generale interessamento a questa manifestazione di feconda e perenne vitalità della Chiesa Cattolica; se è vero che il Diritto rappresenta una tra le più alte manifestazioni di vita pubblica e sociale.

Ora, che la Chiesa di Gesù Cristo sia una società *giuridicamente* perfetta divinamente instituita, e perciò stesso in suo ordine suprema ed indipendente da ogni potestà umana, si poteva pur mettere in dubbio o senz'altro negare da certe cattedre asservite a preconcetti mille volte travolte dalla forza della verità e dalla storia; si poteva pur affettare una sarcastica indifferenza per tutto quanto riferisce alla Chiesa, si poteva anzi sostenere tra facili applausi che le norme ecclesiastiche non potevano attribuirsi, senza una grave profanazione, il nome sacro di *Diritto*. Dunque la Chiesa, questa società più antica delle società politiche o nazionali, perchè essa sola ha venti secoli di storia, la più giovane e la più vitale, perchè essa sola possiede la verità che non si supera, che non invecchia, che non si esaurisce, è la garanzia della perennità indefettibile; la più feconda perchè possiede essa sola il seme dei martiri, dava nuovo assetto giuridico alla sua vita sociale, incanalando la multiforme ed esuberante fecondità della sua vita in una forma di disciplina più rispondente alle nuove esigenze degli Orientali. E cosí non fu soltanto il Clero Orientale e Latino ad interessarsi alla nuova codificazione, ma il laicato e principalmente furono, come è naturale i cultori di Diritto.

Cosí incominciava la nuova letteratura canonica Orientale, la quale, in ormai 7 anni, andava ogni dí crescendo, se non proprio arricchendosi.

Non è nostro proposito passare qui in rassegna tutto quanto si è già publicato intorno il Codice di diritto Orientale. Qui soltanto ci preme di fare rilievo di particolare interesse.

La parte più importante della Codificazione del Codice Orientale è certamente quella che riguarda *le persone*. Questa corrisponde al libro

secondo del Codice di Diritto Canonico. Osserviamo, che in questa parte le norme stabilite nel Codice Orientale sono differenti da quelli del Codice di Diritto Canonico. Il Codice Orientale in questa parte (come anche nelle altre) segue il Diritto Canonico perchè lo scopo della Codificazione è fare nei limiti del possibile un solo Codice per tutta la Chiesa universale. Infatti il S. Padre Pio XII, nella promulgazione del M.P. 'Cleri sanctitati' dice 'Hoc legum corpore edito aliquando *et cum Codice Iuris Canonici conlato*, magna profecto eluxisset similitudo ac vel etiam aequitas canonum atque institutorum pro universa Catholica Ecclesia'[1]. Questo però non lo possiamo affermare riguardo a questa parte. Infatti esiste una varietà di istituzioni particolari nella legislazione Orientale p.e. Patriarca, Exarca ecc. che nel Codice di Diritto Canonico mancano. Poi anche nelle istituzioni identiche troviamo differenti aspetti e determinazioni. Per esempio, secondo la disciplina Orientale una persona è maggiorenne quando compie 18 anni;[2] una persona morale non può essere mai parroco;[3] la parrocchia non può essere unita ad una persona morale;[4] e cosí si parla di 'eparchia' invece di 'diocesi' di 'Hierarcha' per 'Ordinario' di 'Exarca' di 'Synodo permanente' ecc.

A noi interessa la legislazione che riguarda il parroco essendo lo scopo principale del nostro lavoro. Perciò intendiamo paragonare questa parte con quella del Codice di Diritto Canonico. Per riuscire noi dividiamo i canoni che trattano del parroco in tre categorie:

(1) Canoni del Codice Orientale che sono uguali a quelli del CIC;
(2) Canoni che si differenziano dal CIC;
(3) Canoni che non hanno corrispondenza nel CIC.

Prima categoria.

Codice Orientale	Codice di Diritto Canonico
c. 499	c. 458
c. 504	c. 463
c. 505	c. 464
c. 508	c. 467

[1] AAS, XLIX(1957), 434.
[2] M.P. 'Cleri sanctitati', can. 17, § 1.
[3] M.P. 'Cleri sanctitati', can. 489, § 1 e 2.
[4] M.P. 'Cleri sanctitati', can. 490.

c. 509	c. 468
c. 510	c. 469

Seconda categoria.

c. 489, § 1, § 3, § 4	c. 451
c. 490, § 1, 1	c. 452
c. 493	c. 453
c. 494	c. 454
c. 496	c. 455
c. 497	c. 456
c. 498	c. 457
c. 500	c. 459
c. 501	c. 460
c. 502	c. 461
c. 503	c. 462
c. 506	c. 465
c. 507	c. 466
c. 511, § 1, 2, 3, § 5	c. 470

Terza categoria.

c. 489 2.	–
c. 490 1, 2, 3, 2	–
c. 491	–
c. 492	–
c. 495	–

Ci fermiamo brevemente su quei canoni soltanto che non hanno corrispondenza col CIC.

Prima di tutto nella definizione data dal M.P. 'Cleri sanctitati' nel can. 489, l'espressione 'Ordinarii loci' del CIC, è stata cambiata in quella di 'Episcopi', questo perchè dove sono le parrocchie ivi deve essere il Vescovo, e dove non c'è il Vescovo ma un'altro Gerarca del luogo, p.e. un Esarca, le unità pastorali si chiamano quasi-parrocchie, e il loro rettore si chiama quasi-parroco.[5]

Dappertutto in Oriente si trova l'istituzione dei parroci e delle parrocchie, ma l'organizzazione differisce abbastanza da quella di diritto latino. L'Oriente non conosce le parrocchie unite 'pleno iure' con una persona morale.[6] Ora questa unione con una persona morale è ammessa,

[5] M.P. 'Cleri sanctitati', can. 160, § 3.

[6] Cf. Coussa, Epitome 1, n. 306.

ma in questo caso il vero parroco a cui la parrocchia è affidata non è la persona morale, come nel diritto latino, ma la persona investita dell'ufficio. Tale pratica sembra più conforme al principio dell'unione più stretta dei poteri ecclesiastici con il carattere sacro dell'Ordinazione.[7]

L'ufficio del parroco è di per se ufficio stabile, sebbene in diverso grado: alcuni parroci infatti, come tutti i quasi-parroci, sono amovibili; però ad normam iuris.[8] Altri parroci invece sono inamovibili, cioè non possono rimuoversi che per cause e forme stabilite dalla legge. Il Vescovo puè rendere inamovibili parroci amovibili, 'auditis consultoribus eparchialibus' ma non vicecersa senza osservare le prescrizioni del can. 260 § 1, n. 2f; e senza il beneplacito apostolico. Finora questi parroci inamovibili esistevano presso i Ruteni e presso tutti gli Orientali i parroci erano amovibili 'ad natum' del Vescovo.

Il legislatore in questo canone al principio riporta il canone 454 del CIC, però tiene conto delle parrocchie e quasi-parrocchie che non hanno una dote sufficiente e questi possono essere conferiti 'ad nutum'. Però il can. 495 fa obbligo al Gerarca di procurare per queste parrocchie e quasi-parrocchie 'quamprimum' una dote conveniente.[9]

Quanto alla nomina del parroco, il diritto di farla spetta al Vescovo. Si riprovano tutte le vigenti consuetudini contrarie, restando salvo il diritto per patronato già costituito. Il privilegio di elezione menzionato nel CIC è escluso. Perciò il n. 2 del can. 455 del CIC, che riguarda la conferma o l'istituzione del parroco è stata omessa nel Codice Orientale.

Il can. 501 prescrive nel § 1 che nessuno può essere parroco di due parrocchie, amenochè non siano realmente unite in perpetuo; nel § 2 che viceversa ogni parrocchia non debba avere che un parroco solo, esorta il Gerarca del luogo che la consuetudine contraria a questo proposito verrà rimossa 'prudenter'. Perciò ci sembra poter osservare che anche più parrocchie, realmente distinte, possono pure avere in comune la chiesa, nella quale, quindi, potrebbero sussitere distinti benefici parrocchiali, non essendo, per se, elemento essenziale della parrocchia l'avere un tempio o chiesa propria. E vero che questa è un'anomalia, e non risponde punto allo spirito del M.P. Ad ogni modo, data da una parte la necessità di non diminuire gli attuali benefici parrocchiali, data dall'altra la impossibiltà di costruire subito tante chiese quanti

[7]M.P. 'Cleri sanctitati', can. 490, § 1, 2, 3 § 2.

[8]M.P. 'Cleri sanctitati', can. 494, & 1.

[9]M.P. 'Cleri sanctitati', cc. 494-495.

sono i benefici, non ci sembra inopportuno suggerire che, *donec melius provideatur*, ridurre questi poli-parroci in collegi lasciando ad uno solo la cura parrocchiale ad normam can. 490. Anzi crediamo che si possa
provideatur, ridurre questi poli-parroci in collegi lasciando ad uno solo la cura parrocchiale ad normam can. 490. Anzi crediamo che si possa
lasciare più benefici parrocchiali nella stessa chiesa, dividendo *però* i limiti del territorio e assegnando a ciascuno la cura esclusiva di ciascuna parte. Anche cosí si sarà osservato il prescritto del can. 501 § 2 'In eadem paroecia unus tantum debet esse parochus': nulla infatti vieta di interpretare la parola *paroecia* come beneficio e territorio parrocchiale a norma del can. 160 § 1 del M.P. 'Cleri sanctitati', tanto più che nel § 1 del medesimo can. 501, § 2 se ne limita il significato al *titolo* o beneficio parrocchiale; e niente obbliga a intendere qui *paroecia* per *ecclesia paroecialis*. Cosí opiniamo, salvo sempre miglior giudizio.

R. GAUCI O.F.M. CONV.

DE IUDICUM OFFICIIS

AMBROSIUS, iudex regius, magis de bono filiorum quam de iustitia dicenda sollicitus, Caium, filiae sponsum, absolvit quamvis reus iudicialiter constiterit; Ivum filium docet quomodo causae tractari debent ut lites vincere possit; imo Gervasum innocentem morti damnavit quia reus iudicialiter inventus est.

QUAERITUR:

I. Quaenam sint munera tum iudicis, tum advocati?
II. Quando iudicis sententiae standum est?
III. Quid de modo agendi Ambrosii?

PRAENOTANDA

Cum facultatem curam communitatis habentibus dederit Deus leges condendi ad prosequtionem finis naturalis hominum, dicendum videtur quod Ipse Deus humanam societatem mediis idoneis suppeditavit quibus leges latae efficaciam sortiantur, ita ut sanctionem intentam obtineant premiis vel poenis. Processus vero quo sanctio istalocum habet iudicium vocatur. Iudicium ergo 'est legitima disceptatio et definitio causae, inter actorem et reum, per iudicem facta'. Iudicium hoc est criminale vel contentiosum prout statuitur ad poenam delicto infligendam, vel ad iura personarum vindicanda et prosequenda. In constitutione autem omnis iudicii interesse debent inter alios et iudex et advocatus.

Iudex est persona publica a legitima auctoritate constituta ad ius dicendum et definiendum.

Advocatus dicitur qui litigantis causam suscipit in iudicio defendendam.

AD PRIMUM:

Quaenam sint munera tum iudicis, tum advocati?

Ante iudicium iudex praeditus esse debet et iurisdictione et scientia competenti. Carens enim iurisdictione iudex invalide sententiam dicit, reusque fit iniustitiae tum erga iudicem cuius iurisdictionem usurpat tum erga reum contra quem vim coactivam iniuste adhibet. Carens vero scientia debita iudex temere sese exponit periculo nocendi iis quorum causas agit, ideoque ad restitutionem damni ex eius ignorantia secuti tenetur.

Iudicio durante iudex tenetur ex iustitia tum legali tum commutativa, ob quasi-contractum initum cum societate et cum partibus, causas cum debita iustitia et diligentia tractare, atque in omnibus integritatem suo ufficio proportionatam exhibere.

Iustitia quae in causis tractandis adhibere iudex debet postulat ut iudex processum instituat et sententiam ferat iuxta leges vigentes, modo iustae sint. Ad sententiam ferendam iuxta leges constitutus est iudex. Ergo si leges violat peccat contra iustitiam legalem, si ius strictum alterius violat peccat contra iustitiam commutativam et ad restitutionem tenetur.

Diligentia postulat ut iudex in causis tractandis curam illam adhibeat quae iudicio prudentum necessaria censetur pro gravitate rei. Porro debet et iudex causas ultra necessitatem non protrahere, ne damna partibus oriantur.

Integritas postulat ut iudex in omnibus iustitiam servet, nec acceptione personarum, nec passione odii aut amoris, nec praecibus aut muneribus ad iustitiam laedendam flectetur.

Post iudicium ad nil tenetur iudex si sententiam iustam tulit, ad hoc enim constitutus est. Si vero culpabiliter sententiam iniustam tulit tenetur sententiam ipsam revocare, etiam cum gravi incommodo, si potest, et si sententiam iniustam revocare nequit tenetur damna omnia ex sua iniusta sententia secuta ex iustitia commutativa reparare. Si autem sententiam iniustam inculpabiliter iudex tulit, tenetur hanc sententiam revocare si sine magno incommodo id facere possit, secus ad nihil tenetur. Unde sequitur quod iudex ad restitutionem tenetur si poenam iusto maiorem imposuit, non vero si aliquem a mulcta pecuniaria, solvenda ex lege in poenam delicti, liberavit. Ad fisco consulendum non est constitutus.

De muneribus advocati.

In causis suscipiendis advocatus praeditus esse debet scientia competenti, et in ipsis tractandis diligentiam gravitati causae proportionatam exhibere; ne sua imperitia aut negligentia damna proprio clienti afferat.

Causas criminales, etsi iniustas, potest semper advocatus defendendas suscipere, causas vero civiles potest tantum suscipere, si iustae sunt aut saltem dubiae.

In causis defendendis advocatus nequit mediis iniustis uti, ne iudicem inducat ad sententiam iniustam ferendam, quo in casu tenetur ad damna reparanda uti causa iniusta et efficax. Potest autem advocatus occultare ea, quibus causa sua impediri posset, quia aliam partem non

decipit sed permittit ut decipiatur.

Quoad clientem advocatus tenetur:

(a) exitum probabilem causae aperire
(b) causam susceptam debita diligentia expedire
(c) causam sine grave motivo non deserere
(d) et honorarium iusto maius non exigere.

AD SECUNDUM:

Quando iudicis sententiae standum est?

I. Sententia iudicis certo iusta obligationem in conscientia parit, eique standum est. Sententia haec est velut praeceptum superioris in casu particulari quod in conscientia obligat.

II. Sententia iudicis certo iniusta obligationem conscientiae nequit inducere quia nequit dari obligatio violandi obligationem; eique standum non est. Hoc valet quidem tum si sententia est iniusta in se, tum si iniusta evadit ex non servato ordine iudiciali, sive iudex bona sive mala fide egerit.

III. Sententia iudicis dubie iusta locum ut appellatio interponatur dat. Interea eique standum est, tum in foro conscientiae, tum in foro externo. In dubio enim factum praesumitur recte factum.

IV. Sententia iudicis fundata in praesumptione falsa facti obligationem conscientiae non inducit. Praesumptio enim locum cedere debet veritati. Et si quis in foro externo suum ius vindicare nequit, potest sibi consulere etiam per occultam compensationem.

AD TERTIUM:

Quid de modo agendi Ambrosii?

Minime laudanda videtur sollicitudo Ambrosii bona filiis procurandi cum detrimento proprii muneris. Nam integritas et iustitia, iuxta superius exposita, postulabant ut sine acceptione personarum, et secundum iustitiam commutativam et legalem ius diceret.

Ideoque male se gessit Ambrosius Caium, filiae sponsum, absolvendo quamvis iudicialiter reum constiterit, et ad restitutionem tenetur, si in causa civili pars altera damnum passa sit. Si vero causa fuerit criminalis, et Ambrosius privata scientia sciret Caium innocentem fuisse nullam iniustitiam commisit Caium iudicialiter convictum absolvendo. Imo iuxta aliquos iniustitiam committeret si damnasset quem privata scientia innocentem sciret.

Ad iudicandum vero de bonitate aut malitia actionis Ambrosii in fi-

lium Ivum docendo quomodo causae tractari debent ut lites vincantur videndum est utrum agatur de causis coram ipso iudice Ambrosio tractandis an non. In primo casu male se gessisse dicendus est Ambrosius, non vero in altero. Ratio primi est quia iudex partem advocati agere nequit, et ex proprio ufficio stricte tenetur sententiam proferre ex allegatis et probatis tantum; secus alteri parti iniustus foret. Ratio secundi est ius advocati peritiores consulendi ad lites vincendas. Si enim Ivo liceat consulere libros et in iure peritiores, nullam causam video cur non posset consulere patrem, quem ipse in iure peritiorem aestimat.

Quoad damnationem Gervasii innocentis, quem iudicialiter reum constiterit, dicendum quod Ambrosius peccare potuit contra caritatem non vero contra iustitiam. Peccavit forsan contra caritatem Ambrosius si omnia media ad liberandum innocentem non tentavit. Non peccavit vero contra iustitiam quia de hac re non una est theologorum sententia. Sunt enim qui tenent iudicem numquam posse damnare innocentem, etsi iudicialiter reum constiterit, ad privationem vitae vel libertatis; quia super haec publica potestas nullum dominium habere potest ob bonum publicum. Alii vero cum S. Thoma tenent quod iudex uti persona publica potest semper proferre sententiam iuxta allegata et probata, etiamsi agatur de imponenda poena gravissima mortis, quia iudex est persona publica quae iuxta scientiam publicam ob bonum commune in omnibus procedere debet. In tanta diversitate sententiarum Ambrosium iudicem de iniustitia in casu non auderem damnare.

L. SPITERI