



E. W. Kemble

On Dueling, Divorce, and Red Indians

by Hugh Barbour, O.Praem.

IN FEBRUARY 1861, Joseph Sadoc Alemany, the first Roman Catholic bishop of the state of California, wrote an urgent pastoral letter to his flock. This letter was published immediately in the New York *Freeman's Journal*, and for this indiscretion its editor was imprisoned for a year in Fort Lafayette, and his presses were shut down. Archbishop Alemany was a Dominican, born in Spain, who pursued his calling in Italy and in Kentucky (where his Dominican brethren had imparted the foundations of classical learning to the young Jeff Davis) before being named bishop of California by Pius IX. He was an enthusiastic American citizen who, although (or because) he was a Spaniard, was hated by the Mexican government, against which originally and perennially corrupt regime he pursued a reparations case all the way to the Hague, and with the help of the U.S. government to boot. The archbishop, a Democrat, was deeply concerned about the looming war and so promulgated a letter against the principal moral evils afflicting his diocese: divorce and

dueling. He used these to describe the evil of the war, which he likened to a divorce and a duel writ large. This letter offers an example of a kind of rhetorical argumentation used in documents of the ecclesiastical magisterium with increasing frequency in modern times. Traditional teaching is presented, but justified more by notions of social progress and civilization than by the austere limits of the divine and natural law.

In the letter Archbishop Alemany deals quickly with divorce, which, like generous bankruptcy protection, was easily obtainable in California from its earliest days as a state. Then he moves on to dueling, which was outlawed in the first state constitution of 1849. Significantly, in contrast to divorce, he says, "We deprecate still more the unparalleled disaster of a duel, which no Christian or rational mind can countenance."

Even so, the duel had become so common in frontier California that the very politicians who had been eager to outlaw it at the state's first constitutional convention

were later constrained to become duelists themselves. Assemblyman George Johnston (1858), U.S. Sen. William Gwin (1853), and Chief Justice of the Supreme Court of California David Terry (1859) all engaged in famous duels, even though each of them had favored the proscription of the practice.

A personalist, rhetorical defense of traditional morality can lead to the destruction of the most basic moral sense in modern people, who are so easily prey to ethical deracination.

The Church's proscription of the duel is very ancient, going back to the First Lateran Council (1170) and continuing all the way to the letter *Pastoralis officii* of Leo XIII (1891). In 1917 it was included in the first Code of Canon Law (although it is nowhere to be found in the present code of 1982, in which all the penalties for dueling have been abrogated). The duelists, their seconds, spectators, advisors, attending physicians, and clergy were all struck with excommunication reserved to the Holy See. The duelists were to suffer *infamia iuris*, legal disgrace causing the loss of privileges (such as being a godfather or best man) and, before the 19th century, the confiscation of goods and the denial of Church burial.

The morality of the duel is evaluated in tradition by two principles. The first is *moderamen inculpatae tutelae*, or the standard of guiltless self-defense, meaning that one is justified in using lethal means to defend one's life against an unjust aggressor. But the duel, which takes place *ex convicto* (by agreement) does not satisfy this criterion because, at the time the lethal force is to be taken, the "aggressor's" action has been agreed upon by the offended party, and so he is not then and there an actual aggressor. The second is that of the *media apta*, or apt means for repairing an injustice. The loss of honor or reputation, which is ordinarily the reason for a duel, cannot be repaired by lethal combat, but must be repaired by other legal means. The outcome of the combat itself cannot determine the injustice of the offense. Consequently, the duel is both an unjust exposure of one's own life and an intentional homicide of one who is not, at the point of the

duel, a true, unjust aggressor but, rather, an accomplice in a crime. Very different would be the case of one who is set upon by an opponent who says, "Take this saber or pistol and defend yourself like a man, for I am going to kill you now." In this scenario, a man would be justified in taking the offered weapon and defending himself.

In his letter, Archbishop Alemany writes,

Let us be permitted unhesitatingly to denounce the deadly contest, by which men laying claim to Christianity and refined manners, but acting as the red men of the forest, whose mental eye has never yet seen the least glimpse of civilization, divest themselves of all sense of duties which they owe to kindred or to society, and sacrifice, perhaps forever[,] the honor and welfare of parents, wife, or children . . . Deaf to every friendly advice, and thirsting after human blood, they go like beasts into the field to decide by brute force or impious chance who is right and who is wrong. We pity the poor Indians whose want of mental culture leads them to determine right from wrong with the bow and arrow. But what can exculpate the man who boasts of his civilization and intellectual refinement, yet who has not the strength of mind to discern that powder is not the standard of right!

In place of the traditional argument is an argument from urbanity. Here we are confronted with an instructive example of what becomes progressively more common as a justification for Christian morality: the superior culture of modern men *versus* that of the savage, an argument from moral progress instead of a rational judgment of the injustice endured and the legitimate means to overcome it. This is a rhetorical argument—not a presentation of the principles of natural law, but an appeal to human respect.

Family feeling, far from being violated by the duel, is precisely what justifies the duel in a man's mind in the first place—a sense of identity and manly dignity that must be defended as a possession more valuable than life, just as a woman may kill a man seeking to violate her, even though such a violation would not take her life. Its malice is not a primitive sense of honor but the illegitimate exposure of one's life and that of another as a means to repair a wrong that cannot be repaired by force. William Gwin's 1853 duel provides a perfect example of this. The senator from California faced U.S. Rep. J.W. McCorkle with rifles at 30 paces, wheeling at word and firing, which, in the signed account of the witness, "the two gentlemen did three

times without harming each other, when the affair was brought to termination by the friends of the parties, having discovered that their principals were fighting under a misapprehension of the facts." McCorkle apologized to Gwin, and that was it. In the meantime, the matter was relayed to Gwin's wife. After the first shot she said, "Let us thank God"; after the second, "Praise be"; after the third and the news of the apology, she expressed her disappointment in her spouse and his opponent: "There's been some mighty poor shooting today!" Family feeling might have something to do with the motive of the duelist.

All along, though, the Holy See continued to show that one may recognize the sounder instincts that were used as a pretext for an immoral practice. In answering *dubia* proposed by the bishops of Central Europe as late as 1947, the Holy See pronounced on the question of going before a "tribunal of honor" to determine whether an offense equal to a duel had occurred. Would doing so incur the penalties of canon law against dueling? The answer, wisely, was no, as long as the parties did not intend to proceed to a duel but were only determining the cause of the contest to be resolved by other, morally legitimate means. Even the greatest of practical moralists, St. Alphonsus Liguori, did not regard certain extenuating reasons for dueling as morally improbable—for example, a loss of honor before one's military peers sufficient to ruin one's livelihood—until Pope Benedict XIV forbade any dueling under any circumstances whatsoever. A sense of honor based on a man's name, or title, or profession, or even his physical strength has a very sound natural foundation, and this foundation ultimately is based on his family, present or future. This is something that civilized Christians may have in common with savages, and without which they may become inferior to them.

A personalist, rhetorical defense of traditional morality can lead to the destruction of the most basic moral sense in modern people, who are so easily prey to ethical deracination. A key example would be the understanding of marriage and marital relations as a remedy for concupiscence. Teach young men and women in our co-educational age that only the highest spiritual motives can adequately account for married love, and you will have them refusing simply on account of their feelings the legitimate advances of their spouses. The "marriage debt" can be much, much more, but it remains a debt and a duty without which men can be emasculated, not even able serenely to request a most basic right of marriage, and women can be doomed to perpetual suspicion of not being truly loved at all, because they are not loved per-

fectly here and now. And so there is the vicious cycle in which the progressive moral account ends up rendering impossible the very love it so exalts. That this approach and a mentality that is very open to divorce are aligned is clear. So yes, a civilized Christian husband and a savage red man have a basic human value in common, and of this he must not be ashamed, but only of sin and infidelity.

**Those who have the duty of teaching
in the Church and in civil society must
always offer the genuine reasons for
human conduct and use the rhetorical
and odious comparison very sparingly.**

In a society in which every standard is viewed as subject to a notion of progress that is, at root, technological and material, it can be dangerous to characterize fundamental human impulses as primitive or barbarous. Even if they are impulses corrupted by fallen nature, by concupiscence and pride, they remain rooted in our nature and are meant for the good. Drawing traditional moral conclusions from arguments based on social progress can utterly undermine and obscure the moral truths that those traditional conclusions imply. Dueling is wrong, but not because an Indian brave might do the same thing and for the same reasons, and not because it is violent, but because the power to coerce is a property of law, and if there is no implicit threat of force, either moral or physical, then there can be no law. At its most grave, this can be seen in John Paul II's affirmation that the threat of an eternal Hell is a necessary guarantee of a fixed standard of morality.

Nowhere is the danger of the *argumentum ad hominem rubrum* more apparent than in the bishop's use of divorce and the duel as a metaphor for civil war. The conditions under which a defensive or an offensive war may be fought are clear. In his letter he does not address them but merely describes war again as a descent into tribal barbarism. But a war is not justly fought at all unless it is fought for the sake of one's family and native common good. We now live in a society in which fighting for one's own people is precisely the only kind of war that is considered unjust. Every interest, refined (oil!) and technological and financial, may excuse, but war for the sake

of tribe, religion, or territory is deemed not only barbarism but terrorism. (One nation is exempt from this contemporary prohibition, though, and it is not the United States.) The Christian Croat or Serb, or the Palestinian, is a would-be war criminal, since he only seems to care about something as primitive as his own country. Thus, wars will increase, because there is no motive limited to truly human goods which can restrain them. Ideology at the service of plutocracy is the new order of things. We now have "smart bombs," after all.

And yet the good archbishop was in the right, in spite of himself. In a very important passage of his encyclical *Veritatis splendor* John Paul II pointed out that theologians who reflect on the moral law are bound by the conclusions

of the magisterium, but not by the arguments evinced for them, which they are free to replace with others that they find more sound or cogent. To this we respond with a lusty "Q.E.D."

The course of the last century and a half is instructive. Those who have the duty of teaching in the Church and in civil society must always offer the genuine reasons for human conduct and use the rhetorical and odious comparison very sparingly. Otherwise, the just who love family and honor may be relegated to the special reservations of the Brave New World, where we will all be red Indians.

Fr. Hugh is prior of St. Michael's Abbey in Trabuco Canyon, California.

Rose Catalogue in January

by Maryann Corbett

You want them, yes, the year's new hybrid teas,
long-stemmed, high-centered, pointed, budded tight.
You hesitate at old varieties'
neediness, at fogs of pesticide,
thorny defenses, sensitivities—

But close your eyes. Think how you loved them once,
those hundred-petalled secrecies within
Fantin-Latour, those foldings, sinuous, dense.
Think of rugosa petals' openness,
of rounded hips that bore the weight of winter,

and albas: how their breathings stir the past.
How essence, concentrated, will persist
when nothing's left but fragments in a jar,
complexities still fragrant on the air.