

## Seventeenth-Century Casuistry Regarding Persons with Disabilities: Antonino Diana's Tract 'On the Mute, Deaf, and Blind'

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IN 1639, THE FAMOUS THEATINE casuist Antonino Diana published the fifth part of his *Resolutiones morales*, a volume that included a tract regarding the mute, deaf, and blind.<sup>1</sup> Structured as a series of cases (i.e., questions and answers), its form resembles tracts in Diana's other volumes concerning members of particular groups, such as vowed religious, slaves, and executors of wills.<sup>2</sup> While the arrangement of cases within the tract is not systematic, they tend to fall into two broad categories, the first regarding the status of persons with specified disabilities in the Church and the second in civil society. Diana draws the cases from a wide variety of sources, from Thomas Aquinas and Gratian to later experts in theology, pastoral practice, canon law, and civil law. The tract is thus a reference collection rather than a monograph, although Diana occasionally proposes a new question for his colleagues' consideration.

"On the Mute, Deaf, and Blind" addresses thirty-seven different cases, some focused upon persons with a single disability, and others, on persons with combination of these three disabilities. Specific cases hinge upon further distinctions. Is the individual in question completely or partially blind, totally deaf or hard of hearing, mute or beset with a speech impediment? Was the condition present from birth

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<sup>1</sup> Antonino Diana, *Resolutionum moralium pars quinta* (hereafter *RM* 5) (Lyon, France: Sumpt. Laurent. Durand, 1639), 161-172 (tract 6). All citations to the works of Diana in this article rely upon volumes digitized by Google. For background on Diana's theology, see Santo Burgio, *Teologia barocca: Il probabilismo in Sicilia nell'epoca di Filippo IV* (Catania, Italy: Società di Storia Patria per la Sicilia Orientale, 1998); Pierre Hurtubise, *La casuistique dans tous ses états: de Martin Azpilcueta à Alphonse de Liguori* (Ottawa, Canada: Novalis, 2005), 35-37, 125-137.

<sup>2</sup> On slaves, see Antonino Diana, *Resolutionum moralium pars septima ...* (hereafter *RM* 7), Editio Secunda Veneta (Venice: Apud Franciscum Baba, 1650), 141-165, (tract 7); on religious, see Antonino Diana, *Resolutionum moralium pars tertia...* (hereafter *RM* 3) (Lyon, France: Sumptibus Jacobi Prost, 1633), 21-69 (tract 2); on executors of wills, see Antonino Diana, *Resolutionum moralium pars octava...* (hereafter *RM* 8) (Lyon, France: Haered. Petri Prost, Philippi Borde, & Laurentii Arnaud, 1647), 366-407 (tract 5).

or did it develop later, as the result of illness or injury? Do the subject's intellect, education, or communicative skills offset his or her sensory deficiencies? When taken as a whole, Diana's collection of cases provides a fascinating window into Early Modern Roman Catholic assessments of the capacities and responsibilities of this group of disabled persons.

Why should Diana's tract interest Catholic ethicists focused on "engaging disability" today? First, the collection illustrates at least some of the practical questions that arose during the seventeenth century when pastors, missionaries, religious superiors, and magistrates interacted with the disabled, or, in some cases, became disabled themselves.<sup>3</sup> It also indicates the range of expert opinions on the appropriate resolution of these practical issues. Considering Diana's tract thus enhances our appreciation of the history of Roman Catholic ethical engagement with disability.

Moreover, the tract provides evidence for several significant conclusions regarding Roman Catholic casuistry's approaches to the disabled during the early seventeenth century. First, Early Modern Roman Catholic casuistry recognized and acknowledged the capacities of the disabled, in both the religious and the civil spheres, even though persons' disabilities excluded them from some positions of authority. Second, seventeenth century casuists assumed that mute, deaf, and blind Catholics had responsibilities within the Church, as lay Christians, vowed religious, or members of the clergy. Third, this collection of casuistry demonstrates that Early Modern pastoral practice and civil law provided some accommodations for the disabled, both to enable them to fulfill their ordinary responsibilities and to avoid the imposition of unfair burdens upon them. In fact, one may reasonably argue that the implicit concern behind Diana's treatise—as evidenced by the cases he proposes and the resolutions he supports—is to safeguard the participation of the disabled within the Church and civil society in light of their capacities for moral agency.

To provide a context for my interpretation of Diana's tract, this paper begins with a brief introduction to the meaning and historical situation of Roman Catholic casuistry in the seventeenth century, before turning to Diana's life and his literary project, the *Resolutiones morales*, and the place of "On the Mute, Deaf, and Blind" within that work. This background grounds the paper's central claims that the tract reflects seventeenth century Roman Catholic casuistry's acknowledgment of the capacities and responsibilities of the hearing, seeing, or vocally impaired, and its consideration (albeit to a much

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<sup>3</sup> I deliberately use the word *some* because Diana was not systematic in his approach. He makes no claim to have compiled all the relevant cases regarding this sub-group of the disabled.

lesser degree) of the accommodations necessary to allow them to fulfill their responsibilities.

The paper concludes with a brief and admittedly provisional introduction of three topics for further investigation, i.e., questions that experts in disability ethics might wish to develop, in dialogue with Diana's text. These questions concern the significance of personal histories and circumstances for the analysis of disability; the application within disability ethics of the distinction between an alternative means and an unduly burdensome means of fulfilling one's responsibilities; and finally, the value of the situation of the disabled as a lens for theological analysis. Ultimately, however, any inspiration that this tract can offer for contemporary theologies of disability arises from its central presumption that the mute, deaf, and blind are members of communities and, thus, that questions about their modes of participation in those communities presuppose a web of existing relationships with their fellow human beings, fellow believers, and fellow citizens.

#### **CASUISTRY AND CASUISTS IN THE FIRST HALF OF THE SEVENTEENTH CENTURY**

Early Modern Roman Catholic casuistry was the art of resolving cases of conscience, questions regarding the identification of appropriate and inappropriate Christian practices.<sup>4</sup> Such questions were often ethical problems in the modern sense. For example, is it legitimate to use deadly force in self-defense? However, they could also concern devotional practices, such as Jubilee indulgences or the maintenance of private oratories.<sup>5</sup> Finally, Roman Catholic casuistry often addressed problems of sacramental administration and pastoral jurisdiction.<sup>6</sup> By their nature, many cases of conscience involved the application of canon law.

Casuists were experts in the principles and precedents necessary to resolve these practical dilemmas of the Christian life. They evaluated extant cases, drawn from earlier theologians or from their own contemporaries. New problems, such as the significance of chocolate consumption or tobacco use for the Eucharistic fast, also drew their

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<sup>4</sup> For a general introduction to the concept of casuistry, see Albert R. Jonsen and Stephen Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (Berkeley: University of California Press, 1988); and Hurtubise, *La casuistique dans tous ses états*, 13-23.

<sup>5</sup> Diana discusses indulgences and Jubilee in *RM* 5, 317-340 (tract. 12). A tract on private oratories appears in *Resolutionum moralium pars nona...* (hereafter *RM* 9) (Venice, Italy: Apud Iuntas & Baba, 1650), 1-32 (tract. 1).

<sup>6</sup> On the broad meaning of the term *mores*, especially at the Council of Trent, see John Mahoney, *The Making of Moral Theology: A Study of the Roman Catholic Tradition* (Oxford: Clarendon Press, 1989), 120-135.

comments.<sup>7</sup> Well-known casuists such as Diana might add cases that came to their attention when someone asked for their opinion, either in person or by letter. Casuists thus served as ethical consultants for political leaders as well as private individuals. The Spanish crown created councils of theologians, “customarily assembled to pronounce where questions of conscience impinged on matters of state.”<sup>8</sup> Casuists even debated whether accepting money for giving their opinions constituted simony (the selling of holy things).<sup>9</sup>

In discussing cases, the casuist’s principle role was to identify, outline, and evaluate the various solutions proposed for a particular practical question. His greatest responsibility was to distinguish options that were acceptable in practice from those that were not (e.g., because they had been rejected by central Church authorities or because of weaknesses in the arguments and expert endorsements that supported them). Naturally, professional opinions sometimes differed, especially in their assessment of the comparative strength of the various alternatives. By the end of Diana’s career, such disagreements had blossomed into a full-fledged methodological dispute regarding the sufficiency of probable opinion as a warrant for action.<sup>10</sup> While a casuist might, and often did, assert the superiority of one option over the others, he educated those involved in the formation of consciences by outlining positions other than his own, particularly those he regarded as safe in practice.

As Pierre Hurtubise points out, the production of works of casuistry was very much a growth industry in the Early Modern period, especially in the seventeenth century, which saw the publication of more than 750 volumes on the subject.<sup>11</sup> Significantly, the market for works of casuistry extended beyond the clerical elites, as evidenced by the popularity of condensed versions of texts like Diana’s *Resolutiones morales*.<sup>12</sup> The ecclesiological impetus for this extensive interest in casuistry was the Council of Trent’s teaching on

<sup>7</sup> See Diana, *RM* 5, 142, 341-343 (resol. 11; resol. 1). Because a single page often includes more than one case, I will include the number of the specific case resolution in parenthesis after the page numbers in my citations, unless the reference is to a tract in its entirety.

<sup>8</sup> J.H. Elliott, *The Count-Duke of Olivares: The Statesman in an Age of Decline* (New Haven: Yale University Press, 1986), 227.

<sup>9</sup> See Diana, *RM* 5, 388 (resol. 4).

<sup>10</sup> On this history, see Jean Delumeau, *L’aveu et le pardon: Les difficultés de la confession XIII<sup>e</sup>-XVIII<sup>e</sup> siècle* (Paris: Fayard, 1990), 123-149; Jean-Louis Quantin, *Le rigorisme chrétien* (Paris: Les Éditions du Cerf, 2001), 71-106; Julia Fleming, *Defending Probabilism: The Moral Theology of Juan Caramuel* (Washington, D.C.: Georgetown, 2006), 4-7, 14-19; Jonsen and Toulmin, *The Abuse of Casuistry*, 164-175; Mahoney, *The Making of Moral Theology*, 135-43; and Burgio, *Teologia barocca*, 136-180.

<sup>11</sup> Hurtubise, *La casuistique dans tous ses états*, 25-31.

<sup>12</sup> See Hurtubise, *La casuistique dans tous ses états*, 36-37.

private confession, especially its insistence that penitents confess their sins according to number and species (i.e., according to frequency and type of sin committed).<sup>13</sup> This last requirement necessitated the education of confessors skilled in classifying sins, given the complicated taxonomy of wrong actions operative within Roman Catholic moral theology. The emphasis upon confession as an instrument for the formation and discipline of the laity during this period also heightened the importance of casuistry, as an educational tool for Church reform.<sup>14</sup>

An added challenge for the conscientious bishop, religious superior, or confessor arose from the post-Tridentine expansion in central Church regulations, particularly surrounding the administration of penance, a development that one can trace in Giovanni Pittoni's *Constitutiones pontificiae et romanarum Congregationum decisiones ad confessarios utriusque cleri spectantes*, published in Venice in 1715.<sup>15</sup> While Pittoni identifies only 221 rulings regarding penance between 1023 and 1563 (the year in which the Council of Trent ended), he cites over 500 papal or congregational decisions on the subject issued between 1564 and September of 1628, when Diana received permission to publish the first two installments of the *Resolutiones morales*.<sup>16</sup> There would be another 200 such rulings by the end of Diana's literary career.<sup>17</sup> Helping to keep confessors abreast of these developments became another service that casuists such as Diana could provide.

Not all casuistry, of course, was intended for the same audience or served the same authorial purpose. For example, some casuistry appears within textbooks for the author's students, as in the works of Juan Azor, S.J.<sup>18</sup> Naturally, works aimed at students include a great

<sup>13</sup> See Council of Trent, Session 14, 25 November 1551, canons 7-9, and ch. 5, *de confessione* in Norman P. Tanner, S.J., ed., *Decrees of the Ecumenical Councils, Vol. II, Trent to Vatican II*, ed. (London: Sheed and Ward, 1990), 712, 705-707. See also the comments of Mahoney, *The Making of Moral Theology*, 22-26.

<sup>14</sup> See Adriano Prosperi, *Tribunali della coscienza: Inquisitori, confessori, missionary*, nuove ed. (Torino, Italy: Piccola Biblioteca Einaudi, 2009).

<sup>15</sup> Giovanni Pittoni, *Constitutiones pontificiae et romanarum Congregationum decisiones ad confessarios utriusque cleri spectantes* (Venice, Italy: Leonardus Pittonus Collectoris Pater, 1715).

<sup>16</sup> Pittoni, *Constitutiones pontificiae*, 1-76, 76-218. One can determine the dates on which Diana received permission to publish by consulting the unnumbered preliminary pages of each volume. Volume 1 of the 1636 Venice edition (hereafter, *RM* 1), *Resolutiones morales in quatuor partes distributae ...* (Apud Franciscum Baba), reprints the 1628 permissions on a such a page under the heading "Approbationes."

<sup>17</sup> By September of 1655, Diana's Superior General gave permission for the publication of Volume 12. See Antonino Diana, *Resolutionum moralium pars duodecima ...* (hereafter *RM* 12) (Venice: Apud Franciscum Baba, 1657), untitled preliminary page (no heading); and Pittone, *Constitutiones pontificiae*, 218-275.

<sup>18</sup> On Azor, see Hurtubise, *La casuistique dans tous ses états*, 106-112.

deal of what one might describe as stock casuistry or standard casuistry, i.e., settled cases discussed simply to educate the reader. By contrast, one can also find volumes of casuistry that are really illustrations of ethical theory, as when Juan Caramuel developed his *Theologiae Praeterintentionalis* around cases largely drawn from Diana's *Resolutiones morales*.<sup>19</sup> As we shall see, Diana was neither an academic nor a theorist. His goal was to provide a reference collection for knowledgeable colleagues.<sup>20</sup> Virtually his entire literary corpus concerns the resolution of cases of conscience.<sup>21</sup>

*Antonino Diana, the Theatines, and the Resolutiones morales*

Unfortunately, there is no biography, either Early Modern or recent, to flesh out the basic outline of Diana's personal history. Born in Palermo in 1585, Antonino Diana was the child of a noble Sicilian family with a history of involvement in city governance, and in service to the Spanish Inquisition.<sup>22</sup> His educational background is presently a matter of conjecture, but five vernacular poems, created in his adolescence, but published near the end of his life in another author's anthology of Sicilian verse, suggest that he received humanistic training.<sup>23</sup>

Apparently, Diana was already a priest when he entered the Congregation of Regular Clerics (commonly known as the Theatines) in 1614 or 1615.<sup>24</sup> This was a new religious community, founded in

<sup>19</sup> Juan Caramuel, *Theologia Praeterintentionalis* ... (Lyon: Sumptibus Philippi Borde, Laurentii Arnaud, Petri Borde, & Guillemi Barbier, 1664).

<sup>20</sup> See Hurtubise, *La casuistique dans tous ses états*, 128, 135.

<sup>21</sup> Diana, *RM* 9, 389-419, contains a text of Diana's that had originally been a separate work: *De primatu solius D. Petri, ac differentia inter ipsum et D. Paulum, disceptationes apologeticae*. On its publication history, see Antonio Francesco Vezzosi, *I scrittori de' Cherici Regolari detti teatini, parte prima* (Rome: Sacra Congregazione di Propaganda Fide, 1780), 313.

<sup>22</sup> For brief accounts of his career, see Gaetano M. Cottone, C.R., *De scriptoribus venerabilis domus divi Josephi Clericorum Regularium urbis Panormi...* (Palermo: ex Typographia Angeli Felicella, 1733), 12-38; and Antonino Mongitore, *Bibliotheca sicula, sive de scriptoribus siculis...* (Palermo: ex Typographia Didaci Bua, 1707), 45-47. Both digitized by Google. See also Paolo Portone, "Diana, Antonino," *Dizionario biografico degli italiani Treccani* (Rome: Istituto della Enciclopedia Italiana Treccani, 1991), 39:645-647. On the family, see Filadelfo Mugnos, *Teatro genealogico delle famiglie nobili, titolate, feudatarie ed antiche nobili del fidelissimo regno di Sicilia viventi ed estinte* (Palermo: Pietro Coppola, 1647), 329-330. For references to two members of the Diana family, including Antonio Guiscardo de Diana, a doctor of both civil and canon law, as familiars of the Inquisition in Palermo in 1561, see Francesco Giunta, *Dossier inquisizione in Sicilia: l'organigramma del Sant'Uffizio a metà del Cinquecento* (Palermo: Sellerio, 1991), 46, 47.

<sup>23</sup> Pier Giuseppe Sanclemente, *Le muse siciliane, ovvero, Scelta di tutte le canzoni della Sicilia* (Palermo: Giuseppe Bisagni, 1662), Part 2, Vol. 1, 84-87. Digitized by Google. See also Cottone, *De scriptoribus venerabilis*, 12.

<sup>24</sup> On the sources for the two different dates, see Vezzosi, *I scrittori de' Cherici Regolari detti teatini*, 301, n. 3.

1524 by four members of the Roman branch of the Oratory of Divine Love who had concluded that they could best serve the confraternity's goal of fostering lay piety, sacramental devotion, and participation in the corporal works of mercy by creating a new religious order that would model these practices for ordinary Christians.<sup>25</sup> Drawing inspiration from the monastic model that Augustine had created for his clergy at Hippo, the new group's members lived in community and recited (rather than sang) the liturgy of the hours. Their pastoral ministries included care of the sick, preaching, and hearing confessions. New members of the community typically were clerics seeking a stricter way of life and a reformed model of living out their pastoral vocation.<sup>26</sup>

Created as a community subject to the pope and to their own elected superior, the Theatines collaborated with the Vatican on a number of important projects following the Council of Trent. Members of the order, for example, were involved in the revision of the Vulgate, the Roman breviary, and the missal.<sup>27</sup> By the time that the community reached its centenary, it had produced forty-five bishops.<sup>28</sup> Much of this influence was the legacy of the most famous of the group's original founders, Gian Pietro Carafa, who promoted the order after his election to the papacy in 1555. (The name *Theatine*, in fact, reflects Carafa's one-time position as bishop of Chieti, one of the two episcopal offices that he resigned when the order received formal Vatican recognition).<sup>29</sup> As the community's first Superior and, later, as Pope Paul IV, Carafa exercised significant influence over the Theatines' development, especially since the group did not create a constitution until early in the seventeenth century.<sup>30</sup> Moreover, the agenda of Paul IV, the promulgator of the Roman Index, the creator of the Roman ghetto, and the hardline opponent of any concessions to Protestantism, inevitably affected the image and self-understanding of the religious community that he had helped to create.<sup>31</sup>

Until the seventeenth century, the Theatines did not expand beyond Italy. Despite their influence within the Italian ecclesiastical orbit, their numbers remained small. The first Theatine house in Palermo,

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<sup>25</sup> For background on the Theatines, see Kenneth J. Jorgensen, S.J., "The Theatines," in *Religious Orders of the Catholic Reformation: In Honor of John C. Olin on His Seventy-Fifth Birthday*, ed. Richard L. DeMolen (New York: Fordham University Press, 1994), 1-29; and William V. Hudon, *Theatine Spirituality: Selected Writings* (New York: Paulist Press, 1996), 1-29.

<sup>26</sup> See Jorgensen, "The Theatines," 10-11, 13, 14, 18-19; Hudon, *Theatine Spirituality* 17, 21, 22-23.

<sup>27</sup> Hudon, *Theatine Spirituality*, 27.

<sup>28</sup> Jorgensen, "The Theatines," 18.

<sup>29</sup> Hudon, *Theatine Spirituality*, 20-22, 27, 29.

<sup>30</sup> Jorgensen, "The Theatines," 3, 5, 8-9; Hudon, *Theatine Spirituality*, 23-26.

<sup>31</sup> Jorgensen, "The Theatines," 5-7, 16-18.

Diana's birthplace, was established in 1602, and S. Giuseppe, the house in which he would later be admitted to the community, was founded a year later.<sup>32</sup>

In light of the present investigation, it is interesting that Diana required special accommodations from his order's General Chapter in 1630 before he could become a full voting member of the Theatines, since ill health precluded him from participating in some of the ordinary responsibilities of the community.<sup>33</sup> Evidently, he had provided alternative service by concentrating upon his studies in standards for Christian practice. In the preface to the first volume of the *Resolutiones morales*, he tells that reader that he has served as a consultant regarding moral problems in Palermo for many years.<sup>34</sup> Various volumes of his text refer to consultations with political authorities in his native city.<sup>35</sup> The work's title page also identifies Diana as a consultor for the Spanish Inquisition, operative in Sicily, then a possession of the Spanish Hapsburgs, as part of the tribunal of Aragon.<sup>36</sup> The responsibilities of this (unpaid) appointment would have included giving advice about whether there was sufficient evidence or legal grounds to justify an arrest or torture of someone suspected of heresy and providing similar advice about the punishment of those convicted.<sup>37</sup> Diana eventually addressed a number of cases regarding the Inquisition within the fourth volume of the *Resolutiones morales*.<sup>38</sup>

In 1628, Diana, by then in his late forties, received permission to publish the first installment of what would become his life's literary project. In his preliminary message to the reader, Diana provides important clues for interpreting the work, in reference to both its intended audience and its purpose. Diana begins with the conceit that his reader has already expended great energy in the study of moral questions and has wandered, overworked, through a variety of prolix

<sup>32</sup> Marcella Campanelli, *I Teatini*. L'Inchiesta di Innocenzo X sui regolari in Italia, ed. Giuseppe Galasso (Rome: Edizioni di Storia e Letteratura, 1987), 68; Vezzosi, *I scrittori de' Cherici Regolari detti teatini*, 301.

<sup>33</sup> Vezzosi, *I scrittori de' Cherici Regolari detti teatini*, 301-302; Hurtubise, *La casuistique dans tous ses états*, 126.

<sup>34</sup> Diana, *RM* 1, unnumbered preliminary page, "Auctor ad Lectorem."

<sup>35</sup> See, for example, Diana, *RM* 5, 343 (resol. 2); Antonino Diana, *Resolutiones moralium pars secunda...* (hereafter *RM* 2) (Lyon, France: Sumpt. Iacobi Prost, 1633) 76 (resol. 67). See the last paragraph of this resolution.

<sup>36</sup> On the tribunal in Sicily, see William Monter, *Frontiers of Heresy: The Spanish Inquisition from the Basque Lands to Sicily* (Cambridge: Cambridge University Press, 1990), 164-185; and Henry Charles Lea, *The Inquisition in the Spanish Dependencies: Sicily—Naples—Sardinia—Milan—The Canaries—Mexico—Peru—New Granada* (New York: Macmillan, 1922), 1-44.

<sup>37</sup> Antonino Diana, *Resolutionum moralium pars quarta ...* (hereafter *RM* 4) (Venice: Apud Franciscum Baba, 1636), 229, 190, 202-204 (res. 11; res. 25; res. 7, res. 8).

<sup>38</sup> See Diana, *RM* 4, 163-258 (tracts 5-8).

tomes.<sup>39</sup> This compliment to the reader, in fact, reflects an important characteristic of the text: Diana is writing for those who already have a background in the discipline rather than for students or neophytes. He presumes that the reader will understand the background for the cases he discusses so that there is no need for a preliminary excursus into foundational issues in theology, sacramental practices, or canon law. This presumption also allows Diana to move straight into the controversial cases without a systematic review of the settled cases relevant to their resolution. In reading Diana, it is important to remember that his targeted audience member is the expert rather than the novice.

What, then, does Diana offer to such a knowledgeable reader? In essence, the *Resolutiones morales* is a reference book, the distillation of his vast research into complex questions of moral theology, sacramental administration, and canon law. It is also a précis of alternative moral assessments of these questions, predominantly drawn from recent or contemporary sources.<sup>40</sup> While the cumulative scope of the *Resolutiones morales* is vast, Diana's treatment of individual cases is often very short, so that a single page might well present several cases. In an interesting acknowledgment of his own ongoing disability, Diana tells the reader that both ill health and his other responsibilities would have precluded him from composing an extensive analysis of particular moral questions, even if he were inclined to pursue such a project. What he hopes to provide instead is a guidebook to resolutions for complex problems of Christian practice, the strongest arguments surrounding them, and their most important advocates.<sup>41</sup>

In writing for his fellow casuists, Diana takes care to expose the range of possible options for the conundrums under consideration. In some cases, he asserts, truth and natural law mandate a single course of action from which any deviation would be wicked. In other cases, however, God allows greater scope for human freedom, so that the prudent have more than one responsible choice. Diana is particularly concerned to identify the "more benign [*benigniores*]" alternatives for his readers, to aid them in receiving confessions or resolving others' perplexities. They must not, he warns, attack God's supreme impartiality and the "sweet yoke [*suaveque...iugum*]" of divine law.<sup>42</sup>

Whatever Diana's original hopes or intentions for his work, the publishing records of the *Resolutiones morales* testify to its influence

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<sup>39</sup> See Diana, *RM* 1, "Auctor ad lectorem."

<sup>40</sup> See Hurtubise's comments regarding Diana's sources, *La casuistique dans tous ses états*, 133-36. However, I would note that this tract includes several references to Aquinas and to Gratian. See Diana, *RM* 5, 162, 167, 172 (resols. 2, 3, 18, 20, 35).

<sup>41</sup> Diana, *RM* 1, "Auctor ad lectorem."

<sup>42</sup> Diana, *RM* 1, "Auctor ad lectorem."

and success. Printers in Lyon, Rome, Venice, Madrid, Antwerp, Munich, and Paris (among others) released versions of Diana's volumes.<sup>43</sup> Within five years, Diana's work had also given rise to condensed versions, which continued to be published—sometimes with Diana's approval and sometimes to his dismay—both during and beyond their author's lifetime.<sup>44</sup>

For the next twenty-eight years, Diana continued to publish installments of the *Resolutiones morales*.<sup>45</sup> Later volumes followed the same basic format as the first, with very brief presentations of individual cases combined into tracts. Diana often returned to cases that he had considered in earlier volumes, updating the analysis and describing new discussions of the case or other writers' responses to his positions.<sup>46</sup> Over time, this meant that multiple volumes could contain treatments of the same question. Diana never systematically revised the entire work. Others would undertake this effort after the last volume of the *Resolutiones morales* appeared, and it was more than another decade before this mammoth collection was published, several years after Diana's death.<sup>47</sup>

Diana's move to Rome in 1637 encouraged his scholarly work, even though he undertook other responsibilities for his order and for the Vatican, where he served as an examiner of bishops under Urban VIII, Innocent X, and Alexander VII.<sup>48</sup> From Pope Innocent, to whom Diana dedicated the seventh volume of the *Resolutiones morales*, the Theatine purportedly received both personal approbation and financial support for his research.<sup>49</sup> In his account of Diana's work, the Theatine Gaetano Maria Cottone includes a long catalogue of laudatory references to the author of the *Resolutiones morales* taken from their own writings or preserved in the records of the Theatine community

<sup>43</sup> See Vezzosi, *I scrittori de' Cherici Regolari detti teatini*, 307.

<sup>44</sup> Compare the statement of approbation from Diana that appears within the *Summa Diana* of Antonio Cottoni (published with the compiler's name listed under the anagram *Ausonio Noctinot*) with Diana's warning against the early abridged version of Jean de Val. For the first, see the last page of the unnumbered preliminary address "lectori benevolo" in *Summa Diana ... pars prior* (Lyon: Sumptib. Haered. Prost, Borde, & Arnaud, 1644). For the second, see *RM* 1, where Diana's warning appears on the unnumbered page "Auctor ad lectorem," under the heading: "Iterum auctor lectori benevolo."

<sup>45</sup> See Vezzosi, *I scrittori de' Cherici Regolari detti teatini*, 304-307.

<sup>46</sup> For an example of this regarding a case discussed in "On the Mute, Deaf, and Blind," see note 96.

<sup>47</sup> See Vezzosi, *I scrittori de' Cherici Regolari detti teatini*, 307-309.

<sup>48</sup> See Hurtubise, *La casuistique dans tous ses états*, 127; Vezzosi, *I scrittori de' Cherici Regolari detti teatini*, 303-304.

<sup>49</sup> See Vezzosi, *I scrittori de' Cherici Regolari detti teatini*, 306; Mongitore, *Bibliotheca sicula*, 1:45-46.

in Palermo.<sup>50</sup> By any standard, Diana enjoyed great success for most of his career.

Ironically, Diana is probably best known today as one of Pascal's targets in the *Provincial Letters* and, more broadly, as one of the writers associated with the controversies over probabilism and laxism that dominated the history of Roman Catholic moral theology in the second half of the seventeenth century.<sup>51</sup> However, it is important to note that many of these events post-date Diana's publishing career, since the last volume of the *Resolutiones morales* appeared in the same year that Pascal began to release his satirical epistles.<sup>52</sup> While Diana certainly lived to see the beginnings of these controversies, he never responded to them in print. Indeed, the dedicatory epistle to Alexander VII at the beginning of volume 12 makes many references to Diana's age and his failing health.<sup>53</sup> The deterioration of his eyesight made him incapable of the intensive reading demanded for the production of the *Resolutiones morales*.<sup>54</sup> Diana died in Rome in 1663, less than a decade after his last volume's publication.<sup>55</sup>

#### *The Tract "On the Mute, Deaf, and Blind"*

Diana's tract "On the Mute, Deaf, and Blind," appears within *Resolutiones morales* 5, the first volume published after its author's move from Palermo to Rome. Neither the tract itself nor the volume's introductory message to the reader provides any clues about what inspired Diana to take up these questions. While one can sometimes connect the production of a tract in the *Resolutiones morales* to a particular book that had drawn Diana's interest (or his ire), the cases in "On the Mute, Deaf, and Blind" seem to have come from a wide variety of sources.<sup>56</sup> Even the tract's placement in the volume provides

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<sup>50</sup> See Cottone, *De scriptoribus venerabilis*, 16-38.

<sup>51</sup> See Quantin, *Le rigorisme chrétien*, 54-70; and Jonsen and Toulmin, *The Abuse of Casuistry*, 156-57, 248; Jean-Pascal Gay, *Morales en conflit: Théologie et polémique au Grand Siècle (1640-1700)* (Paris: Les Éditions du Cerf, 2011), 37, 183-184, 194, 566-567, 789, 803.

<sup>52</sup> On Pascal's impact, see Gay, *Morales en conflit*, 171-202; Burgio, *Teologia barocca*, 154-159; Quantin, *Le rigorisme chrétien*, 71-106; and Jonsen and Toulmin, *The Abuse of Casuistry*, 231-249.

<sup>53</sup> See Diana, *RM* 12, unnumbered page with the heading, "Alexandro VII P.O.M."

<sup>54</sup> See Hurtubise, *La casuistique dans tous ses états*, 134, n. 17; Juan Caramuel, *Apologema pro antiquissima et universalissima doctrina, de probabilitate...* (Lyon: Sumptibus Laurentii Anisson, 1663) 10, 92.

<sup>55</sup> See Mongitore, *Bibliotheca sicula*, 1:46; Vezzosi, *I scrittori de' Cherici Regolari detti teatini*, 304.

<sup>56</sup> See the first tract in Diana, *RM* 5, which is clearly directed against Mario Cutelli's *Codicis legum Sicularum libri iv ...* (see page 1, resol. 1).

no assistance, since “On the Mute, Deaf, and Blind” follows the tract on parvity of matter and precedes the tract on scandal.<sup>57</sup>

But if Diana’s motivations remain a mystery, the cases themselves give us grounds to speculate about another important issue: who would have benefited from having answers to the questions that Diana poses in this tract? The most obvious audience for such information is the pastor seeking to respond to the needs of a disabled parishioner, especially in reference to sacramental administration. Perhaps the tract’s cases regarding wills and donations would also have been of special interest to pastors, who often witnessed or recorded deathbed testaments during this period.<sup>58</sup> But one can also imagine many of these cases arising in the context of a dialogue—a dialogue, for example, between a pastor and the parents of a disabled child regarding the child’s status in the Church and civil society and the vocational options available to him or her. Moreover, in at least two cases, a disabled person clearly initiated the exchange that became the basis for Diana’s reflections. Thus, disabled persons, their caretakers, and their pastors appear as potential beneficiaries of the options that the tract outlines.

Yet, there is another group that might also have been particularly interested in Diana’s analysis: those in the process of going deaf or blind. At least a quarter of the tract’s cases ask whether those who have become disabled are still obligated to perform their former duties and whether they remain eligible to fulfill particular roles (e.g., reciting the breviary, celebrating mass, serving as judges, voting in elections for religious superiors).<sup>59</sup> In an age without cataract surgery or hearing aids, debilitating loss of vision and hearing were no doubt familiar specters of the aging process. Diana lost his sight in the last years of his life; so, later, did his friend Juan Caramuel, the bishop of Vigevano, who managed to conceal his blindness in one eye from his clergy until he lost sight in the other.<sup>60</sup> In the seventeenth century, as in the twenty-first, progressive disability must have been a painful adjustment, both for the disabled and for their caregivers. For religious superiors, consideration of an aging community member’s rights and responsibilities might well have been a common preoccupation. Thus, in addition to addressing the needs of the currently disabled, Diana’s

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<sup>57</sup> Diana, *RM* 5, 137-160, 173-194 (tracts 5 and 7). This is by no means unusual for Diana, who follows no evident system in the arrangement of his tracts.

<sup>58</sup> On the role of Catholic priests regarding wills in seventeenth century France, see S. Amana Eurich, “Between the Living and the Dead: Preserving Confessional Identity in Early Modern France,” in *Defining Community in Early Modern Europe*, ed. Michael J. Halvorson and Karen E. Spierling (Aldershot: Ashgate Publishing, 2008), 43-61 at 45-46.

<sup>59</sup> Diana, *RM* 5, 166-167, 172 (resols. 13-22, 36).

<sup>60</sup> See Julián Velarde Lombráña, *Juan Caramuel: vida y obra* (Oviedo, Spain: Pentalfa, 1989), 374.

tract addressed future problems that persons could anticipate, in the face of either their own progressive disabilities or the decline of those for whom they were responsible. In contrast to some of his other tracts, which addressed a comparatively narrow band of human experience, “On the Mute, Deaf, and Blind” considers problems that extend across the life cycle.

### INTERPRETATION OF THE TRACT

Any effort to interpret Antonino Diana’s tract “On the Mute, Deaf, and Blind,” as evidence for seventeenth century casuistry’s engagement with issues surrounding these disabilities must begin with three important clarifications regarding the project. First, although Diana is the compiler of the tract, he is not the formulator of the cases, except perhaps in one instance.<sup>61</sup> Thus, the tract is a record less of Diana’s own speculations about disability than of what he found, and judged to be of interest, in the writings of others. Obviously, Diana chose the cases, responded to the arguments proposed, and combined them into a unit of his broader literary work, but one must not treat the text as if it articulated the reflections of a single author. In a sense, this makes the work more interesting, since it reveals the arguments and disagreements among a broad group of experts over questions of disability.

Second, Diana was not systematic in choosing his cases and targeted his work toward knowledgeable professionals rather than neophytes. As we have noted, this allowed him to move directly into analyzing the cases that posed the greatest challenge, without reviewing related cases.<sup>62</sup> But it also means that many practical questions regarding interactions with the disabled may be missing from this tract, precisely because Diana assumed that his intended audience already knew the answers. Diana’s work is thus a better guide to complex cases regarding the disabled than to the resolution of obvious ones.

Third, unlike many other Christian casuists, Diana never composed works of spiritual or systematic theology that would provide a framework for interpreting his case resolutions or, indeed, his interpretation of disabilities. The *Resolutiones morales* includes no explicit presentation on theological anthropology.<sup>63</sup> Thus, the interpreter cannot hope to offer an analysis of Diana’s thought relevant to a theology of disability comparable to Miguel J. Romero’s

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<sup>61</sup> See Diana, *RM* 5, 163-164 (resol. 7).

<sup>62</sup> Notice, for example, that the first case in the tract concerns a deaf-mute adult from the New World who requests baptism (Diana, *RM* 5, 161). Diana never asks whether the case would be different for a deaf-mute adult raised in a majority Christian culture (e.g., a Jew raised in the Roman ghetto).

<sup>63</sup> See Hurtubise, *La casuistique dans tous ses états*, 131.

interpretation of Aquinas.<sup>64</sup> Indeed, the most theoretical speculation regarding disability in Diana's tract comes from medicine rather than theology, as he discusses physicians' hypotheses about whether those born deaf are necessarily incapable of speech.<sup>65</sup> Diana's theological presumptions about disability remain implicit. The sources figuring most prominently in this tract are precedent and practical experience, as Diana (and the writers upon whom he relies) invoke the guidance that they have received from the Tradition and their observations of interactions with the disabled.<sup>66</sup> What emerges, by necessity, is a casuistry of encounters with the mute, deaf, and blind, rather than a casuistry of disability *per se*.

Nonetheless, despite these limitations, Diana's tract does support the claim that seventeenth century casuistry recognized the capacities and emphasized the ecclesiastical responsibilities of the mute, deaf, and blind, while at the same time acknowledging (at least to some degree) their need for special accommodations in this regard. Accordingly, it approached them primarily as members of the human, ecclesiastical, and civil communities whose circumstances required special consideration. Because defense of this claim requires illustrations from the tract itself, the interpretation of Diana's text that follows addresses first its treatment of the capacities, second, of the ecclesiastical responsibilities, and third, of the accommodations necessary to insure the participation of the mute, deaf, and blind in the various communities to which they belonged.

#### *Capacities of Persons with Particular Disabilities*

From its outset, Diana's tract on the mute, deaf, and blind analyzes the capacities of persons with disabilities and, accordingly, evaluates their potential to participate in rites of the Church or to perform specific roles within the Christian community or civil society. The tract begins with a case from the New World regarding baptism. Among a group of indigenous persons requesting the sacrament was a mute adult who had been born deaf. Diana's source for the case, the Dominican Luis Lopez, reports that his missionary confreres feared to administer baptism under such circumstances because adult baptism requires both explicit faith and repentance for sin. Christ's command to the disciples to baptize all nations is preceded by the command to teach them, a process that engenders both faith and awareness of one's need for conversion. Since the deaf could not hear the preaching of the missionaries, the friars concluded that they could not be prepared for

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<sup>64</sup> Miguel J. Romero, "Aquinas on the *corporis infirmitas*: Broken Flesh and the Grammar of Grace," in *Disability in the Christian Tradition: A Reader*, ed. Brian Brock and John Swinton (Grand Rapids: Eerdmans, 2012), 101-151.

<sup>65</sup> See Diana, *RM* 5, 168 (resol. 24).

<sup>66</sup> See, for example, Diana, *RM* 5, 162, 163, 164, 170 (resols. 3, 6, 7, 9, 29).

adult baptism, either intellectually or morally. Under these circumstances, their disability undermined their capacity for reception into the Christian community.<sup>67</sup>

Diana reports extensively upon Lopez's rejection of these arguments. To deny baptism closes the way to salvation for persons seeking it. Instead, one should presume that God has somehow enlightened such persons with supernatural faith, if they express their contrition with gestures. Out of concern for the persuasiveness of the arguments against baptism however, Lopez argues that the missionary should defer the case to the local bishop, who must then determine whether a particular deaf-mute candidate has gained sufficient knowledge of the faith through sharpness of mind, divine inspiration, or exposure to Christian practices. Diana seems impressed by the arguments in favor of baptism, but he is less convinced of the need for episcopal intervention. Instead Diana cites the concession of a Spanish bishop that no such consultation is necessary if distance renders it impractical.<sup>68</sup> Yet whenever and wherever the examination of the deaf-mute occurs, Lopez, Diana, and the bishop agree that the expression of the candidate's capacity for baptism can come through gestures rather than words.

This case illustrates a recurrent question of great practical significance within the tract: do persons with particular disabilities, especially deaf-mutes, have the capacity to communicate their intentions and understanding to others? Two resolutions regarding whether the deaf can make wills distinguish those who are deaf and mute from those who are deaf but not mute. Deaf persons who can speak—whether they are literate or illiterate—can make wills.<sup>69</sup> However, *Resolutio* 23 reflects considerable disagreement among the authorities about whether and under what circumstances a deaf-mute can be permitted to do so. For example, does it matter whether the disabilities were present from birth, whether the deaf-mute is literate, whether he is a soldier or the recipient of some other privilege granted by a prince, or whether the will concerns bequests to pious causes?<sup>70</sup> By contrast, the long discussion of the wills of the blind focuses upon procedures for preventing malfeasance in transmission of the testament, since there is no doubt regarding these testators' capacity to express their wishes verbally.<sup>71</sup>

These arguments might initially suggest that the casuists regarded only conventional speech as an adequate form of self-expression. However, the tract also refers to alternative forms of communication

<sup>67</sup> Diana, *RM* 5, 161 (resol. 1).

<sup>68</sup> Diana, *RM* 5, 161 (resol. 1).

<sup>69</sup> Diana, *RM* 5, 168 (resol. 24).

<sup>70</sup> Diana, *RM* 5, 167-168 (resol. 23).

<sup>71</sup> Diana, *RM* 5, 169-170 (resol. 26).

among those without conventional speech or hearing, including nods and gestures, signs that can be interpreted by friends or family members, lip reading, and, of course, writing.<sup>72</sup> Thus, according to a number of Diana's experts, deaf-mutes are capable of marrying, making religious vows, engaging in commerce, guaranteeing others' debts, and giving testimony (under some circumstances).<sup>73</sup>

Perhaps because the blind can speak for themselves in conventional ways, the tract does not pose any question about their capacity for marriage or religious profession, except when blind persons are also deaf-mutes.<sup>74</sup> Similarly, there is no case about whether the blind can serve as witnesses, although the tract does explicitly defend their capacity to guarantee others' debts.<sup>75</sup> While noting that the deaf, the mute, and the blind are precluded from serving as others' legal counsel, Diana cites Sanchez's argument that it is no sin for a mute with the necessary legal expertise to proffer a written opinion.<sup>76</sup>

The tract also gives explicit attention to the capacities of the disabled to fulfill other functions within the civil order. Because the role involves speaking publicly for another, for example, a mute person cannot act as a guardian. Yet, it is conceivable that the mute, deaf, and blind might act as advocates on their own behalf.<sup>77</sup> A blind person can serve as a judge.<sup>78</sup> If capable of performing the specified service to their lords, mute, deaf, or blind persons can even inherit feudal rights.<sup>79</sup> In the secular sphere, just as in the ecclesiastical sphere, the tract's cases reflect great concern for the specific circumstances surrounding the capacities of the disabled and their possibilities for communicating their intentions and serving the common good.

Since canon law treated deafness, muteness, and blindness as impediments to ordination, Diana presumes that persons with these conditions are barred from receiving Holy Orders.<sup>80</sup> Diana's single case on the subject carefully distinguishes the completely disabled

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<sup>72</sup>Diana, *RM 5*, 162-165, 168, 170-171 (resols. 3, 4, 7, 9, 12, 23, 29, 31, 33, 34).

<sup>73</sup>Diana, *RM 5*, 164-165, 171-172, 165, 170, 171 (resols. 9, 34, 12, 29, 32).

<sup>74</sup>Diana, *RM 5*, 165, 171-172 (resols. 10, 34). Notice that Diana mentions sources who do not reject marriage in all cases for those who are both blind and deaf-mute, although he does not accept these conclusions.

<sup>75</sup>Diana, *RM 5*, 170 (resol. 29).

<sup>76</sup>Diana, *RM 5*, 170 (resol. 27).

<sup>77</sup>Diana, *RM 5*, 172, 170 (resols. 35, 27).

<sup>78</sup>Diana, *RM 5*, 172 (resol. 36).

<sup>79</sup>Diana, *RM 5*, 167 (resol. 21).

<sup>80</sup> These prohibitions are not part of 1983 Code of Canon Law, but they were applied in reference to canon 984, no. 2, of the 1917 Code. For a commentary on this point in the older code, see Charles Augustine (Bachfen), O.S.B., *A Commentary on the New Code of Canon Law*, Book III, Vol. 4 (St. Louis: B. Herder Book Company, 1920), 4:481. Digitized by LLMC Digital.

from the partially disabled, emphasizing that the hearing and speech-impaired (unlike the deaf and mute) are not automatically excluded from ordained ministry.<sup>81</sup> However, the tract also poses a number of cases in which the cleric's disability developed after ordination. Can a blind priest celebrate the Eucharist? Can a mute priest, in emergency circumstances, administer the Eucharist to others? Can a deaf priest serve as a confessor, if no one else is available? The answer to all these questions is "yes."<sup>82</sup> Furthermore, while disabled clerics cannot become prelates, they do not lose their rights to vote in elections of prelates (e.g., religious superiors).<sup>83</sup> Clerical identity remains, even when disability restricts the ordinary exercise of ministerial or administrative roles.

When considered as a whole therefore, Diana's collection of cases reflects a broad recognition within seventeenth century Roman Catholic casuistry of the capacities of the mute, deaf, and blind to participate in the life of both the ecclesiastical and civil communities. Implicit in this analysis is an assumption that all persons share the responsibility to contribute to the common good. As a result, while particular disabilities may influence the form of a person's participation in the common good, they do not supersede this basic human vocation.

### *The Ecclesiastical Responsibilities of the Mute, Deaf, and/or Blind*

If Diana's tract provides evidence that seventeenth century casuistry recognized the capacities of the mute, deaf, and blind, it also demonstrates that such casuistry emphasized the ecclesiastical responsibilities of the disabled. One striking case asks whether the duty to "hear" mass on festival days applies to deaf-mutes who are

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<sup>81</sup> Diana, *RM* 5, 167 (resol. 22). According to Diana, the case of the blind is more complex, since both the completely blind man and the man who has lost one eye (e.g., to injury) are deemed irregular, although the man who has lost his sight in one eye is not. The loss of an eye (as opposed to the loss of vision in an eye) prevented candidates from meeting the standards for acceptable physical appearance required of potential clergy. Regarding these regulations, see the commentary mentioned in the previous footnote and R.M. Helmholtz, *The Spirit of Classical Canon Law* (Athens: University of Georgia Press, 1996), 64-65. See also the discussion from Aquinas's commentary on Lombard's Fourth Book of Sentences that appears in St. Thomas Aquinas, *Summa Theologica, Supplement*, q. 39, art. 6.

<sup>82</sup> Diana, *RM* 5, 166-167 (resols. 17-19). Diana returns to the case of the visually impaired priest and the Eucharistic celebration in *RM* 9, 344 (resol. 30). Here, he mentions his advice to a priest experiencing double vision.

<sup>83</sup> Diana, *RM* 5, 166 (resol. 13). Diana also discusses the debated case of religious appointed as visitor (i.e., as a travelling inspector of his community's houses and ministries) who loses his eyesight while these responsibilities are ongoing (Diana, *RM* 5, 167 [resol. 20]). In a later volume, he addresses a related case regarding the rights of a blind religious to intervene in a general chapter. See Antonino Diana, *Resolutionium moralium pars decima...* (Venice: Apud Franciscum Baba, 1652), 430-431 (resol. 45). Hereafter, *RM* 10.

also blind. While the reader might expect a negative answer, given the tract's denial of the capacity of such persons for marriage, Diana does not cite a single author who argues that they are not obliged to attend mass.<sup>84</sup> The precept does not require one to "hear" mass in the literal sense, he explains. There are circumstances in which mass-goers without any hearing impairment will be unable to perceive the spoken words, as for example, if they are present during a priest's private mass or during a large, crowded celebration.<sup>85</sup> Those who are mute, deaf, and blind simply share the obligation to attend mass incumbent upon other Christians.

Diana and his sources also agree that those who are mute (including the deaf) have an obligation to confess through nods and gestures, assuming that they are capable of doing so.<sup>86</sup> A more controversial question is whether mute persons who are able to write are obliged to put pen to paper so that they can make an integral confession. Here the experts are divided. On the one hand, when such an important precept of the Church is at stake, writing down sins that one already remembers is not a particularly arduous task. (In fact, presenting a written list to one's confessor is likely to arouse less shame than reciting the same list out loud.) On the other hand, writing sins down risks their accidental public exposure. There is always a chance that the penitent might lose the paper through accident or theft. The Jesuit Jacobus Granadus, whom Diana cites at length for the affirmative position, suggests that penitents protect themselves by writing their sins on one sheet of paper, and the corresponding numbers of these sins on another, apparently, so that content of the confession does not become apparent until the two pages are aligned. After the confession is finished, the confessor is to destroy the pages immediately!<sup>87</sup>

Yet it is precisely the risk of inadvertent revelation that leads other thinkers to conclude that literate mutes have no obligation to confess in writing. The precept of the Church does not require annual *public* confession. Writing is a medium susceptible to publicity, should the text fall into the wrong hands. Ergo, written confession is not obligatory for mute persons capable of employing this means. Diana calls both positions probable (i.e., defensible), although he seems inclined to the negative view.<sup>88</sup>

These arguments suggest an intriguing calculus about the obligations of the disabled. In respect to the basic duty to confess

<sup>84</sup> Diana, *RM* 5, 164 (resol. 8). On marriage, compare resols. 9 and 10. Note, however, the range of opinions in *resolutio* 10.

<sup>85</sup> Diana, *RM* 5, 164 (resol. 8).

<sup>86</sup> Diana, *RM* 5, 162 (resol. 3).

<sup>87</sup> Diana, *RM* 5, 162-163 (resol. 4).

<sup>88</sup> Diana, *RM* 5, 162-163 (resol. 4). Diana tends to end with the opinion that he regards as more persuasive. However, he gives no explicit endorsement of either position in this case.

annually, the mute are like other Christians, even though this requires them to use an alternative means (i.e., nodding and signs). However, if the means in question—in this case, writing—creates an excessive risk or burden, it is not required, even though writing *per se* is not usually onerous and the clarity of a written confession will exceed the intelligibility of a confession made through gestures. This conclusion suggests that, while disabled persons share basic Christian obligations, and even have a duty to pursue them by alternative means, they have no obligation to pursue them by heroic means.

Diana invokes the obligation of deaf-mutes to confess through signs as a precedent for solving another case—one that he reports that he has not found debated among the doctors. Can mute persons who were born deaf receive the Eucharist throughout their lives (i.e., at times other than when their imminent death is expected)?<sup>89</sup> Diana precedes his analysis by considering a narrower case regarding deathbed communion for persons with these disabilities. Here, he quotes without commentary several paragraphs from Jacobus Marchantius, who advocates administering Viaticum to those born deaf, but hesitates to give them the Eucharist under ordinary circumstances. The problem is again one of communication: how can a pastor be sure that a person who has never been able to hear a teacher or a preacher grasps the mystery of the sacrament sufficiently? Marchantius recognizes both theological and practical objections to this argument, including an appeal to the effects of the grace conferred in baptism and the impact of witnessing others' reverence for the Eucharist. As a pastor, he had seen a deaf-mute parishioner's gestures of devotion during the consecration and had concluded that this person perceived the Eucharistic mystery, at least in some limited way. Yet, when the parishioner asked to receive the sacrament, Marchantius hesitated to agree, especially since earlier pastors had refused. It was simply too difficult, he explains, to judge whether the parishioner's disposition, reverence for the sacrament, and understanding of the Church's command were sufficient.<sup>90</sup>

Diana, by contrast, regards administering the Eucharist to lifelong death-mutes only on their deathbeds as far too restrictive. For those born deaf who can read and write, the issue is simple: such persons have a means to learn about the sacrament and to express their comprehension of basic Christian doctrine. However, Diana believes that a pastor acts prudently in administering the sacrament to the illiterate as well. Theological consensus holds that deaf-mutes must confess their sins through signs and gestures, if they are able to do so. If those born deaf are required to confess, it must be because they can learn what they need to know in order to make good confessions. What

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<sup>89</sup> Diana, *RM 5*, 163 (resol. 7).

<sup>90</sup> Diana, *RM 5*, 163 (resol. 6).

a penitent needs to know about sin, conversion, and satisfaction is no less challenging than Eucharistic theology. In practical terms, it is easier to teach the disabled to observe the Eucharistic fast than to instill sorrow for their sins. Therefore, Diana argues, if those born deaf are capable of confession, they must be capable of receiving the Eucharist as well.<sup>91</sup>

Diana finds a second precedent for his conclusion in the treatment of the intellectually disabled. There is no blanket denial of the Eucharist to the intellectually impaired, so there is no logical reason to exclude those born deaf, who may approach the sacrament with greater understanding. (Earlier in the argument, Diana had acknowledged the mental acuity of many deaf-mutes, as evidenced by their ability to communicate through signs.) While he does not invoke the term *justice* explicitly, Diana does make the inclusion of one group of disabled persons the warrant for inclusion of the other.

In both claims, Diana's method is consistent with Jonsen and Toulmin's explanation of the structure of casuistry, in that he solves one case by comparing it to another, more settled case resolution.<sup>92</sup> However, it is important to notice the difference between the two precedent cases (i.e., confession through signs and Eucharist for the intellectually disabled). The obligation to confess through signs is one of the cases that the tract considers directly, even though the *resolutio* indicates that there is no controversy regarding this duty. By contrast, the tract never asks whether the intellectually disabled should receive the Eucharist—this is simply a practice of the Church that is taken for granted. The intellectually disabled are a foil for an argument, rather than a subject of analysis within the tract as such.<sup>93</sup> Diana mentions them here only to bolster his defense of administering the Eucharist to deaf-mute Christians.

Finally, Diana's tract includes several cases about the continuing responsibilities of clergy and religious whose disability developed after their ordination or religious profession. All concern the ongoing duty to recite the divine office (also known as the liturgy of the hours) in the face of deafness or blindness.<sup>94</sup> This was an important practical question for those holding Church offices to which an income was attached, since the Fifth Lateran Council had established deprivation of one's revenues or even loss of such an office (i.e., a benefice) as a penalty for neglecting these prayers of the Church.<sup>95</sup> One can trace the

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<sup>91</sup> Diana, *RM* 5, 163-164 (resol. 7).

<sup>92</sup> Jonsen and Toulmin, *The Abuse of Casuistry*, 35.

<sup>93</sup> Diana, *RM* 5, 164 (resol. 7). Obviously, there is much to criticize in the description of the intellectually disabled in this passage—not least the racist association of intellectual weakness with certain “Aethiopes”!

<sup>94</sup> Diana, *RM* 5, 166 (resols. 14, 15, 16).

<sup>95</sup> See Fifth Lateran Council, Session 9, 5 May 1514, *Bulla reformationis curiae*, sect. “Reformationis curiae et aliorum,” in *Decrees of the Ecumenical Councils*, Vol. 1,

popular interest in the issue by noting how often Diana returns to these cases in various installments of the *Resolutiones morales*. His consideration of blindness and the liturgy of the hours begins as a side issue to a different case in Part II, before he posits a specific case on the topic in Part IV. The tract in Part V considers both blindness and deafness and the obligation to recite. Issues related to the divine office and both disabilities appear again in Parts VII, IX, and X.<sup>96</sup> (In the tenth volume, Diana mentions that he had recently been involved in a great argument with a curial official over the responsibilities of the blind regarding these prayers of the Church.)<sup>97</sup>

Within Diana's treatment of these cases, the questions concerning the responsibilities of the deaf are primarily theoretical, while the questions regarding those of the blind are practical. Since a deaf cleric or religious can still read and speak, such a person remains capable of reciting the prayers and readings, and Diana has no doubt that he or she has obligation to do so.<sup>98</sup> The theoretical question concerns religious who recite the offices in common. Does a person who cannot hear the community's responses really participate in *choir*? Is hearing as well as speaking part of the essence of this ministry? Diana believes that it is not, but, in Part IX, he cites an argument for the other position at some length, describing it as probable, the same classification that he applies to his own conclusions.<sup>99</sup> In this case, however, what is at stake is how the deaf religious's recitations should be interpreted, not whether he or she should perform them.

By contrast, Diana's questions about the cleric who has lost his sight are practical, and he develops them in greater detail in later volumes of the *Resolutiones morales* than in this tract from Part V.<sup>100</sup> Clearly, Diana argues one can have no obligation to read what one cannot see. Because parts of the office change from day to day, the blind person will be unable to recite the entire office from memory. On the other hand, if he has been reciting the office for years, it is quite likely that he has memorized parts of it, such as the Psalms. Conceivably, the blind person could recite the divine office with a friend, who would read the lessons and prompt him, if necessary, on the Psalms. Is there an obligation to recite what one can from memory,

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*Nicaea I to Lateran V*, ed. Norman P. Tanner, S.J. (London: Sheed and Ward, 1990), 623. For a definition and explanation of the concept of a benefice, see Joseph Bergin, *Church, Society and Religious Change in France, 1580-1730* (New Haven: Yale University Press, 2009), 54-55.

<sup>96</sup> Diana, *RM* 2, 14 (resol. 43); Diana, *RM* 4, 87 (resol. 11); Diana, *RM* 7, 230-231 (resols. 3 and 6); Diana, *RM* 9, 342-343 (resol. 28); and Diana, *RM* 10, 430-431 (resol. 45).

<sup>97</sup> Diana, *RM* 10, 430-431 (resol. 45).

<sup>98</sup> Diana, *RM* 5, 166 (resol. 15).

<sup>99</sup> Diana, *RM* 9, 342 (resol. 28).

<sup>100</sup> The short discussion in this tract appears in Diana, *RM* 5, 166 (resol. 16).

if blindness makes it impossible to recite the whole? Is there an obligation to bring in a friend to assist with the recitation?<sup>101</sup> The arguments on both sides involve this question: are these alternative means to fulfill the Church's precept or are they excessive burdens upon the blind? The latter is not required. Antonio Escobar, whom Diana cites at some length in his return to this question in Part IX, uses the terms *ordinary* and *extraordinary means* [*mediis ordinariis ... extraordinariis*] to make this distinction.<sup>102</sup> Thus, the arguments about the responsibilities of the blind ecclesiastic parallel those concerning the deaf-mutes and confession in writing.

The tract "On the Mute, Deaf, and Blind" thus supports the claim the seventeenth century Roman Catholic casuistry recognized, and indeed, insisted upon the ecclesiastical responsibilities of the disabled. In a sense, this conclusion flows logically from the tract's acknowledgement of their capacities, since obligation presupposes the possibility of moral agency. However, the tract also highlights a useful principle for evaluating the options theoretically available to the disabled in fulfilling their obligations, i.e., the distinction between an alternate means and an excessively burdensome means. If casuists like Diana acknowledged the capacities and emphasized the ecclesiastical responsibilities of the disabled, they also recognized that their circumstances raised difficulties distinct from those associated with conventional forms of Christian practice.

#### *Accommodations for the Mute, Deaf, and/or Blind*

Interestingly, the tract devotes much less attention to accommodations for disabled persons than to their capacities and responsibilities. Regarding the ecclesiastical sphere, Diana considers three distinct cases. In the first, he simply reports decisions of central Church authorities. *Resolutio* 14, which discusses the financial rights of deaf or blind canons unable to participate in choir, had been settled in the canons' favor by precedents established in the Sacred Congregation on the Council.<sup>103</sup> A second case addresses the responsibilities of a confessor toward a deaf penitent. Here, Diana's source indicates that the confessor should administer the sacrament in a private part of the Church (since the penitent may have less skill in moderating his/her voice than a hearing person) and should abbreviate his interrogations to protect the penitent from fatigue.<sup>104</sup> Yet perhaps

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<sup>101</sup>See Diana, *RM* 7, 230 (resol. 3); Diana, *RM* 9, 342-343 (resol. 28); Diana, *RM* 10, 430-431 (resol. 45).

<sup>102</sup>Diana, *RM* 9, 343 (resol. 28). While we typically associate this distinction with medical interventions, it had broader applications in the Early Modern Period. See Julia Fleming, "When 'Meats Are Like Medicines': Vitoria and Lessius on the Role of Food in the Duty to Preserve Life," *Theological Studies* 69, no.1 (2008): 99-115.

<sup>103</sup>Diana, *RM* 5, 166.

<sup>104</sup>Diana, *RM* 5, 163 (resol. 5).

the most striking ecclesiastical case involves the denial of a need for an accommodation, specifically regarding the administration of Extreme Unction to those born mute, deaf, or blind. The question that Diana poses is this: since such persons have never used their senses in a sinful way, why anoint their ears, eyes, etc., as death approaches?<sup>105</sup> Diana's sources point out that the disabled share the same internal powers as those able to see and hear: sin comes from the misuse of these internal capacities, not from the eyes or the ears *per se*. Like other Church members who can see and hear, those born deaf or blind are capable of sin and need divine mercy in the face of death. Their reception of the sacrament requires no special accommodation, since it reflects their human condition rather than their disability.

In his treatment of secular accommodations, Diana mentions Roman law's concessions for some deaf, mute, or blind persons as so-called *miserabiles personae* under the Code of Justinian, a status that allowed them special flexibility regarding the tribunals in which their cases were tried, as well as immunity from certain civic obligations.<sup>106</sup> Both sets of benefits accrue to the completely blind and deaf, as opposed to those who are only partially disabled.<sup>107</sup> Diana also discusses whether deaf-mutes and the blind are subject to ordinary punishments for crimes and to torture to elicit their confessions.<sup>108</sup> His authorities agree that deaf-mutes, assuming they are not also intellectually disabled, can be interrogated and can be required to respond to their questioners through signs or in writing. A literate deaf-mute can even be tortured to obtain a confession, if there is sufficient evidence. However, an illiterate person's confession made through signs requires corroborating testimony, given the risk of mistakes in its interpretation.<sup>109</sup> While Diana's sources conclude that a blind person can confess to and suffer punishment for murder, the Theatine makes torture of the blind the subject of a separate resolution, where he asserts that they are immune from such coercion. Perhaps because this is a matter of secular law, Diana simply points his reader to his source on the question (the jurist Nicola Gizzarelli) without

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<sup>105</sup> Diana, *RM* 5, 165 (resol. 11). Diana appears to posit this as a hypothetical question, since he cites no author opposed to administering the sacrament in the conventional way.

<sup>106</sup> Diana, *RM* 5, 170, 171 (resols. 30, 33). For the text from the Code of Justinian, 3.14, see S.P. Scott, ed., *The Civil Law, Including the Twelve Tables, The Institutes of Gaius, The Rules of Ulpian, The Opinions of Paulus, The Enactments of Justinian, and the Constitutions of Leo*, 17 volumes (Ohio: The Central Trust Company, 1932), 12:280. See also Giovanni Maria Novario, *Praxis novissima et amplissimus, absolutissimusque tractatus de electione, et variatione fori, ... pars prima* (Venice, Apud Paulum Balleonium, 1670), 46. Digitized by Google.

<sup>107</sup> Diana, *RM* 5, 170, 171 (resols. 30, 33).

<sup>108</sup> Diana, *RM* 5, 170-171, 172 (resols. 31, 37).

<sup>109</sup> Diana, *RM* 5, 170-171 (resol. 31).

explaining why the blind deserve greater accommodation than the deaf.<sup>110</sup>

Diana's brief discussion of these accommodations raises as many questions as it answers, but it also supports the argument that the tract approaches the disabled primarily as community members, whose special circumstances may or may not require adaptations in standard practice.<sup>111</sup> The subtext for this analysis is clearly the status of the disabled within their communities, whether as Christians in need of anointing at the time of death, or as subjects eligible for certain protections under civil law.

### CONCLUSION: IMPLICATIONS FOR THE PRESENT

The preceding analysis has focused upon situating Antonino Diana's tract "On the Mute, Deaf, and Blind" within its historical context, and upon interpreting this text as evidence for several general conclusions regarding the approach to persons with these disabilities in seventeenth-century Roman Catholic casuistry. Diana's text is most useful to modern Roman Catholic ethics as an illumination of its history and as evidence of interest in ethical questions surrounding these disabilities in Early Modern Catholicism.

However, any historical investigation is almost inevitably, the product of questions about the present. Thus, I would like to end the paper with three very brief observations about the implications of Diana's tract for contemporary reflections on disability. My suggestions are intended only to spark a continued dialogue between contemporary disability ethicists and Diana's Early Modern contribution to the subject. These observations concern the significance of individual circumstances and histories for disability ethics, the distinction between an alternative means and an extraordinary means in evaluating the responsibilities of the disabled, and the value of the situation of the disabled as a lens for theological analysis.

If one can draw any general conclusion from Diana's collection of cases, it is surely that circumstances and personal histories play a particularly important role in addressing ethical questions regarding the disabled. The tract is not a study of disability *per se* but of situations involving persons with three particular disabilities (or

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<sup>110</sup> Diana, *RM* 5, 171, 172 (resols. 31, 37). Gizzarelli's analysis concerns a defendant blind from birth, in a case involving the debasement of coinage. See Nicola Gizzarelli, *Aureae decisiones sac. reg. cons. Neap. Nicolai Antonii Gizzarelli ...* 2 vols. (Naples: Ex typographia Francisci Savii, 1632), 1:108-110. Digitized by Google.

<sup>111</sup> It would be interesting to know, for example, why Diana includes these last cases regarding the rights of the disabled under civil law. Is this an illustration of his thoroughness? Is the information intended to aid pastors and families in acting as advocates for the disabled? Does he intend to instruct the confessors of magistrates, who would have encountered the disabled in their courts?

combinations of the three). In most cases, the answer to the ethical question under consideration depends upon factors other than the disability itself, including the subject's intelligence, education, and facility in communicating. How the disability fits into a person's history is also significant, especially in terms of his/her age and status at the time when the disability developed. Many cases consider the degree of the subject's disability, since losses of vision, hearing, or the ability to speak fall along a continuum. Diana's cases remind us, therefore, that the disabled are *persons* affected in various ways and at different stages in their lives, by disabilities, to which they respond in light of their individual characters and through the resources they either have or are in a position to acquire. Ethical reflections on disability must not lose sight of this personal context.

Diana's tract also highlights an important ethical principle for addressing some cases involving disability: the distinction between an alternate means and a heroic means. As his analyses of confession in writing for the mute and recitation of the canonical hours for the blind reveal, Diana argues that the disabled need not use excessively burdensome means to fulfill their obligations, even though they can reasonably be asked to use alternative means. One can imagine some obvious applications of this principle for contemporary issues surrounding disability accommodations. How can a state, for example, best enable disabled persons to provide proof of identity? How can a government agency or employer verify disability without imposing excessive burdens upon the claimant? How should a professor respond to a disabled student whose needs exceed the limits of institutionalized accommodations? Such examples suggest that the distinction between an alternate means and an overly burdensome means may prove to be a useful tool for contemporary reflections on disability, just as it served the needs of Early Modern casuists.

Finally, Diana's tract reminds us that the experience of the disabled can serve as a lens for theological reflection, especially about the meaning of Christian practices. In considering the anointing of senses for the disabled within Extreme Unction, the obligation to "hear mass" for those both deaf and blind, or even the validity of a tandem baptism performed by a mute person (who pours the water) and a physically incapacitated person (who recites the formula), Diana and his sources are really analyzing the essence of these sacraments, in light of the liminal experiences of the disabled.<sup>112</sup> Theological reflection on foundational Christian practices can only benefit from looking through this alternative window into their meaning.<sup>113</sup>

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<sup>112</sup> Diana cites Aquinas as a source for the baptism case, see *RM* 5, 161-162 (resol. 2).

<sup>113</sup> See, for example, Shane Clifton, "Theodicy, Disability, and Fragility: An Attempt to Find Meaning in the Aftermath of Quadriplegia," *Theological Studies* 76, no. 4 (2015): 765-784.

Diana and his colleagues lived in an age that emphasized the catechesis of ordinary Christians, and accordingly gave great weight to explicit knowledge of dogma.<sup>114</sup> The controversies over administering adult baptism and Eucharist to those born deaf reflect a tendency to conflate faith with the acquisition of doctrinal knowledge. This is true even in the arguments favoring sacramental administration to adults born deaf, since some of Diana's sources appeal to special revelation to get around the problem of familiarity with Christian teachings. This emphasis upon the understanding of doctrine also explains the sharp distinction in some case resolutions between those who are both intellectually and physically disabled and those with physical disabilities alone. Yet Diana's sources occasionally acknowledge that faith can be nurtured in Christian practice and experience rather than verbal catechesis, especially when they see evidence of grace in wordless gestures of reverence and contrition. This insight suggests an approach to the experiences of the disabled—especially the intellectually disabled—that escapes the tract's narrow association of faith with knowledge of doctrine. In the face of contemporary projections regarding Alzheimer's diagnoses, interpreting faith in the context of disability will be a challenge shared by this century's moral theologians. Perhaps Diana's tract can suggest both a salutary warning against and an intriguing alternative to the conflation of faith with doctrinal familiarity.

Diana's tract, therefore, is a historical artifact, but it is not simply a historical curiosity. While recognizing its limitations, perhaps we can draw upon this seventeenth-century work as one point of departure for our own ethical analyses, especially in terms of its sensitivity to the varied histories, circumstances, and experiences of disabled persons. In its consideration of the capacities and ecclesiastical obligations of individuals with particular disabilities, the tract reminds us that moral agency is by no means limited to those who can speak, hear, or see. To be a moral agent, with or without disabilities, is to face ethical challenges and to stand in need of grace. Diana acknowledges this human experience of finitude and temptation in the tract's final sentence: "May God grant that we, in respect to speaking, hearing, and seeing evil, may become mute, deaf, and blind."<sup>115</sup> **M**

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<sup>114</sup> See, for example, Robert Bireley, *The Refashioning of Catholicism, 1450-1700: A Reassessment of the Counter Reformation* (Washington, DC: The Catholic University of America, 1999), 96-104, 121-125; Bergin, *Church, Society and Religious Change in France*, 277-309; and Patrick J. O'Banion, *The Sacrament of Penance and Religious Life in Golden Age Spain* (University Park, PA: Pennsylvania State University Press, 2012), 55-57.

<sup>115</sup> Diana, *RM* 5, 172 (resol. 37). The translation is my own.