

JURIDICITY IN THE CHURCH

The existence of law is a phenomenon that has always gripped the Church and is a perennial source of debate within the ecclesiastical circle. The history of the Church, in fact, reveals a series of periodic antagonistic clashes between authority and liberty, charism and institution, law and grace, etc.¹

This state of debate and uncertainty with regards to the Church's real structure and of its law has been brought over to our century. The Code of Canon law published in 1917 hailed in both Catholic and non-Catholic circles alike as a masterpiece of legislative genuise, did not help resolve the question of the necessity for and the role of law in the life of the Church.

The Perennial Problem

The problem of ecclesiastical law's existence in the life of the Church is a burning question even in the present age. The tension between authority and freedom, grace and law, charism and

¹ Since it is not within the scope of this treatise to treat this matter in detail, the readers are referred to the following works among others: A. DE LA HUERGA, O.P., "*La Iglesia de Caridad y la Iglesia de Derecho*", *La Postestad de la Iglesia*, ed. J. FLORES (Barcelona, 1960), pp. 1-49; J. SALAVERRI DE LA TORRE, S.J., "El Derecho en el Misterio de la Iglesia", *Investigación y Elaboración del Derecho Canónico*, ed. J. FLORES (Barcelona, 1956), pp. 1-54; J. MA. ALONSO, C.M., "Juridismo y Caridad", *XII Semana Española de Teología* (Madrid; 1963), pp. 459-560; M. F. COUSELO, "Errores Teológicos Acerca de la Naturaleza Jurídica de la Iglesia y su Derecho Público", *XIV Semana Española De Teología*, (Madrid: 1964), pp. 3-73; J. G. DAVIES, *The Early Christian Church* (N.Y.: Holt, Rinehart & Winston, 1965), pp. 69-70, etc.

institution forever present in the pilgrim Church is felt more acutely today than it has never been before. The Code did not solve the problem. On the contrary, scarcely a decade after its promulgation, defects in its language, syntax, arrangement, etc. were already noted.² As time went on, even its very contents — the relevance of the norms it contained was itself put into question. For it cannot be denied that although the Code of 1917 was hailed as a masterpiece by both Catholics and Protestants alike during its promulgation, the enthusiasm with which it was received soon died out.

The Code was published to precisely update and consolidate the numerous legislations of the Church, but as is true in all human undertakings, defects and imperfections could not be avoided within its confines. Human elements, especially in the field of law is a reality one has always to contend with.

Added to this was the particular character of the period during which the publication and subsequent promulgation of the Code was realized. After the Industrial Revolution especially after World War I, the world found itself in rapid acceleration in all fields of human endeavor. This was especially felt in the intellectual field. Philosophy was becoming more and more unrestrained. The love for free discussion and debate nurtured the growing awareness and desire for freedom in everything. This led to the formation of a conscience of universality with its complement of better discerning diversity.

In the wake of this intellectual upheaval, authority and law were not spared. The existence and relevance of authority in the Church, its rules and regulations, its central organs, etc. were questioned and in the ensuing discussion the problem of authority and law in the Church was dissected to a point of near anarchy. Thus, even if the original intentions of the discussion were legitimate, how to achieve participated and shared responsibility in the exercise of authority in the Church, passions and historical contingencies often times led the upper hand, and the resulting overall effects left the questions half-resolved if at all.

² Cf. BIBLIOPHILIUS, "Post Annos Decem a Codicis IC Applicatione" *Jus Pontificium*, VIII (1928), pp. 137-243.

The Second Vatican Council came and measures were drafted to remedy the situation. In the words itself of John XXIII who convoked it, the crowning glory of the Council would be the revision and "aggiornamento" of the present Code. Vatican II brought to force several innovations. The new ecclesiastical approach and orientation inaugurated by the Council had many consequences. It led to a re-consideration once again of the question of law's place in the Church.

The theological guidelines indicated in the many conciliar documents and decrees point out to a restructuring not only in the mode of viewing the mystery of the Church, but also in the manner of considering the role of law in the same. The Council nevertheless, left open unresolved many ecclesiological questions among which is the theological justification for the presence of the juridical factor in the Church. These and the present cult for independence and liberty as well as the contemporary existentialist milieu characterized by antagonism towards all sorts of authority has placed the problem of law's relevance now and again under question as never before.

State of the Question

From a simple historico-sociological question the law's existence in the Church has become a theological problem brought about mainly by the new dimensions opened by Vatican II and the current trend among ecclesiastical authors to view the matter from its more profound theological roots. At present it is commonly conceded that the question will never be resolved unless some pre-suppositions are cleared from its very fundamentals: the theological compatibility, consecutivity and constitutivity of the juridical factor in the mystery of the Church itself. In other words, the problem revolves around the question whether juridicity is a necessary part of the Church, whether it is constitutive of its integral reality and whether it is compatible with the supernatural dimension of the same.

A solely apologetic approach to the question of ecclesiastical law's role and place in the ecclesial community is not enough. The problem of the existence of a juridical aspect and consequently of law properly and autonomously of the Church has to be resolved

within the context of the Church's true nature, i.e., theologically, ecclesiologically.

The right approach and answer to this problem will put to rest once and for all the apparent clash between institution and charism in the Church. Our purpose in this article will not be to present a final or definitive solution to the *why* of the problem. We shall limit ourselves rather to offering guidelines according to *how* the question could be resolved. In the process we shall review the different opinions and views advanced by various authors on how to resolve the question. This way, we hope to find a safe and convenient path toward which to proceed.

Attempts at a Solution and Their Appraisal

Currently, there are various theories advanced by contemporary theologians and canonists to explain the presence of the juridical aspect in the Church. The various opinions offered can be classified under a double heading: *The charismatic view* and what may be termed the *institutionalistic approach*. By charismatic view we mean the opinion which regard the Church as purely spiritual structurally sans laws. Ecclesiastical institutions and precepts if present are just products of historico-sociological necessities latent to the fact that the Church is immersed in human history as she journeys towards her eschatological end.

To this group we also include the exponents of Situation Ethics and the Catholic authors both clerics and lay alike who likewise propose the abolition of all norms claiming that love alone unhampered by law should rule Christian life. Hence, proponents of this view can further be classified under two headings: those who indeed confirm the existence of a juridical Church with laws but regard them as posterior to the constitution of and external to the Church. For this latter who we call *charismatico-relativists*, the Church's juridical structure is relative and ecclesiastical norms are merely accidental. And of course, as earlier indicated there are those who believe that the Church is purely invisible without external institutions and laws. This latter group we call *charismatico-absolutists*.

The institutionalistic approach on the other hand, support the existence of a juridical factor in the Church natural and neces-

sary for its very essence. Proponents of this theory explain the fact doubly: philosophico-sociologically and theologically.

THE CHARISMATIC-RELATIVISTIC APPROACH

Typical of the charismatic-relativistic view can be gleaned from Hans Küng's ecclesiological theory as well as from the basic postulates of Neuman. Though both coincide in attributing the Church's juridicity to sociological influence, their mode of explanation is diverse.

1. *Hans Küng*

Hans Küng observes that the Church as a fellowship of faith, and a community of believers abhors all references regarding the existence of a

particular clan or caste within the fellowship of the faithful. On the contrary, all believers, in fundamental equality, are the Church, all members of the people of God.³

They are "elect", "saints", "disciple", "brethren". In the Church, therefore, there is no place for a select group or caste charged with ruling over the others. In fact, authority and ecclesial "office" in the sense of power to govern the Church authoritatively is denied by Küng.⁴ All believers not just a chosen few or group enjoy the priestly power of Christ since they all share in the universal priesthood of the same Christ. Due to this they have direct access to God and no one can take away this privilege and the autonomy and freedom guaranteed him.

Basic Postulates

To get a thorough grasp of what Küng's idea of the Church is and be able to discover its basic structure — whether charismatic or juridical — some preliminary postulates should be understood. In fact, Küng's ecclesiological theory and many of

³ H. KÜNG, *The Church*, trans. Ray and Rosaleen Ockenden (London: Search Press, 1971), p. 270. In p. 371 of the same work, the author further illustrates that there can be no distinction among the members of the Church since as the body of Christ and a spiritual building, it means that in the Church all have their own dignity and function and in the same all believe and not just a few chosen mediating figures are filled with the Spirit, in short all are equal.

⁴ Cf. *Op. cit.*, p. 406.

its implications can only be formed if one follows his pet theory that the Church has an "essence" contrasted with but encountered in its various historical "forms"; and that the true "nature" of the Church which though found always in conflict with its "un-nature" is nevertheless dependent on this latter for its existence.

The "essence" of the Church is "a constant factor in the various changing historical images of the Church, something which survives however much the history of mankind, of the Church and of theology may vary".⁵ This "essence" is not derived from the Church itself but is "drawn from the permanently decisive origin of the Church."⁶ One curious thing with this "essence" is that it is revealed only in change, for its identity exists in variability, its continuity only in changing circumstances, its permanence only in varying outward appearances and more explicitly, *the real essence of the real Church is expressed in historical forms.*⁷

The "essence" and "form" of the Church, therefore, are inseparable. And although it is important to distinguish one from the other in order to understand both, any distinction between the two can only be "conceptual, not real distinction. There never was, in fact, an essence of the Church by itself, separate, chemically pure, distilled from the stream of historical form."⁸

Since, however, the Church's "essence" is found constantly in its different changing historical "forms," it is inevitable that the "form" conditioned as it is by history could cause the Church's image to be distorted in the course of her evolution. For this reason, Küng envisages the existence of "un-natures" of the Church besides its genuine "nature". The "un-nature" of the Church, though in conflict with the true "nature" of the same Church, depends on the latter for its existence. The "un-nature" represents "the illegitimate as opposed to the legitimate side of the Church, the perversion of its true nature. They arise not from the will of God, but from the failings of the men who make up the Church."⁹

⁵ *The Church*, p. 4.

⁶ *Ibid.*

⁷ *Ibid.*, p. 5.

⁸ *Ibid.*

⁹ *Ibid.*, p. 28.

What are the "un-natures" of the Church and for that matter, what is the real "nature" of the same? Küng does not give a direct answer, but rather suggests that only the believer can have a grasp of the Church's genuine nature. It is only the believing Christian who can know the "nature" and "un-nature" of the Church, for the real Church is the object of faith.¹⁰

The Fundamental Structure of the Church

Since the Church is the object of faith, to define it in clearcut terms would be an exercise in futility. And precisely because the Church's "essence" though different from, emerges in historical "forms", and its nature, though always encountered with is nevertheless often clouded by its "un-nature", an objective appraisal of what the Church really is offers difficulties if not impossibility itself. Besides, the Church's "essence" is not an "abstract ideal situated in the celestial sphere of theological theory."¹¹ It is rather something to be believed. The real Church which is constant among all historical changes is the believing and believed Church despite its "un-natures".¹²

¹⁰ *Ibid.*, p. 30: "Admirers and critics of the Church alike must be aware that the men who, in a real sense, make up the Church are different from their fellows in the one vital respect: *they believe*. They declare themselves to be a *fellowship of believers*... Indeed, these believers consider that the Church as the fellowship of believers is misunderstood, or at least its fundamentals are not fully understood, by those who do not share their belief and their beliefs. The Church cannot be properly judged from outside, from the viewpoint of a neutral observer, but only from within by those who live in and with the Church."

¹¹ *Ibid.*, p. 19: "The 'essential' nature of the Church is not to be found in some unchanging platonic heaven of ideas, but only in the *history* of the Church. The real Church not only has a history, it exists by having a history. There is no 'doctrine' of the Church in the sense of an unalterable metaphysical and ontological system, but only one which is historically conditioned within the framework of the history of the Church, its dogmas and its theology."

¹² *Ibid.*, p. 39: "This then is the real Church: constant among all historical change, believing and believed despite its 'unnatures'. It is possible to live in the real Church. It is not an idealized Church which self-confidently claims to be more than it is and therefore cannot fulfill its promises, it is not a minimized Church which despises itself, claims to be less than it is and therefore cannot make any promises. A man can live in the real church, free from idealistic illusions and from depressing inferiority complexes, free to live in faith soberly and joyfully in the fellowship of believers."

For Küng, therefore, the Church as the object of faith is not something that can be categorized in definite metaphysical terms. And although it is both visible and invisible, it is *one* hidden Church precisely because it is believing and at the same time believed.¹³

The origin of the Church attests to this fact. Küng rejects the traditional doctrine that Christ initiated or at least started the foundation of a visible institutional Church during his life-time on earth. In His preaching and ministry, Jesus never addressed Himself to a select group separated from the mass of people. Even His act of singling out the Twelve was not a gesture towards consolidating a separate privileged group.¹⁴ It was rather a symbolic gesture to show the calling of Israel as a whole, the people of God. The Church, hence, in the sense of the chosen new people of God, is a post-resurrection phenomenon and started only *from the time of faith in the resurrection*:

As soon as man gathered together in faith, in the resurrection of the crucified Jesus of Nazareth, and in expectation of the coming consummation of the reign of God and the return of the risen Christ in glory, the Church came into existence.¹⁵

The Church as a post-resurrection reality is founded on faith. It is the community of God's chosen and believing people, and in no way a juridical community. This is clearly gathered when describing his ecclesiological theory, which he claims is:

¹³ *Ibid.*, pp. 37-38 passim: "The real Church is the Church we believe and yet visible; it is at once visible and invisible. Its visible aspects are therefore of a particular kind, having an equally essential invisible inner dimension. The decisive aspect of what is revealed remains hidden. The visible aspects of the Church are quickened, formed and controlled by the invisible aspect... The one Church in its essential nature and its external forms alike, is always at once visible and invisible. The Church which we believe is *one* Church: visible and invisible or rather hidden, at once. This is the Church which believes and is believed."

¹⁴ *Ibid.*, p. 72: "In the pre-Easter period, during his lifetime, *Jesus did not found a Church*. In his preaching and ministry Jesus never addressed himself merely to a select group separated from the mass of the people... What then of the founding of the circle of twelve? This too illustrates precisely not the singling out of the select few, but the calling of Israel as a whole. The twelve were to represent Jesus' call to the whole people of the twelve tribes and therefore to have the roles as judges in the time of eschatological consummation."

¹⁵ *Ibid.*, p. 73.

...distinct from the one-sided ecclesiology of a scholastic dogmatism which is too uncritical of its presuppositions and which would take Jesus, as having in the pre-Easter period, the intention of founding an organized Church (as envisaged for example by modern Catholic canon law) or indeed maintain that he did found it formally and juridically.¹⁶

The anti-juridical nature of Küng's Church can further be gathered from his theory of the Church as the people of God. Since all believers in Christ form the Church of the people of God, there is a basic equality among them.¹⁷ To distinguish between "clerics" and "laymen" in the Church would be a *clericalizing misconception*.¹⁸ The implications of this assertion cannot be over-emphasized. In a community where everybody is equal, where there is no distinction between governing and governed, no relations between members themselves towards a common purpose since all are equal and autonomous,¹⁹ juridical relations are certain to be absent.

¹⁶ *Ibid.*, pp. 77-78.

¹⁷ *Ibid.*, p. 25: "The Church is always and in all cases the *whole* people of God, the *whole* ecclesia, the *whole* fellowship of the faithful. Everyone belongs to the chosen race, the royal priesthood, the holy nation. All members of the people of God have been called by God, justified by Christ, sanctified by the holy Spirit. All members of the Church are equal in this. And all members of the people of God have been called by the message of Jesus Christ to faith, obedience and complete devotion in love; in this, too, all members of the Church are equal."

¹⁸ This assertion is arrived at after a historico-linguistic study of the word *clerus* from which Küng is able to affirm (*Ibid.*, p. 387): "From a theological point of view, then, '*clerus*' means the share in eschatological salvation which God gives to each individual believer in the communion of all believers. This share is to be understood not simply as a 'lot' but rather as a 'good thing' prepared for the believer of God. We must then conclude... that the particular 'share' (*clerus*) of the Lord is precisely not just the clergy, but the whole people of God; and Christ is the 'share' (*clerus*) not just for the clergy, but of the whole people of God. The '*clerus*' too, therefore, belongs to the whole Church, and not just to those who hold office in it..."

¹⁹ This personal autonomy is clearly manifested in Küng's affirmation (*Ibid.*, p. 373) that: "Every believer, as a member of the community, as a man among other men and on behalf of other men, has an ultimately direct relationship with God, which no human being, even in the fellowship can take away from him and no human, nor ecclesiastical authority, can disrupt. It is in this most intimate personal sphere that ultimate decisions between an individual and God are taken, as also between an individual and his fellow men. This is where God's grace makes direct contact with man, God's Spirit guides him. This is where he finds his ultimate freedom and his intimate responsibility. No one can judge, control or command

Authority and Freedom in the Church

To be able to understand more the structure of Küng's Church, one should go back to and not forget his basic postulate that the real nature of the Church can be traced only from the earliest account regarding the primitive Christian community. In this regard, he rebukes the exclusive tendency of Catholic ecclesiology to base its Church on the pastoral epistles and the Acts only. For Küng, an honest and genuine picture of the early Christian Church can be gathered only from "the oldest New Testamente document — earlier even than Mark or Matthew... the first letter to the Corinthians", along with the two other letters to the Thessalonians.²⁰

In the earliest Pauline letters,

original and detailed information about the external and internal ordering of the Church can be gathered. In the first letter to the Corinthians, there is no reference to either "elders" or "bishops," to ordinations or to the laying-on of hands. On the contrary, there is repeated reference to the "charismata" or "pneumatika" which is accordingly bestowed on each Christian to the measure of his faith. The same letter likewise contains long chapters about the charismatic structure of the Church.²¹

Küng further claims that charisms in the early Christian community were

everyday rather than fundamentally exceptional phenomena... various rather than uniform in kind, and... found throughout the Church rather than being restricted to a particular group of people.²²

In fact, he further adds, being of the "essence" of the Church, they are not phenomena

exclusive to the early Church, but present and contemporary ones; ...not peripheral phenomena, but central

the decisions which are made in this sphere of direct contract between God and man."

²⁰ *Ibid.*, p. 179

²¹ *Ibid.*, pp. 179-180; also: "By contrast, in the pastoral letters, which are among the latest New Testament writings, the Pauline view that each Christian has received the Spirit and his gifts is overlaid by a strongly emphasized theology of Church offices. The Spirit is given in ordination.

²² *Ibid.*, p. 188.

essential elements in the Church. Hence one can speak of a *charismatic structure of the Church, which includes but goes far beyond the hierarchical structure of the Church*.²³

The real nature of the Church, therefore, according to Küng, is essentially charismatic, in fact, a continuing charismatic one.²⁴

At this point, a logical conclusion would be for Küng to disregard outright its antithesis — an institutional juridical Church. This has not been the case, however. Nowhere in his work is there any outright denial of the Church's juridical aspect. And for logically obvious reasons. Following his theory of the Church's "essence" encountered in various historical "forms", it is easy to surmise that a juridically oriented Church is just one of the possible historical "forms" the Church can and did evolve into. And this is in fact the case according to Küng. Since the varying forms of the real *ecclesia* is consciously reflected in various ecclesiological expressions of the Church's image, historically the Church will have a different "form" according to different ecclesiological expressions conditioned by the age or epoch the *ecclesia* finds itself in. A distinct picture of the Church, for example, emerges from the ecclesiology of the primitive Church where the word "ecclesia" is scarcely used — the main concern being the role of God and Christ. The Church presented by an ecclesiology based on the popular philosophy of Roman stoicism is seen generally as a well-ordered community governed by laws.²⁵ The changes and variations in the historical "forms" of the Church

²³ *Ibid.* In this statement, Küng does not actually admit the hierarchy as is ordinarily understood in Catholic ecclesiology. For although he admits leaders in the Pauline Churches and for that matter in the Church in general, his idea of leadership is different. To quote him (*Ibid.*, p. 187): "The Charism of leadership in the Pauline Churches did not at all events produce a 'ruling class,' an aristocracy of those endowed with the Spirit who separated themselves from the community and rose above it, and rule over it. The entire New Testament carefully avoids using secular terms of office to describe function in the community (Ζοχή, ἡγεμονία, τέλος), because all of them express a relationship of rulers and ruled... The charisms cannot be subsumed under the heading of ecclesiastical office, but all Church offices can be subsumed under the charism."

²⁴ *Ibid.*, p. 181: "Rigorous theological investigation is needed to show how fruitful Pauline ecclesiology could be in the contemporary situation; in the present context it will help us to throw light on the continuing charismatic structure of the Church."

²⁵ *Ibid.*, pp. 7 ff.

between charismatic Church and institutional Church was quite pronounced. Thus, Küng cites explicitly the Church of Rupert of Deutz, Joakim of Fiore, etc., which regarded the legal constitution as relatively unimportant, as contraposed from the Church of the medieval canonists and St. Thomas Aquinas which stressed the legal and constitutional aspects as well as the power and authority of the clergy.²⁶

But Küng is rather a slippery theologian. To form a more complete picture of the structure of his Church, a closer examination of what he implicitly implies is indispensable. We have seen that in Küng's ecclesiology the individual's autonomy is uppermost.²⁷ This autonomy and personal self-sufficiency is even further enhanced when treating of the common priesthood of the believers.

Küng observes that in the Church, the *people of God*, all members even those who hold offices, are believers — for the Church must be seen first and foremost as a fellowship of faith.²⁸ Hierarchical titles and offices like bishops, priests and deacons are but products of historical evolution and have no foundation in Scriptures.²⁹ The Church as the fellowship of believers and the people of God abhors all references regarding the existence of

a particular class or caste within the fellowship of the faithful. On the contrary, all believers, in fundamental

²⁶ *Ibid.*, p. 9

²⁷ *Ibid.*, pp. 9-10, especially footnote 19.

²⁸ *Ibid.*, p. 363.

²⁹ H. KÜNG, *Why Priests*, trans. John Cummings (London: Collins Fontana Library of Theology and Philosophy, 1972), p. 29: "The New Testament shows that the word 'priests' — like 'ecclesiastic' and 'cleric,' as a special and exclusive term for anyone responsible for an ecclesial service — ought really to be dispensed with; as far as the New Testament is concerned, all believers are 'priests,' 'clerics' or 'ecclesiastics.' The term 'priestly ministry' applied not to all Christians, but only to those entrusted with a specific church service, misrepresents the situation recorded in the New Testament." On p. 26 of the same work, Küng affirms: "Even though different functions are mentioned in the New Testament, the question of an ecclesial office (ministry) never arises as a theme. Ecclesial 'office' is not a new Testament notion, but a problematic concept which emerged from later reflection."

equality, are the believers, in fundamental equality, are the Church, are members of the people of God. They all "elect," "saints," "disciples," "brethren". And hence, they are a royal priesthood.³⁰

Again, the Church as the *body of Christ* means that not a few especially distinguished members, but all members of the body of Christ are important and play their part. They have all their own dignity and their own functions, on the basis again of fundamental equality.³¹

And finally, the Church as a spiritual *building* means that

all believers, not just a few chosen mediating figures, are filled with the Spirit. All Christians are taught and led and supported by the Spirit directly without mediation, and they all are to live by the Spirit.³²

The Church as the people of God, the creation of the Spirit and the Body of Christ, is what for Küng constitutes the fundamental structure of the Church.³³

Since the members of the Church are basically equal and in the same there is no place for a select group or caste charged with ruling over the others, then authority is absent.³⁴ And if in the ecclesial community there are pastors in charge of overseeing the whole, their role should be seen more on the aspect of ministry and service, not in the context of authority and power.³⁵

All believers enjoy the priestly power of Christ since they all share in the universal priesthood of the same Christ. Due to this, they have direct access to God and no one can take away this

³⁰ *The Church*, p. 270.

³¹ *Ibid.*, pp. 370-371.

³² *Ibid.*, p. 371.

³³ Cf. *Ibid.*, pp. 107-262 for more details on this point.

³⁴ This implicit denial is explicitly expressed when Küng denies (*Ibid.*, p. 402) ... "ecclesial 'office' in the sense of power to govern the Church authoritatively" on three counts, namely, the absence of the monarchical episcopate in the Pauline communities which are to him the oldest; the absence of the office of the presbyter in the same communities, and the absence of ordination, or the laying on of hands to confer authority.

³⁵ *Ibid.*, p. 401: "Authority in the community is derived not from the holding of a certain rank, not from a special tradition, not from old age or long membership of the community, but from the performance of a ministry in the Spirit."

privilege and deny him the autonomy and freedom it guarantees him. More precisely:

Every believer, as a member of the community, as a man among other men and on behalf of other men, has an ultimately direct relationship with God, which no human being even in the fellowship can take away from him and no human, nor ecclesiastical authority, can disrupt. It is in this most intimate personal sphere that ultimate decisions between an individual and God are taken, as also between an individual and his fellow men. This is where God's grace makes direct contact with man, God's Spirit guides him. This is where he finds his ultimate freedom and his ultimate responsibility. No one can judge, control or command the decisions which are made in this sphere of direct contact between God and men.³⁶

If then *all* believers, Küng continues, "make sacrifice through Christ, this means that *all* believers have a priestly function, of a completely new kind, through Christ the one high priest and mediator."³⁷ He needs no specially annointed person to do this for him.³⁸ There is only one mediator Christ who is the Lord and all others are no more or no less than the witness and ambassadors of this one Mediator in whom God's decisive eschatological saving act occurred.³⁹ Hence, he concludes:

The abolition of a special priestly caste and its replacement by the priesthood of the *one* new and eternal high priest has its strange and yet logical consequence in the fact that all believers share in a universal priesthood.⁴⁰

³⁶ *Ibid.*, p. 373.

³⁷ *Ibid.*, p. 370.

³⁸ *Ibid.*, p. 438: "... all Christians form a priesthood in the real original sense of the word, and thus have direct access to God, are called to make spiritual offerings in their everyday lives and to exercise mediatory ministries on behalf of their brethren, and are empowered to share actively in baptism, the Lord's supper and the forgiving of sins. Those who are empowered to exercise a particular pastoral ministry in the Church are not, at least as far as the New Testament tells us, a separate caste of consecrated priests, as they often are in primitive religions. They do not act as mediators between God and the people by means of ritual actions which they alone can perform, representing the people before God in sacrifice, and representing God to the people through oracular statements and lawgiving. In the Church of Jesus Christ, who is the only high priest and mediator, all the faithful are priests and clergy."

³⁹ *Ibid.*, p. 369.

⁴⁰ *Ibid.*, p. 370.

In K ng's Church which is founded solely on faith, in its turn governed mainly through the freedom of the sons of God, where all are equal and enjoy power through the universal priesthood of believers, juridical relations cannot have a significant place.

Authority in the sense of the right to govern and direct towards the common spiritual goal is not recognized. Ordination or the anointing of special ministers to carry out hierarchical functions if admitted are not essential and do not belong to the Church's nature, for they are only a product of later historical advancement, although they can be regarded as legitimate.⁴¹ The apostles were not called by Christ to govern, but only to act as witness to His deeds and resurrection. They did not have successors, therefore, to perpetuate authoritative governing privileges, but only successors to their function as witness. And in this sense, not only a special exclusive group share it, but the whole Church, the fellowship of believers⁴²

All members of the Church, then, are equal and autonomous. They share in the power of Christ's universal priesthood and need no one in the fellowship of believers to direct them, guide them and control them in their direct relationship with God.⁴³ There is therefore no mutual relation among the believers in their quest

⁴¹ This apparent contradiction is one of those common affirmations in K ng's ecclesiology. When he affirms ordination to be legitimate he is viewing the question only as an *argument from fact*, for he affirms (*Why Priests*, p. 66) that "ordination (ordination to the priesthood) was not instituted by Christ since everyone knows that it is neither mentioned nor implicit in any Pauline text." He also says (*The Church*, p. 423) that "all this can be regarded as legitimate, because this was how things developed, this was the course the history the Church took. First of all a presbyterium arose in Jerusalem, and then this form of ordering the community spread to other communities, and even established itself, after Pauline time, in the Pauline communities; so that finally the exercise of any special ecclesiastical ministry in the Church became universally regarded as dependent on a special commissioning by men."

⁴² *The Church*, pp. 354-356.

⁴³ The Christian believer's independence from authority is further enhanced and his personal autonomy regarding his direct relations with God is assured in more affirmations (*Why Priests?*, p. 19): "... a Christian does not need the mediation of a priest in order to enter the inner-most sanctuary of his temple: that is, to reach God himself. On the contrary, he is admitted to the ultimate immediacy of God, which no Church authority can spoil or forbid him."

The Church, p. 373: "By his sacrificial death Christ perfected and finished this kind of mediation, and thereby opened to *all* access to the holy

for God. Through faith and the Spirit God directly communicates with all members of the community of believers; and the believers in their turn, as shares of Christ's universal priesthood, have immediate access to God and are mediators themselves personally and for the community.⁴⁴

The community of believers is governed by the Spirit. The same Spirit, which "knows no law but that of his freedom, no authority but that of his own grace, no power but that of his own faithfulness,"⁴⁵ has given to the Church the same freedom⁴⁶ creating in the fellowship of believers a permanent reality which is the foundation of the Church's charismatic character.

Küng departs from a biblico-historical basis according to which all that pertains to the true nature or essence of the Church can be gathered only if one were to go back to the earliest recorded account concerning the primitive Christian community contained in Scripture. For this Küng has reference to the Corinthian epistles which record the earliest account regarding the Church, earlier even than some of the gospel narratives. Out of the data gathered from these and together with those included in the letters to the Thessalonians, he concludes that according to the earliest recorded biblical accounts, the Christian assembly was a purely spiritual community without elders or bishops, without

of holies. In *faith* all have through Christ direct access to grace (*Rom.* 5:2; cf. *Eph.* 3:12, *Heb.* 10:22). In *baptism* all receive fellowship with Christ (*Rom.* 6:1-11) and all are washed with pure water, in order to be able to draw near to God (*Heb.* 10:22). In the one *Spirit* all have access to the Father (*Eph.* 2:18) ... Christians do not stand in the threshold of the temple like impure people begging for grace, in fear and trembling... They themselves stand in the very midst of the temple of God, as holy priests chosen by God, able to communicate directly with God."

⁴⁴ The communitarian mediatory function of the believers for Küng does not carry any juridical significance. It is seen more in the context of service to one's fellow men and to the world since its main function is "to reveal the hidden works of God and make effective his acts of power." (*The Church*, p. 381).

⁴⁵ *Ibid.*, p. 177.

⁴⁶ *Ibid.*, p. 162. "Freedom is demanded of the Church precisely because freedom has been given to the Church... How does this freedom come to me? Through the call of the Gospel: 'For you were called to freedom' (Gal. 5:13). It is also the work of the *Spirit*, who takes possession of us in word and sacrament and awakens his freedom in us: 'Where the Spirit of the Lord is, there is freedom' (*II Cor.* 3:17). The Spirit of the Lord gives to the believer the threefold freedom from sin, law and death."

any hierarchy in fact, and hence, the basic structure of the Church is charismatic.⁴⁷

From the start, one can notice the shaky foundation of this form of methodology. Küng places excessive value on the historicity of the scriptural accounts as though the principal function of the bible is to give a faithful record of the Church's beginnings down to the minutest detail. The scriptural narratives cannot be utilized strictly and formally as a source of history to either disprove the existence or prove the non-existence of a certain ecclesiological structure since its purpose is not to record chronologically in full detail the evolution of the ecclesial assembly, but rather to record the deeds of the Lord in its theological dimensions. Scripture is basically a doctrinal and moral book, not a source of pure theological history. Besides, the earliest biblical accounts of the Church though somehow containing some records regarding the same cannot be factually considered to contain the complete record of the truly primitive Christian community. A record may be chronologically early but may not contain a factually early event.

It is true that in tracing the origin and nature of the Church's juridical aspect or Canon Law recourse should ultimately be had to Scripture. But again, the bible is a book of revelation, hence, a source principally of theological truths and not of strictly historical proofs. To trace and pin-point the moment of the Church's foundation from one particular community and proclaim it as the prototype of the ideal Church is unacceptable. The founding of

⁴⁷ Küng opines that an honest and genuine picture of the early Church can be gathered only from "the eldest New Testament documents earlier even than Mark or Matthew... the first letters to the Corinthians", along with the two other letters to the Thessalonians. (*The Church*, p. 179). In the earliest Pauline letters, "original and detailed information about the external and internal ordering of the Church can be gathered. In the first letter to the Corinthians, there is no reference to either "elders" or "bishops", to ordinations or to the laying-on of hands. On the contrary, there is repeated reference to the "charismata" or "pneumatika" which is accordingly bestowed on each Christian to the measure of his faith. The same letter likewise contains a long chapter about the charismatic structure of the Church.

"By contrast, in the pastoral letters, which are among the latest New Testament writings, the Pauline view that each Christian has received the Spirit and his gifts is overlaid by a strongly emphasized theology of Church offices. The Spirit is given in ordination." *Ibid.*, pp. 179-180.

the Church was not accomplished in an instant but as D. Stanley observes is "something inextricably bound up with time process."⁴⁸

Christ did not offer to the world in one act at a particular moment a ready-made formula and plan on how His Church should be structured and run, but rather indicated in isolated and scattered instances during His brief sojourn on earth and even after His resurrection, through the Spirit, how the salvific mission should be continued and what means to procure this end were to be used. The selection of the Twelve, the promise made to Peter, the triple affirmation demanded from him all the activities of the apostles and the early Church as recorded in the Acts point out to the fact that Christ wished to form a social community for the realization of His eschatological promise.

It is unfortunate that Küng who claims support to his views from what he says are the latest biblical and exegetical studies has not been aware of these inconsistencies.⁴⁹

More revealing however, is the doctrinal consequences that follow. Since from scriptural investigation Küng is led to establish that the earliest Christian community was free and guided solely by the Spirit consequent assertions place in doubt not only the existence but also the nature itself of the Church Christ established to continue His salvific mission. For Küng emphatically postulates that Christ did not intend to found any Church at any moment in His sojourn on earth. The Church started only when the early Christians started to gather in faith after the resurrection. Hence, the driving force that led to the founding of the Christian assembly was faith in Christ resurrected.⁵⁰

What is important for Küng is the individual and not an assembly of persons, for in relation to God the faithful is free

D. STANLEY, S.J., "Discovering the Permanent and the Transitory", *Law for Liberty*, ed. J. BIECHLER (Baltimore: Helicon Press, Inc., 1967), pp. 20.

⁴⁹ Cf. *The Church*, p. 92.

⁵⁰ *Ibid.*, p. 72, "In the Pre-Easter period, during his lifetime, *Jesus did not found a Church*. In his preaching and ministry Jesus never addressed himself merely to a selected group separated from the mass of the people... What then of the founding of the Circle of the Twelve? This too illustrated precisely not the singling out of the select few, but the calling of Israel as a whole. The twelve were to represent Jesus's call to the whole and the twelve tribes and therefore to have the roles of rulers and judges in the time of eschatological consummation."

and autonomous. He is self-sufficient to direct and unite himself with God. Other factors that stand between God and him are not necessary for his sanctification.⁵¹ At this point an inconsistency is discernible. For on the one hand, Küng emphasizes individual autonomy and on the other hand, he admits the existence of the Church as the community of faith, which assembly accomplishes really nothing in the order of men's salvation.

A closer examination of Küng's idea of the Church reveals the clue to the problem. As an assembly of faith the Church is not an organic unity forming one body, but rather an aggregate of independent believers, a harmonious grouping in each one of whom Churchliness is verified and each one of whom is essentially equal to an ecclesial whole.⁵² In Küng's Church structure and life meet in each individual faithful as such so that the individual person is uppermost and what really counts in the last analysis.⁵³

The same can be gathered from his theory of the Church found in diverse historical forms as it courses through human

⁵¹ This personal autonomy is clearly manifested in Küng's affirmation (*Ibid.*, p. 373) that: "Every believer, as a member of the community, as a man among other men and in behalf of other men, has an ultimately direct relationship with God, which no human being, even in the fellowship can take away from him and no human, nor ecclesiastical authority, can disrupt. It is in this most intimate personal sphere that ultimate decisions between an individual and God are taken, as also between and individual and his fellow men. This is where he finds his ultimate freedom and his ultimate responsibility. No one can judge, control or command the decisions which are made in this sphere of direct contact between God and man."

⁵² "To say that we do not believe in the Church means that *we* are the Church. As the fellowship of believers the Church is in no way different from us. It is not an agnostic collective person, which we can see to be separate from us. *We* are and *we are* the Church. Certainly the Church is always more than the sum of its individual members; but it is and remains the fellowship of its believing members, which this people of God has gathered. There can be no Church without this people of believers. *We* are the Church... Without us and outside us, the Church has no reality." *Ibid.*..

⁵³ "It is right to distinguish between, the 'structure' and the 'life' of the Church but wrong to assign to structure faith, sacramental and offices and endow them with a particular importance as spiritual riches, while we pigeonhole the fellowship of believers under 'life'. There can be no faith, sacraments and offices, nothing of an institutional nature, without men, they cannot precede or be superior to man. All these things only exist in the fellowship of believers, who are the Church; it is this fellowship, which is identical with the new people of God which constitutes the *basic structure* of the Church," Cf. *Op. cit.*, p. 130.

history.⁵⁴ Here, it is implied that the Church is only a historical necessity in consonance with man's historicity. In fact, the true Church is immersed in history or rather in "historical forms" and can be discerned only by those who have faith, by the believers, who are the Church themselves. For the Church does not exist *per se* in the abstract but in the concrete believing man. We are the Church. Küng diminishes all traces of selfhood proper to the Church as such, disintegrating it into the various and multiple "selves" of its aggregate members, united extrinsically only by their common origin, a common goal and a common social action.⁵⁵ The individualistic aspect of Küng's Church and his cult for personal autonomy is readily apparent.

The logical consequences that result from these assertions are the rejection of the ministerial priesthood, ordination, *in fact*, of the hierarchy itself; and consequently, the juridical aspect as a necessary element of the Church. The most that Küng admits is that all ecclesiastical institutions and the Church's juridicity are just historical outgrowths.

2. John Neuman

John Neuman is more explicit in this latter point. He points out that the early Church as it journeyed in history adapted the various social, cultural and juridical institutions of the society it encountered itself in at a particular moment and just assumed them in the name of the Lord to assure their valid assimilation into the supernatural life of the Church.

The juridical structure of the Church, particularly, is not of its nature originally, but rather grew out of various social pre-suppositions. Christ did not establish the Church socially. It did not originate from the free association of the faithful or from social contact. Rather,

the community of the Lord was "bought and paid for" by the blood of the Son of Man (*I Cor.*, 6:20). The Spirit of the Lord dwells in the *ecclesia*, that band of those "called" by the Spirit before God, as in a temple (*I Cor.* 3:16).⁵⁶

⁵⁴ Cf. *The Church*, pp. 4-73 passim.

⁵⁵ Cf. *Op. Cit.*, pp. 33-79.

⁵⁶ JOHANNES NEUMAN, "The Specific Social Nature of the Church and its Consequence for Canon Law", *Concilium*, VIII (Oct. 1969), pp. 11.

The Church, exists as one people whose unity is the work solely of the Father, the Son and the Holy Spirit. It is true that the disciples were called by the Lord. But the meaning and purpose of this choice.

was not an organization, but the "bearing of fruit in patience" and the following of the commandment "that you love one another" (*Jo. 15:17*)⁵⁷

For sure, the instructions and parables of the gospel presupposes some juridical views and institutions, but then

it would be an exaggeration to see in these words of the gospel final statements of "divine law" in the sense of norms that are legally sanctioned and enforceable by human jurisdiction.⁵⁸

And if in the New Testament there are observed some principles of organization, they should be considered as statements thought and spoken "in cosmic rather than in juridical terms".⁵⁹

For soon after its establishment, the primitive Christian community started adapting social norms current in the legal institutions existing at the time and incorporating the same. The adoption of the judaic rabbinical legal and liturgical customs was prevalent. The imposition of the hands, the *semikehah* is a classical example.⁶⁰

Again in the Acts, Neuman opines that the introduction of the first ecclesiastical office which consisted in the institution of the Seven, was illustrative of the early Christian's readiness when pressed by definite religious and social circumstances to refer to

⁵⁷ *Op. Cit.*, p. 7.

⁵⁸ This is illustrated for instance, when Jesus sent out his apostles for the first time (*Matt. 10:1-16*). There the Lord uses the institution of *Schaliach* by which Jews legally delegated power. As *Schaleuchim* the apostles are his authoritative delegates, endowed with his authority (*excousia*). This mandate expires when they return to Jesus. Cf. *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ In the Judaic custom "the teacher installed his disciple as teacher and judge by means of an imposition of hands after he had successfully finished his studies. In contrast with the *Schaliach*, the *semikehah* is an unrepeatable authorization once and for all, because it not only confirmed that the disciple was able to and fit to teach, but also conferred divine power upon him. For the same person, it could not be made retroactive." *Ibid.*, p. 7.

legal institutions and social conditions they thought proper for the given situation. Nonetheless, although the group of seven shared in authority with the Twelve, having been elevated not merely to be incharge of the poor and of almsgiving, the organization that resulted from it

was taken over simply to fill the need of the community and without any particular theological consideration. The only thing one might call specifically Christian, if one wishes to see it that way, is the fact that those elevated were presented to the Apostles "who prayed and laid their hands on them" (*Acts 1:16*).⁶¹

Neuman offers more arguments. When the members of the communities increased and the apostles died a considerable amount of social factors were again assumed. As the Pauline epistles show, general

human and social situations were adapted as quite natural and obvious; and the baptized by the instruction to do all things in the Lord, that is, they were simply put in the perspective of Christ and his Church.⁶²

Hence, all institutions derived and taken over from Judaism or the Hellenistic culture are only reflections of general ideas of social behavior and are not indications as specifically Christian. In other words, all the social and institutional outgrowths in the Church should not be considered as of the essence of the Church, but are rather external additions assumed by the same according to the various demands of time and circumstances.⁶³

Neuman, therefore, concludes:

... the juridical structure of the early communities grew on the one hand out of the contemporary social and juridical situations of their environment while, on the other

⁶¹ *Ibid.*

⁶² *Ibid.*, pp. 7-8.

⁶³ *Ibid.*, p. 8; "... Theology and Canon law cannot escape the fact that the indications given in Scripture must be seen in their social context and must therefore now interpret them in the changed situation of the present age."

"From this particular instructions taken over from social environment, it was but a small step to the legal sanctioning of a given situation as fitting for Christians."

hand, they showed the practice of the community's faith in the concrete circumstances of life.⁶⁴

In Tertullian's time, the Church took over not only the concept of Roman Law, but also the very mentality itself of Roman Law. From here the transition to Gregory VII and Boniface VIII through Pseudo-Denys was easy. Thus, a series of legal institutions, totally alien to ecclesiastical administration and theology, found their way into ecclesial practice.

Neuman, hence, admits a juridical order in the Church and likewise the existence of juridical norms, though not of the nature of the Church, but only as a necessary outgrowth brought about by diverse social customs.

There's nothing actually sacred therefore with the juridical factor or Church law since they were not willed by Christ but was only assumed for convenience and necessity.

Thus for Küng as for Neuman there is agreement in the fact that the Church's juridical aspect is admissible only as a historico-sociological necessity but is in no way theologically necessary, i.e., willed in the divine plan. And for Küng, there is no need even for an institutional Church since the individual believer is self-sufficient and his faith is enough to unite him with God. The juridical factor in the Church is very accidental and could exist or not exist depending upon the need of the particular historical situation the ecclesial assembly finds itself in a given moment.

These assertions of the charismatic-relativists spring from a defective methodological approach. In Küng's case, excessive historical significance is attached to particular scriptural accounts which though chronologically early cannot be regarded as absolute proofs to prove the non-existence or disprove the existence of a certain ecclesiological structure. Added to this is the implication that Christ did not wish to establish a Church to continue His salvific act but left everything to the autonomy of the individual whose faith alone in the kingdom of God yet to come is all that matters in the order of salvation. The inevitable consequence is the logical denial of any juridical aspect in the Church and concomitantly, of all ecclesiastical norms.

⁶⁴ *Ibid.*, p. 52.

The salient point thought of the K  ng — Neuman theory is the recognition of the historico-sociological aspect of the Church. For it cannot be denied that though ultimately the existence and nature of the Church and its juridical aspect has to be traced from its theological source, the human factor cannot be disregarded. The social nature of man plays a significant role in the realization of juridical relations; and the historicity of the pilgrim Church as it journeys to its final end is a fact to be considered. Understood in its proper context and oriented to its proper place, a historico-sociological perspective is also needed for the full grasp of the existence of the Church's juridical aspect.

THE CHARISMATICO-ABSOLUTISTS

In this connection the opinion of those who deny the presence of and necessity for all norms in the Christian community and allow only love to reign as the sole rule of Christian life is to oversimplify the question.

This can be gleaned from the opinion of not a few Catholic lay and clergy authors alike who have voiced unfavorable sentiments regarding ecclesiastical norms and its presence in the Church. Mrs. Rosemary Haughton, for instance, thinks that ecclesiastical law has created a "rule mentality" in normal matters among the faithful which has done nothing but harm the Christian's personal and direct commitment to God. Church law has already decided everything for the Christian and hence, there is nothing left for himself to initiate. She suggests therefore, that law should be abolished or reduced to the absolute minimum keeping away all moral matters from its sphere.⁶⁵

The opinion of the proponents of the so-called Situation Ethics move along the same line. Since only love is what matters in man's relation with God, it is the only rule that can guide and govern his conduct. All other norms, including ecclesiastical law have no place in Christian life. Man must decide what's good for him at any given situation guided by the law of love alone.⁶⁶

⁶⁵ Cf. ROSEMARY HAUGHTON, "The Ending of the Law", *Doctrine and Life*, XVIII (1968), pp. 87ss.

⁶⁶ Cf. J. FLETCHER, *Situation Ethics, The New Morality* (London: S.C.M. Press, Lt., 1960) pp. 64 passim; also J.A.T. ROBINSON, *Honest to God* (London: S.C.M. Press Lt.: 1963), pp. 110 ss.

Joseph Fletcher for instance, is very vocal in subordinating law to the demands of love. For, according to him

Jesus and Paul replaced the precept of Torah with the living principle of *agape*. They redeemed law from the letter that kills and brought it back to the spirit that gives it life. And to do this, law and general rules always have to be refined back from legislative prescriptions and from rabbinical pulpil to the heart principle of love... We follow law; if at all, for love's sake, we do not follow love for law's sake.⁶⁷

Following Fletcher's theory, John A.T. Robinson absolutely excludes norms and law from the realm of human conduct. For him, love alone is open to all situations, love alone enables man to embrace each circumstance with a genuine personal responsiveness sans preceptive laws.⁶⁸

The Jesuit theologian and scripturist, Fr. Mckenzie is more vocal in his rejection of ecclesiastical law in the Church. Christ, according to him when he abolished Mosaic law abolished law in all its forms and substituted it with the gospel alone. Furthermore, as the author continues, the principle of law has really no place in christian life. For law is intended to procure the common good. It is in no way directed to the improvement of the person in his personal goods or in his use of real goods. Now, in the Church it is hard, if not impossible to define "common good".
The New Testament

knows no other end of the Church than the incorporation of persons into Christ. The Church can have no accomplishment and no fulfillment which is not expressed in terms of individual persons.⁶⁹

Law, therefore, has no place in the Church since authority in the Church is concerned rather with individual accomplishments

⁶⁷ FLETCHER, *Op. cit.*, p. 70.

⁶⁸ Cf. ROBINSON, *Op. cit.*, pp. 115, also 116-121.

⁶⁹ JOHN L. MCKENZIE, "Law in the New Testament", *The Jurist*, XXVI (1960), pp. 167-180. In his book *the Power and Wisdom — An Interpretation of the NT* (Milwaukee: The Bruce Publishing Co., 1965) on p. 207 the author remarks: "The Christian is left with the only one saving act which he can perform, this is the saving act of love. Love is not the fulfillment of an obligation but a spontaneous movement. The Christian would be incapable of this spontaneity were it not given him by the indwelling Spirit. But is given him, and words like law and obligation become meaningless."

not with the common good. It is persuasive, it does not impose. If ever the Church exhibits at present any form, structure, and purpose of law it is actually not different from Civil Law in nature, and hence, is secular and no way Christian.

The Church, therefore, has no business of promulgating new norms for the government and guidance of the faithful. Christ did not intend to replace the Mosaic law with another equally cold and legalistic. Only the law of love should reign in the Christian community hence, words like law and obligations become meaningless.⁷⁰

It is true that charity should reign in all Christian acts whether it be the exercise of authority or the expression of obedience. But charity is abstract and needs concrete manifestations. The expression of what is genuine charity can only be realized socially. The divine plan provides that each Christian should live as member of Christ's body dependent upon one another. Man must learn their dependence upon the Spirit of Christ by experiencing the need for his divergent activities in other members of the Church. The illumination of the Spirit is received by the individual Christian through the acts of another. For as attested by Vatican II, the Church is not only the Mystical Body of Christ, but also a society furnished with hierarchical agencies. The Spirit who dwells in the Church and in the hearts of the faithful inspiring them with love, guiding them in truth has likewise furnished the Church with various gifts both hierarchical and charismatic.⁷¹ Hence, there can really be no conflict between charity and law since they both have their origin and receive their dynamism from the same Spirit. To appeal to love with the exclusion of law or vice versa would be to mutilate the divine plan which called for the unity of the visible and the spiritual elements, the earthly Church and the Church enriched with heavenly things, in short, the harmonious working together of both the divine and the human elements in the pursuit of sanctification.⁷²

⁷⁰ Cf. JOHN L. MCKENZIE, "Law in the New Testament", pp. 167-180.

⁷¹ Cf. *Lumen Gentium*, nn. 1 & 8.

⁷² Regarding this Paul VI remarked: "Sunt deinde qui distinguunt inter ecclesiam, quam 'juridicam' vel a 'muneribus' appellant, et Ecclesiam cui nomen 'caritatis' adjiciunt, asserentes caritatis praeceptum omnium summum esse primasque partes ei tribui oportet, mala autem, quibus Ecclesia vexetur, ex 'juridismo' illo, uti vocant esse exorta. Attamen, quemadmodum anima

Hence, Christian life must have its commandments, precepts, normative directives and formulated ways of acting.⁷³ To be sure Church laws are not to be considered as ones imposed by a master from far above upon a slave. They have to be regarded as the blueprint of the form of life which love given by the Spirit prompts the faithful to live.⁷⁴

THE PHILOSOPHICAL APPROACH

The institutionalists we earlier mentioned approached the problem doubly: philosophically and theologically. Although considerable advancements have been achieved by the proponents of the philosophico-sociological theory, the past influence of the apologists and the exponents of Public Ecclesiastical law can still be felt.

This is specially apparent in the theory of *Desmond Vella*. His argument moves only in the purely natural sphere taking what societal concepts he thinks are applicable to the Church as a society and "making the necessary adjustments" applies the same to the supernatural order.⁷⁵

According to him the Incarnation of the Second Person of the Blessed Trinity for the purpose of redeeming mankind was accomplished in time and space; and in order

to keep present before all men of all times the saving and life-giving effects of this central event in the history of mankind, Christ took to himself a human nature with all its defects and limitations.⁷⁶

a corpore, seiungi nequit quin mors subsequatur, Ecclesia, quam a 'caritate', nuncupant, sine Ecclesia 'iuridica' existere nequit. Non licet ignorare Ecclesiam visibilem ut initio diximus, ex Dei voluntate esse societatem visibilem omnibus cum institutis ad exteriorem moderationem pertinentibus; Christum Apostolis eorumque successoribus contulisse potestatem iurisdictionis; de qua re Evangelium nos certiores reddit... Cf. "Ad E. mos Patres Cardinales et Ad Consultores Pontificii Consilii Codici Iuris Canonici recognoscendo", A.A.S., XVII, 1965, p. 986.

⁷³ Cf. *Lumen Gent.*, esp. nn. 1, 8, 18, 28, 30. See also B. A. AHERN, "Law and the Gospel", *Law for Liberty*, p. 103.

⁷⁴ For more discussion on this point Cf. Footnotes; nn. 1, & 111, pp. 1 & 43 respectively

⁷⁵ Cf. DESMOND VELLA, "Canon Law and the Mystical Body", *The Jurist*, XXII (1962), pp. 412-432.

⁷⁶ Cf. *Op. cit.*, p. 420.

The meaning and effect of this gesture is that in the prolongation of the reality of the Incarnation, the Lord

...established in this world a Church which would be a continuation of His Humanity. The form given to the Church is that of a visible external society. More and above, Christ endowed His Church with all the supernatural requisites needed to attain its end. But although He constituted the Church as a supernatural society He wished that it evolve in a way similar to any natural society. This is so because the social way is the most convenient manner for the Church to be able to undertake and accomplish the salvific mission of men."⁷⁷

The Church therefore is a society and hence, Vella admits that the characteristic notions of society with certain adjustments, of course, can be applied to the social aspect of the Church.⁷⁸

A similar view can be observed in the theory advanced by the *Canon Law Society of America*. The *Ekklesia* established by Christ is a juridical society since it carries all the characteristics observable in natural societies.

It is a visible congregation analogous to other secular societies in as much as it is composed of men, has a beginning, and an evolution in human history, a visible regime, etc.⁷⁹

Scriptural accounts are then advanced and a process of accommodation of scriptural facts to the principles of society and law in general follows.

⁷⁷ *Ibid.*, pp. 422-423, continuing "in the divine plan of salvation, God freely chose to save man on man's term, as it were; to draw man to Himself in a way that would be compatible to man and aptly suited to his nature. The effects of Redemption did not destroy man's nature but rather elevated or supernaturalized it. Man's nature remains the same, although man now may operate with the help of grace in a supernatural level towards a supernatural end. Granting the present economy of salvation, therefore, with all the aspects of man's nature intact, we see how aptly it is that God should enable man to attain also his supernatural end socially the way most natural for him"

⁷⁸ Ex. gr., since man's end is supernatural, the means for its attainment should also be supernatural; and so with the Church's common good. In the Church, moreover, it being a supernatural society, the means to achieve its end is not within the reach of man's nature to provide since it exceeds this latter. These and others, differentiate the Church from secular society in general. Cf. *Op. cit.*, pp. 425 ff.

⁷⁹ "The Role of Law in the Church", *The Jurist*, XXVII (1967). pp. 163-164.

Primary is the uniqueness of the *Ekklesia* itself as the only community that confesses Jesus as the glorified Christ and Lord. The New Testament, refers to this in a variety of images: the mystery of Christ present in believers, the spouse of Christ, the body of Christ, the branches of Christ who is the vine, the sanctuary of God, the Israel of God, the Eschatological people of God, etc.⁸⁰

Christ's authority is next traced from His Lordship as the Son of God and the Risen Christ. Through the *act of faith* the Christian responds to this authority; hence, between the Risen Christ and faithful, therefore, there exists a relation as between a director and the ones directed based on the authority or the power of the one directing, as the unique path for the pursuit of a common end — redemption.

Since Christ did not wish to appropriate for Himself all exercise of authority in the Church, He appointed individuals to continue his redemptive mission and extended to them a participation of His divine authority since it is the will of the glorified Christ that men are to be saved by other men.⁸¹

The conversion of St. Paul and several instances in the Acts,⁸² attest likewise to the existence of juridical bonds within the early Christian community. The Canon Law Society of America, therefore, concludes that the Church is juridical from the fact that the *Ekklesia* is a visible community established by Christ and carries the latent characteristics of all societies though in the Church these are understood analogically.⁸³ The end result of this theory does not likewise depart from the plane of the natural and human.

Since these methods do not really show the genuine origin and nature of the Church's juridical factor as an entity distinct from that of secular societies leaving in its wake unclarified and unanswered several questions regarding the proper nature, function, finality, etc. of ecclesiastical norms, its value has been put

⁸⁰ *Ibid.*, pp. 163-164.

⁸¹ *Ibid.*, p. 165.

⁸² Ex. gr. *Acts* 6:1-6; *I Tim.* 1:5-9, etc.

⁸³ Cf. *op. cit.*, p. 166 ff

in question and for the most regarded by not a few contemporary authors as inadequate and insufficient.⁸⁴

Wilhelm Bertrams' view⁸⁵ though laudable in many aspects does not escape either from the above defect. Though his theory is indeed original its tendency to justify juridicity in the Church along philosophico-sociological lines, creates the problem of how to adequately explain the spiritual aspect of the Church's juridicity and the relation between the sacramentality and juridicity of the supernatural society. This is very evident in the double movement of his main argument.

In the first place Bertrams examines and analyses the data of revelation. From his investigation he postulates that Christ founded the religious community known as the Church to continue His salvific mission socially and juridically. The Church's juridical aspect is traceable from its founding by Christ on the Cross. The Lord's death on the Cross was a social act in which all elements constitutive of the Church's essence were presented. On the same Cross, *jure proprio*, Christ was made head of the Church. As such He provided this latter with all that pertains to it as an external and juridical society such as proper end, means, power, precepts, etc.

Christ's death on the Cross, however, provided the Church with only the intrinsic principles of sociability and juridicity. But since the Church has to express herself also externally as a social organization to be able to manifest its existence sensibly in time and space, Bertrams next seeks to establish a theory with which to justify the Church's sociability and juridicity. In other words, Bertrams wants to justify the convenience of a juridical Church as willed by Christ through His death on the Cross.

From this he moves to the second plane of his theory, to the natural ontological sphere claiming that the corporeo-spiritual nature of man postulates an external sensible element as a pre-

⁸⁴ Cf. A. ROUCO VARELA-E. CORECCO, *Sacramento e diritto: antinomia nella Chiesa*, (Milano; Edizioni Jaca Book, 1971), D. LLAMAZARES FERNANDEZ, "Sacramentalidad y Juridicidad", *Lex Ecclesiae* (Salamanca: Universidad Pontifica, 1971), pp. 244 ff., E. CORECCO, "Origine Dei Potere dei Giurisdizione Episcopale", *La Scuola Cattolica*, Vol. 96 (1968), pp. 11 ff.

⁸⁵ Cf. W. BERTRAMS, *Questiones Fundamentales Juris Canonici* (Roma: Pontificia Universita Gregoriana, 1969).

supposition for the full realization of internal acts. Since man is composed not only of a soul but a body as well, as essential constitutive parts human sociability by metaphysical necessity must likewise be composed of internal and external elements as essential parts. The *structura externa* of human sociability is actually just the externalization of the *structura interna*. In the former, the internal structure is projected *ad extra* in such a way that the internal structure determines the external structure.⁸⁶ And when man was elevated to the supernatural order all his faculties, including his sociability, were likewise spiritualized. Hence, as is true in the natural order, there is also a metaphysical necessity for distinguishing between internal and external structures in the supernatural life of the Church. The Church being a genuine human society is built through internal and external structures true of all societies. Its *structura externa* is composed of the intentional union of the faithful who follow Christ through faith making His word the norm of rule for their lives. Since the plenitude of the Word of the Lord which is the plenitude of supernatural life, is achievable only through the intentional cooperation of the faithful and pastors, their internal or intentional union forms as it were the *esse sociale* of the Church, its *esse intentionale seu structuram internam Ecclesiae*.⁸⁷

The internal relationship or the intentional relations between the faithful and the pastors therefore, in as much as they are ordained to the actuation of the various supernatural goods inherent in Christian life constitutes properly the *internal structure of the Church*.

The external structure of the Church in its turn, visibly manifests the internal structure. Proceeding from the internal life of the Church itself, the external structure is ordained towards the conservation and progress of internal structure. Hence the author continues: "...structura et activitas externa Ecclesiae vitam internam habet manifestandam, representandam, protegendam, promovendam, perspicendam."⁸⁸

⁸⁶ Cf. W. BERTRAMS, *Questiones Fundamentales Juris Canonici* (Roma: Pontificia Universita Gregoriana, 1969), pp. 270-271, *passim*.

⁸⁷ Cf. W. BERTRAMS, "De Structura Ecclesiae Simul Charismatica et Institutionali", *Op. Cit.*, pp. 269-270.

⁸⁸ Cf. *Op. Cit.*, p. 271

The Church's juridicity therefore is encountered in its external structure which is the manifestation *ad extra* of the internal structure, both structures forming one constitutive whole in such a manner that the external juridical structure is not something merely added *ab extrinseco*.⁸⁹

Consequently, just as in the human organism, the soul needs to be expressed externally through the body, so also in the Church "ad invicem non se habet tamquam res ad rem", but rather both elements taken singly and as genuine constitutive elements "unitatem vitae Ecclesiae efformant". It is in this way that the *structura externa* of the Church "sit ad modum signi sacramenti efficaciter significatur".⁹⁰ The juridical structure of the Church therefore, is supernatural since in the sacramental reality the sign follows the nature of the *rei signati*.

It is in this sense that the genuine nature of the juridical aspect of the Church should be understood. The Church therefore is not only an internal supernatural reality, but a juridical society as well. Having been constituted by Christ as a supernatural society, the Church lives and evolves in the same way as natural societies do. Just as natural societies exist through the co-operation of their members towards the attainment of the common good, so also the Church lives through the common activities of the faithful and the pastors for the pursuit of its supernatural end.⁹¹

Thus, the *esse sociale* of the Church as is true with other social unions is realized through the intentional and teleological relations, more precisely, through social relations ordained for the attainment of a supernatural good *modo humano habendam*.⁹²

The attempt to explain a theological reality metaphysico-sociologically is very evident in the above theory of Bertrams. The methodological inadequacy of his system, however, can be seen in the attempt to justify the theological reality of juridicity through recourse to the philosophical and sociological analysis of man's

⁸⁹ Cf. W. BERTRAMS, "De Origine Ecclesiae", *Op. cit.*, pp. 36-38.

⁹⁰ *Ibid.*

⁹¹ Cf. W. BERTRAMS, "De Analogia quoad structuram hierarchicam inter Ecclesiam Universalem et Ecclesiam Particularem", *Op. cit.* p. 447.

⁹² Cf. W. BERTRAMS, "De Personalitatis Moralis in Jure Canonico Natura Metaphysica", *Ibid.*, p. 218 ff. In another place Bertrams states:

social nature. The data of revelation which supports that Christ willed to form a juridical Church are hence, just utilized to support the metaphysical truths of man's natural sociability. In other words, Bertrams discovered a philosophical theory from which to base the convenience of the Church's juridical nature; and to support its supernatural reality he gathers scriptural data and fits the same into his system to form a philosophico-spiritual whole which he believes then fully explains both the human and divine elements of the Church.

This approach fails to establish the supernatural basis of the Church's juridical factor for any attempt to justify the presence of law in the Church should start from a theological base. To do otherwise would miss the properly spiritual dimension of the fact in question and would result in the spiritualization of an extra-supernatural reality which is the case of Bertram's approach. For, however, sound a philosophical postulate is, it is not adequate to explain a supernatural reality-something beyond its sphere.

Besides, there is quite a ready concession of the fact that the internal structure of the Church is necessarily expressed juridically through the external structure. For it could also happen otherwise. Juridicity is not the only manner of expressing externally what is internal.

William Onclin tried to avoid this pitfall by distinguishing between the concept of community and that of society in general. In a community there are interpersonal relations but being a simple social fact without any appreciable community of interests, juridical relations do not exist.

a. ("De Principio Subsidiaritatis," *Ibid.*, p. 559), "Iamvero Ecclesia a Christo Domino constituitur ad bonum supernaturale modo humano, activitate externa continuo actuandum. Ita bonum supernaturale constituere potest, et vere constituit, unum ex bonis communibus humanis cooperatione omnium actuandum. Immo bonum supernaturale modo humano habendum in tota ejus latitudine et secundum diversos gradus supernaturalitatis... activitatis ejus socialis qua societas humana, constituit."

b. In "Origine Ecclesiae", *Ibid.*, pp. 41-42, he remarks: "Homines enim mere interne communicare non possunt; vita interna invisibilis Ecclesiae in tota sua latitudine non potest hominibus conferri nisi tali activitate externa, juridica. Si itaque morte Christi cultus Ecclesiae, definitur, si Ecclesiae conferuntur bona spiritualia hominibus elargienda, si ibi fundatur potestas sacra Christi Capitis Ecclesiae et potestas Apostolorum in hominibus tradenda sigillatur-haec omnia activitatem externam, socialem, iuridicam Ecclesia exigit".

Society for Onclin "is the freely organized and constituted group of persons who pursue the realization of a common end. To speak of society is to speak of organized collaboration through the use of common means which are determined in view of attaining a common goal, that is to say, for the common profit of all the members who pool their activity and who participate in the goods realized by their working together".⁹³

Community, on the other hand, "designates the ensemble of persons actually united among themselves through a common conscious possession of certain characteristics or attributes essential or accidental; but it is not a community of interests and as such implies in no way the pursuit of a goal in common by the members who compose it".⁹⁴

In a society, therefore, where there is present a group organized for a common goal, juridical relations is a necessary consequence.⁹⁵ The concept of community is included in that of society but not vice versa. Hence, Onclin concludes, that the Church as Mystical Body is a community, while the Church as hierarchically constituted and a pilgrim is a society.

In short, the Church is at once "both a spiritual community extending beyond this world, and a society constituted and organized in this world".⁹⁶ It is only in this latter aspect where the Church is juridical and necessitates laws.

This procedure however, does not solve the problems. It is only another way of looking at a consequential question without tracing it from its basic roots.

Besides, this theory serves only to complicate matters and creates new problems. Recognizing both a separate communitarian and societal dimension in the one Church of Christ creates a dichotomy not easy to grasp and explain. In fact, Onclin foresaw the problem when he quickly reaffirms that

⁹³ WILLIAM H. ONCLIN, "Church and Church Law, *Theological Studies*, XXVIII (1967), p. 735.

⁹⁴ Cf. *Loc. cit.*

⁹⁵ Cf. *Op. cit.*, p. 737 ff.

⁹⁶ Cf. *Ibid.*

The Church in *hoc mundo societas constituta et ordinata* is not a reality different from the Church *Corpus Christi Mysticum*. The Church-society is integrated into the Church community and is at the service of the Mystical Body and organized society in this world... Thus, the Church of Christ, Mystical Body of Christ on the one hand, and hierarchically organized society on the other, is at one both a community and society.⁹⁷

The problem, therefore, remains and this theory is likewise an attempt to explain a theological reality through philosophy.

What could have been a more commendable approach is to try to trace the Church's juridical aspect from its sacramentality, which Bertrams introduced but never fully developed. His affirmation that the Church is a juridical institution because it is a sacrament of salvation could have been a better point of departure. This way the theological aspect of ecclesiastical norms could have been better clarified and placed in its proper perspective. A theological reality could have been explained through an equally theological means and hence, the Church's juridical aspect could have been seen from its proper context in the supernatural reality of the Church; and Canon Law's essential structural and functional diversity from other social laws better perceived and appreciated.

A simple philosophico-sociological manner of approaching the question of ecclesiastical juridicity hence, has the main drawback of just attempting to spiritualize a natural postulate. It fails to establish the true reality of the Church's juridical aspects since it moves on the purely human plane.

THE THEOLOGICAL APPROACH

Looking next to the theory of *Klaus Mörsdorf* and other authors of the same bend, we discover an opposite movement. Whereas Bertrams and companions lean on a basically philosophical perspective, the other extreme is manifested by Mörsdorf and related writers — a basically theological approach. Mörsdorf's theory which is specifically illustrative, parts from the basic pos-

⁹⁷ *Op. cit.*, p. 379.

tulate that the juridical structure of the Church is traceable from two basic fundaments: the Word and the Sacrament.

The salvific mission of Christ which is entrusted to the Church for its continuity forming its principal spiritual activity is made palpable and visible in the world through two vehicles: the preaching of the Word and the administration of the Sacraments. Mörsdorf tries to avoid the mistake of proving logically a supernatural reality by discovering from both Word and Sacrament the possibility of a theological support in providing the Church's juridicity. Both Word and Sacrament are basic forms of human communication and possess the capacity to express binding juridical relations. This fact has been recognized both in human society and in the Bible. Christ used the Word to proclaim His salvific message and the sacraments to channel the saving effect of His grace. Hence, in Christ, the Word ceases to be human word but attains a kerygmatic character and the Sacrament attains a spiritual dimension as the instrument for communicating the salvific act.

The Word possesses a formal obligatory claim attesting as it does to the "locutio Dei". Man ought to obey God's word not only by virtue of its interior force but also most of all, because of the mandate given by the Father to Christ, which in turn is entrusted to the Church.

Mörsdorf supports this claim through scriptural illustrations. First, Christ demanded obedience. In His manner of speaking, He always addressed his hearers in an authoritative form always fully conscious of the mission He received from the Father.⁹⁸

Among His hearers He always gave the impression that He was talking with authority. He himself recognized and confessed that "all authority in heaven and on earth has been given to me".⁹⁹

Christ likewise demanded obedience and submission evoking explicitly the fact that He is the "one sent by the Father", and when the Pharisees rebuked the value of His testimony since it referred to His power alone, He affirmed that His testimony was

⁹⁸ "You have learned how it was said to our ancestors... but I say to you..." *Matt.* 5:21-22 *passim*.

⁹⁹ *Matt.* 28:19.

true because in giving it He was not alone, but on the contrary "I may be testifying in my own behalf, but the Father who sent me is my witness too."¹⁰⁰

To confirm His authority and person, Christ performed miracles and on many occasions announced that He was "the Son of Man" and had "authority on earth to forgive sins."¹⁰¹ All His miracles therefore, pointed to the fact that "Jesus is the Christ, the Son of God," and "all who believed His word would have eternal life."¹⁰²

Christ always spoke in a form markedly imperative which can be made only by one conscious of His being Lord, and His possession of all rights to demand obedience.

The mission of Christ is inseparable from His own person and its acceptance through faith demands the recognition not only of the message, but also of our hearing the message. The personality of the Son Incarnate is always placed first in His words. Thus, the faithful's response to His message decides whether He will be saved or condemned.¹⁰³

The word of Christ, therefore, has juridical overtones and the same Word lives in the Church with the same efficacy in which it was announced by Christ Himself and it is prolonged in the Church through preaching. To assure perpetuity and efficacy, Christ created all necessary conditions and appointed the Apostles as His plenipotentiaries through juridical succession and delegation of power.¹⁰⁴

The apostles, hence, not only gave testimony to the Word, but when proclaiming the same created obligations to all listeners of the Word and to the authority of the apostles who since they act in Christ's name have the right to the same obedience due to the Lord.¹⁰⁵ The proclamation of the Word is therefore, an essen-

¹⁰⁰ *Jo.* 8:8.

¹⁰¹ *Matt.* 9:6.

¹⁰² *Jo.* 20:3.

¹⁰³ "No one who believes in Him will be condemned but whoever refuses to believe is condemned already, because he has refused to believe in the name of God's only Son," *Jo.* 3:18.

¹⁰⁴ Cf. K. MÖRSBÖRGER, *Lehrbuch des Kirschenrechts* (Paderborn: Verlag Ferdinand Schoeningh, 1964), I Band, p. 15.

¹⁰⁵ *Op. cit.*, p. 11

tial element in the constitution of the Church visible and participates consequently, in the sacramental character of the same Church.¹⁰⁶ This does not result however, from the choice of the Christian community but from the direct act of Christ in choosing certain symbolic signs like the imposition of hands and infusing on them its proper sacramental juridical character.¹⁰⁷

As a sensible and efficacious sign of an invisible salvific reality, the sacrament is intimately emersed in juridical symbolism. In all social organizations, the juridical symbol indicates an invisible reality related to the life of the social community. The same symbol could also be an object which expresses something which transcends all sensible appearances or an action which produces an invisible reality by means of the use of symbols. The juridical symbol is intimately connected with the customs and mores of the people and community; and having its roots and origin from them, it exists according to the mode and rhythm of the community. It likewise receives the force and power to signify and produce symbolically the various juridical signs from the same source.¹⁰⁸

And with this connection established by Christ, the sacraments are imbued with an essential relation to the ecclesial community or the Church.

Word and Sacrament are hence, the roots of the Church's juridicity having been constituted such by the full and express will of Christ. At the same time they are the cause of the Church being visible and the sacramental sign of salvation.

As can be observed, Mörsdorf's approach is almost opposite to that of Bertrams. He tries to save the proper spiritual and theological elements of the Church's juridical aspect appealing to the act of Christ in choosing to utilize both Word and Sacraments

¹⁰⁶ *Ibid.*, p. 14; see also by the same author, "Fundamentos del Derecho de la Iglesia," *Revista de Teología*, III (1953), pp. 22 ff.

¹⁰⁷ Cf. "Fundamentos del Derecho...", p. 25.

¹⁰⁸ To illustrate what he means, Mörsdorf points to the example of the Oriental and German laws. These body of laws possess such a rich treasure of symbolism, profoundly popular, many of whose elements survived in the laws and liturgy of the Church. Particularly, the imposition of the hands widely used in the conferment of Sacred Orders is one of the more extensive and important sacramental signs adapted by the Church from Oriental Law. Cf. "Fundamentales del Derecho..." pp. 24-25.

as fundamentals of the Church. That is, Mörsdorf's approach seeks to encounter theological proof for the Church's juridicity through data of revelation by pointing that Christ used the Word and the Sacrament, both having natural juridical dimensions as means of accomplishing His salvific act. Unlike Bertram's therefore, who justifies philosophically the scriptural data regarding the Church's juridical aspect, Mörsdorf, seeks to establish a theological explanation for a theological fact—thus saving the proper nature of Church law.

This approach though laudable, in most parts possesses its own limitations. Tracing the Church's juridicity from the Word and Sacraments and these latter in turn from the act of Christ making them such over-spiritualizes natural human elements, consequently, creating a vacuum with regards to the legitimate human and external juridical dimensions which should also be recognized. Although it is true that the juridical factor should participate in the Church's supernatural reality it cannot be denied that it is also proper of the human element in the Church and is very much a part and parcel of this latter. And besides, to have a complete and thorough foundation supporting the supernatural base of juridicity, would it not be proper and more convincing if a scriptural proof anterior even to the Incarnation is advanced? Such a proof would offset the voluntaristic and hence, extrinsic manner of Mörsdorf's approach. The Church's juridicity should be supported by reasons intrinsic to its reality.

The same defect, is also observed in the position of *Hans Dombois*. His theory rests on the concept of covenant from which he opines, all discussions regarding the Church's legal structure should depart. Rejecting the axiom *ubi societas ibi jus* as meaningless in a supernatural reality like the Church, he advocates for the abandonment of all that pertains to the secular sphere in explaining the existence of the Church's juridicity including even its societal concept. According to him:

The Church is rather a legal bond and a legal community because God chose himself a people, entered into a covenant with them, and made them his own. The fundamental legal concept in which the whole of the Church

law rests is therefore, not the *societas* but the *foedus* (*covenant*).¹⁰⁹

A tendency to excessive supernaturalization of the juridical factor is likewise evident in this instance with the same consequent difficulties observed in Mörsdorf's theory present.

Nevertheless, the theological approach of the institutionalist has, as we noted, its significant points. In fact, considered methodologically their theory is the more acceptable. For any attempt to justify the existence of law in the Church should move along the plane of theology, more especially of ecclesiology since the problem of law is intimately connected with the problem of the Church. Of course, in the last analysis the data of revelation should be the principal base. In this respect, the view of Mörsdorf is a step in the right direction. He has not only shown the way from which all attempts to clarify the problem of ecclesial juridicity should start, but has given convincing argument with which to explain the existence and nature of ecclesiastical law as distinguished from other forms of law.

It is in this latter aspect where rests the value of Mörsdorf's Word-Sacrament hypothesis.. By assuming the Word and the Sacrament as essential constitutive elements of the Church, Mörsdorf had his attention fixed mainly on the juridical impact and relevance of both. Taken from universal tradition of human culture and history as well as from biblical usage, the symbol and the Word has always been recognized as possessing juridical binding force. And Christ has utilized both as means with which man immersed in history must conform himself in the order of salvation.

Viewed from a christological angle, a new point of reference from which to consider juridicity in the Church appears. Placing the apparent voluntaristic tendency of the theory in its proper perspective a means from which to trace the origin of juridicity even prior to the societal constitution of the Church presents itself. And hence, the usual procedure of justifying law in the Church by proving the latter first as perfect and juridical society akin

¹⁰⁹ H. DOMBOIS, "The Basic Structure of the Church," *Concilium*, VIII (Oct. 1969), pp. 24 ff.

to the State is side-tracked. A genuinely theological method is utilized instead and viewed from what should be its genuine and proper context the juridical factor of the Church somehow assumes a new objective.

John Barry's stand can also be identified with the methodology of Mörsdorf, to some extent. He considers the problem of Church law a biblical one and hence, should be studied from this aspect. He then examines and proposes several scriptural instances wherein juridicity at least, in its embryonic form can be observed.

During the meeting of the apostles and elders in Jerusalem (*Acts* 5:16 ff.) for instance, a true body of Canon Law was enacted. Four prescriptions were promulgated to meet a problem connected with community relations peculiar to that period and locality. The laws enacted existed until the need for them disappeared, thus illustrating the transitory nature of ecclesiastical law.

In *I Cor.* 5, Barry recognizes what he believes is the first sign of a true penal law. A man living with his stepmother-affinity in the first degree of direct line, was condemned as incestuous and driven from the community. Barry regards the act "as an embryonic excommunication, a ban which at once lifted when there was evidence of repentance (*II, Cor.* 2:8), in recognition that the evil doer had harmed the whole community, followed by absolution and forgiveness when that harm had been repaired (v. 10)."¹¹⁰

Using afterwards the philosophy of law and the concept of society as a spring-board he concludes that the Church is indeed a juridical society complete with norms. Barry, of course, fails to offer a more profound theology of his scriptural sign-posts. Instead he clings at once to philosophy and sociology thus re-assuming once again the mistake of equating Church and State juridically. The failure to establish a solid theological ground from which to view the existence of law in the Church is once more present.

¹¹⁰ J. C. BARRY, "Law in the Post-Conciliar Church", *Studia Canonica*, V (1971), p. 269.

Barry's fault does not consist in utilizing the instrumentality of the philosophy of law in explaining his theory, but in his failure to establish clearly and more solidly his theological basis first before resorting to the former.

A POSSIBLE WAY

The crisis of law in the Church is traceable in the last analysis from the failure to establish a right theological approach to the problem of juridicity. We examined the many proposed attempts to solve the problem and exposed their merits and shortcomings.

While it is undeniable that the problem of law in its roots is connected with the problem of the Church's nature and has to be solved theologically with the data of revelation as basic starting point, we cannot agree with the procedure of the charismatics contemporarily expressed by such authors as Küng and Neuman. Scripture should always be looked upon wholly and integrally as the source or revelation of doctrinal and moral truths and one particular book or part of the Bible isolated can never strictly be regarded as a source of complete history concerning the Church. Each book in Scripture form one who integrally related to each other. To take the Pauline Corinthian epistles alone without reference to the Acts and other letters separately as a biblical source to discover and establish the basic structure of the Church is rather arbitrary and will naturally lead to a one-sided view of the question. Hence, not one particular moment or instance in the life of the early Christian community, not one particular instance in the ministry of Christ can be regarded as historically indicating what basic structure the Lord wanted His Church to possess for all times.

Attention should rather be focused on the various deeds of Christ while still on earth and the various indications He gave. The call of Peter, the choosing of the Twelve, the tradition of the key, etc., all point to a distinct fact—the wish of the Lord to establish a social and hierarchical community to continue His salvific mission and to play the role between Him and His new chosen people. The life of the early Church as recorded in the Acts provides more and concrete proofs — the council of Jerusalem, the judgment of Annanias and Sapphira, the episode of the incestuous men, etc., are more indications of a germinating

juridical structure. In this instance, it is interesting to note that customs and morals prevalent among the various cultural and ethnic groups the early Church encountered itself in the course of its pilgrimage in human history were assumed as seen necessary for its social and community activities and later retained or abandoned as its usefulness or not dictated.

Thus from the scriptural records of Christ's ministry as well as from the life of the primitive Christian assembly, two distinct phenomena can be discerned: the wish of Christ to formally found a socially and juridically structured Church and the convenience of such a structure, i.e., adapted to the nature of man. The germ of juridicity and law can already be discerned which seed was to grow as the Church assumed legitimate human customs and mores as it journeyed in history, these latter gaining a more profound reality in the life of the Church as it expanded and new human needs were met. Of course, Charisms and institutions were present hand in hand in several Christian communities and in some instances charisms were more apparent as with the case of the Corinthian Church from which Küng bases chiefly his ecclesiological theory. But as we constantly state, the young Church was still in its formative stage and not yet fully formed. And besides, it is to be noted that even in the prevalently charismatic communities, there was always someone who acted as overseer as was St. Paul's case whose influence and guiding spirit were always felt either physically or morally through his epistles which he allowed to be read in the public cultural assembly in the Lord's name, i.e., with authority.¹¹¹

Hence, it is admissible as Neuman states, that the Church should appropriate several customs and mores as it grew and its needs gained universal proportions. But these were assumed to express the Church's juridical aspect. They were posterior

¹¹¹ Since it is not within the scope of this treatise to treat of the relations between charisma and institution in its fullest, the readers are directed to the ff.: J. VODOPIVEC, "De Ecclesia caractere charismatica et hierarchica", *Euntes Docete*, 8 (1955), pp. 145-159; E. D. O'CONNOR, "The New Theology of Charisma in the Church", *The American Ecclesiastical Review*, 161 (1969), pp. 145-149; L. TORRADO, "Carisma y Ministerio en San Pablo", *Salmanticensis*, 19 (1972), pp. 323-253; P. LOMBARDIA, "Relevancia de los carismas personales en el ordenamiento canónico", *Jus Canonicum* 9 (1969), pp. 101-120; G. GARCIA EXTEREMENO, "Iglesia, Jerarquía y Carisma", *Ciencia Tomista*, 86 (1959), pp. 24-26).

to the juridical constitution of the Church and availed of only instrumentally and not constitutively of the same. There was, therefore no arbitrary spiritualization of natural social structures. Correco rightly describes the matter, stating that "il soprannaturale contiene l'umano e in se stesso umano, non nel senso che trae origine da esso, ma nel senso che comprende lo spazio per salvare l'elemento umano."¹¹² The supernatural can assume the natural to assume its spatio-temporal applicability when directed to human realities. When the Church therefore, assumed various human elements, it did not supernaturalize them nor change their nature but rather elevated them allowing the same to participate somehow in its supernatural function. As St. Thomas would put it, grace does not destroy nature but presupposes and perfects the same.¹¹³ When the Church assumes and uses the human it does not change its nature but only perfects it and makes the same capable of performing the supernatural function proper of the Church without losing its own nature.

In this connection, the Thomistic theory of instrumental action is handy. When a principal cause avails of an instrumental cause, this latter is elevated to the plane of the former and together produce an effect proper of the principal cause, the instrumental cause remaining unchanged as to nature and proper function.¹¹⁴ Social, cultural, juridical mores and customs therefore, could be considered instrumental causes in effecting the salvific action of the Church; and its proper effect, the salvific action is understood according to the principle of conjoined causes described above.

Of course, the instrumentality of these structures should be considered more on the moral than on the physical plane. For even if the juridical aspect and hence, ecclesiastical law, is an instrument of divine grace, and thus, basically springs from the will of Christ, its concrete and detailed formulation comes from agents who carry the dignity of being the divinely instituted overseers of the Church. Church law's instrumentality therefore, should be considered in its proper theological and human con-

¹¹² Cf. *Op. cit.*, p. 141.

¹¹³ S. T., I-II, q. 109, a. 3.

¹¹⁴ J. GRETT, *Elementa Philosophiae Aristotelico-Thomisticae* (Friburgi: Herder, & Co.), vol. II, pp. 158-162, 167-173.

text. For not every legal rule is the direct expression of divine will. The bulk of ecclesiastical laws are man-made carrying with it the limitations and defects of human nature.

That the Church, hence, is structurally charismatic sans laws and precepts is hard to prove from Scripture. On the other hand, several factors in the life of Christ and the early Church point to the opposite — a growing structurally juridical Church. We have seen the various theories proposed to explain the existence of the juridical factor in the Church and saw their merits and defects. For us the point of departure, after Scripture, in any endeavor to show the presence of the juridical aspect in the Church should be theological, more precisely, ecclesiological and christological since the question of law is intimately connected with Christ and His Church. A metaphysico-sociological approach, we have seen is inadequate and neither is a purely theological manner of looking at the question.

The Church is a supernatural reality established to procure a supernatural end *modo humano*. In considering any aspect of the Church like its juridicity, a mean balance between the spiritual and the human element should be had and each should be regarded its rightful and proportionate attention. All discussions concerning the juridical aspect of the Church should be guided by this fact. The sacramental approach has the advantage of bridging the spiritual and the spatio-temporal dimensions of juridicity. This has been the point of reference of Vatican II, in fact.¹¹⁵ This mystery of the Church is compared to the Incarnate Word. Just as the assumed nature inseparably united to the divine Word serves Him as a living instrument of salvation, so too in a similar way does the communal structure of the Church serve Christ's spirit, who vivifies it by way of building up the body.¹¹⁶ Extending the analogy further, one can add that Canon law is the external manifestation of the Church's communal and hierarchical structure and hence, likewise, participates in the saving mission of the Church.

But these are posterior considerations. What should be sought first is a theological basis for the ontological necessity of juridicity in the Church. That is, a data of revelation which

¹¹⁵ Cf. *Lumen Gent.*, n. 1.

¹¹⁶ *Op. cit.*, n. 8

should support that intersubjectivity among men is divinely decreed as a necessary means of union with God. This established, the mystery of Christ's Incarnation will gain fuller and wider significance and the sacramental character of the Church, its juridicity, its laws attain a rightful and convincing theological meaning.

Parting from this premise one can then continue to examine more closely the human aspect of juridicity using as suitable means the findings and principles of philosophy, jurisprudence, sociology, etc. Profane sciences especially the Philosophy of Law are apt instruments by means of which the data of revelation can be interpreted and understood. It is precisely because law has to achieve a spiritual end while remaining human and intimately immersed in the spatio-temporal reality of man and history that human means of explaining the same is necessary. The application of a proper theological method even when we are dealing with the human side of the Church is essential. Without it one is liable to go astray and transfer human ideas to a divine reality.

This does not mean however, we repeat, that one can legitimately part from a philosophical or natural base and through it prove a theological reality. A genuine theological method which is the only legitimate way of proving and illustrating juridicity in the Church should part from the source of revelation and only posteriorly should be the aid of philosophical speculation be availed of for purposes of clarification and interpretation. The theological method does not and should not eliminate the assistance of philosophical science for the supernatural element does not eliminate the human and natural. Philosophical principles and ideas are useful and helpful in understanding the nature of the Church provided they are restricted to their proper role-as handmaids and never as mistresses of the house.

For God's Church has taken flesh in the human society that is ruled by ordinary laws of human nature. The law has been assumed into the fullness of the divine reality that is present in the Church. Therefore, the Church's nature should first be determined from revelation and then only posteriorly should the juridical factor's existence be explained through the instrumentality of human reasoning availing of all the sound principles that philo-

sophy can offer. It is the spiritualization of the human or natural element which should be avoided. The main fact then that should not be forgotten is that the juridical factor though easily understandable from the human aspect of the Church in reality participates of the supernatural dimension and is an ontological necessity in order that the spiritual benefits from Christ's Incarnation can be channeled to man according to the social exigency of his own proper nature.

Conclusions

1. — There exists a crisis of law in the Church whose external cause can be traced on the one hand from the defects of the Code of Canon law which for the past almost 50 years ruled the Church with norms at times technically faulty and in some instances unadapted to the diverse historical situations the Church constantly encounters itself in its period of pilgrimage. The problem, however, has a more internal cause, the failure of the Church to establish a theological basis for the necessity of the juridical aspect in the Church and consequently of Canon Law. The crisis that the actual Code is experiencing is therefore not so much imputable to its own proper shortcomings as to the crisis itself of law in the Church which in the last analysis is traceable to an inadequate theological theory regarding the Church's proper nature and structure.

2. — Scripturally, it is hard to disprove that Christ willed to establish an institutionally and hierarchically structured Church. Many biblical accounts of Christ's act and that of the early Church point to the fact that a fully established and structurally complete Church was not constituted definitely during a particular instant and in a particular ecclesial community. The germ of a juridically oriented Church was, however, notable in the early Christian assemblies which became more established and marked as the Church evolved to maturity.

3. — The question of the existence of a juridical factor in the Church is biblico-theological. Any attempt to approach the question otherwise will merely be to philosophize a supernatural reality. In this instance, there would be no advancement in the

concept and understanding of the nature and purpose of law in the Church except from a natural plane which is insufficient.

4. — A theological approach to the problem of juridicity in the Church is the most appropriate and this should start from a christologico-ecclesiological plane. For the problem of Church law is intimately connected with the Incarnation and the Church.

5. — Prior to and besides the societal aspect of the Church a theological basis for juridicity should be established in order that a proper and genuine concept of law can be projected.

6. — In illustrating the proper nature and finality of the Church's juridical factor and of its law, the principles of philosophical speculation and other human sciences should be used as auxiliaries. The danger, however, of spiritualizing philosophical conclusions to prove the Church's juridical factor should be avoided.

7. — The juridical factor and ecclesiastical law, consequently, exists in the Church as an ontological necessity demanded by divine will to channel the saving act of God to man in consonance with the exigency of his social nature.

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