

The Pastoral Function of Church Law

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It is now more than thirty years since the Second Vatican Council, to quote the opening words of its first document, "set out to impart an ever-increasing vigor to the Christian life of the faithful."¹ The renewal envisaged by the Council was to be pastoral; in other words, it was to be a renewal of the Church's role in caring for souls, as it carries on the work of Christ the Eternal Pastor². A pastorally renewed Church, according to the mind of the Council, should therefore be a Church where souls are cared for better, where the care they receive is more according to the fullness of Christ's design.

Not everyone today is content with the progress of renewal. Some people — some pastoralists in particular — say that if pastoral renewal has not gone as rapidly or as effectively as desired, a main reason is the rigid and antiquated concept of law which the Church — or some elements in the Church — still seek to maintain. The traditional inflexibility of the law is, for them, an anti-pastoral force. Instead of caring for people, so they say, it harms them. It seeks to keep Christian life in set molds, so stifling initiative, spontaneity, experimentation, the use of personal charisms. And, very particularly, it penalizes those whose lives do not conform to its strict norm, even to the extent of excluding them from a full share in the Christian community.

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¹ *Sacrosanctum Concilium*, no. 1.

² Cf. *Christus Dominus*, no. 1.

Law, understood within such a perspective, has no positive contribution to make to pastoral action. On the contrary, its role is essentially negative; so much so that it becomes a major obstacle to pastoral renewal.

A "law-versus-pastorate" mentality has come to characterize many post-conciliar approaches. It seems to be axiomatic for some people today that if a person thinks in juridical categories, he is no longer thinking pastorally. For them, "pastoral" and "juridical" have come to be opposed and even incompatible terms. It follows — within this logic — that insofar as Vatican II emphasized the pastoral aspects of the Church's life, it initiated — and its spirit still countenances — a de-emphasis on law and on all the canonical aspects of ecclesial life. I would say that from the Council right through to the new Code of 1983, we witnessed the effect of this de-emphasis, and are still in large measure witnessing it.

All of this suggests several questions. Which, if any, justification does the approach just outlined have in conciliar thinking? What is the relationship between law and pastoral care? Must we see opposition or can we find harmony between them?

Vatican II was personalist

If we are to answer these questions properly, I think we have to highlight — and to harmonize — two important features of Vatican II: the personalist note that characterizes its thinking, and the new understanding of law and authority that it offers.

First let us consider the personalism of Vatican II. The Council is of course personalist, in a primary sense, in that it is centered on the Person of Jesus Christ. But it is also personalist in the very important sense that it stresses the dignity and inviolability of each human person. Now, in stating that Vatican II is personalist in this latter sense, we need to keep some points clear:

✓ a) *Personalist* is not the same as *individualist*. Vatican II is not individualist; in other words, it does not accentuate the individual above the community. It is community-centered; it accentuates the community (at the same time as it accentuates the person). "Communio" is its main theme, that is, the main basis it proposes for a renewed

Church³. To be gathered together as sons and daughters, brothers and sisters, within the great family communion of the Blessed Trinity, of God's own life, is the vision and inspiration it offers.

b) Vatican II is therefore *both* personalist *and* community-centered. There is no contradiction. Personalism stresses the dignity and rights of each person seen in his value as God's creation and in his calling to divine sonship in Jesus Christ. However, in stressing rights, personalism also stresses duties (any genuine philosophy of rights is also a philosophy of duties). It stresses duties towards other persons — towards the community — and sees the fulfillment of these duties as a means of personal growth and self-fulfillment, in the fulfillment of the community. Individualism, in contrast, stresses the interests and advantage of the individual regarded as an end in himself, unrelated to any community. The individualist may at times pay lip-service to duties, but has no real concern for them. Self-interest is his rule. Where individual interests and common interests seem to clash, the individualist will always put what he considers his own interests first.

One can be personalist and community-centered. One cannot be individualist and community-centered. The failure to keep this basic truth in mind has largely bedevilled renewal over the past 30 years.

c) To be personalist is not to be anti-law. The individualist spirit can be (and generally is) anti-law. The personalist spirit cannot be anti-law, since a main function of law is precisely to defend the personal rights of each individual and to harmonize the relative rights of different persons, so that all can grow within the community.

If one does not keep the difference clear between individualism and personalism, one may fail to perceive that the use of personalistic language (invoking freedom, rights, conscience, etc.) can at times be simply a cover for individualist anti-community attitudes.

A second feature of Vatican II which is of interest here is its understanding of authority and of law. There is no doubt that Vatican II called for a rethinking of the nature of law and authority in the Church, and a new approach in the way in which authority is exercised. Authoritarianism and arbitrariness clearly violate the spirit of

³ Cf. *Lumen Gentium*, no. 1 and *passim*.

the Council. But, to call for a new understanding of law is not to reject law. To call for new modes in the exercise of authority is not to say that there should be no authority or that authority should not be heeded.

Vatican II never de-emphasized law

Vatican II nowhere countenances a de-emphasis on law, and less still does it put an "Ecclesia Spiritus" — of charismatic gifts and pastoral spontaneity — above an "Ecclesia iuris" — of laws and discipline.

On the contrary, when Vatican II seeks to reduce the theologically pregnant (but broad and somewhat vague) theme of "Communio" to a more concrete image, it chooses "People of God," a term which necessarily carries with it a juridic emphasis in a way that other traditional descriptions of the Church — such as "Body of Christ" or "Bride of Christ" — do not. It should be obvious that while an ecclesiology of the Body of Christ can be developed without any special emphasis on the reality or necessity of law, an ecclesiology of the People of God cannot, since the very notion of a "People" necessarily stresses interpersonal relationships, rights and duties, and therefore questions of justice and law.

This point is surely elementary and offers an all-important key to renewal. Nevertheless, certain attempts at renewal over the last 3 decades have not only totally ignored it, but have contradicted it and sought to generate a renewal movement based on an anti-law mentality. Now — and this needs to be stated with strong emphasis — an individualist anti-law mentality cannot lead to renewal. It can only lead to the dissolution of community, to a lawless situation where rights are not respected, duties are not fulfilled, and the many — the people — are exploited by the few. I have tried to develop this point at greater length elsewhere.⁴

Pastoral concern; juridical function

Let us try now to pinpoint the connection between *pastoral concern*, as Vatican II understands it, and *juridical function* or system.

⁴ *Authority and Freedom in the Church*, Ignatius Press, 1988.

Communion with Christ, and with others in Christ: this is the great pastoral theme and aim of Vatican II. This pastoral concern evidently presupposes not only a possibility of communion, but a *right* to communion; a right of access to Christ. Here we see how quickly the pastoral and the juridical interlink, because once we speak of rights we are of course speaking in juridic terms. Rights, after all, need to be defined, so that people know their own rights and the rights of others; so that they know what is owed to each one and what each one owes to others. Rights also need to be defended, so that each one is in fact given what is due to him. And this is where law and authority necessarily enter since, without law and authority, there can be no proper definition. and especially no proper defense, of rights.

It will help our exposition if we take a deeper look into the content of the right to "communio." The right to "communio" is the right to find the Grace, Truth and Will of Christ in and through his Church, using the means that Christ himself has instituted and left us. Canon 213, one of the most basic canons in the 1983 Code, says tersely: "Christ's Faithful have the right to be assisted by their Pastors from the spiritual riches of the Church. especially by the Word of God and the Sacraments." Canon 762 further stresses part of this, also in terms of a right: "the People of God are first united through the word of the living God and are fully entitled" — they have the full right — "to seek this word from their priests."

There are some important points to be noted about these canons, which are taken word-for-word from the conciliar documents *Lumen Gentium* (no. 37) and *Presbyterorum Ordinis* (no. 4). In the first place, the canons, in underlining the rights of certain persons, necessarily underline the obligations of others (one person's right always implies another person's obligation). Secondly, while the terms "Christ's Faithful" and "People of God" in themselves include clerics as well as laity, nevertheless in these passages — which emphasize what the people are entitled to seek from their pastors — the Council is evidently speaking in particular of the rights of the laity.

Duties come with rights

Renewal in fact, as the Council presents it, depends very largely on the laity's becoming aware of their ecclesial rights (and, of course, duties) and exercising them. This special stress on the rights of the

laity is undoubtedly something new. It is also something with an immediate consequence, for it evidently puts special stress on the obligations of those who are called to be ministers to the people, i.e. the clergy.

That is why it is not a healthy sign for renewal when some clerics today, who do talk emphatically about ecclesial rights, do not speak with equal emphasis about ecclesial duties, when they do not seem to be aware that, within the People of God, it is the laity who have more rights than duties and the clergy who have more duties than rights; when they are vague about clerical duties, whereas the Council is specific (as is the Code), or when they are negative about them — about obedience or celibacy, for instance — whereas the Council is totally positive.⁵

After “communio,” another major theme of Vatican II is that of “diakonia,” of service, with particular reference to clerical service. To serve is the great task, privilege and duty of clerics. A great part of church law is in fact aimed at safeguarding and enforcing the proper service by the clergy of the whole People of God.

I wish we could keep this in mind as we evaluate the protests and complaints about ecclesiastical law being a burden that still, 30 years after Vatican II and even after the introduction of the new Code of Canon Law, echo through sectors of the Church. How should one judge such a situation?

It could be that some aspect of the law or its administration has been and remains notably unjust, or it could simply be that “diakonia” has remained a jargon word, an unassimilated conciliar concept, while the spirit of service has become notably weak, particularly among those in the Church whom it should most characterize.

The priest whose spirit of service towards his people is strong will readily fulfil the ecclesiastical laws designed to protect their rights. But if a priest does not keep this service role uppermost in his mind, he can easily come to abuse the rights of the faithful, without perhaps even realizing it, and can do so in the very name of renewal: of spontaneity, of charismatic approaches, etc. Possible instances readily come to mind.

⁵ Cf. *Lumen Gentium*, 24, 36, 41, 42; *Presbyterorum Ordinis*, 15, 16; and cc. 273, 277, 284, etc.

Priests can abuse rights

The priest who disregards the norms governing worship or the administration of the sacraments, or who imposes a particular form of liturgical observance where the Church leaves freedom; the priest who is seldom available for Confessions⁶ or who puts parents off when they request baptism of their new-born child⁷ or who is unduly absent from his parish or diocese⁸ the priest who neglects preaching or who preaches politics or economics in a context that is totally lacking in faith or in supernatural criteria, or whose preaching does not follow (in words of the opening paragraph of the Vatican II Constitution *Dei Verbum*) "the true doctrine on divine Revelation and its transmission", or who bases his preaching on Scripture alone without reference to Tradition, forgetting (again in the words of *Dei Verbum*) that "Sacred Tradition and Sacred Scripture make up a single sacred deposit of the Word of God" (n.10), or who does not teach his people that for an authentic interpretation of the Word of God, given in the name of Jesus Christ, they have the right to look to the living Magisterium of the Church (*ibid.*): such a priest is not serving, he is not being responsible, he is not fulfilling his obligations, and therefore — since he is not respecting the rights of the people entrusted to his care — he is being neither just nor pastoral. It follows as a matter of course that the people, in the face of such failure to respect their rights, are entitled to look to ecclesiastical law and authority for the effective vindication of these rights.

If then we ask what the pastoral role or the function of law is, the answer is clear: it is the defense of ecclesial and personal rights. Without law, these rights are not defined, are not clear, are not safe. Without law, violations of rights go unchecked. Without law, abuses creep in, pastoral abuses included.

A further point should be mentioned here. Some pastoral theorists nowadays seem not only to accept the view that law is meant to defend persons, but to have also taken on themselves the vindication of this view in the face of those who, they allege, see the function of

⁶ Cf. can. 986.

⁷ Cf. can. 867.

⁸ Cf. canons 395; 533.

law as the defense not of persons but of institutions. It is scarcely an exaggeration to say that whole areas of canon law have become for them a battle-field between what they would call a conservative legalistic-canonical school, which defends institutions as against persons, and a progressive pastoral-canonical school (their school) which defends persons as against institutions.

Law, persons and institutions

The presuppositions underlying this approach seem to raise two questions: 1) *Is it a function of law to defend institutions?* 2) *If so, does the law, in defending institutions, show a lack of concern for persons and for their rights?*

The surprising thing about the first question is that it should be raised at all, within a Catholic context. Surely it is elementary to Catholic ecclesiology that Christ did not set up a purely spiritual Church but a Church that, as *Lumen Gentium* puts it, is a "hierarchically ordered society" and a "spiritual community". at one and the same time (n.8). In this society there are realities that pertain to the constitutional essence of the Church: the Sacraments, the Deposit of Faith, the Hierarchy, the Magisterium. These institutions were instituted by Christ himself; they are entitled to the defense of the law, and, insofar as the law defends them, it is defending the constitutional will of Christ for his Church and his People.

If the suggestion that canon law has no mission to defend Church institutions is out of step with the ecclesiology of Vatican II, the suggestion that, in defending institutions, canon law shows a lack of concern for persons and their rights betrays a radical failure to understand the true personalism of the Council.

Persons, in God's plan of Redemption, need institutions, and access to institutions, for their personal growth in Christ. For instance, this growth would be severely limited without the proper use of the Sacraments. It also enters into God's plan that persons need the concrete demands that institutions at times make on them, if their growth in Christ is to be complete. When we are burdened by the shame of our sins, it takes an effort to go to Confession (as it undoubtedly took the Prodigal Son an effort to return to his father), but God wants us to make that effort.

Law, therefore, in defending institutions, is defending persons. It is defending institutions *for* persons so that, also through them, each member of the People of God can reach and be reached by the fullness both of Christ's personal grace and help and of Christ's ambition and particular demands for him or her.

So, if we have to make choices in the whole matter, the choice is not between defending institutions *or* defending persons; it is rather between *defending persons*, by defending the institutions designed for their help and enrichment, or *failing to defend persons*, by allowing them to be deprived of the full power and efficacy of Christ's institutionalized gifts to his Church and, through his Church, to each of his followers.

We would do well to examine our attitude towards the different Church institutions, in this light; for instance, towards the *Magisterium*. It is an individualistic spirit which harps on how the Magisterium "threatens" people's rights. A spirit more attuned to the ecclesiology of Vatican II realizes that the Magisterium in fact defends people's rights; concretely their right to know the Mind of Christ on major issues, so as to be able to live within the Splendour of his Truth.

Law, truth, justice

A truly christian and personalist analysis reveals the positive and essential function of law in the life and renewal of the Church. Law, truth and justice are pillars of every society that proposes to offer its members the incentives, the channels and the guarantees necessary so that interpersonal life and relations develop in harmonious solidarity. Law is at the service of the truth, and even more concretely of justice: of what, according to the most attainable measure of truth, regulates the relations between persons, whether physical or juridic. That is why Saint Thomas says that "justice is at times called truth,"⁹ because it implies acting according to right reason or truth. In 1942 Pius XII told the Roman Rota that "the world has need of the truth which is justice, and of that justice which is truth."¹⁰ And in a 1961 address also to the Rota, John XXIII referred to the ministry of the

⁹ "Quandoque iustitia veritas vocatur": *Sum. Theol.* II-II, q. 58, art. 4 ad 1.

¹⁰ AAS 34, 342.

ecclesiastical judge as a "ministerium veritatis", a ministry or service of the truth.¹¹

Some time ago I read an article in a canonical review, complaining that an ecclesiastical judgment has no power to "heal" persons. The statement left me perplexed, for it is not so. Justice, properly administered, is a powerful stimulus to people. Appealing to the inner honesty of each one, to his or her deeper sense of values, it calls on them to put the proper rights of others above individual convenience or advantage. A just judgment — a declaration of justice — has great power to heal, or at least to point out the path to health.

It is true that the judgment alone - the simple declaration of justice - may not be sufficient to restore health. It needs to be accepted personally, and put into effect. That is why even though justice always possesses healing power, in the end it is not just the declaration, but the *acceptance* of justice — even if this demands a sacrifice — that heals. To bring about that acceptance is a truly pastoral concern, to be shared by judges and other pastors.

The healing - renewing - power of justice

When we say that good medicine heals, we are usually thinking of a healing process which demands not only a proper diagnosis but also getting the patient to accept the treatment necessary or the medicine prescribed, even if painful or bitter. The diagnosis or prescription — the judgment — is useless if there is no one capable of getting the sick person to accept and apply the remedy.

So, both judges and pastors have a capacity to heal. But their healing capacity is not exercised if they let people think that a violation of rights or a failure to fulfill obligations is a healthy and not a pathological situation.

Yes, one comes across cases where a civil or ecclesiastical judgment seems to leave one of the parties "wounded", and he or she lapses into a bitter and resentful attitude. But if the judgment is just, the person should not be that way, or be left that way. The genuine pastoral concern then must be to help the person out of that attitude, through

¹¹ AAS 53, 819.

seeing that the judgment, despite the personal hardships it may cause him or her, defends other people's rights. Only if the person accepts this, will the "wound" gradually disappear and the healing process be brought to completion. The pastor who does not share this aspect of pastoral concern may tell people they are well, but in fact he is leaving them sick.

As jurists, we need to be keenly sensitive to a great danger always threatening the science and practice of law: its possible instrumentalization if it were placed at the service of particular ideologies, or individual or group interests, and not at the service of truth and justice. If this were to occur (and there is no guarantee that it cannot happen in the ecclesial world, just as it is most certainly happening in the secular), then — apart from the enormous harm done to the whole of the life of the faithful — jurists themselves — judges, lawyers, teachers — inevitably run the risk of losing the deep joy of their profession and calling, which in the end can derive only from the sense of serving the cause of justice and of truth. It is a danger that could particularly threaten the natural idealism of young people as they embark for the first time on the service of law, truth and justice within the Church.

More than ever before, we need practitioners of the law who are in love with justice and truth; who are deeply conscious of the "*Splendor Veritatis*", and — a subject to which the Pope devoted his 1994 Address to the Rota — of the "*Splendor Legis*" or the "*Splendor Iustitiae*": the splendor of law and of justice. Only such jurists can help the great body of the faithful to understand the service given by the law to the life and vigor of the People of God. Turning more specifically to the field of our present interest, one could add that only such jurists will be capable of comprehending and reflecting the deep attractiveness of the Church's teaching on marriage, in the light also of the challenges it undoubtedly offers.

Without a longing for "communio", without a proper understanding of christian personalism in its demands as well as in its beauty, without a deep love for truth, justice and law, the renewal of ecclesial life in general and of personal christian life in particular is not likely to come about. It is true that justice alone cannot build individuals or build a community, bringing people together and maintaining them together. But *love* for justice can. □

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