REVISION, THE LAW AND THE CHAPTER

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DURING THE first Vatican Council, it was clear to the fathers that the canon law needed total revision. The task was so complex that it seemed to be beyond the capacities of anything less than a general council. Yet by the same token, it would never get done in a general council; and in any case the council was itself suspended before it had given much indication even of its first thoughts about the shape of church law. The huge body of legal enactments already in existence could hardly be known except to those few scholars truly learned in the history of law and its vast content. They were in fact the first to admit that it was virtually impossible to say what the law was in detail. Some aspects of it were brought into some kind of ordered shape after the council was terminated; but by the end of the nineteenth century it was clear that heroic measures were going to prove necessary.

The codification of church law

In 1904, Pius X declared that there was to be a full codification of all extant and operative canon laws. The obsolete and outdated elements would be eliminated, and the remainder adapted to modern conditions. In fact the work was completed in about thirteen years. The apparatus of principal sources and the plethora of footnotes in the printed code testify to the skill of the compilers: so much so that to investigate the development of important canons is like following an exacting course in church history. The speed of the work was most striking. By any realistic standard, the code of 1918 must stand as one of the greatest works of legislation of all time. Obviously it is open to criticism, especially from the point of view that the First World War provided a serious obstacle to the fullest previous testing of its contents, and even to its accommodation to the needs of the times.

However, though it is not to our point here to make a defence of that code, it would be stupid to allow it to be written off as some sort of aberration that prevailed in the life of the Church for

fifty years or so. A good case can be made for the view that only a very strong and even over-powerful legal system would have been enough to withstand the changes and upheavals which took place in the first half of the present century. To press the point further, only a very firm basis in law could have produced the security for the changes which were introduced under Vatican II. The fathers of the council were the fruit of the system that they wished to change. And yet it was change that they wanted.

The Code treats religious life with a markedly strong juridical accent. At first sight, such a statement seems like complaining about the farmer producing food, or about the cobbler sticking to his last. What we are saying, however, is not that a legal code was juridical, but that its juridical nature did not serve religious life for the best. As canon law is a juridical manner of expounding theology, and yet is not all theology, so the canon law for religious life is not at all the whole of religious life. Now the common law in the Code for religious provided, for the various classes of religious, norms and regulations to which the religious of virtually every Institute had to conform. It was indeed possible to know with a considerable degree of accuracy what monks, nuns, exempt religious, members of clerical Institutes, members of lay Institutes and the rest, were or ought to be doing without having any knowledge of their own particular law. This could be known as it were *a priori*, by knowledge of the common law, and without any close acquaintance of the internal life of any Institute. In fact it was very often completely predictable what each Institute would be like in its being and manner of acting. The common law ruled over all, and the particular law of the Institutes had to be brought into conformity with it. It is easy to exaggerate the effects of this, and easy to ignore the advantages. For example, it is not too unusual to encounter religious who think that it might be quite a good thing if there were 'just religious', without any marked differentiation. But disadvantages there were, and we are still living with them. The most notable of these was that the need to conform to the common law limited the particular riches of the religious Institutes in their response to the challenges of the times. They all tended to be depressed to a common denominator, not necessarily and simply a lowest common denominator, but one which inhibited the spirit and the individuality of the particular Institute from achieving its full potential.

It is true that a number of the more powerful Institutes were able to resist the effects of the pressure of the common law upon them.

Nor was this from any disobedience to the common law; rather it came about through a particular insistence upon those elements of their own law which remained untouched by the Code, and were therefore free to be applied in addition to the common law, as it were. Less powerful Institutes tended to assimilate more and more to each other, so that the differences between them seemed often enough to be minor: the minutiae of religious life and observance, the millinery department, the practice of highly domestic custom. It should be noted that this period of ascendancy of the common law coincided with some of the most notable and successful initiatives in the history of the Church. Missions, schools and educational work of all sorts, charitable and apostolic activity seemed to grow out of a virtually endless stream of good vocations, which were strenuously trained and very rigorously controlled. Correspondingly, there was a very high standard of regular observance, even though this was in the realm of discipline rather than of personal growth.

The rumblings of change

This said, it is clear that at the deepest levels all was not well. This seems to have been recognized at general chapters of some of the larger orders after the Second World War. A new and perplexing world was coming into being. The securities and certainties of the pre-war outlook were being brought under question. Attempts to enter into the obvious danger-areas of the needs of the Church by the reasonably perceptive were instantly restricted. Some thought that if one did not look they would go away; others denied their very existence. Rather over-simplified notions of religious life were militating against the vigour and fruitfulness of the Institute's self-understanding; the immobile tended to be confused with the essential. All of this was, of course, a partial reflection of the understanding of the Church of herself: a defective understanding, which was itself to some degree sustained by the limitations imposed by the common law of the Church upon the Institutes. The relative debility of religious life in the Church was demonstrated when the brakes came off: a weakness and lack of stability was uncovered which could not be entirely written off as due to the frailty of the members. The Institutes themselves had suffered damage.

The Council and the religious life

The consideration of the religious life in Vatican Council II was placed accurately within the consideration of the nature of the Church.

It is interesting to note that, at the beginning, the bishops were optimistic rather than cautious about the increasing competence of the dioceses to take over, progressively, work previously entrusted to religious. Where that was not desirable or possible, the activities of religious of all sorts were to be more directly under the control of the local Ordinaries. As the Council progressed, the matter became more central. The basic insight emerged that religious were seen to be and required to be for the Church. This was not news to the religious; but it did have the positive value of stressing that the religious life existed by right as belonging to the holiness of the Church, and not by a kind of toleration or sufferance. On the other hand, the religious life had to bring forth expected fruits. The documents of the Council which are at the centre of modern religious life are chapter VI of *Lumen Gentium*, chapter III (4) of *Christus Dominus, Perfectae Caritatis*, and *Ad Gentes*.[1] These give us the conciliar law on religious, and their importance can hardly be exaggerated. But the question that needs to be asked and answered is simply that the conciliar law needs to be applied. We have come to learn what should have been initially clear; it is quite possible to have interpretations which impose meanings upon or extract meanings from these documents. They do not have any one simple interpretation; indeed, they are still in the process of receiving interpretations which are not fully consistent with each other.

Lumen Gentium places religious within the Church. *Christus Dominus* places them within the dioceses, and relates them to the local hierarchy and the hierarchy to them. *Ad Gentes* places the religious within the Church and the diocesan structures, in the way in which the Church is missionary, and in the manner that the religious are called and sent to be missionaries. The decree *Perfectae Caritatis* is specifically concerned with religious life. Published on 28th October 1965, it was followed by a note concerning the *vacatio legis*, the customary period of suspension of a new law within which it does not oblige, and during which it may be spread abroad, so that it may be studied and its recipients familiarize themselves with its contents. The suspension was extended to 29th June 1966: 'In the meantime the Supreme Pontiff will issue norms for the implementation of the aforementioned laws'. (A similar note, but one published without

[1] The Dogmatic Constitution on the Church; Decree on the Bishops' Pastoral Office in the Church; Decree on the renewal of Religious Life best suited to our times; Decree on the Church's Missionary Activity.

the promise of norms for implementation was placed at the end of *Ad Gentes*.) Some months later, the Motu Proprio, *Ecclesiae Sanctae*, of 6th August 1966, was promulgated by Paul VI. This, as promised, gave norms for applications; but it also treated other matters:

> And so with due consideration, by our own initiative (*Motu Proprio*) and with our apostolic authority, we decree and promulgate the norms which follow, and command that they be observed for the purpose of experimentation, until that is, the new Code of canon law shall be promulgated, unless the Apostolic See shall in the meantime provide otherwise. The norms are for the carrying into effect of the decrees of the Council entitled by their opening words; *Christus Dominus* (The Pastoral Office of Bishops in the Church). *Presbyterorum Ordinis* (Of the ministry and life of priests), *Perfectae Caritatis* (The renewal of religious life best suited to the times), and *Ad Gentes Divinitus* (The missionary activity of the Church).

The sweep of this legislation is thus very wide: it is the Church trying to legislate for her full-time personnel and actually doing so, although much of the legislation is professedly for the purpose of experiment. With the attempt to reorganize the apostolate according to the mind of the Council, much experience would be gathered. On such a basis, a new Code might emerge which would be more suited to the actual life of the Church.

Renewal and capitular legislation

It follows, then, that the current work of renovation of religious life and Institutes must be integral with the doctrine of the Council.[2] It is equally clear that the main responsibility for religious legislation is no longer in the common law. The responsibility for renewal and adaptation now rests squarely on the shoulders of the Institutes themselves; and their main instrument here is the general chapter. Nor are the chapters themselves to think of their work as being fulfilled merely by legislation; it rests rather in their effective attempts to re-invigorate the spiritual and apostolic vitality of the Institute. It is not our theme to treat specifically of the law of *Ecclesiae Sanctae*; but we must notice in the light of the changes required the emphatic insistence on two levels of law for the Institutes. The most important elements are to be included in the fundamental codex, which will be

[2] *Ecclesiae Sanctae II*, Introduction. Cf *Supplement to the Way*, 4 (November 1967), p 3.

stable and substantially immutable when once fully accepted by the Holy See. More ephemeral matters of application and accommodation are to be included in the secondary codex of law, which, as such, will be open to change. The intention is clearly to prevent the accumulation of obsolete matter which, by the inertia of time and habit, is likely to overlay the more vital aspect of life inculcated by the rule. Of course, nothing is ever introduced as obsolete, but rather as most real and actual and necessary: but that is not how it remains. In this context, it is clear that continuing vigilance and openness to change is directly legislated for.

> Finally, there can never be any question of the right kind of renewal being accomplished once and for all; it must be kept in progress continually by the fervent support of the members, and the constant care of chapters and superiors.[3]

In this clause of the law it seems clear that the matter is not only for the period before the publication of the new Code. Rather it seems to admit the need which experience teaches and which became most obvious under the old Code. Then, far too often what marked the individuality of the Institutes was their 'traditional' peculiarities; and by the very fact that the Constitutions had once been approved, the matter was removed from the power of the Institutes themselves and was reserved to the Holy See. Change was not only difficult, it was practically impossible.

The draft code for Institutes of consecrated life

Now we have a draft code of common law for religious. This has been constructed with an awareness of the immense work which religious of all types have given in a loyal and obediential effort to do what *Ecclesiae Sanctae* enjoined and still enjoins upon them: for the work continues. Both from the draft code and from the task of renovation and accommodation, it appears that we are reaching a moderately clear position. It has been said, 'anyone can have the legislation if they leave me the administration'. Obviously, if the chapters of renewal as they have operated and are still operating within their terms of reference, and within the time permitted to them, decide to produce a fundamental codex which leaves a great deal to the

[3] *Ibid.*, p 18.

competence of the secondary codex, then that Institute remains very open to change, according to the law of *Ecclesiae Sanctae*. But if either the draft Code or the Sacred Congregation of Religious and Secular Institutes requires that the fundamental codex shall contain elements which might conceivably and perhaps reasonably be placed in the secondary codex, then that Institute is the less open to adaptation and accommodation.

Concretely, then, it will not really be the new Code that gives a religious Institute the right to change its laws. So far as can be seen, this process will have been in its greater part completed by the time that the new Code is fully promulgated. And if the revised Constitutions are themselves approved before the Code is promulgated, it will be because they meet the requirements of the Congregation of Religious. It is true that the draft Code does give indications of what must be included in the basic codex; and it is even more true that the boundaries of accommodation have been practically set by the scrutiny of the Congregation of Religious. The outstanding question is whether or no either the draft Code or the administrative decisions of the Congregation of Religious, in separating out the mutable from the relatively immutable, have shown sufficient sensitivity to the conciliar law, or even that of *Ecclesiae Sanctae*: not to mention the work of the Institutes, as they have extended themselves to handle the task which was imposed upon them by law thirteen years ago.

The constitutions in revision

What the constitutions should include is fairly clearly indicated in the draft Code: the burden of its song is 'according to the constitutions'. Of itself, this would not deal with the problem of whether or no elements should be assumed to be suitable or required for the fundamental codex because they feature in the draft Code. It goes without saying, however, that the points indicated by the draft Code are little more than a table of contents. It is precisely in the manner of handling these legal themes that revised constitutions will be more or less successful. The items which express in practical terms the being and operation of a religious Institute are rather conclusions from the spirituality and the graced self-image of the Institute than their elaborate description. It is worth noting that early drafts tend to be long, verbose and redolent of the 'with-it' theologies of the day. Alternatively, there are the short-cut drafts which simply attempt to appropriate the gospels as the rule of life, as if any Institute could

adequately express the mystery of Christ in the gospels. The problem is that while, ideally, every religious Insitute is a true expression of the evangelical values, the variety and richness come from particular emphases laid on some of these values, with a lesser accent falling upon others. The written Constitutions will stress what in the practical order makes these values to endure and bring forth fruit.

Although it is true that this can be done successfully, it is equally true that there are not many founders of spiritual genius. Not even saintly founders were always endowed with the sort of qualities which would measure up to what *Ecclesiae Sanctae* has required for accommodated renewal. This tends to produce rather anachronistic flights to 'what our founder would do were he alive today'. It is not even cynical to ask whether he would have founded at all. It should also be kept in mind that very rarely have founders had the full freedom necessary for the implementation of their personal charism. One who did have this freedom, although not without difficulties and contradictions, was St Ignatius Loyola. His constitutions have stood the test of time very well indeed, and are virtually unchanged. They also set forth a very strong pattern of spirituality reduced to practicality, and succeed in maintaining the ascendancy of spiritual principle without taking off into rhapsodic flight. Yet in the middle of his work, Ignatius secured from Pope Paul III the previous privilege of change and accommodation of the Constitutions for the Society.[4] The powers there granted are so wide that it is difficult to see how they could be extended. That they have hardly been used does not much weaken the point that even so successful a legislator had the forethought to anticipate that change, even change at a deep level, might become necessary.

The general chapter and the new constitutions

The requirements of the Council and of *Ecclesiae Sanctae* fell, therefore, upon the Institutes themselves. The majority were not only without experience in legislation; they had been specifically refused the power to make laws. The very function of the general chapter was so reduced that it had become little more than machinery for election. It is not too surprising that much of the chapter work was of mixed quality. The draft Canons do not have very much to say concerning the powers of general chapters for the future. Canon 25 states that

[4] *Iniunctum Nobis* (14 March 1544).

they have 'power with regard to their members in accord with the rule of universal law and of the constitutions': and it then goes on to indicate that clerical institutes of pontifical right possess in addition ecclesiastical power of government.[5] Now this is really to say that they have the power to legislate only if it had been specifically conceded to them. It could be conceded to them by the universal law (but surely this is the proposed draft of that law), or by the acceptance by the Holy See of the constitutions which enshrine that competence. The implication would therefore seem to be that the intention of draft canon eleven is restrictive:

> Changes in Institutes of the consecrated life which affect any matter subject to the Apostolic See cannot be made without its consent.[6]

Of itself this is perfectly reasonable and makes good sense; but there seems to be no recognition that the matters which are not of the fundamental codex are likely ever to need change. Moreover, as has been previously remarked, if there are not effective powers to decide what will be retained in the more mutable part of the constitutions, then the time of important change could already be drawing to a close. This is not to make a plea for incessant change, and certainly not change for the sake of change. But there is much to be said for the view that really deep experience of the effects of the new legislation may well require much greater latitude.

Moving towards revision

In fact, to the faculty granted by *Ecclesiae Sanctae* to experiment against the constitutions, and even against the common law with due permission,[7] there arose roughly two different sorts of response. Both of these were experimental, but had a different accent. One took its beginning from a strong persuasion that the basic lines of the text expressing the life of the Institutes were sound, and thereupon moved by way of amendment and modification. The other took a much more radical approach, stressing the need for very deep investigation into the life and values of the Institute, and making regulations of a highly provisional sort. These two responses include, of course, a continuum from adherence to a text to virtual elimination of any

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[5] Cf *Supplement to The Way* 33 (Spring 1978), draft canon 25 and comment, pp 49-50.
[6] *Ibid.*, p 38.
[7] *Ecclesiae Sanctae II*, 6; *loc. cit.*, pp 8-9.

firm document for the time being. Thus much work has been done in many Institutes upon the spiritual identity of the whole body, while maintaining a text under close observation and assessment.

The almost universal finding was that religious knew relatively little about the life that they had been living for years. When the leash was slipped, there were considerable troubles and disorders; often because, quite simply, many did not know how to use their freedom, many feared freedom for themselves and for others, many were uninformed. The exhortations to involve entire memberships of Institutes in the work of renewal had good and less good effects. It was just too easy to imagine that any view was as good as any other. Often, particularly in the earlier stages or phases, matters of great delicacy and importance were treated with quite insufficient circumspection and even respect. Some of the worst fears of the conservatives seemed to be verified. The position became much better when it was accepted that renewal work was far more serious and demanding than an untrained population had imagined. The matter of training became more and more emphasized, and ranged from the theological and ascetical to the psychological. The sheer difficulties inherited from a previous but still prevalent culture, which had deprecated any deep inter-communication of personal values and realities, had to be overcome if preparatory work for chapters and the chapters themselves were not to be traumatic. This process, even as the work moves into what may be its last phase of opportunity — last, that is, according to the provision of *Ecclesiae Sanctae* — is continuing, and seems only now to be coming into its own. Learning and experimentation take time; and the learning of the skills of communication takes more time and practice than in fact is often allowed for.

In some measure it is now much more possible than before to do capitular work, whether that which is preparatory or that which is plenary. This reflects an honesty of disposition and a personal reformation which was emphasized in the documents which initiated the whole process. And although it is true that without the personal skills of listening to each other, the information of all sorts which must inform discussion and debate, and the experience of what happens is understood, then nothing happens, it remains true that organizational skills have also come into prominence. It is fairly clear that organization of views and insights has often been a major difficulty. For lack of the genius in spirituality and practicality, and even law, the slack has to be taken up by joint effort. And this can produce all the defects of committee work in itself and in its outcome.

Practical observations

The work of chapters seems to be successful in direct proportion to the work previously invested. This is a glimpse of the obvious, but it is not so obvious as to be always observed. The work of previous consideration must be upon a text established as basis. How the text itself is prepared is another matter. It might well be the existing documents or constitutions: it is rare enough that it be a position paper, unless this be magisterial and of immense competence. It may be noted that some Institutes of women, through the researches of their members, have discovered truths about their origins which they had hardly even suspected. These researches are of course sometimes simply impossible to perform: where they can be performed they will give a foundation of immense value to the discernment of the radical spirit of the Institute. Here there is no adequate substitute for fact. Happy indeed are the religious who know their spiritual origins and genealogy.

Upon this sort of information it then becomes necessary to reflect individually and in groups; and such reflection can be painful and challenging. Basically it is a question of how I find myself, at my reasonable best, reflecting upon what seems to be proposed. Is this me? Is what is said in the text my truth, in so far as my experience of the religious life instructs me? Does it ring true at least in aspiration? And if it rings true in aspiration, is it observed? And if it is not observed, is this just for reasons of human frailty, or is there something wrong with the way in which it is proposed? Can the values which are being sought be obtained by some other means?

Concretely, it can be very useful to go through a text or even the full book of the constitutions and, using a colour code, mark what seems to be central and of the greatest importance, then that which is of lesser importance, and so on, for perhaps four gradations. When this has been done in small groups, the findings can be collected. And here it seems most necessary to make the point that for all practical work upon constitutions an accurate system of numeration is necessary from the beginning. Comments and modifications, even if they are very numerous, are quite manageable, if some decimal system is followed. The arrangement of collected comments is generally more efficacious if the matter is arranged in broad positions rather than with too much attention to the words, expression and style. But there must be a considerable exercise of discipline. Before any point of change is suggested, it seems necessary that the basic

criticism be made: it must be stated what is wrong with the thing as it is, and only then is it useful to suggest change or improvement.

It is when the general views on a given topic have been fed back that the work of collation begins. It is not completely necessary that everything said is reported, even in the working papers; it is useful if the weight of numbers can be reflected in the broad positions. If some system of using one piece of paper for one theme is followed from the beginning, and with good numeration within that, an accurate position can be drafted for any section under consideration; within this, the various opinions will emerge naturally and the real reasons given. It goes without saying that fidelity and reasonable accuracy make this process successful. It is not necessary or particularly valuable to write up such a position in sequential prose. There is a notable bonus in such work for those who are appointed to it; if these are likely capitulants, they will have a deep understanding of what is in hand for the work of the chapter itself. If it is possible to provide the suitable persons, this work should be divided, and there should be more than one engaged upon each area. There is no censoring of views; the task is merely one of collation and central reporting of the views brought forward.

In questions of great importance, it can be useful to feed back to the members what the broad views are, for this maintains interest and may also give useful light in relation to elections for the chapter. It is also most valuable and usually necessary that, when the elected capitulants are known, they are provided with all the working papers, in order that they may study them and even consult upon them.

This process is one of widest consultation. It is not unknown, however, that the matter should be handled virtually *a priori* by someone appointed for the task. This has some advantages, in purely technical matters for instance; for it is more than can be reasonably expected that people shall inform themselves of technical areas which can be immensely complex. On the other hand, it is a complete waste of time for people to ramble on, in a kind of ritual gesture of consultation, about matters on which they have no skill nor competence. But this is a different matter from the previous preparation of material where, in fact, the chapter is confronted with a text in an advanced state of elaboration, to which it is expected to agree with a rubber stamp. This, or the fear of it, is a sovereign recipe for capitular chaos.

In the chapter as such, a different tempo from that of preparatory work asserts itself. If the chapter is that of a province or a region,

its purpose is to bring forward the mind of the province upon the themes proposed. It is not required to produce fully elaborate texts with all the minutiae of drafting which that involves. It should, on the other hand, have the greatest clarity over the points at issue; and often this will involve the proffering of draft texts. However, these are not put forward as a kind of finished and absolute judgment, but rather as a means of illustrating what the opinion of the provincial chapter is. It may be noted in passing that the more solid the work of the provincial chapter the more effect it will have upon the general chapter. This is not just because a position that has been well prepared can be fought for, but because a greater contribution can be made to the general consideration of business when points arising have been considered previously and at depth.

In any chapter it is necessary that there be established, agreed and observed some sort of rules of procedure. These are not merely the setting down of the norms for parliamentary procedure as for committee work, but should state clearly what manner of approach is to be taken to the handling of business through its various stages. There is nothing more depressing than the interminable utterance that is supposed to clarify and only obscures. It seems reasonable to expect that, working upon the basis of well-prepared matter, a commission can do as well as the plenary assembly in drawing together all the previous work into a shape acceptable on the floor of the house. The work of separate commissions proceeds in parallel, and it is desirable that the membership of commissions should be well-balanced for strength and experience. For this reason it is good to have a careful diary of work constructed. The commissions should know from the beginning roughly when they have to produce their matter clarified for discussion. To handle this effectively they themselves will have to make some sort of previous assessment of the relative importance of matter that is in their hands: this is most salutary. Proportion is the soul of chapter work.