

Preface

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THAT THE EDITORS of *Concilium* should devote a volume to Canon Law may cause some surprise. But the reason for doing so is easily justified: Canon Law and theology are essentially related.

1. We can, as a matter of fact, speak of a theology of Canon Law and of a theology in Canon Law. Someone has said that Canon Law is "the juridical mode of theologizing". Theology effectively shapes Canon Law and presents it with pre-juridical grounds for action—the immutable data of the social, hierarchical and sacramental structure of the Church—and its meta-juridical goal, the *salus animarum*.

For that reason, the vicissitudes and the progress of theology have immediate repercussions in Canon Law. Consider, for example, the possible and diverse consequences in Canon Law of admitting or denying the "generic" institution of the seven sacraments and the Church's jurisdiction over these sacraments (which are the social means of grace at its disposal). Or again, consider the effect of affirming or denying the doctrine of episcopal collegiality.

Now then, the pre-juridical theological foundation is often *indifferent or generic* with respect to the concrete instrumental expression of canonical regulations. Or, to put it conversely, we must take into consideration the essential *relativity* of many canonical regulations, a relativity made possible because of their generic theological foundation.

We see, therefore, that the movement of theology coincides directly with the movement of Canon Law. It is in the theologian's interest to know the possible canonical implications of

his theological positions in order to justify doctrinally the historical variables of Canon Law.

2. The lack of complete identity between theology and Canon Law and the relativity of canonical norms *vis-à-vis* absolute, although generic, theological norms, justify to a certain extent the distinction between the *Ecclesia juris* and the *Ecclesia caritatis*.

Theology, on the other hand, has been accused, especially in ecumenical circles, of becoming "Westernized", "juridicized", and of "post factum theologizing", that is, of absolutizing theologically the historical lines of action of Canon Law.

It is, however, precisely the proper valuation of the spatio-temporal relativity of canonical regulations that will help not a little to acquit theology of this charge. We cannot prescind from analysing and weighing the historical development of Canon Law in order to determine in many cases the exact theological doctrine. For by failing to take into account the historical viewpoint and the historical data of Canon Law, the theologian runs the risk of identifying laws, usages and customs (perhaps very stable and, if so, even more binding) with the norms of divine law (which are immutable), even when the former are at most canonical norms that the Church can change at will.

Canon Law, therefore, can be of great assistance to theology in helping it to become effectively more "catholic" and consequently more "ecumenical". It will prevent theology from becoming identified with canonical historical factors even though theology be deeply involved in them, giving them their form.

3. Again, those of a more pastoral bent

accuse Canon Law of a certain rigidity and of being an inefficacious instrument. They realize that the goal of Canon Law is the *salus animarum*. They know that between the two extremes—the social structure of the Church and the salvation of souls—Canon Law is a pastoral instrument and as such must continually renew its fidelity to theology as well as its pastoral suitability. The social structure of the Church, being immutable only in its substantial features, makes this revision possible; changing pastoral needs demand it.

The very "theologizing" of Canon Law tends to absolutize canon laws, making them static and fixed with the absolute rigour of immutable theological truth. It carries such immutability over into the pastoral sphere which by definition is as dynamic and agile as life itself. Consequently, we meet with a pastoral prejudice.

Hence, very often the rigidity of Canon Law smothers pastoral needs, being insufficiently flexible to fulfil or meet them. These needs force theology to deepen its awareness of the pre-judicial elements in theological doctrines as a prior and necessary step in reaching an adequate canonical formulation. Has this not been one of the most striking experiences of Vatican Council II?

Only by taking into account the essential relativity of Canon Law within the limits of its essential, theological and immutable foundation can the doors be opened to a *jus condendum* different from an actual *jus conditum*. And if the pastoral needs bring pressure to bear on Canon Law to attain adequate laws, Canon Law puts pressure on theology with all the force of its mission—which is to regulate and order the pastoral—so that theology dictates to Canon Law the immutable theological limits within which it can move. Canon Law in this way coincides with theology, and exerts its influence in causing it to progress and grow.

4. Finally, the search for, and the establish-

ment of, the correct application of the principle of canonical relativity achieved by the legislator will enable the theologian to see more clearly how the generic imperatives of theology are formulated. These formulations will take the form of distinct and concrete canonical laws in keeping with the pastoral demands of differing historical and social circumstances from a theological point of view. In this way the work and study of the canonist will help the theologian discover his proper stance with greater precision.

This auxiliary role will be especially relevant in the next few years before the *aggiornamento* or updating of Canon Law announced by the Council. But it will be a never-ending task. The Church, in a state of continual historical becoming, should be continually and constantly revising and reforming its discipline with a view to the ever-changing historical and geographical pastoral needs. Hence, the necessity of a constant pastoral re-evaluation of its laws.

In conclusion, *Concilium*, Vol. 8, will try to move continually from Canon Law to theology and to the pastoral and vice versa in order to discover and apply the principle of the generic nature of theology and of the relativity of Canon Law. Our viewpoint will be that of the pastoral evaluation of laws and their adequate formulation in order to offer reflections for improving a possible *jus condendum*.

Preserving the substance of the Constitution on the Church and in its service, this volume aims at helping theologians in "dejuridicizing" theology and canonists in "detheologizing" Canon Law. Thus pastoral theologians, ecumenists and legislators may collaborate in making the Church's canonical role more attractive and in establishing, in accord with the wishes of Pope John XXIII, a legal apparatus relevant to the age.

May it have as its charge and its symbol the symbol and charge of Vatican Council II: to be "catholic", "ecumenical" and "pastoral".