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# *The MAST Journal*

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## **Law and Religious Life**

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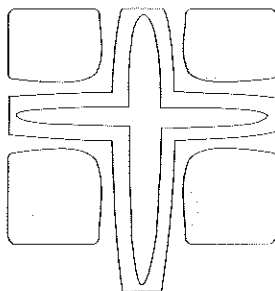
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Dear Sisters, Associates and Friends of Mercy

A Japanese koan, or riddle for meditation, proposes, "What is the sound of one hand clapping?" The paradox, which frustrates the mind's demand for logical explanation, refers to "one-sidedness," and forces the monk to consider whether it is true that there is a sound if one hand claps. Patriarchy is a species of one-sidedness. It is a lie because it prevents the whole truth of persons, events and history from being acknowledged. Patriarchy rests on a fraud and distortion of the truth because, in unilaterally dictating terms and defining what reality will be normative, it substitutes one side for the fact that two sides exist. Patriarchy is violent because it ignores, silences or eliminates any voice but its own.

Patriarchy is not only the cultural heritage of "fathers" exercising one-sided dominance over women, children, slaves and earth. Patriarchy and paternalism also manifest their one-sidedness in the church at large, and even within women's religious communities. Patriarchy at root is not just about male power and subordination of women, but about subversion of wholeness. As an obdurate one-sidedness, patriarchy refuses to acknowledge, hear, or respect any perspective except its own. It violates the truth that others exist, and that all persons have rights.

One significant section in the revised Code of Canon Law of 1983 concerns the rights of the laity, Canons 224-231. These acknowledge the dignity of the baptised, their right to have training in theology and doctrine, to speak as experts in the church, to participate in its functioning, and to have fair remuneration for their ministerial services. The enunciation of these rights undermines a patriarchal, one-sided idea of church, in which laity are silent and powerless, and only clergy have the power to articulate doctrine or decide policy.

Women religious are not clergy. Their canonical status is closer to that of laity. Sharing the status of laity, women religious understand the one-sidedness of the church which suppresses the voices of women, ignores the experience of women, and violates the personal integrity of women, leaving wrongs done to them unredressed by ecclesial authorities.

All the baptised have an ecclesial right to due process. Citizens in democratic societies enjoy it as a civil right. Due process is directly opposed to the fraud of patriarchy. Due process describes fundamental procedures of governance which guarantee the "other side" will have a hearing before a policy is decided, a decision made, or a judgment rendered.

Due process requires persons in authority to give notice and provide a hearing to the "lesser" or "other" before a decision is made. Patriarchal decision-making is fraudulent because it is merely a "telling" that dictates decisions as though the other does not exist. Due process requires the whole truth of persons, events, and history to be acknowledged, even if those facts displease, interrupt, or contradict the one-sidedness of patriarchal assertion. Patriarchy shuts down the voice of the other, marginalizing it and eliminating it, perpetuating the falsehood that there really is a sound if only one hand is clapping.

Due process corrects patriarchy by formally inviting the other to appear and protecting that voice so it will not be silenced. The premise of due process is that both sides exist, must be heard, and must be tested for the truth before a judgment is made. Women in a religious community provide an alternative to patriarchy by insuring that their due process procedures are well-defined, known by all members, and honored by those in leadership.



*Eloise Rosenblatt, R.S.M.*

Eloise Rosenblatt, R.S.M.  
Editor, *The MAST Journal*

# Editorial Introduction

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Doris Gottemoeller, R.S.M.

In his recent book, *Canon Law As Ministry: Freedom and Good Order for the Church*, James Coriden notes that, as a discipline or field of study, canon law is a subset of theology, rather than of law. "Canon law receives its principles, guidance, and illumination from the scriptures and from the church's tradition. It depends on theological teachings: on Christology, on pneumatology, Christian anthropology, sacramental theology, and most immediately and directly on ecclesiology, the theology of the church itself."<sup>1</sup>

Therefore, in approaching the theme of Church law, we have asked several of our sisters to illuminate these principles and to reflect on their implications for the life of the Church. Sharon Euart, R.S.M., leads off this issue with an exploration of the relationship between theology and law. She notes that theology is the fruit of faith seeking understanding, while canon law is the result of faith seeking guidance for decision-making and action. Mary Rose Bumpus, R.S.M., takes us to greater depth with her discussion of law and life in scripture. She reflects on the law/covenant relationship, on the purpose or intent of the law, and about the relationship between the Mosaic law and the "new law" of Christ.

Building on this foundation, several authors explore various facets and applications of the 1983 Code of Canon Law. Jeanne-Margaret McNally "

removes the veil" from the mysterious concept of public juridic person, something we've heard a lot about in recent years in connection with our health systems, but may not have fully understood. Catherine Darcy, R.S.M., shows us how the canons can promote social justice and support our Institute Direction Statement. Lois Keller, R.S.M., deals with the rights of persons in the Church, and processes designed to protect those rights.

Bringing our reflections even closer to home, Helen Amos, R.S.M., retells the story of the drafting of our Institute's particular law, our *Constitutions*, and notes that we have not yet fully plumbed the depths of this corporate word. In the concluding article, I invited our Sister of Mercy canon lawyers to share some of their experiences of this ministry.

There is a certain amount of overlap in these articles, as the authors explore the topic of canon law from different perspectives. We hope that you will find this repetition an aid to understanding, rather than a distraction. We can't promise that at the end of this issue you will be ready to sit for the licentiate exam in canon law, but you will have a deeper appreciation of an important facet of the Church's life and organization!

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## Notes

- 1 New York: Paulist Press, 2000, p. 151.

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THE MAST JOURNAL, begun in 1990, is published three times a year by the Mercy Association in Scripture and Theology. Members of the Editorial Board are Sisters Eloise Rosenblatt, Editor (Burlingame), Doris Gottemoeller (Cincinnati), Mary Sullivan (Rochester), Patricia Talone (Merion), Mary Daly (Connecticut), Carol Rittner (Dallas), and Kathleen McAlpin (Merion). Subscriptions correspondence to Marilee Howard, R.S.M. (Auburn) at 740 41st Street, Sacramento, CA 95819, e-mail mhoward@chw.edu. Editorial correspondence to Eloise Rosenblatt, R.S.M., at 1121 Starbird Circle #4, San Jose, CA 95117, e-mail erosen1121@cs.com. Layout, design, and printing by BIBAL Press, an imprint of D. & F. Scott Publishing, Inc., P.O. Box 821653, North Richland Hills, TX 76182. Back issues at \$5.00 may be ordered from BIBAL Press at (888) 788-2280 or sales@dfscott.com.

# Theology and Law

## Reflections on Faith Seeking Understanding— Faith Seeking Action

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*Sharon Euart, R.S.M.*

**W**hen the revised Code of Canon Law was promulgated in 1983, Pope John Paul II described the code as fully corresponding to the nature of the Church, “especially as it is proposed by the teaching of the Second Vatican Council.” “In fact,” he stated, “this new Code could be understood as a great effort to translate [the] . . . conciliar doctrine and ecclesiology into canonical language.”<sup>1</sup> He spoke of a “fidelity in newness and newness in fidelity” in the revised law’s expression of the Council’s teaching.<sup>2</sup> Thus, a refreshed understanding of our doctrinal tradition has led to a reform of our norms for action.

These historical events of the late twentieth century suggest an inquiry into the relationship of theology and law. The theological vision that emerged through the Second Vatican Council and the promulgation of the revised Code of Canon Law present an organic connectedness that enlightens our understanding of the concepts of theology and canon law and how they relate to one another.<sup>3</sup>

The Council conceived, developed, and presented a renewed vision of the Church that needed to be translated into transforming action. It is in the process of developing practical norms of action to carry out the vision that we see most clearly the

Theology and canon law derive from the same source. They are both generated by the Church as diverse fruits of an organic process in which the faith of the Church, having received the divine mysteries of salvation, seeks understanding.

relationship between theology and law. Just as faith moves the community to seek understanding of God’s mysteries, so too does faith prompt the community to create norms of action for receiving God’s mysteries and gifts.

First, however, it is important to clarify the concepts of theology and law. Theology, broadly speaking, can be defined as our knowledge of the transcendental mysteries or “faith seeking understanding.” It concerns what we know about God and what God has accomplished for our salvation. It concerns God’s revelation and the Church’s teachings.

Law (canon law or ecclesiastical law) is a system of norms of action in service to faith seeking understanding. In its essence, it depends on a preexisting theological reality.<sup>4</sup> The purpose of law is to assist the Church in fulfilling its task of revealing and communicating God’s saving power to the world.<sup>5</sup> Law accomplishes this task by helping the Church develop structures which bring salvation to all people. The ultimate purpose of these church structures is to welcome the individual into the community of salvation, to extend that salvation to the entire world and to give form to the fullness of our salvation.<sup>6</sup>

Theology and canon law derive from the same source. They are both generated by the Church as diverse fruits of an organic process in which the faith of the Church, having received the divine mysteries of salvation, seeks understanding; it also seeks structures and norms to guide the faithful for the continued reception of God’s gifts. The resulting ordinances form the body of canon law.<sup>7</sup>

The term “canon law” has been used to describe the Church’s rules from very early times. “Canon” comes from the Greek *kanon* meaning a reed, rod, or ruler, and described the measure or ruler used by a carpenter or designer—it was a standard by which things were measured. It came to mean a rule of conduct or norms for the governance of the external life of the Church.

Canon law is a set of norms created by reason and informed by faith. The canons of the Code concern church order and discipline rather than doctrine and dogma. Their purpose is to bring order to the life of the Church; they govern the external life of the Church, the public life of the faith community.

The purpose of the Code of Canon law is perhaps best described by Pope John Paul II, when he promulgated the revised code in 1983:

... the Code is in no way intended to substitute for faith, grace, charisms, and especially charity in the life of the Church or of the faithful. On the contrary, its purpose is to create such an order in the ecclesial society that, while assigning the primacy to love, grace and charisms, it at the same time renders their organic development easier in the life of both the ecclesial society and the individual persons who belong to it.<sup>8</sup>

Flowing from the purpose of canon law are four functions that may be considered analogous to the functions of law in any society.

1. Law aids the church in fulfilling its goals. Canon law assists the Church in carrying out its mission in the world: to proclaim the life and message of Christ, to be a communal witness to the loving presence of God, and to be of service to the world of today. The church's discipline is to aid it is carrying out these tasks.
2. Law affords stability to the Church. Canon law provides good order, reliable procedures, and predictable outcomes. The canons govern these functions, which are vital as well as stabilizing for the Church.
3. Law protects personal rights. Canon law provides avenues of recourse and redress for grievances, and means for the resolution of conflicts. The canons articulate the rights of the faithful and provide various means for their protection.
4. Law assists in the education of the community. Canon law reminds everyone of the law's values and standards. Canon law spells out the expectations, obligations and rights of members, the qualifications of officeholders, and the ideals of consecrated life. The church's discipline is directed toward leading people to a virtuous life, not simply external compliance with rules.<sup>9</sup>

The history of the Church's juridical structures from post-apostolic times to the present day is very

complex. The administrative organization of the Church was not in place when the Church was founded. It developed rules and procedures as it grew and spread. In that process, the church's rules were shaped by its internal needs, the surrounding cultures, and the pressures of changed circumstances. This evolutionary process was anything but smooth.

For example, in his *Introduction to Canon Law*, James Coriden divides its history into seven periods: (1) the post apostolic and early church, (2) the church of the empire, (3) the church and feudalism, (4) the classical period, (5) decline and reform, (6) the church in the modern world, and (7) the codification of canon law. We are currently in the midst of a reform period.<sup>10</sup>

Pope John XXIII initiated a reform of the law on January 25, 1959 when he announced the three-part plan for his papacy: (1) a synod for the diocese of Rome, (2) an ecumenical council, and (3) a modernization or revision (*aggiornamento*) of the Code of Canon Law. He created a Commission for the revision (actually the *recognitio*, a rethinking) of the code in 1963, shortly before his death. Pope Paul VI set the commission to work telling the

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members that they were to do more than update the fifty-year old document; they were to reorganize the church's discipline and to accommodate it to the teachings of the Second Vatican Council. They were to reform the Church's canonical style, give it a "new way of thinking" (*a novus habitus mentis*), responsive to new needs.

As one of its first tasks, the commission prepared a set of broad principles to guide its work. The principles were approved by Pope Paul VI and the Synod of Bishops in 1967. These principles endure today as valuable guidelines for canonists and those who work with the law: pastoral tone and purpose; charity as well as justice; fundamental equality of all believers with power and authority viewed as service; principle of subsidiarity<sup>11</sup>

To help us understand the relationship between theology and canon law, it is important to recognize the relationship of the Second Vatican Council to the Code of Canon Law. Conscious of the revision of the Code that was to follow their deliberations at the conclusion of the Council, the Council Fathers viewed the Code as an instrument for implementing the Council, for carrying out the vision and decisions of the Council. The revised Code, therefore, was to reflect the theology of the Council and manifest its spirit, a relationship that is often seen in the *fontes* or sources of the canons or in the conciliar language used in the canons. As a source text for the revised Code, the conciliar teachings rule and guide the interpretation of the canons. These revised canons are remarkably faithful to the teachings of the Council which serve as the framework, the context for understanding and applying the law.

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An example of this relationship can be seen in the Code's provision of a common status for all members of the Church, arising from baptism (c. 208) and directed toward one's participation in the

threefold mission of the Church (cc. 211, 216). Responsibilities and rights of all the faithful are spelled out in the Code for the first time. The enhanced role of lay persons in the mission of the Church is acknowledged in the Code as it was during the Council.

Another example is the relationship of the diocesan bishop to the Holy See. The collegiality of bishops and the role of the diocesan bishop within his local church were important aspects of the teachings of the Council. They are reflected in many striking ways in the revised Code. For example, reflecting *Lumen Gentium* 27, the Code describes the diocesan bishop as possessing in his diocese all the "ordinary, proper and immediate power" needed to carry out his pastoral ministry (c. 381). He governs his people as a vicar of Christ, not as a vicar of the pope. The role of the diocesan bishop is greatly enhanced. Many restrictions on his initiative and discretion have been removed from the Code, and he is encouraged to apply the law to his diocese, taking into account local conditions and circumstances, always working within the framework of the Code and directives from the Holy See.

We are approaching twenty years since the promulgation of the revised Code. Some have judged it to be, on the whole, a success, turning canon law away from what appeared to be a somewhat lifeless set of "musts" into an embodiment of a new way of thinking that holds promise for the pastoral life of the Church.

Others have been disappointed, disillusioned or even alienated by instances in which the revised Code has been used in a way that seems to reflect the mind-set of an older legalism.

Nowhere has the potential for this disillusionment been greater than in the clashes between law and theology which have taken place over the last two decades. For its good order, the Church needs a stable sense of what it believes. Theology, too, takes its strength from being firmly rooted in the Church's constant teaching. However, theology also naturally ventures beyond even hallowed expressions and formulations in its search for more adequate ways to describe the unfathomable mysteries of God. What is the role of law in reining in this search, if it seems that it may disturb the Church's need for stability and good order?

This question is as old as the New Testament; but the modern era has given it new aspects with the emphasis now placed on expertise, the value of independent research, the right to free expression, and the need for authority to put in place procedures which transparently protect the rights of the individual. The Second Vatican Council, the revised Code, and various declarations and decrees since the promulgation of the revised Code have tried to deal with this thorny issue without resolving the matter entirely.

Theology and canon law are, then, distinct entities in the Church which even can be said to have an inherent potential for tension between them, yet they are organically united: theology as the fruit of faith seeking understanding; canon law as the result of faith seeking decisions and actions.<sup>12</sup> The conceptual world of understanding about God and his saving deeds (theology) converges with the decisive world of action (canon law) around the issue of values. It is here that theology provides the community with the overall vision and definition of Christian values, while canon law provides the norms of action for the acquisition of those values which foster the life of the community for the common good.<sup>13</sup> The system of laws must be closely linked to a structure of values, either to a specific value, such as life, or to the value of good order in the community, such as the procedures for the protection of individual rights. If law is not connected to a value, it can become an obstacle rather than an opportunity within the community.<sup>14</sup>

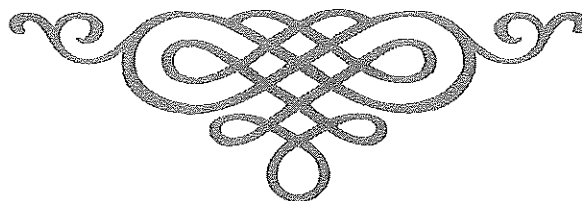
Since faith continues to seek understanding, so, too, the inquiry into Christian mysteries must not cease. As long as there are knowledgeable, responsible men and women who seek to understand their faith, we will continue to be concerned about

knowledge of God and his salvific plan. As long as the faithful continue to receive God's gifts and contemplate God's mysteries, we will continue to seek structures and norms of action to order the public life of the faith community.



## Notes

- 1 John Paul II, apostolic constitution, *Sacrae Disciplina Leges*, New English translation in *Code of Canon Law: Latin-English Edition* (Washington DC: CLSA, 1998) xxx.
- 2 Ibid. xxxi.
- 3 Not all the laws of the Church are contained in the Code of Canon Law. Some are outside the Code such as liturgical laws and some contained in the Code are not strictly speaking legal rules.
- 4 Ladislav M. Orsy, S.J., *Theology and Canon Law: New Horizons for Legislation and Interpretation* (Collegeville, MN: Liturgical Press, 1992) 103.
- 5 Ladislav M. Orsy, S.J., "Theology and Canon Law," (hereafter *Commentary*) in John Beal, et al., *The New Commentary on the Code of Canon Law* (Mahwah, NJ: Paulist Press, 2000) 2.
- 6 See Richard J. Sklba, "Law in Service to the Gospel," *Origins* 30:20 (October 26, 2000) 309.
- 7 Ibid. 8.
- 8 Op.cit. *Sacrae Disciplina Leges*, xxix-xxx.
- 9 See James A. Coriden, *An Introduction to Canon Law* (Mahwah, NJ: Paulist Press, 1991) 5-6.
- 10 For a brief description of the history of Canon Law, see Coriden, *op. cit.*, 9-29.
- 11 For a listing of the principles, see "Preface to the Latin Edition," in *Code of Canon Law: Latin-English Edition*, New English Translation, (Mahwah, NJ: Paulist Press, 1998) xxxvi-vii.
- 12 Op. cit. Orsy, *Theology and Canon Law: New Horizons*, 164.
- 13 Ibid. 103.
- 14 Op. cit. Orsy, *Commentary*, 8.



# Law and Life in the Christian Scriptures

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Mary Rose Bumpus, R.S.M.

What do we think of when we think of “law”? Do we immediately conjure up images of police pulling us over and handing us a ticket for speeding? Or do we see Detective Brisco from TV’s *Law & Order* hovering over a victim trying to find clues as to the perpetrator of the crime? Maybe we have images of U.S. Supreme Court justices pelting lawyers with questions in order to determine the validity of a lower court’s decision. Perhaps we think of parents who kept reiterating that they were going to “lay down the law” with its usual meaning that some punishment was soon to follow.

It could be that our thoughts first wander to the customs and guides that regulated daily religious life for many years. Maybe we are struck by lingering feelings about a time without certain freedoms or with undue constraints. On the other hand, perhaps we are drawn to ponder how the different manifestations of our constitutions have sup-

ported and fostered our life together in mercy.

When we think of “law” in relationship to the Christian scriptures, what comes to mind? Do we immediately think of the Ten Commandments? Or the myriad laws of the Levitical purity codes? Maybe we think of sin and old catechism pictures of black marks on white milk bottles. Some of us may not be able to think of law without thinking about obedience, while others think first about commitment or covenant. Some of us may hear the refrain from Paul’s letter to the Corinthians: “for the letter kills, but the Spirit gives life.” Others recall the New Testament’s assertion that there are two great commandments—love of God and love of neighbor.

Like most of you, I imagine, I come to any conversation or reflection about “law” with life experiences that give images, feelings, and shape to my present understanding of it. These experiences also predispose me to be a more or less active, a more or

less receptive, conversation partner in any dialogue about law, no matter what the arena. On this account, I begin by telling you a bit about myself. For many years, I pictured the law as something completely outside myself, something that was imposed upon me by others, and something that all the people that really mattered to me expected me to obey. Over time, this perspective became less than helpful, sometimes injurious, and it did not allow me to become the person God was inviting me to be. It was a picture that needed changing.

The first change in the picture came as a result of a New Testament studies course. In this class, I discovered that there are three New Testament Greek words that are typically translated into English as “obedience.”

Two of the three bear little, if any, resemblance to my picture of law/obedience. One of these is the Greek verb *eisakouo*, which literally means “to hear and answer” (like the Latin *obaudire*, to hear and respond). Another, the Greek verb *peitho*, means to persuade or convince and is indicative of a relationship of “trust” or “confidence.”<sup>1</sup> These two terms suggested to me an altogether different view of the law/obedience dynamic. From a biblical perspective, the law/obedience dynamic is about hearing and

Some of us may not be able to think of law without thinking about obedience, while others think first about commitment or covenant.



responding. It is related to interiority, to authenticity, to a faith stance. It invites rather than commands response, and it invites a response that is authentic. It is rooted in relationship. As I began to understand this more deeply, my picture began to change. The law is no longer something that is completely exterior to me, and I experience myself as one who is invited rather than expected or commanded to respond.

I won't take you on the rest of my journey at this point. You will no doubt see further glimpses of it in the remainder of this article. I have spoken about this, however, as a way of inviting each of us to consider what our present understanding of the "law" is and to allow ourselves to enter into a potentially new world as we explore further the nature and purpose of the law in biblical texts. What I hope to do in these few pages is to offer some comments for our reflection about the law/covenant relationship, about the purpose or intent of the law, and about the relationship between the Mosaic law and the "new law" of Christ. I will do this by examining specific biblical texts. Since my own studies have focused upon spirituality and the New Testament, most of these reflections will concentrate upon New Testament texts. But I must begin at the beginning.

### **The Decalogue: A Way of Holiness and Justice**

Early Christians gave the name Pentateuch to the first five books of the Bible. The term is derived

from the Greek and means "five rolls" or "books." In the Jewish tradition, however, the first five books of the Bible are given the name Torah, often called the Law. The Torah played a particularly significant role in the restoration of the Jewish community after the exile. It reminded the Israelites of their connection to Moses and the Covenant relationship, and it presented basic guidelines for the restructuring of the Jewish way of life. As a result, this collection of five books came to be known as the Mosaic Law.<sup>2</sup> In the New Testament, the Greek term *nomos*, or "law," ordinarily refers to the whole of the Mosaic Law.

and Christian traditions, and within Western culture as a whole. The Decalogue represents the basic stipulations of God's Covenant with Israel, and it gives "tone and spirit" to the other collections of laws.<sup>5</sup> Some scholars consider the Decalogue to be a "highly sophisticated attempt to summarize the basic postulates of Israelite law."<sup>6</sup> In fact, the Decalogue provides us with a sense of how the relationship between God and the people of Israel is structured, and it gives us a glimpse of the purpose and meaning of the law in the Old Testament.

There are two basic accounts or versions of the Ten Commandments found in the Pentateuch:

## **The Decalogue represents the basic stipulations of God's Covenant with Israel, and it gives "tone and spirit" to the other collections of laws.**

Within the Mosaic Law, there are several distinct collections of laws: "The Book of the Covenant" (Exod 20:22–23:19), the Deuteronomic "Book of the Law" (Deut 12–26), and "The Holiness Code" (Lev 17–26). These codes contain most of the formally stated laws of the Old Testament.<sup>3</sup> However, other judicial narratives and speeches, as well as cultic regulations, may be found throughout the books of the Old Testament.<sup>4</sup> The Decalogue, or in common parlance the Ten Commandments (Exod 20:1–17 and Deut 5:6–21), is not generally included under the rubric of "collections of laws" because of its unique status within the Bible, within the Jewish

Exod 20:1–17, an account that occurs at the beginning of the collection of laws known as "The Book of the Covenant," and Deut 5:6–21. Scholars and others have long noted that the list of Covenant stipulations in both accounts may be divided into two basic parts. The first commandments (in Catholic numbering, the first three) deal specifically with the community's relationship with God while the remaining commandments (the last seven) deal with relationships among persons and communities of persons. Recently, however, scholars have begun to suggest that the third commandment, "Observe the sabbath and keep it holy," constitutes the

center or heart of the Decalogue. As we shall see, in Deuteronomy the sabbath command points toward what follows it, i.e., toward the commandments that structure just and peaceful relationships among all persons. In the Exodus version, the sabbath command points toward what goes before it, i.e., toward the first commandments and the imitation of God's holiness.<sup>7</sup>

In the version of the Ten Commandments found in Deuteronomy 5, the Israelites are commanded to "Observe the Sabbath and keep it holy" so that slaves and other workers, "resident aliens," family members and animals, might "rest as well as you." "Remember," says God, "that you were a slave in the land

labors and from potentially oppressive power structures is a matter of justice—"Observe the Sabbath day" so that your workers "may rest as well as you." Keeping the Sabbath day, then, sustains and protects just relationships, an act that leads to peace. This interpretation of the commandment points toward all the commandments that follow which have to do with right relationships among persons.

As presented in Deuteronomy, the command to keep the Sabbath day is also religiously motivated and directly related to Israelite identity. The people of Israel know themselves as once enslaved, and "one who has been a slave himself will not easily deprive his workers of the seventh

history and to act out of their own self-identity as motivation for observing and keeping the sabbath day. Such observance allows God's love to be effective and the Covenant with God to remain a *living* Covenant.

In a second version of the Ten Commandments found in Exodus 20, the Israelites are once again commanded to "Remember the Sabbath day, and keep it holy." But in this version the command is followed by words that echo the priestly account of creation in Gen 2:2-3. "For in six days the Lord made heaven and earth, the sea, and all that is in them, but rested the seventh day; therefore the Lord blessed the sabbath and consecrated it" (Exod 20:11). In this version of the command, the Israelites are reminded that the rhythm of sabbath/work, work/sabbath, "is the divine rhythm of the created universe. Participating in this rhythm becomes a means of participating in the very life of God."<sup>10</sup> The emphasis in this version of the commandment is on keeping the Sabbath *holy*. It points toward the commandments that precede it inviting the people of Israel to "be holy as the Lord your God is holy."

This participation in the very life/holiness of God is further delineated in The Book of the Covenant which follows the Decalogue in Exodus. One of the repeated emphases or patterns in this collection of laws has to do with the treatment of persons who are poor:

You shall not wrong or oppress a resident alien, for you were aliens in the land of Egypt. You shall not abuse any widow or orphan. (Exod 22:21-22)

The author of Deuteronomy invites the people of Israel to remember their history and to act out of their own self-identity as motivation for observing and keeping the sabbath day. Such observance allows God's love to be effective and the Covenant with God to remain a *living* Covenant.

of Egypt, and the Lord your God brought you out from there with a mighty hand and an outstretched arm, therefore, the Lord your God commanded you to keep the Sabbath day."<sup>8</sup> In this account, the emphasis of the command falls on *keeping* the Sabbath day, an emphasis that has social as well as religious motives and consequences. In the first instance, granting workers rest from their

day as a day of rest."<sup>9</sup> The people of Israel also know what it means to be freed by God from the hands of oppressors. Hence, they are to rest, and to provide respite and freedom from labor on the Sabbath, not just as a reminder of their history, but in a manner like the God who continually delivers and liberates them. The author of Deuteronomy invites the people of Israel to remember their

If you lend money to my people, to the poor among you, you shall not deal with them as a creditor; you shall not exact interest from them. If you take your neighbor's cloak in pawn, you shall restore it before the sun goes down; for it may be your neighbor's only clothing to use as cover; in what else shall that person sleep? And if your neighbor cries out to me, *I will listen, for I am compassionate* (Exod 22:25–27; emphasis added).

You shall not pervert the justice due to your poor in their lawsuits (Exod 23:6).

For six years you shall sow your land and gather in its yield; but the seventh year you shall let it rest and lie fallow, so that the poor of your people may eat; and what they leave the wild animals may eat (Exod 23:10–11).

These laws suggest that persons who are poor are to be treated as God's holiness would dictate, i.e., with a listening heart and with compassion. "I will listen, for I am compassionate," says the God of the book of Exodus (Exod 22:27). In the view of the author of Exodus, then, the command to keep the sabbath holy is an invitation to participate in the very holiness of God, a holiness that evidences itself in compassionate mercy (Exod 22:20–27).

These differing accounts and interpretations of the law of the sabbath reveal a number of things. First, they exemplify the fact that the law was not read or interpreted in an absolute sense. Rather, the law was understood and interpreted within particular historical and social contexts and in view of particular relationships. The law, then, was not

a static reality but a dynamic and changing one. Second, though the law was interpreted differently in differing contexts, the purpose of the law remained the same—to provide a structure, a means, for maintaining the covenant relationship between God and the people of Israel and for effecting the holiness and justice of God amongst all. This was the basic intent of the Law. Finally, and consequently, it is important to note that the meaning of "law" for the ancient Jewish people was very expansive. The Law was much more than specific regulations. The Law was a way of life. It was God's Way.

### **The New Testament and the Mosaic Law**

When we turn to New Testament texts, the question of how the law is presented and understood is varied and complex. At times, New Testament texts suggest that there is great continuity between the Mosaic Law and the advent of the New Covenant espoused in the person and teaching of Jesus Christ.

At other times, the opposite seems true. For example, what are we to make of Paul's indictment to the Galatians that "all who rely on the works of the law are under a curse" (3:10)? What

does it mean to speak about Jesus as the fulfillment of the law, as Matthew does (5:17), or to assert that "the Sabbath was made for humankind and not humankind for the Sabbath" as Mark suggests (2:27). While it is beyond the scope of this article to deal with the many ways that the question of the law is addressed in the books of the New Testament, we will briefly examine two texts that present differing perspectives: Paul's letter to the Galatians and the Gospel of Luke.

### **Paul and the Galatians: The Mosaic Law or the Gospel of Christ?**

Sometime between 50–55 C.E., Paul wrote and sent a "Letter to the Galatians," i.e., to members of a group of house churches that existed in the region of Asia Minor. Paul was the first person to proclaim the gospel of Christ to the Galatians. As a result of his proclamation, many Gentiles of this region heard and accepted the message of the gospel, were gifted with faith and baptized, and came to experience a new freedom as sons and daughters of God (Gal 3:26; 4:6–7). Paul, then, had a very significant relationship with the members of these house churches.

At times, New Testament texts suggest that there is great continuity between the Mosaic Law and the advent of the New Covenant espoused in the person and teaching of Jesus Christ.

As a pastor and itinerant preacher, Paul moved about from region to region proclaiming the good news of Jesus Christ. When Paul left a given community, he would often receive word about the Christian life of that community (1 Cor 1:11) and he responded and communicated with such communities by letter. These letters were then read aloud or proclaimed to the various house churches in the region.

**Paul was convinced that salvation was granted through faith in Jesus Christ who died and rose so that humanity might be reconciled with God and empowered to live in right relationship. It was not obtained by observance of the Law.**

After leaving the territory of Galatia to proclaim the gospel to others, Paul received word that the Galatian church communities were about to give up their new freedom in Christ (Gal 4:11; 5:1). We get some sense from Paul's letter of two factors that were influencing the Galatians in this regard.<sup>11</sup> The Galatians understood that one aspect of their new life in Christ was "freedom from" the power of sin. They were surprised then when some members of the fledgling community were committing sinful acts (Gal 6:1).<sup>12</sup> They experienced this as a threat to their newly won freedom, and they began to ask how they could protect their new "life in the Spirit" in the midst of such transgression.

Second, a group of Jewish-Christian missionaries, sometimes referred to as Judaizers, had arrived in Galatia and were, according to Paul, preaching "a different gospel" (Gal 1:6). These Jewish-Christian missionaries proclaimed belief in Jesus Christ but also insisted that circumcision and observance of the Torah were necessary for salvation. The young church community, out of its desire to protect itself from the harmful effects of sin and the

Christian community. At the time when Paul wrote his letter to the Galatians, there had already been significant controversy in the church over Jewish food laws. In Gal 2:12, Paul tells the story of Peter's visit to Antioch, and he describes how Peter separated himself from table-fellowship with gentile Christians over such laws. Hence, observance of the Law had already divided Jewish Christians from gentile Christians.

Paul was convinced that salvation was granted through faith in Jesus Christ who died and rose so that humanity might be reconciled with God and empowered to live in right relationship. It was not obtained by observance of the Law. To suggest to new gentile converts that the Torah and circumcision were necessary for their "new life in the Spirit" was contrary to Paul's understanding of the Christian community's primary identity and was in opposition to "the unity of all believers in Christ."

need for security in this regard, looked to what seemed to be the surest way to unity and order, i.e., the faithful observance of the Torah—the Law.<sup>13</sup> This is not difficult to understand. The Law would provide a structure for daily life. It would tell the Galatians what to do and not to do.<sup>14</sup> There was no denial of Jesus Christ involved in the acceptance of the Torah, or so it seemed. So the Galatians began to doubt the validity of the gospel as preached by Paul, and they began to look to the Torah and circumcision as the "best way to protect the Christian life."<sup>15</sup>

Paul, on the other hand, saw the Judaizing Christian missionaries as a threat to both the identity and the unity of the fledgling

In the letter to the Galatians, then, Paul makes a number of statements about the Law. First, he asserts that the gift of "new life in the Spirit" did not come to the Galatian community via works of the Law, it came through faith (3:1–5). He points out that Abraham was made righteous through faith, and it is this same blessing that is handed on to the Gentiles through Jesus Christ (3:6–9). Paul cites scripture to make this point. Second, Paul argues that the Law is a curse. Those who accept the Law are under a curse to persevere in doing everything that is written in the book of the Law. Third, Paul states that the Law is inferior to

the covenant promises God made to Abraham. Here again Paul makes his claim based on the scriptures (3:17–19). Fourth, Paul asserts that the Law is connected with sin. This statement is probably best explained in Paul's letter to the Romans (3:20 and 7:7–8). In that letter, Paul suggests that the Law demonstrated to humanity just what sin is, and hence, it served to specify transgressions (3:19). Finally, Paul states that the Law was given by God to be the custodian until Jesus Christ was revealed. In other words, the Law was the disciplinarian, the monitor who stood guard until such time as faith in Christ became possible.

As Paul sees it, then, by accepting circumcision and obedience to the Torah, the Galatians were in danger of losing the very freedom they had found in their new life in Christ.

For freedom Christ has set us free. Stand firm, therefore, and do not submit again to a yoke of slavery.

Listen! I, Paul, am telling you that if you let yourselves be circumcised, Christ will be of no benefit to you. Once again I testify to every man who lets himself be circumcised that he is obliged to obey the entire law. You who want to be justified by the law have cut yourselves off from Christ; you have fallen away from grace. For through the Spirit, by faith, we eagerly wait for the hope of righteousness. For in Christ Jesus neither circumcision nor uncircumcision counts for anything; the only thing that counts is faith working through love (Gal 5:1–6)

In this passage and the text that follows, Paul contrasts the free-

dom of life lived in the power of the Spirit with the slavery of life burdened by law, sin, or death. According to Paul, prior to the death and resurrection of Jesus Christ, humanity and all of creation lived under the elemental powers, under sin, or under the Law. Being bound to sin resulted in idolatry, enmity, strife, selfishness, dissension, and the like. All are clearly divisive of Christian community (5:19–20).

**For Paul, love is a mutual and reciprocal act. Human beings cannot exist without one another in that all persons need to love and be loved, to empower and to be empowered.**

"Life according to the Spirit," however, is a life of "freedom from" the Law, sin, and death and a life of "freedom for" love. Paul speaks about the constitutive and integral relationship between freedom and love in Gal 5:13–14.

For you were called to freedom, brothers and sisters; only do not use your freedom as an opportunity for self-indulgence, but through love become slaves to one another. For the whole law is summed up in a single commandment, "You shall love your neighbor as yourself."

Paul concretely describes the reality of this "law of love" in response to the Galatian concern about how to deal with members of the community who are seen as transgressors.

My friends, if anyone is detected in a transgression, you who have received the Spirit

should restore such a one in a spirit of gentleness. Take care that you yourselves are not tempted. Bear one another's burdens, and in this way you will fulfill the law of Christ (6:1–2).

The law of Christ, i.e., love of neighbor, is a reconciling, restorative love, a way of love that befits those who have received the Spirit. In terms of the other, it means that if one is a wrongdoer, this one needs to be re-

stored and reconciled with the community in a gentle way. At the same time, members of the community are to take care lest they too be tempted. The temptation to self-righteousness and arrogance in regard to the wrongdoer is always great in the human community. In addition, this attitude, which places one in the position of judge or prosecutor, can do more harm in the community than the act of wrongdoing itself.<sup>16</sup> The way in which the law of Christ is properly observed is by "bearing one another's burdens."

It is only at this point in Paul's argument that we get a clear picture of what Paul was suggesting earlier when he stated that freedom has to do with becoming "slaves to one another through love."<sup>17</sup> For Paul, love is a mutual and reciprocal act. Human beings cannot exist

without one another in that all persons need to love and be loved, to empower and to be empowered. It is also true that for Paul, freedom “was essentially a property of the community, and its reality was conditioned by the vitality of the community.”<sup>18</sup> In this light, each member of the community bears gifts that are given for the upbuilding of the body, and every member of the community brings human failures, weakness, and sinfulness. Because personal identity is constituted, in part, by membership

recognizes the presence and power of God in its midst and gives thanks. There are also moments and times when the community’s life of freedom and love is in some way incomplete. The Galatians experienced this when they first came to recognize and acknowledge their own sinfulness. But hope draws the community forward and helps to give shape to the future. Hope empowers the Christian community to imagine new responses of love in differing historical situations. Thus hope makes a contribution

### **Luke: Fidelity to God’s Purpose and Saving Grace**

While Paul implies that “Christ” and “Law” are mutually exclusive alternatives for members of the Christian community in some passages in Galatians, Luke portrays a different picture. In part, this is because Luke-Acts was written some thirty or more years after Paul’s letter to the Galatians (80–85 CE), and, unlike Paul’s letters, it is not written as a “response to a specific or local crisis.” The Gospel of Luke was most probably written for Christians who were Greek speaking and who had enough knowledge of the Jewish scriptures, i.e., the Greek version known as the Septuagint, that they could respond to Luke’s many allusions to biblical passages.<sup>20</sup> The author of Luke-Acts is not overtly concerned, as was Paul, to establish the identity and unity of Christian communities. In fact, in the famous prologue of the Gospel, the author of Luke-Acts speaks of the purpose of the Gospel in the following way. “I too decided, after investigating everything carefully from the very first, to write an orderly account for you, most excellent Theophilus, so that you may know the truth concerning the things about which you have been instructed” (1:3–4). This introduction suggests that the author of Luke is writing for a more general audience and purpose and that Luke-Acts is occasioned by the natural development of the Christian movement itself.<sup>21</sup>

Luke-Acts is a unified story about the fulfillment of God’s ancient purpose—“to bring salvation in all its fullness to all

Because personal identity is constituted, in part, by membership in the community, and the community’s vitality is dependent upon the membership, it is only in the sharing of one another’s burdens that the community can fulfill the law of Christ.

in the community, and the community’s vitality is dependent upon the membership, it is only in the sharing of one another’s burdens that the community can fulfill the law of Christ. In such sharing, the Christian community exists as the reconciling, liberating presence of Christ in the world.

Christian communities always live in the tension that is created between that which has already been accomplished and that which is not yet. There are moments and times in the life of the Christian community when the community experiences authentic freedom and love. In these moments, the community

to our freedom. For Paul the guarantor of hope is the death and resurrection of Jesus Christ—an event of self-giving love. It is the power of the love of Christ that ultimately overcame sin, death, and law, offered God’s freedom to the human community, and ushered in the age of life according to the Spirit.

In Paul’s letter to the Galatians, the Mosaic Law continues to function as authoritative scripture. In addition, certain texts such as the Abraham narrative and the Decalogue “continue to offer guidance for the Christian community, but they are interpreted through the lens of the gospel.”<sup>19</sup>

people.”<sup>22</sup> While Luke narrates “the events that have been fulfilled among us,” the “proper” beginning of the story is in the past, in the redemptive purposes of God as set forth in the Septuagint. “Luke is not introducing a *new* story, but continuing an old one . . .” Situating the advent of Jesus within the ongoing story of God’s gracious activity in human history, Luke presents it as “one divine story.”<sup>23</sup> It is within this context that law and human response to law in the Gospel of Luke are best understood.

From the very beginning of Luke’s Gospel, in the telling of the birth narratives, the validity of the law is simply assumed.<sup>24</sup> Persons are presented as responding faithfully to the law in its broadest sense, i.e., as the will of God, and in the more narrow sense of law as custom. Zechariah and Elizabeth are described as “righteous before God, living blamelessly according to all the commandments and regulations of the Lord” (1:6). Their story is enacted in the context of the Jewish temple where Zechariah “was serving as a priest before God.” (1:8–9) Later on, Zechariah and Elizabeth faithfully respond to Gabriel’s instruction to name their child “John,” and they have him circumcised as a sign of fidelity to the covenant made between God and Abraham.

In the story of the presentation of Jesus in the temple, we are shown in narrative fashion the piety or holiness of Jesus’ family exhibited in faithful response to God by acting in accordance with the law. They circumcise Jesus on the eighth day; they give him the name commanded

by Gabriel; they go to the temple for the rite of purification “according to the Law of Moses.” They present Jesus to the Lord (“as it is written in the law of the Lord”); they offer a sacrifice “according to what is stated in the law of the Lord” (2:21–24). Simeon is described as righteous and devout, one upon whom the Holy Spirit rests, and one who is guided by the Holy Spirit (2:25–26). Anna is described as a prophet, one who worshipped in the temple “with fasting and prayer day and night.” In these accounts, keeping the Law is connected with the presence of the Spirit and ultimately with

centrality of the Law, etc., are addressed by Luke later in the Gospel. There are four accounts of disputes over the Sabbath law narrated in the Gospel: Luke 6:1–5; 6:6–11; 13:10–17; and 14:1–6. In the first account, 6:1–5, Luke narrates the story of the disciples plucking grain, rubbing it in their hands, and eating it on the Sabbath. This is immediately followed by the story of Jesus healing the man with the withered hand, again on the Sabbath (6:6–11). In both narratives, the scribes and Pharisees question whether or not the action of the disciples and the action of Jesus are lawful?

**While the validity of the Law is generally assumed by Luke, questions about who interprets the Law correctly, how the Law is to be read, what constitutes the centrality of the Law, etc., are addressed by Luke later in the Gospel.**

God’s divine purpose as proclaimed in the prophetic utterances of Simeon and Anna about the child Jesus. He is the anticipated consolation of Israel, a light for the gentiles, God’s salvation for all. Keeping the law is obviously important in this account, but behind the keeping of the law stands God’s purpose, a purpose that unfolds as the gospel story is told.

While the validity of the Law is generally assumed by Luke, questions about who interprets the Law correctly, how the Law is to be read, what constitutes the

Let us look more closely at the story of the disciples picking grain on the Sabbath. In Joel Green’s *Commentary on the Gospel of Luke*, he notes that Old Testament sabbath law did not specifically prohibit the plucking of grain on the Sabbath. Rather, it prohibited harvesting and winnowing it.<sup>25</sup> This narrative, then, raises the question of the Pharisaic interpretation of the Sabbath law. When the Pharisees question the legality of picking grain on the Sabbath, Jesus first responds with the words, “Have you not read

...?” This formulaic expression suggests that his questioners have indeed read, but they “have not understood the real meaning” of the scriptures.<sup>26</sup> “Have you not read what David did when he and his companions were hungry? He entered the house of God and took and ate the bread of the Presence, which it is not lawful for anyone but the priests to eat, and gave some to his companions” (6:3–4)? Jesus

heal on the sabbath only in life-threatening situations. A person with a withered hand did not present such a life-threatening case.<sup>29</sup> So Jesus raises the question: “Is it lawful to do good or to do harm on the Sabbath, to save life or to destroy it?” He invites the man to stretch out his hand, and his hand is restored. Throughout the Gospel, Jesus is portrayed as faithfully responding to God’s purpose. In this

“Teacher, what must I do to inherit eternal life” (10:25)? Jesus responds to the lawyer’s question in a way that acknowledges the significance of the Mosaic Law as well as the lawyer’s position and expertise in the Law. “What is written in the law? What do you read there” (10:26)? The lawyer’s response based upon Deut 6:5 and Lev 19:18 is phrased succinctly and in terms of a single command. “You shall love the Lord your God with all your heart, and with all your soul, and with all your strength, and with all your mind; and your neighbor as yourself” (10:27). Jesus affirms the lawyer’s response and points out that the two agree about what one is to do in order to obtain eternal life. He adds: “Do this, and you will live” (10:28). In this part of the episode, the Law has a number of functions. First, the Law serves as guide and source of wisdom for the lawyer’s question. Second, the Law establishes and explicates a way of life, i.e., love of God and love of neighbor. Finally, the Law points toward its ultimate end—eternal life.

In the next section of this passage, the ultimate intent of the Law is concretely portrayed. But “wanting to justify himself,” the lawyer asks Jesus: “And who is my neighbor?” The lawyer is now characterized as someone who wants to assert himself and his own status rather than welcoming the response of Jesus and treating him as neighbor. The question itself, however, is not an unusual one. Who constitutes the neighbor was an issue that was debated at the time of Jesus. Jesus responds to the question in the form of a parabolic narrative.

## Jesus interprets the biblical story about David in an authoritative way. In so doing, he makes the claim that he, not the scribes and Pharisees, understands the true meaning of the scriptures.

ends this response by asserting, “The Son of Man is lord of the sabbath” (6:5). Two things happen in this account. First, Jesus interprets the biblical story about David in an authoritative way. In so doing, he makes the claim that he, not the scribes and Pharisees, understands the true meaning of the scriptures. Second, as lord of the Sabbath, it is Jesus who is authorized to determine what is or is not appropriate on the Sabbath.<sup>27</sup> In this account, then, the Torah has authority only insofar as it is interpreted by Jesus.<sup>28</sup>

In the second story, Jesus acts on the authority he claims as “lord of the Sabbath.” He decides what is lawful and determines what kind of activity is appropriate for the Sabbath. In the first century CE, it was proper to

narrative, Jesus makes it clear that Sabbath observance is not the criterion for determining who is and who is not faithful to God’s will. Rather, fidelity to God’s design is determined by whether or not one participates in the divine purpose for humankind. Healing and saving life—restoring human beings to “their integrity as part of God’s creation,” this is God’s purpose and the ultimate significance of the Sabbath command.<sup>30</sup>

Luke’s understanding of the intent of the Law, its import, and its relationship to God’s purpose is directly addressed in a dialogue between Jesus and a lawyer that includes the parable of the Good Samaritan. The dialogue begins when a lawyer (a scribe in Jewish categories) stands up to test Jesus and poses a question to him.



It is not possible within the scope of this discussion to give a full explication of the parable of the Good Samaritan. Suffice it to say that a Samaritan comes to the aid of an unidentified person in need—a man in a ditch, left half dead and naked, without any sign of position or social status or nationality. It was a Samaritan, an outsider and a considered enemy, who, unlike the priest and Levite, stopped to give assistance to the person in need. The Samaritan *sees* the man, is *moved with compassion*, *goes to him*, and *restores him to health*.

In Luke 7:11–17, the same pattern is exhibited by Jesus. Jesus *sees* the widow who is about to bury her only son. He *has compassion* for her, *comes forward*, touches the bier, and *restores* the young man to *life*. This same pattern is repeated in Luke 15:11–32 as the father responds to the prodigal son. In the Gospel of Luke, this is the way God visits the people. God *sees*, is *moved with compassion*, responds, and acts. God does so for the purpose of healing, restoring, reconciling, and giving life.

Jesus concludes the telling of the parable by asking the lawyer: “Which of these three [the priest, the Levite, the Samaritan], do you think, was a neighbor to the man who fell into the hands of robbers” (10:36)? The lawyer replied: “The one who showed him mercy.” Jesus says: “Go and do likewise” (10:37). There is a subtle shift in this parable where “the neighbor becomes the subject rather than the object of acts of love.”<sup>31</sup> Jesus makes it clear that the lawyer was to act as neighbor toward all

The Law guides, directs, orients us toward right relationship with God and others. It is intended to direct us toward the life of God. It gives concrete expression to signs of this life; i.e., love, compassion, justice, and holiness.

persons regardless of their social position or nationality. This final response of Jesus answers the lawyer’s initial question: “What must I do to inherit eternal life?” The parable functions to explicate what it means to “do” this—to do the word, to respond faithfully to God’s purpose, to inherit eternal life. Throughout Luke’s Gospel, Jesus is the one who fully understands and interprets the law, in light of God’s purpose, and lives the law of love in word and in deed in all its fullness. In the Gospel of Luke, the Mosaic Law points toward its ultimate fulfillment in Jesus Christ who is the final interpreter, arbiter, and exemplar of the Law—the One who responds always in fidelity to God’s divine purpose. As such, Jesus embodies God’s life of compassionate mercy, and in so doing, he invites all to participate in the healing, restoring, and reconciling life of God.

It is time now to pause in these reflections on “law” in the Christian scriptures. As you can see the issues surrounding the notion of “law” are multiple and varied, and the biblical texts leave many unanswered questions. Yet there are some commonalities among the texts we have endeavored to explore. Positively or neg-

atively viewed, the Law is seen as a way of life. It guides, directs, orients us toward right relationship with God and others. It is intended to direct us toward the life of God. It gives concrete expression to signs of this life; i.e., love, compassion, justice, and holiness. It provides the structure by which our primary covenant relationship with God is sustained and supported. The Law is always interpreted. It is a dynamic and changing reality. For Christians, the Law is always viewed through the life, death, and resurrection of Jesus Christ who is the ultimate fulfillment of the Law as well as the final arbiter and interpreter of the Law. The Law speaks to us of God’s purpose, God’s will, God’s desire for our life and wholeness. Perhaps the Psalmist best sums up the biblical understanding of Law.

The law of the Lord is perfect,  
reviving the soul;

the decrees of the Lord are  
sure, making wise the simple;

the precepts of the Lord are  
right, rejoicing the heart,

the commandment of the Lord  
is clear, enlightening the eyes;

the fear of the Lord is pure, en-  
during forever;

the ordinances of the Lord are true and righteous altogether (Ps 19:7-9).



## Notes

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- 2 Norman K. Gottwald, *The Hebrew Bible: A Socio-Literary Introduction* (Philadelphia: Fortress Press, 1985), 103, 106.
- 3 Samuel Greengus, "Law: Biblical and ANE Law," in *Anchor Bible Dictionary* (1992).
- 4 See Norman K. Gottwald, Table of "Literary Genres, Forms, or Types in the Hebrew Bible," 99-101.
- 5 John L. McKenzie, "Aspects of Old Testament Thought," in *The Jerome Biblical Commentary*, 1<sup>st</sup> ed., edited by Raymond E. Brown, Joseph A. Fitzmyer, and Roland E. Murphy with a foreword by Augustin Cardinal Bea (Englewood Cliffs, NJ: Prentice-Hall, Inc.), 751.
- 6 Dale Patrick, *Old Testament Law* (Atlanta: John Knox Press, 1985), 40.
- 7 John Endres, consultation with, professor of Old Testament Studies, The Jesuit School of Theology, Berkeley, CA, December 24, 2000.
- 8 All biblical citations are taken from the New Revised Standard Version unless otherwise noted.
- 9 H. A. Brongers, "The Literature of the Old Testament," Ch. II in *The World of the Old Testament*, gen. ed., A. S. Van Der Woude (Grand Rapids, MI: William B. Eerdmans Publishing Company, 1989), 159.
- 10 Antony F. Campbell, *The Study Companion to Old Testament Literature: An Approach to the Writings of Pre-Exilic and Exilic Israel* (Wilmington, DE: Michael Glazier, Inc., 1989), 69.
- 11 When assessing the situation in Galatia, it is important to keep in mind that the attitudes, problems, and possible questions of the Galatian community cannot be known with accuracy since only one side of the communication exists. Nonetheless, there is evidence for these assertions in the text itself.
- 12 Hans Dieter Betz, *Galatians: A Commentary on Paul's Letter to the Churches in Galatia* (Philadelphia: Fortress, 1979), 258.
- 13 Stanley Marrow, *Paul—His Letters and His Theology: An Introduction to Paul's Epistles* (New York/Mahwah: Paulist Press, 1986), 104-106.
- 14 Thomas H. Tobin, *The Spirituality of Paul* (Wilmington, DE: Michael Glazier, Inc., 1987), 101.
- 15 Hans Dieter Betz, 29.
- 16 Hans Dieter Betz, 298.
- 17 I recognize that the language of slavery is highly problematic here both in terms of racial injustice and in terms of women's oppression. Paul is using this language to give expression to the concept of "being bound by or to." He is saying that in community our love binds us to one another in such a way that we experience the freedom of God.
- 18 Jerome Murphy-O'Connor, "Freedom or the Ghetto (1 Co 8:1-13; 10:23-11:1)," in *Freedom and Love: The Guide for Christian Life (1 Co 8-10; Rm. 14-15): Monographic Series of "Benedictina"* (St. Paul's Abbey, Rome, 1981), 29.
- 19 Frank Thielman, *The Law and The New Testament: The Question of Continuity*, Companions to the New Testament (New York: Crossroad Publishing Company, 1999), 35.
- 20 Luke Timothy Johnson, "Luke-Acts, Book of," *Anchor Bible Dictionary*, IV:404.
- 21 Luke Timothy Johnson, 405.
- 22 Joel B. Green, *The Gospel of Luke*, New International Commentary on the New Testament (Grand Rapids, MI: Eerdmans, 1997), 9-10.
- 23 Ibid., 52.
- 24 Ibid., 61.
- 25 Ibid., 253.
- 26 Ibid., 254.
- 27 Ibid., 254.
- 28 Ibid., 255.
- 29 Ibid., 255-56.
- 30 Paul-Gerd Muller, "apokathisterni, apokathistano," in *Exegetical Dictionary of the New Testament*, cited by Joel B. Green, 256.
- 31 Stephen G. Wilson, *Luke and the Law*, Society for New Testament Studies 50 (Cambridge: Cambridge University Press, 1983), 15.

# Public Juridic Persons in the Church

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*Jeanne-Margaret McNally, R.S.M.*

**T**he Code of Canon Law has categorized and defined persons in the Church. These persons are designated as physical persons, moral persons, or juridic persons.

A physical person is an individual human being. By baptism each person is incorporated into the Church and constituted a person with rights and obligations spelled out in the canons, i.e., laity (cc. 224–231), clergy (cc. 273–289), religious (cc. 662–672), married couples, and parents (cc. 1135–1136). The rights and obligations of physical persons may be affected by such factors as age, mental capacity, relationship to others, etc.<sup>1</sup> The Catholic Church and the Holy See are moral persons by virtue of divine law. That is, they are not created by decree or by canon law. The Holy See includes the Pope, the Vatican Secretariat of State, the Council of Public Affairs for the Church and the Roman Curia.

A juridic person is an aggregate or community of persons (at least three) or a collection of things (money, buildings, foundations) gathered together to constitute a whole, directed to a specific purpose for the benefit of the mission of the Church. The juridic person is an artificial person. As such, it is a legal concept similar to a corporation in civil law. Corporations are artificial persons, legal entities created by the authority of the state, usually consisting of associations of numerous individuals. The corporation subsists as a single body under a particular name and has “personality” distinct from that of its members. The authority of the state vests it with the capacity of continuous succession, irrespective of changes in membership, either in perpetuity or for a limited number of years. The corporation acts as a single unit in matters related to the common purpose for which it was created. Corporations are legal structures designed to provide stability, continuity, and a single, legally responsible voice for those dealing through and with them.<sup>2</sup>

Juridic persons are constituted either by law or by a decree from competent ecclesiastical authority. The 1983 Code of Canon Law does not explicitly define competent ecclesiastical authority, but by inference, it is understood to mean the Pope, the Holy See, a National Conference of Bishops, the diocesan bishop or one acting according to apostolic privilege.<sup>3</sup> A privilege is the Church’s response to a particular situation not foreseen by the law. It is always a favor designated for the community. An apostolic privilege is granted for the benefit of certain

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persons, physical or juridic. Such a privilege exists as long as the person or thing or place to which it was given continues to exist.<sup>4</sup> Examples of a juridic person created by virtue of the law are seminaries, parishes, and religious institutes. A conference of major superiors or the Knights of Columbus are examples of a juridic person created by decree. A third order of a religious institute is an example of a group created by apostolic privilege.

The juridic person is an impersonal subject of rights and obligations similar to, but totally distinct from, the rights and obligations of physical or natural persons. A juridic person is an “it” not a “they.”

Prior to or simultaneous with the creation of a juridic person, it is necessary for there to exist a group of natural persons committed to some apostolic purpose, or an accumulation of material goods set aside for an apostolic purpose to serve as the basis in reality for the artificial personality of the juridic person. For example, a religious institute is a juridic person and has juridic personality of its own distinct from the natural personalities that make up the community.

### **A religious institute is a juridic person and has juridic personality of its own distinct from the natural personalities that make up the community.**

The purposes of the juridic person go beyond the individual persons or things that compose it. These purposes are understood as those that pertain to works of piety, of the apostolate, or of charity, whether spiritual or temporal. The competent ecclesiastical authority is not to confer juridic personality except to those aggregates of persons or things which pursue a truly useful purpose, and which have the resources to achieve their designated purposes.

A juridic entity may be collegial, that is, a collection of persons, such as a religious institute or an association of the faithful, or it may be noncollegial, that is, an aggregate of goods or property, such as a diocese, a parish, a hospital, a college, or a university. Juridic persons are collegial when, according to law or its statutes all its members participate in decision making. Participation can be direct or indirect through elected representatives. A noncollegial entity is managed and operated by officers or directors appointed or elected for that purpose.

Juridic persons are defined as private or public. Private juridic persons are established only by special decree. A private juridic person acts in its own name, although it is brought into existence by the Church and is accountable to the Church in accord with its statutes that have been approved by the Church. A public juridic person is established by the law itself,

e.g., religious institutes, parishes, etc, or by ecclesiastical authority, e.g., a conference of major religious superiors. The significant difference between a private and a public juridic person is that their statutes govern private juridic persons, and ecclesiastical authority governs public juridic persons.<sup>5</sup>

Statutes are similar to articles of incorporation and by-laws of a civil corporation. The statutes define the purpose of the juridic person, the place of its headquarters, the form of government, the conditions for membership, and the manner in which its activities will be carried out. While the law does not require it, statutes should also state the juridic person's basic spirituality, the list of officials, the procedure for admission and dismissal of members, the process of election, the financial administration and the mechanism for changing the statutes. No juridic person, public or private, can be established validly without the approval of their statutes by competent ecclesiastical authority. The purpose of prior approval of the statutes is to ensure that they contain nothing contrary to Church teaching.<sup>6</sup>

Representatives of the public juridic person acting in its name are those whose competence is acknowledged by universal or particular law or by its statutes. Being artificial persons, juridic persons can act only by means of physical persons who represent the juridic persons. Such would be the bishop for the diocese, the pastor for the parish, or the major superior for a religious institute. Juridic persons are capable of acquiring, retaining, administering and alienating temporal goods. They can sue and be sued.

Only someone who is legally capable can perform a valid juridical act. This person must have the general capacity to perform these acts, i.e., age, personal responsibility, freedom from any impediment, hold an office, or have delegation. Every juridical act is an act of the will; therefore, it must be a free act. The validity of the act is affected if there is evidence of fear, force, or deceit involved. Before certain juridical acts are performed, the law requires the superior to obtain consent or advice from certain people. The term "superior" refers to anyone holding a position of executive authority at any level. When consent is required, an absolute majority of those present must agree on the issue in question. When advice is sought, the superior must ask for the advice, listen to what is said, and if there is no response the supe-

rior is free to act. If the advice were not actually asked, the act would be invalid.<sup>7</sup>

Juridic persons with juridic personality are capable of exercising certain rights and fulfilling certain obligations in their own name. Juridic personality may be conferred at the same time of the establishment of the public juridic person. For example, when the Holy See establishes a religious institute, juridic personality is established at the same time. Entities in the church such as colleges, universities, hospitals, and other apostolic institutions can also serve as the foundation or substrata of juridic persons, but juridic personality is not conferred upon such institutions by law. It can be conferred only by decree of competent ecclesiastical authority.

A juridic person, of its very nature, is perpetual, and once established it can outlast all natural persons or material goods which formed its foundation or substratum. However, a juridic person can be extinguished if competent authority suppresses it. It ceases if there has been no activity for a continuous period of one hundred years. If only one member remains, the exercise of all the rights of the juridic person belong to that one individual, and that individual can act in the name of the juridic person. However, all the assets belong to the juridic person as such, not to the individual. On the extinction of a public juridic person, the determination of its goods and patrimony and its obligations devolve on the public juridic person immediately its superior. So, if a parish ceases to exist, its obligations fall on the diocese. The wishes of the benefactors must, however, be respected.

The relevance of canon law to church-related educational and charitable corporations in the U.S. depends on the canonical status of the institution. Most church-related institutions were established in the U.S. in one of three ways. An institution may have been founded as part of the apostolate of a diocese or a religious institute and allowed to remain so, thereby sharing in the canonical status of that diocese or religious institute. Secondly, an institution may, at the time of its founding or later, have been given independent canonical juridic personality of its own. Thirdly, an institution may initially have been established as a secular institution with no canonical status and that status may have been removed.<sup>8</sup>

Traditionally, the canons required episcopal power for conferral of juridic personality since it af-

fects the public order of the Church by creating new subjects of canonical rights and obligations. The creation of juridic persons requires a decree that is an act of executive power of governance and this power does not reside in a superior of a religious institute. The decree of the diocesan bishop constituting a juridic person can be the same decree that confers juridic personality. This could be applicable to health care systems and other individual institutions.

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sons and associations of the faithful, thereby increasing the options for canonical status of newly founded health care, educational, and charitable institutions—and the options for a change of status of those already established. Before deciding the status of an institution, one must have accurate knowledge of the advantages and disadvantages of each and the precise status of the alterations being considered.<sup>9</sup> Today, in fact, the organizational choices available to churches and religious organizations have significant advantages and disadvantages, not only in ease of creation and management, but also in the area of civil liability, taxation, and distribution of assets upon termination. The choice of a legal or canonical structure may be made at the time the religious entity is formed, such as the creation of a new school or hospital. It may also be made at some later time when amendment to the original working plan seems in order, for example, when a religious institute considers it necessary to merge, divide, or separately incorporate institutions. The choice may be made based on liability, tax consideration, government funding,

regulations, or simply greater facility in the operation or in the disposition of properties.<sup>10</sup>

It is important to be cognizant of the fact that in the United States civil law is often in conflict with canon law, which can result in much confusion. When one is concerned with hospitals or universities, etc., it is a difficult question as to which law should prevail. For example, in the U.S., church goods would be trust property following U.S. laws. In canon law, there is not the concept of "trust," hence we speak of ownership, which is not quite the same. An additional complication is that canon law recognizes civil law in contract, and "trust property" is usually established by contract. This requires working with two separate entities, Canon Law and American Civil Law. This is further complicated by the fact that every state does not have the same laws related to so-called parent corporations. One other consideration is the use of the term "sponsorship" which is not a legal term. Sponsorship has ambivalent meanings because there are so many ways to be a sponsor.<sup>11</sup>

All of this raises the question as to whether a healthcare or educational or similar type of institution should be a public juridic person or not. Canonists may well differ on a response to such a question. The advantages of being a public juridic person would be a demonstration that the entity has canonical status and that this status corresponds to civil law. Employees would have additional rights if they worked in institutions designated as public juridic persons, as they would have access to ecclesiastical courts with their grievances. Further, an institution that is a public juridic person has some protection in its relationship with the local Church. A canonist with experience in corporate and juridical choices and structures can be of help to those involved in making decisions about the canonical status of an institution.

Recognizing that most healthcare and educational institutions have been founded by religious institutes in the U.S., future decisions concerning the canonical status of these institutions will be directed toward the reality of the religious institute's relationship with laity, with collaborative partner-

ships, with their ability to provide resources, especially personnel, and with the concern and ability of laity to be involved in these ministries.<sup>12</sup> The significance of institutions requires that the historical reason for founding these institutions is kept alive, but these must be viewed in contemporary experience. Religious institutes interpret and symbolize the traditions of the past, while at the same time they resonate and are configured by the symbols of the present world. Religious organizations change in theological interpretation of the present situation and they adapt to the exigencies of contemporary society.<sup>13</sup>



## Notes

- 1 *The Code of Canon Law-Latin-English Edition* (Washington, DC: Canon Law Society of America, 1983), Canons 4, 76, 78, 96, 113–123, 137, 238, 312, 320, 322, 326, 393, 515, 532, 616, 634, 709, 1257.
- 2 William W. Bassett, *Religious Organizations and the Law* (St. Paul, MN: West Group, 1998), 3–9.
- 3 Robert T. Kennedy, "Juridic Persons," in *New Commentary on the Code of Canon Law*, eds. James P. Beal, James A. Coridin, Thomas J. Green, (Mahwah, N.J.: Paulist Press, 2000) 158.
- 4 Gerard Sheehy, Ralph Brown, Donal Kelly, Aidan McGrath (eds). *The Canon Law-Letter and Spirit*, (Collegeville, MN: A Michael Glazier Book The Liturgical Press, 1995) 53.
- 5 Kennedy, 161.
- 6 Sheehy, 53–54.
- 7 Helmuth Pree, "On Juridic Acts and Liability in Canon Law," *The Jurist* 58 (1998) 41–83.
- 8 Robert T. Kennedy, "McGrath, Maida, Michiels: Introduction to a Study of the Canonical and Civil-Law Status of Church-Related Institutions in the U.S.," *The Jurist* 50 (1990) 399–400.
- 9 Jordan Hite, *A Primer on Public and Private Juridic Persons*, (St. Louis, MO: The Catholic Health Association, 2000) 22.
- 10 Bassett, 3–7.
- 11 Ladislav Orsy, Notes from private conversation. (December, 2000).
- 12 Hite, 22.
- 13 Bassett, 3–9.

# In Pursuit of Justice: The 1983 Code of Canon Law

Catherine Darcy, R.S.M.

To be sure, one of the *best kept secrets* in the Church can be found in its social teaching. Unfortunately, many devout Catholics never make the connection between what they hear proclaimed on Sunday and what they do on Monday in the neighborhoods and workplaces of their lives. In fairness to these Church members, it may well be that those who serve them in their parishes and dioceses have yet to connect, in a meaningful way, the gospel with the real life which transpires in their local and global communities. The 1983 *Code of Canon Law*, however, contains a number of canons which seek to promote the Church's social teaching.<sup>1</sup> These canons address the Church's mission to herald the shaping of a more just society as well as the compelling need for the Church to provide for the making right of relationships within its own structures. This article, which will examine a number of these canons, begins by providing a context for the "justice canons." We will then look at canons which deal with the Church's fundamental mission to promote justice in the world as well as the canons which deal with the Church to act justly in its internal life. Finally, the article will suggest a number of connections with the *Institute Direction Statement*.

## Context for the "Justice" Canons

Previous church law spelled out only one specific right for lay persons; i.e., the right to spiritual assistance in canon 682 of the 1917 *Code of Canon Law*. In contrast, the 1983 Code provides what some would term a "bill of rights" for the Christian faithful in general, as well as one for the laity, more specifically. This is not surprising when one considers the plethora of social teaching which emanated from the Church, as well as from other segments of society, during the twentieth century. In fact, three of the ten principles which were adopted to govern the formulation of the 1983 code refer to the protection and the promotion of rights in the Church.<sup>2</sup>

Church law makes reference to five kinds of rights.<sup>3</sup> These include: human rights, which are conferred at birth and which pertain to the fundamental dignity of the human person; ecclesial rights, which are conferred at baptism and which pertain to church membership; ecclesiastical rights, which pertain to the ordering of church life; communal rights, which belong to members of communities; and contractual rights that arise from the signing of contractual agreements. One prism through

which one can view the whole of Church law is through the prism of the protection and promotion of rights; i.e., the making right of relationships: social justice.

Also helpful for this brief discussion is an understanding of the concept of juridic person. Juridic persons are the corporate identities in the Church that are established by the Church and possess certain rights and obligations. Public juridic persons fulfill their mission and speak in the name of the Church. Examples of public juridic persons include a parish, a diocese and a religious institute as well as its provinces. The Institute of the Sisters of Mercy of the Americas is a public juridic person as is each of its regional communities.

## External Justice

Fundamental to the mission of the Church is its promotion of justice in the world. Canon 222 §2, which is found in the section of the code entitled, "The Obligations and Rights of All the Christian Faithful," states that the Christian faithful "are obliged to promote social justice, and mindful of the precept of the Lord, to assist the poor from their own resources." This canon addresses both the gospel imperative to assist the poor

directly as well as the mandate to work for systemic change. Interestingly, this canon was added rather late in the drafting process for the 1983 Code through the personal intervention of Pope John Paul II. The canon seems, then, to reflect well the mind of the legislator. The order of working of the canon seems to be significant.

The promotion of social justice precedes direct assistance of the poor from one's own resources. While the Church's long practice of personally assisting the poor still prevails, the Church now calls for Catholics to work for the shaping of a more just society through systemic change.

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Canon 222 §2, which provides a fundamental social justice thrust, finds support in a number of other of the canons of this code. In terms of providing for the poor from one's own resources, the Church has this responsibility corporately as well as individually. Canon 1254, the leading canon of the group governing property belonging to any of the Church's public juridic persons, provides the Church's rationale for acquiring, alienating, retaining, and administrat-

ing Church property. In addition to providing for the decent support of the clergy and other ministers and for the exercise of the works of the apostolate, canon 1254 states that the mandate to provide support of the needy provides a fundamental reason why the Church possesses temporal goods.

In terms of the more specific promotion of social justice, canon 287 § 1 is pivotal for both clergy and religious.<sup>4</sup> They are "always to foster the peace and harmony based on justice which are to be observed among people." This canon seems to reflect the well-known axiom: "If you want peace, work for justice."

Canon 287 §1 then stands in stark contrast with canon 141 of the 1917 *Code of Canon Law* which prohibited the clergy from any involvement in civic conflict or public disturbances. Rather, canon 287 §1 encourages Church leaders to participate actively in the building of a more peaceful world. The second part of this canon, however, prohibits individual clergy and religious from active participation in political parties and in the governing of labor unions, unless in the

judgment of competent ecclesiastical authority the protection of the rights of the Church or the common good requires it. While canon 287 §1 applies to clergy and religious as individual persons, application may be made to the Church's juridic person; e.g., parishes, dioceses, religious institutes. It seems reasonable that a parish, a diocese or a specific religious institute has a corporate obligation to foster peace and harmony based on justice.

The question emerges, how does one as an individual or even a corporate entity foster the needed peace and justice? Book III, entitled "The Teaching Function of the Church," contains two canons that address the Church's right to speak both corporately and individually concerning justice. The leading canon of Book III, canon 747 §1, provides that the Church "has the duty and the innate right, independent of any human power whatsoever, to preach the gospel to all peoples . . ." The second paragraph of the canon specifies further: "it belongs to the Church always and everywhere to announce moral principles, even about the social order, and to render judgment concerning any human affairs insofar as the fundamental rights of the human person or the salvation of souls requires it." This canon applies to the Church's public juridic persons; i.e., those corporate entities which fulfill their mission in the name of the Church. Hence, when a public juridic person speaks corporately regarding the reordering of society in a more just and



equitable fashion, it fulfills the intent of canon 747.

In addition, canon 768 §2 addresses individuals who proclaim the Word of God to the Christian faithful. They are to proclaim the doctrine which the Church sets forth concerning "the dignity and freedom of the human person, the unity and stability of the family and its duties, the obligations which people have from being joined together in society, and the ordering of temporal affairs according to the plan established by God." The content of the proclamation on justice is further expounded in the source of the canon, the Second Vatican Council's decree on the pastoral office of bishops. This highlights social problems concerning "the possession, increase and just distribution of material goods . . . peace and war, and the fraternal [sic] co-existence of all peoples."<sup>5</sup>

While the Church has traditionally viewed bishops, priests, and deacons as its preachers, canon 766 provides for the possibility of lay persons preaching as well. Lay persons, including those who are vowed, have increasing opportunities to participate in the public proclamation concerning the dignity and freedom of the human person.

For many Catholics, the place where they hear the Word of God proclaimed is their local parish. Canon 528 is one of a number of canons that spells out the obligations of pastors. In a sense, we see a pastor's "job description" spelled out in canons 528–530. In the section of this "job description" dealing with the pastor as minister of the

Word, his obligation to promote social justice is addressed. According to canon 528 §1, the pastor is "to foster works through which the spirit of the Gospel is promoted, even in what pertains to social justice." Like the Church, the parish is not an end in and of itself. Rather, the 1983 code envisions the parish as a center not only for reflection of the Church's social teaching but also for the taking of actions that will promote God's reign of justice in a particular community.

membership in the Church. For example, canon 213 provides that the Christian faithful have a "right to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the word of God and the sacraments."

However, some of the rights listed are more closely tied to the category of human rights; i.e., the promotion of human dignity within Church structures. For instance, Canon 212 §2 provides for Church members to express their needs and desires to pas-

While the Church has traditionally viewed bishops, priests, and deacons as its preachers, canon 766 provides for the possibility of lay persons preaching as well. Lay persons, including those who are vowed, have increasing opportunities to participate in the public proclamation concerning the dignity and freedom of the human person.

### **Internal Justice**

The listing of the rights and duties of the Christian faithful (cc. 208–223) as well as the listing of the rights and duties for lay persons (cc. 224–231) in particular, have been a sign of the Church's recognition to practice what it preaches. How can the Church proclaim justice to the world if it does not embrace the gospel values in its own internal operations? A number of the rights listed concern ecclesial rights; i.e., rights conferred because of

tors. In addition, the next paragraph of this canon provides for the right and "even at times the duty" to express publicly one's opinion on what is good for the Church. Once again, while this canon is directed to individuals, it may well be appropriate to consider a corporate application as well. It would seem that a public juridic person possesses a right and even at times a duty to express publicly its opinion on what is good for the Church. Admittedly this canon, when seen in a context of other ecclesial rights of competent authorities

in the Church, has provided occasions for a conflict of rights.

The 1983 Code seems to make its most compelling case for justice within its own structures with its precepts regarding the rights of workers. In the section of the Code dealing with temporal goods, canon 1286 states: "Administrators of goods: §1 in the employment of workers are to observe meticulously also the civil laws concerning labor and social policy, according to the principles handed on by the Church; §2 are to pay a just and decent wage to employees so

for purposes of charity or piety or for the promotion of the Christian vocation in the world and to hold meetings for the common pursuit of these purposes." The development of organizations which seek to promote the rights of laborers finds backing with this recognition of the right to form associations. In Canon 1286, §1, the phrase "according to the principles handed on by the Church" does not seem to be a limiting factor over the "civil laws concerning labor and social policy" but rather an expanding phrase. It may be

Christian Faithful." In that section, canon 231 states that lay persons who devote themselves permanently or temporarily to some special service of the Church "have a right to a decent remuneration suited to their condition; by such remuneration they should be able to provide decently for their own needs and for those of their family with due regard for the prescriptions of civil law; they likewise have a right that their pension, social security, and health benefits be duly provided." The long-held teaching regarding the just wage provides that a worker receive an adequate amount to support one's self, one's family, and provide for future needs.<sup>7</sup> Canon 1286 and canon 231 then seem to reflect well the Church's social teaching on the rights of workers and the payment of a just wage for those who labor for the Church directly.

**Canon 215 provides the freedom for members of the Christian faithful to "found and direct associations for purposes of charity or piety or for the promotion of the Christian vocation in the world and to hold meetings for the common pursuit of these purposes."**

that they are able to provide fittingly for their own needs and those of their dependents." Because of its inclusion in Book V entitled "The Temporal Goods for the Church," this canon is applicable to all public juridic persons in the Church. The first section of this canon affirms that Church workers have a right to organize. This reflects also the intent of canon 215 of the section of the code entitled, "The Obligations and Rights of All the Christian Faithful." Canon 215 provides the freedom for members of the Christian faithful to "found and direct associations

that civil laws do not go far enough in protecting rights of workers and in providing for decent wages and working conditions. If the Church follows the principles set down in its own social documents, it will seek to provide more than what many civil standards require.<sup>6</sup>

The second part of canon 1286 addresses the issue of a just wage. Church workers should be able to provide for their own needs as well as for their dependents. This concept finds further support in the canons in the section entitled: "The Obligations and Rights of the Lay

### **Connections with the Institute Direction Statement**

Some, if not many, Sisters of Mercy of the Americas might articulate rather clearly that the 1983 *Code of Canon Law* has little bearing on their lives as individuals. However, because of its ecclesial status and the fact that the Institute as well as its regional communities are public juridic persons in the Church, the 1983 Code does influence Mercy life. Certainly one of the aspects of the code around which Sisters of Mercy may have energy can be found in the "justice canons" described above.

These canons support a number of values inherent in the Institute Direction Statement.

First, concern for *the economically poor of the world* provides a basic reason as to why the Church has the right to acquire, retain,

*Direction Statement* as they work to influence parishes and dioceses to be centers of formation in the Church's social teaching.

Finally, as do other public juridic persons in the Church, the Institute of the Sisters of Mercy of

## the canons acknowledge that working for a more peaceful world by building a more just society is at the heart of the Church's mission.

administer, and alienate temporal goods. The 1983 Code recognizes the obligation of individual Christians as well the Church's public juridic persons to make available its resources for the economically poor of the world.

Second, the canons acknowledge that working for a more peaceful world by building a more just society is at the heart of the Church's mission. Acting *in harmony and interdependence with all of creation*, then, becomes the Church's obligation to be fulfilled through its public juridic persons.

Third, one recognized strategy for the building of a more just society is the Church's ability to *speak corporately* when the occasion warrants. The Church relies on its public juridic persons to fulfill this sacred function. The duty of speaking corporately includes the faithful expression of what is good for the Church.

Fourth, the energies of those Sisters of Mercy serving the Church directly in its pastoral ministry might be best utilized to promote the values in the *Institute*

the Americas and its regional communities have the obligation to support fully in its institutions and sponsored works the Church's social teaching regarding the rights of workers to organize and receive a just wage in payment for their labor. In addition, *standing in solidarity with women seeking fullness and equality in the Church* means standing with women when their rights as Church workers have been disregarded. When Institute members experience unfair labor practices, Institute members stand in solidarity with them as well.

At least in part, the "justice canons" do for the Church what the Institution Direction Statement does for the Sisters of Mercy of the Americas. These canons provide a framework of fundamental values which the Church not only embraces but which are essential to its existence. Perhaps, if the Church's *best kept secret* became common knowledge, then not only the Church but *all of creation* would be very different.

## Notes

- 1 Terence T. Grant, "Social Justice in the 1983 Code of Canon Law: An Examination of Selected Canons," *Jurist* 49 (1989) 112-145.  
References to the 1983 *Code of Canon Law* are found in John Paul II, "Preface to the Latin Edition," in *Code of Canon Law: Latin-English Edition*, (Washington: Canon Law Society of America, 1999 printing). "1983 *Code of Canon Law*" is also referred to as "1983 code."
- 2 Principles 1, 6, and 7. See John Paul II, "Preface to the Latin Edition," in *Code of Canon Law: Latin-English Edition*, (Washington: Canon Law Society of America, 1999 printing) xxxvi-xxxvii.
- 3 James H. Provost, "Ecclesial Rights," *CLSA Proceedings* 44 (1982) 42.
- 4 Although canon 287 is contained under the title, "The Obligations and Rights of Clerics," canon 672 from the section entitled "The Obligations and Rights of Institutes and Their Members," under "Religious Institutes" applies the canon to members of religious institutes.
- 5 Second Vatican Council, *Christus Dominus*, no. 12 in *Vatican Council II: Volume 1 The Conciliar and Post Conciliar Documents*, ed. Austin Flannery, (Northport, New York: Costello Publishing Company) 570.
- 6 Robert T. Kennedy, "The Temporal Goods of the Church," in *New Commentary on the Code of Canon Law*, eds. John Beal, et. al., (New York: Paulist Press, 2000) 1488.
- 7 Grant, 137.



# Due Process and the Rights of Persons in the Church and in Religious Life

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Lois J. Keller, R.S.M.

As Americans, we are persons fiercely protective of what we perceive as "our rights." Our country's founders refused to ratify the Federal Constitution until a statement of those rights we hold inviolate was amended to the document, and both the Fifth and Fourteenth Amendments of the Constitution make reference to due process of law and the protection of individual rights. There has been a growing awareness of the rights of individuals in society stemming from varied sources: the ongoing civil rights movement in this country; concern for human rights following the two World Wars; the United Nations' Universal Declaration of Human Rights; the Second Vatican Council's Constitution on the Church in the Modern World and the Decree on the Laity; the women's rights movement; and the revision of the Code of Canon Law with its section on rights.<sup>1</sup>

In order to understand the profound effect these events have had on awareness of rights within the Church structure and on the individuals who comprise the Church, the following reflections will identify the principles that guided the work of the Second Vatican Council and the "new way of thinking" reflected in the 1983 Code of Canon Law. Rights of the Christian faithful, and in particular, the rights of religious, both implied or specified, will be studied and their effectiveness considered. The strength and power of "proper law," an Institute's own Constitution, will be discussed, and due process, a still developing institution within the Church will be examined.

## **Vatican Council II and Awareness of Human Rights**

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The Second Vatican Council gave great impetus to the development of awareness of human rights in the Church. The Council taught the fundamental equality of all the baptized in their Christian dig-

nity. Whatever else may differentiate us in the Church, we share a common dignity as God's people and a common call to eternal salvation. The affirmation of the fundamental equality of all the baptized is thought to be a "revolution" compared to the views held by some officials of the Church earlier in the twentieth century. Such is the effect of Vatican II in our Church today.<sup>2</sup>

It was imperative that the new Code of Canon Law reflect the work of the Council. So formulation of the Code began after the Council documents were complete. A Pontifical Commission was established to revise the Code, and Pope Paul VI challenged this Commission to put on a *novus habitus mentis*, "a new way of thinking," which was to permeate the mind and heart of the Church.<sup>3</sup> It was not to be considered simply a new way of perceiving the Law, but rather a new method of law itself. Thus, following the direction taken by the Council and under the influence of the documents generated by it, work on the revision of the Code of Canon Law began.

This revision process was guided by ten basic principles which reflected the "new way of thinking," and which stressed congruence between the pastoral decisions of the Council and the juridic content of the canons.<sup>4</sup> Of particular interest are several of the key concepts that were included in these basic principles and that specifically mention concern for individual rights:

to determine and safeguard, acknowledge and protect the rights and obligations of each individual person  
to acknowledge that all Christian Faithful possess the same fundamental rights because of their radical equality arising from personal human dignity and common baptism  
to safeguard and foster subjective rights through legal recourse

From the richness of Pope John XXIII's encyclical, *Pacem in Terris*, which articulates the inherent dignity of the human person, to the documents of Vatican II, which reaffirm the uniqueness of the individual person and the rights which flow from this, the foundation was laid for the delineation of rights in the new Code.

### **Rights in the Code of Canon Law**

Rights are not a privilege bestowed by a superior, nor are they a duty, although they can arise from duties, or impose duties on others. A right is usually described as "that which a person is entitled to have, or to do, or to receive from another."<sup>5</sup> Rights arise from the dignity of the human person, and human rights are those one possesses simply by virtue of being a human person; they are owed to all on an equal basis. Significantly, the Declaration on Religious Liberty of Vatican II begins with the words: "Contemporary man is becoming increasingly conscious of the dignity of the human person," and continues, "the right to religious freedom is based on the very dignity of the human person." The Pastoral Constitution *Gaudium et Spes* declares that all human rights are based on the dignity with which men and women are endowed by God himself.<sup>6</sup>

There are no absolute rights. Rights are relative, since one person's rights and freedoms stop where another person's begin. In addition, rights are limited by their situation within the context of the common good and the rights of others. This can demand that a right be foregone in view of a greater good, or be restricted in certain circumstances. However, certain rights are inalienable and must be recognized as such. A case in point would be the dismissal of a religious. The Apostolic Signatura has held that the right to defense is "a right inherent in the very dignity of the human person" and could not be denied even if the right were not explicitly given in the law.<sup>7</sup>

The Code of Canon law lists some fundamental rights, usually in relation to corresponding obligations:

canons 208–223  
obligations and rights of all the Christian faithful

canons 224–231  
obligations and rights of lay Christian faithful  
canons 273–289  
obligations and rights of clerics  
canons 662–672  
obligations and rights in Consecrated Life

### **Rights Common to All**

With the proclamation of the new Code, rights of the People of God were named and recognized, and religious women and men as members of the Christian faithful experienced a growing awareness that they, too, had rights as well as obligations. Since religious are simultaneously members of the Christian faithful and members of their particular Institutes, they are uniquely situated in Church law.

**Rights are not a privilege  
bestowed by a superior, nor are  
they a duty, although they can  
arise from duties, or impose  
duties on others.**

Canons cc.208–223 identify basic rights common to all the Christian faithful. Religious, as part of the Christian faithful and the laity, are included as recipients of these rights and obligations. It is important to note that c. 208 qualifies the exercise of these rights with the statement "in accord with each one's own condition and function."<sup>8</sup> This reflects the efforts to reconcile the theological reality of equality in virtue of baptism, with the observable fact that people differ in their capacities and involvement in the life of the church (20.1). These canons contain specific identified rights that we all possess as Christian faithful within the Church:

We have the right to share in the Church's mission of proclaiming the gospel, to make known our spiritual needs and desires to the pastors of the Church, and to express our opinions on matters pertaining to the good of the Church (cc.211, 212).

Baptism gives us the right to request from our pastors the spiritual goods of the Church, namely, the word of God and the sacraments. We also hold the right to worship according to our own approved rite, and to follow our own form of spiritual life consonant with the teaching of the Church (cc.213, 214).

We hold the right to found and govern associations for charitable and religious purposes, to promote or sustain apostolic action, the right to a Christian education, the right to lawful freedom of inquiry when engaged in the sacred disciplines (graduate studies in seminaries and universities) and the right to freedom from coercion in choosing a state of life (cc.215–219).

We have the basic human right to a good reputation which is not to be damaged unlawfully, and the right to protect our privacy. In addition, we have the right to vindicate and defend our rights, using a competent forum in the Church to do this. If we are summoned to judgment, we have the right of defense according to due process of law, and we have the right not to be punished except in accord with the norms of law (cc.220–221).

## **A religious Institute has the right to specify how members will observe the evangelical counsels, thus reflecting the particular charisms of the Institute.**

Certain rights that pertain specifically to the lay Christian faithful are also applicable to religious men and women:

Lay Christian faithful hold the right to the same civil liberties that all citizens enjoy (c.227).

Competent lay persons who are so qualified may be assigned to certain ecclesiastical offices and may act as experts or advisors to their pastors in accord with the norms of law;

lay persons may also be invited to exercise prominent roles in liturgical services (c.228). Laity have the right to theological formation by acquiring knowledge of Christian doctrine and by obtaining academic degrees in the sacred sciences; they may receive a mandate to teach in this field (cc.229, 230).

If lay persons are employed by the church they have the right to decent remuneration to provide for themselves and their family, as well as the right to pension, social security and health benefits (c.231).

## **Rights of Institutes and Members**

Canons 662–672 comprise the section of the Code headed “The Obligations and Rights of Institutes and Their Members.” Ironically, despite the title given to this section, the term “rights” is not used in any of the eleven canons. Two of the canons, 663 and 670, speak of rights by implication. In c. 663, this is done indirectly by mandating that the religious include prayer, meditation, Eucharist, spiritual reading, and annual retreat as part of her daily religious life. It follows then, that she has the right to expect the availability of time and opportunity to perform these obligations.

In the second canon, 670, a specific mandate is given to the Institute to furnish for its members that which is necessary for achieving the purpose of their vocation. One might say then, that a religious “has the right” to the spiritual and material resources necessary to fulfill her vocation, including such things as retreats, days of recollection, conferences, adequate housing, clothing, education, professional updating, counseling, etc.

There are additional canons within the general section entitled “Institutes of Consecrated Life” which refer either to implied rights or name specific rights held by religious Institutes or individual Religious.

A religious Institute has the right:

to its own autonomy, especially with regard to governance (c. 586).

to specify how members will observe the evangelical counsels, thus reflecting the particular charisms of the Institute (c. 598).

to expect that the Bishop's approval to erect a religious house within his Diocese includes freedom to live according to the character and purpose of that Institute and to exercise those works proper to that Institute (c. 611).

According to Law, individual Religious have the right:

to expect that any house of the Institute will supply their temporal and spiritual needs (c. 610).

to contribute to the life of the Institute and the local community by offering observations and suggestions at the time of the Visitation (c. 628).

to freedom of conscience regarding the Sacrament of Penance and spiritual direction; to availability of suitable confessors, especially where members have limited access to the sacrament, as in houses of formation or retirement, or infirmaries, while still maintaining the right not to approach such confessors; not to be forced to make a manifestation of conscience to their superiors (c. 630).

to structures of participation or consultation involving all the members, allowing them to participate and express concerns in their own way (c. 633).

to live religious life after incorporation into an Institute, and to be free from arbitrary limitation or denial of the rights and obligations of this incorporation (c. 654).

to spiritual, doctrinal and practical formation throughout their entire religious life, and to expect that time and resources will be provided so this can be done (c. 661).

Should a religious face dismissal from an Institute the following rights are stated in the Code (cc. 694-5, 697-8, 702):

to know the accusations and proofs brought against her  
to be advised of the right of defense and the right to legal counsel  
to receive written, documented warnings of the pending dismissal, or verbal warnings in the presence of two witnesses

to understand that the dismissal depends on refusal to reform  
to be allowed the specified time for response to the accusations  
to appeal directly to the Supreme Moderator of the Institute  
to be informed of the right to make recourse to the Apostolic See  
to be treated with equity and evangelical charity by the Institute at the time of separation

**Each charism is a unique gift to the church. There is wide latitude in Church law so that the apostolic ministry, charitable works, practice of vows, governance structures, and forms of prayer which a particular Institute brings to enrich the Body of Christ can receive the approval of Law.**

An important and affirming theme throughout the Religious Law section of the Code, is its repeated reference to and reliance on the "proper law," i.e., the Constitutions, of religious Institutes. Of the more than 157 canons that treat of Institutes of Consecrated Life, at least half defer to the proper law of the Institute. This is clearly a reflection of the deep respect in which the Church holds the particular charisms of each Institute. Each charism is a unique gift to the church. There is wide latitude in Church law so that the apostolic ministry, charitable works, practice of vows, governance structures, and forms of prayer which a particular Institute brings to enrich the Body of Christ can receive the approval of Law. Canon after canon presents the norm of law regarding a particular topic, and then reads: however, this will be done "according to the proper law of each Institute." Not only does the law of the Church offer protection for at least some of the rights of

religious men and women, but it also strongly supports the charisms of Religious Institutes through the incorporation of proper law into the canons dealing with Institutes of Consecrated Life.

Following from this, we recognize there are two primary sources for the rights of religious, the Code of Canon Law and the Constitutions of their respective Institutes. In the Constitutions of the Sisters of Mercy of the Americas,<sup>9</sup> these rights are specifically mentioned:

to retain ownership of personal property and to acquire additional property through any personal title of inheritance (#25).

to participate in dialogue and share insights in community (#28).

to receive religious formation, to be prepared for ministry, to have time for personal and communal prayer, to have access to the sacraments, to receive a Christian burial, and suffrages after death (#30).

to enjoy active and passive voice after first profession of vows except where restricted by law or policy, and to enjoy active and passive voice in all elections after having made perpetual vows (#56).

to take part in the participative structures and decision-making processes of the Institute, and of the regional and local communities (#76, #78).

to regional governance structures which will guarantee rights of all members (#77).

While incorporation into religious life is considered an "acquired right," i.e., a right based on fulfilling certain prerequisites, it brings with it canonical restriction of a number of other rights freely held by those who are not so incorporated, and who do not profess poverty, chastity and obedience.<sup>10</sup> Again, we see the relative position of rights within

law. What is an obligation for one person may also be for that person the source of certain rights; what is a right for one may result in an obligation for another. One or more rights that are held or acquired may result in the loss of certain other rights. Within this apparent "shifting" of rights and obligations, the question arises as to how rights can actually be protected and enjoyed.

### **Protection of Rights and Due Process**

Much has been written in the last twenty years commenting on the bright promise of the 1983 Code with its exciting and challenging "Bill of Rights." But now canonists are asking if indeed these rights are real; they wonder if there is too much idealism in our expectations, or perhaps too much individualism—a result of our American preoccupation with personal, individual rights.<sup>11</sup> The social mission of the Church, and indeed its very credibility, "will depend in large part on its setting forth and exemplifying in its structure and practice a standard of justice which does not fall below the legitimate expectations of men and women of good will."<sup>12</sup>

"If rights are to be real, they must be defensible"; so rights must find a system of protection and vindication within the Church.<sup>13</sup> If the rights of religious are real, there must be systems and structures within which these rights can be protected and defended. Having seen the frequency with which the Constitutions are called upon within the Code to "enflesh" or enlarge upon laws pertaining to religious life, it follows that proper law would seem to be the locus for a process of protection of rights of Religious. Admittedly, this places a serious burden on individual Institutes and on those in governance positions. It demands that an Institute:

through appropriate consultation and involvement of all members, provide and implement a legal structure which is forward looking, possible to observe, clear and coherent, stable in content, open to necessary adaptation, responsible in distribution and exercise of authority, and inclusive of accountability and consistency in application. Since proper law is so often referred to by the universal law, this may be the best possible vehicle for protecting the rights of members of religious Institutes, provided it does address itself to the need for protection of rights, and provided it is consistently and honestly observed.<sup>14</sup>

**If the rights of religious are real,  
there must be systems and  
structures within which these  
rights can be protected and  
defended.**



While the proper law could briefly indicate the availability of some form of due process, specify those for whom it is intended, and identify the situations that would warrant its use, the details of the process and its implementation would appropriately be found in those congregational documents supplementary to the Constitution. This would allow for ease of revision, updating, and adaptation to changing needs.

If the existence and effectiveness of means to protect rights are a criterion for whether rights expressed on paper are more than mere words, then it is necessary to know if these well-written words actually bring about what they describe.<sup>15</sup> Is the process used? Does it work? And if not, why?

To a certain degree, it is understandable why due process procedures are not well known. Few of us are interested in rules, regulations, or procedures until they directly touch our immediate circumstance—and then, unfortunately, we frequently find it is too late. The burden of making known the process lies largely with either diocesan authorities or congregational leadership. Access to due process in the Church is dependent chiefly upon the endorsement of and participation by the diocesan bishop, and in religious communities, by endorsement and participation of the elected leadership.<sup>16</sup> Sadly, the most common reasons for failure to utilize due process have been ignorance of the process on the part of the people needing it, reluctance on the part of responsible authority to make the process known, and lack of cooperation when the process is known and attempts are made to use it.<sup>17</sup>

### **Development of Due Process in the United States**

Given impetus by the Second Vatican Council's concern for the protection of rights of individuals, the National Council of Catholic Bishops (NCCB) began a study process that was to extend over thirty years. In the late 1960s, they invited the Canon Law Society of America (CLSA) to compile specific suggestions for a means of promotion of "adequate protection of human rights and freedoms."<sup>18</sup> A report was presented to the bishops of the United States in 1969 and subsequently accepted by them. They in turn passed a resolution recommending

that its membership, the U.S. bishops, experiment with the procedures outlined in the 1972 report on due process, adapt them where necessary to local circumstances, and implement them promptly on diocesan, provincial, and regional levels, so that human rights and freedoms would be securely protected by the Church.<sup>19</sup>

Sadly, the most common reasons for failure to utilize due process have been ignorance of the process on the part of the people needing it, reluctance on the part of responsible authority to make the process known, and lack of cooperation when the process is known and attempts are made to use it.

Hierarchical recourse is the ordinary method for vindication of rights of the faithful when an act of administrative power is involved (c. 1732). But the average Catholic is most often not able to take advantage of this for a variety of reasons:<sup>20</sup>

the only superior of a bishop is the Apostolic See, and recourse is usually quite distant from the place of the petitioner, is carried on in a foreign language, and requires specialized procedures not found in the Code. finding a suitable advocate with consideration to language, admission to curial practice, and sufficient time, can become a major problem.

recourse at this level takes considerable time, and can involve considerable expense.

since there is no regular system of reporting of Curial decisions, the praxis of the Curia regarding a particular issue is generally unknown, as is the reasonableness of undertaking the distance, time and expense required for recourse.

Upon learning that the proposed canons related to administrative tribunals at a more local level had

been excluded from the 1983 revised Code, the CLSA decided to explore future options in due process on diocesan, regional, and national levels. First, theoretical issues were explored,<sup>21</sup> and then a survey was taken of actual diocesan experiences with due process since 1969.<sup>22</sup> Additional studies produced a revised report of diocesan experiences which was compiled and presented in 1991. Further testing took place in selected sites throughout the country, studying and evaluating methods of alternate dispute resolution. A final report, the culmination of a study begun over thirty years earlier, was presented at the annual CLSA meeting in 1999 and included summaries of goals, concerns, procedures, outcomes, and possible future directions. There were many valuable findings, some disappointments, and some surprises, and throughout, the conviction that there is still much work to be done in this area of serious concern in the Church.<sup>23</sup>

The CLSA studies have disappointingly found that the recommendations of the due process report have not been implemented in a majority of United States dioceses, and even where they have been implemented, there is reluctance to publicize its availability.

Particular attention has been given to the apparent reluctance of the Apostolic Signatura to allow the required indult for local administrative tribunals. This reflects the earlier removal of proposed norms for such courts from the drafting stage of the revised Code. It is felt that despite CLSA's recommendations regarding the usefulness of such courts, Ordinaries will not take the initiative with an administrative court, knowing that the Roman indult is not forthcoming. Interestingly, the Signatura sees such courts peculiar to the administrative style of a particular bishop, and suggests that a succeeding ordinary may not find such a court useful. And it is possible that even

participants in a particularly difficult case may ignore a summons to court, should they discover Rome's interest in them to be minuscule.<sup>24</sup>

The CLSA studies have disappointingly found that the recommendations of the due process report have not been implemented in a majority of United States dioceses, and even where they have been implemented, there is reluctance to publicize its availability. The conciliation and arbitration procedures it provides are not effective unless both parties agree to it, and in practice are not effective when a bishop is involved as one of the parties.<sup>25</sup> Provost observes that we are in a major period of transition regarding our understanding of Church, the role of individual Christians, and the place of rights in the Church. For the rights to become "real," a conscious, deliberate effort must be made to put on the *novus habitus mentis*, the "new way of thinking" proposed by Vatican II. This is not a given, and must be worked at and acquired afresh at each stage of the journey, just as we must continually struggle to actualize rights in the Church as a means of living the Christian life.<sup>26</sup> As American Catholics we seem to be uniquely prepared for the struggle:

The 1983 Code of Canon Law, particularly its second book, impacts on the church in America, perhaps, in ways unlike other churches. We read those canons differently because we enjoy a keen sense of justice and equality and free speech in this land of opportunity. Ideas of democratic participation and pluralistic opinion run through our veins. In this mix, our culture does not tolerate misuse of persons, denying fair process or overlooking the qualified counsel of participating individuals and groups. Should either inadvertent or calculated action cause someone hurt or loss, we are used to processes for restoration, mediation and reconciliation. Our Church stands to be embarrassed, therefore, when no provisions for redress of grievances are generously offered or, where they exist, are grudgingly provided.<sup>28</sup>

### **Due Process and Religious Life**

Many religious communities have developed sound and hopefully effective processes for the redress of grievances and the protection of rights of their members. Conciliation and arbitration are two of the principal forms of dispute resolution used by the legal community in the United States today and are the ones usually referred to in canonical discussions

of due process. However, some religious Institutes include an intermediary step, mediation.<sup>28</sup> Because members of religious Institutes take vows of poverty and obedience, and because of their commitment to a life lived in community, the perception of violation of rights is differently nuanced. Consider this observation made by a vowed Religious woman who is also canon lawyer:

The fundamental legal canonical concept of vowed obedience still addresses commands given by competent superiors. Basically this means that, irrespective of dialogical positions, eventually a decision will be made, and most likely, this decision will be made by the superior. One cannot discuss forever if a decision is expected or needed. The issue to be remembered is that the superior need not acquiesce to my expectations or demands, but I have a right to be heard. This is where it is important that proper law provide the processes and the procedures for legitimate dissent to protect the rights of all parties concerned.<sup>29</sup>

It is important to keep in mind that arbitration is not designed or intended to contradict the ordinary lines of authority established in the Constitutions. Matter appropriate for referral to the process, and the persons for whom the process is intended must be clearly delineated. And finally, if the process it going to be used and be effective, it must be shared and explained to all the members.

The forms of reconciliation developed by each Institute should reflect the uniqueness of its charism and mission, in addition to being true to the virtues of forgiveness, peace-making, and fraternal charity. This suggests that resolving disputes should involve conciliation of human persons, rather than the assertion of human rights.<sup>30</sup> This is the challenge that due process presents—to incorporate, observe, and dispense right order, fairness, and justice, while still reverencing and holding those values on which we have built our Church and our congregations.

However, we must keep in mind that “No affirmation of rights ensures their acquisition, no establishment of structures guarantees their effectiveness, and no requirement of procedures renders them self-implementing.”<sup>31</sup> These words are a reminder that legislation is given life, meaning and effectiveness by the people it touches, and as this people are human, weak and sinful, so their efforts often fall short of their goal. But the Church, and

the religious Institutes within it, continue to strive for the perfection of the Godhead and the perfection of Law.



## Notes

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## Book Notice

Marie Gaudry, R.S.M. *With Catherine, My Spirit Mother: A Retreat with Catherine McAuley for Sisters of Mercy and for Those Inspired by Mercy.* Sisters of Mercy of Paramatta: Castle Hill, N.S.W., Australia, 1999. 67 pp., 8 1/2" x 11", spiralbound, \$10.00.

The chapters in this book were originally presented in a number of retreats to Sisters of Mercy and reflect the author's conviction that the personality, life, and spirituality of Catherine McAuley, as "spirit mother," are resources for both men and women. The book is now made available for use by individuals, group retreats, days of recollection, and for formation programs for new members of the Institute and Mercy Associates. Each reflection is accompanied by suggestions for prayer, reflection, and journaling. Annotations cite Catherine McAuley's letters as well as secondary scholarly studies.

Marie Gaudry, R.S.M, served in the ministries of her congregation as teacher, president, and director of the New Life Renewal Programs at Marymount Mercy Centre, Castle Hill, NSW, Australia. She holds a diploma in education from the University of New England (Armidale, NSW, Australia) and an M.A. in theology from the Graduate Theological Union in Berkeley, California.

Checks/money orders for \$10.00/copy made out to Sisters of Mercy. Book orders can be sent to: Sister M. Edith Hurley, R.S.M, Holy Name Convent, 1555 39<sup>th</sup> Ave., San Francisco, CA 94122. Phone: (415) 564-1600. E-mail: edithrsm@yahoo.com.

# Writing the Constitutions

## An Unfinished Story of Words and Deeds

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Helen Amos, R.S.M.

**S**tories don't always make sense when you begin at the beginning. As for the story of the *Constitutions of the Institute* of the Sisters of Mercy of the Americas, it may not even be possible to say how, or precisely when, it began. Yet I do want to think of this article as a story—one in which I had the privilege of playing a unique role for more than ten years. I tell the story with a purpose and a hope in mind. My purpose is to invite readers to reapprehend some of the drama behind the development of the text that, in the framework of the law of the church, is our "particular law." As the *Constitutions* story enters its third decade, my hope is that we Sisters of Mercy may see ourselves as engaged in it still—both as authors and interpreters of this corporate word. Such engagement, it seems to me, is absolutely necessary for the preservation and fostering of the core values that inform our particular law.

For our purposes, let us say the story begins in 1980. Here is the scene: There is no Institute of the Sisters of Mercy of the Americas; there is a voluntary association (known as the Federation) of several groups of Sisters of Mercy, all claiming Catherine McAuley as their foundress, spread geographically from

Maine to Guam and from Buffalo to Buenos Aires; members number just over 9000 in total, slightly more than half belonging to the Sisters of Mercy of the Union and the remainder to seventeen different congregations ranging in size from about 100 to 500 members.<sup>1</sup> Within most, if not all, of the eighteen separate entities, efforts are underway to rewrite their particular law as a

will last ten years and lead to the foundation of the Institute of the Sisters of Mercy of the Americas.

But the story has roots that go back even farther. By 1980, religious communities all over the world had been engaged in renewing their way of life for about a dozen years. The Vatican II decree, *Perfectae Caritatis*, had called for "appropriate renewal of the life and rules of religious commu-

In 1980, there was no Institute of the Sisters of Mercy of the Americas; there was a voluntary association (known as the Federation) of several groups of Sisters of Mercy, all claiming Catherine McAuley as their foundress, spread geographically from Maine to Guam and from Buffalo to Buenos Aires.

culminating act of the renewal process called for by Vatican II. At a meeting of the Federation in the spring of 1980, a notice is posted inviting any who might be interested in collaborating on constitutions writing to gather informally to explore the idea. I am one of more than sixty sisters representing seventeen congregations who turn up for the meeting; within forty-five minutes a project is launched that

nities," and specified that each community's effort in this regard be informed by three fundamentals: the gospel, the community's own founding spirit or charism, and the "changed conditions of the times."<sup>2</sup> For the congregations that comprised the Mercy Federation, this process served to underscore a common heritage as followers of Jesus and of Catherine McAuley and fueled the desire to cooperate in an on-

going response to the Vatican II mandate.<sup>3</sup> The group of twenty who reconvened a month after the 1980 Federation meeting to pursue the collaborative writing project named as their goal the formulation of a “core constitutions.” This was a term invented by the group to convey their limited objective of producing only “a basic inspirational text.” It was assumed that such a text would be completed by each congregation’s specification of the necessary “obligatory” elements. Indeed, part of what made the project attractive was the opportunity it presented to engage the poetic instincts of the volunteer authors in setting out Mercy ideals in animating, motivating language.

every word of which survives (with some rearrangement) in the current *Institute Constitutions*. Some 1800 Sisters of Mercy, gathered in Pittsburgh to celebrate the 150th anniversary of the Dublin foundation, received this text in a simple but artistically presented booklet in June 1981. Up to that point, the writing project had operated entirely on good will, with no formal budget and no official sponsorship. When the Federation Governing Board met during the week of the anniversary celebration, the *Core Constitutions* was adopted as a Federation project and the volunteers working on it became a Federation committee.<sup>4</sup> Not coincidentally, the

though each effort clearly influenced the other, distinction between the two was deliberately maintained until 1990, the year before the founding of the Institute. Although the reasons for distinguishing the projects were essentially practical, the distinction itself may have contributed to a perception that two separate stories were in progress, one about words (writing the constitutional text) and the other about deeds (becoming the Institute). In fact, the two projects constitute a single story—an unfinished one at that.

Encouraged by the members’ responsiveness to the 1981 text, and at the behest of the Federation Governing Board, the committee moved forward to test, through several waves of internal consultations, further points of common belief and practice that might be added. There was a desire to use the pooled talents available within the collaborative arrangement to draft as much required constitutional content as possible. However, since the congregations were at that point canonically distinct entities, the committee could only aim at an “expanded core” in the hope that this might somehow strengthen unity among the groups. From a practical standpoint there was no leverage to develop agreement about governance and formation structures—not to mention financial arrangements—which would be needed in a complete constitutional text. On the other hand, a new governance model was precisely the agenda the Mercy Futures process was pressing.

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This sort of effort was very much in keeping with the exhilarating atmosphere of challenge and promise of the renewal process itself. A certain sense of freedom accompanied the postponement of structural and other issues that eventually would have to be spelled out in juridical terms.

The first product of the collaboration was a statement just thirty paragraphs long, almost

Federation Governing Board decided at the same meeting to begin an exploration of restructuring. This exercise, at first dubbed “Mercy Futures,” ultimately led to our amalgamation as the Sisters of Mercy of the Americas. The subsequent seven years of dynamic interaction between work on constitutions and work on Mercy Futures would prove to be critical ones. Even

Despite the fact that the committee did not intend to handle governance and other structural issues in the “expanded core,” the relative ease with which the first thirty paragraphs had emerged became apparent when they took up the arduous task of examining various elements of Mercy life (e.g., prayer, community life, obligations relative to the vows) and fitting them into the framework of expectations spelled out in the universal law of the church. Through the renewal process (and even prior to it) many women religious had come to understand the relationship between “life” and “law” as one of dynamic tension.<sup>5</sup> Thus, while the authors of the *Core Constitutions* understood intellectually the need to grapple with and communicate clearly on issues of identity, obligation and the like, emotionally and instinctively they resisted the spirit-stifling potential of prescriptive language.

In June 1983, as chair of the *Core Constitutions* committee, I reported back to the Federation Governing Board recommending that the most recent version of the committee’s work be released to the individual congregations for use in their own processes of constitutions development. This recommendation was primarily based on practical considerations already mentioned. Another influence might have been the fact that the Vatican had just published “Essential Elements in the Church’s Teaching on Religious Life,” declaring an end to the “period of special experimentation,” and calling on religious congregations to complete work on revising their constitutions.<sup>6</sup> Interestingly, the Federation Governing Board

looked at the very same realities—the fact that multiple Mercy congregations were involved and the Vatican’s press for closure—and reached the conclusion that this would be precisely the wrong time to end the collaborative work. Thus, in the summer of 1983, the Mercy Futures task force, also under the auspices of the Governing Board, would begin a more earnest and more broadly participative process for designing and developing a new governance model. The constitutions committee would tackle a new mandate as well: to press the writing project to its limits. Although the outcome of the Mercy Futures process was unknown, it was clear that the constitutional text (or texts) would ultimately require Vatican approval, and there was a desire to approach that seat of judgment as solidly in the company of one another as possible.

There are interesting parallels and contrasts between the story of how the Institute of the Sisters of Mercy of the Americas and its *Constitutions* came to be and the development of the original Rule and Constitutions of the Sisters of Mercy. The projects were of similar duration, about ten years from first draft to obtaining Vatican approval. Both texts accompanied and helped to bring about important transitions. In the nineteenth century, the transition was from Catherine McAuley’s community of lay women to a new congregation of women religious. In the twentieth century, the transition was from several existing independent Mercy congregations to a single institute. But whereas Catherine McAuley wrote her

text virtually alone, using the Presentation Rule as a guide, the *Constitutions* of the Sisters of Mercy of the Americas was written by multiple authors working from a blank page. Catherine consulted extensively with Daniel Murray and others outside the order, but not at all with the Sisters, as far as we know. Consultations with the membership at large were a prominent part of the development of the Institute *Constitutions*.

In an economy of words and a remarkably spare style, the Institute’s *Constitutions* reflects some of the most characteristic thinking and insights of Catherine McAuley.<sup>7</sup> Along with phrases explicitly linked to Catherine, like “preferential love for the poor” and “special concern for women,” the text emphasizes “union and charity” and comments on the value of “ordinary actions”—two key concepts in her prescriptions for community life. At the same time, the post-Vatican II text exhibits the powerful influence of that Council and of the 1971 Synod, “Justice in the World,” which so definitively called us, as religious, to solidarity with the people of the modern world, especially the marginalized. The newer text also reflects the 1980 encyclical, “Rich in Mercy,” in its insistent view of mercy as that aspect of God of which all are in need, not simply a gift that some have the privilege of dispensing.

Perhaps the most interesting contrast between Catherine’s work in producing the original rule and the Institute’s effort to develop the *Constitutions* concerns dealings with Rome. All of Catherine’s contacts with Rome

were conducted from a distance and through intermediaries, whereas direct correspondence and numerous face-to-face meetings with Vatican officials led to the approval of the Institute's particular law.

existed to own and present for approval the proposed constitutions. Here again, as in the summer of 1983, the instinct to stand together in dealings with the Vatican manifested itself. In the matter of constitutions approval, it

## Perhaps the most interesting contrast between Catherine's work in producing the original rule and the Institute's effort to develop the *Constitutions* concerns dealings with Rome.

The first face-to-face consultation occurred in the late fall of 1984. Doris Gottemoeller and I, as project directors for Mercy Futures and the *Core Constitutions*, respectively, accompanied Federation President Terese Marie Perry on a visit to the Congregation for Religious and Secular Institutes (CRIS, later CICL)<sup>8</sup> in Rome. Our purposes were to obtain observations on the *Core Constitutions* and to acquaint the CICL officials with the Mercy Futures project. At that meeting, the CICL representatives voiced their expectation that completing the constitutions work should be the first order of business, preceding the potential formation of a new institute. In fact, the Vatican would maintain that position until within months of the First Institute Chapter in 1991. Mercy representatives were finally successful in negotiating a change in the sequence by arguing that, prior to the actual founding of the Institute and convening of its chapter, no single authority

was of particular importance, given the many issues relative to authority that were of special moment to the Sisters of Mercy.

The journey from the thirty-paragraph 1981 text to the *Constitutions* accepted at the First Institute Chapter and approved by the Vatican December 12, 1991, was as complicated as it was long. In the struggle to find acceptable ways to articulate certain constitutional provisions required by the universal law and/or by Vatican officials, the Sisters of Mercy were not alone. The mindset of "Essential Elements," suggesting that many practices of preconciliar religious life could and should be re-instituted, clashed badly with the sense of self-direction and adulthood in the church of women religious generally. Over the period that the *Core Constitutions* was being developed in counterpoint with the Mercy Futures process, Vatican assumptions relative to such matters as the

wearing of the habit, the observance of cloister and other monastic practices gradually faded or became more negotiable. A number of issues that had to do specifically with authority got resolved within the context of designing the governance model for Mercy Futures—a process that had canonical requirements to be sure, but for the developing Institute, it was essentially an exercise in self-determination. In time, the necessity and wisdom of including certain required elements became evident. Of that point, #52 is a good example:

We articulate our vision and identity

as Sisters of Mercy

in our Constitutions.

Through the approval of the Constitutions

the church recognizes us as a pontifical institute

and confers authority

to organize and govern ourselves.  
(emphasis added)

In a few instances, Mercy representatives eventually prevailed in their protracted dialogue with CICL over constitutional statements relative to authority. One example concerns the functional responsibility of the Institute Leadership Conference between meetings of the chapter.<sup>9</sup> A second example involves the privilege of "authentic interpretation" of the *Constitutions*. The First Institute Chapter elected to ratify the *Constitutions* without mentioning that such interpretation is "reserved to the Holy See," despite canonical advice that such a statement would be



required.<sup>10</sup> The approved document is silent on the matter.

In contrast to these important—if perhaps somewhat symbolic—successes, article #53, is an instance of a struggle that went on until the final vote on the *Constitutions* at the First Institute Chapter. At every juncture in the consultations with Rome, Mercy representatives had encountered insistence that papal authority be acknowledged in the context of the vow of obedience.<sup>11</sup> In the end, although the text managed to avoid placing it under obligations of the vow, the sentence, “As religious, we recognize the legitimate authority of the Pope,” was included in a statement of relationship to ecclesiastical authority. The vote on this was difficult, especially in light of experiences in which Vatican directives had been imposed on individual sisters whose ministerial activities, though approved by legitimate authority within the congregation, were disallowed by Rome.<sup>12</sup>

The foundation of the Institute that took place in Buffalo in 1991 was itself a moment of high drama and, in a sense, the beginning of a whole new story. But to characterize the *Constitutions* as a concluded story or as a minor, completed plot line within a larger ongoing narrative would be a serious mistake. At best, it would mean squandering some important opportunities. At worst, it would leave important Institute business unfinished. In my view, we would do well to recall that the *Constitutions* contains that “basic inspirational text” that stunned the Federation con-

gregations in 1981 and, in some significant measure, was responsible for drawing us together as an Institute. Furthermore, as the story recounted here testifies, the new relationship among us that became embodied in the Institute was not simply discovered. Rather, we gave that relationship form and substance by writing into our text fundamental agreements about our life together. I suggest that a decade of distance from our struggles with canonical requirements may be sufficient to allow us to appreciate—afresh or for the first time—that this is, indeed, *our* text.

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More concretely, a decade of distance from what we may have thought of as the “end” of the *Constitutions* story could be the point at which we begin to understand our need for the sort of practical exercises, routines, or customs that could give greater visibility to our commitments and prevent us from wandering into forgetfulness about our self-defined obligations.

The writing of the *Constitutions* was not merely an obligatory exercise on the way to founding the Institute. It hardly

needs saying that it is not a perfect declaration—neither of our intentions and aspirations nor of our reality. Yet, surely we intended it to be a durable corporate word, capturing the most fundamental of our founding traditions and shedding new light from Vatican II on our founding charism. That charism both identifies us to ourselves and commits us to be responsive to the needs of our times.

At this point in our story, it is time for us to be testing the durability of the corporate word that is our *Constitutions*. That

would involve forthrightly asking how serviceable it is for our own ongoing engagement in community life, for incorporation of new members into that life, for empowerment of those we entrust with the ministry of leadership, and for nurturance of future leaders. Engaging ourselves in conversation about such questions could be a truly constructive way of continuing to tell, hear and respond to this unfinished story.



## Notes

- 1 By 1987, there would be 8300 members in the Federation, including the Newfoundland congregation which never became part of the Institute. In September 1988, 7400 sisters were "eligible to vote" on the proposed governance model of the Institute. See Catherine C. Darcy R.S.M., *The Institute of the Sisters of Mercy of the Americas: The Canonical Development of the Proposed Governance Model* (Lanham, Maryland: University Press of America, 1993), 214, 156.
- 2 Walter M. Abbott, S.J., *The Documents of Vatican II* (New York: The America Press, 1966), 468.
- 3 For a fuller account of a growing awareness and appreciation of their common heritage among these several groups and the consequent movement toward restructuring, see Darcy, *supra*, note 1.
- 4 Committee members were, from the Union, Helen Amos (Baltimore), Emily George (Detroit), Doris Gottemoeller (Cincinnati), and Evangeline McSloy (Chicago). Representatives of the other congregations were Sylvia Blaine (Burlington), Elizabeth Carroll (Pittsburgh), Mary Daly (Hartford), Louise Dantzig (Brooklyn), Judith Heberle (Rochester), Arthur [Martha] Joyce (Albany), Olivia Kidney (Manchester), Jeanne Marie Kienast (Belmont), Michael [Joanne] Lappetito (Rochester/ Federation Executive Director), Dorothy Mara (Worcester), Mary George Mochen (Plainfield), Mary Jane Nolan (Buffalo), Mary de la Salle O'Donnell (Portland), Mary Jean Ritti (Philadelphia), Mary Celeste Rouleau (Burlingame), and Mary Cephas Wichman (Cedar Rapids). Newfoundland elected not to participate.
- 5 In advance of the 1983 Revised Code of Canon Law, a draft of the portion of the code that would apply to religious was released in 1977. The Leadership Conference of Women Religious promptly published a critical response to the draft. Sandra Schneiders cites this exchange as an example of the then current "tension between law and life." See Sandra Schneiders, *New Wineskins: Reimagining Religious Life Today* (New York: Paulist Press, 1986), 155.
- 6 An English translation of "Essential Elements in Church Teaching on Religious Life," from the *Congregation of Religious and Secular Institutes*, can be found in *Origins* 13 (1983), 133–142.
- 7 Mary Sullivan describes several "overarching attitudes" disclosed in the choices Catherine McAuley made as she edited and added to the Presentation Rule. Among them are "modesty of language and idea," and a preference for a "simple style of speaking and writing." See Mary C. Sullivan, *Catherine McAuley and the Tradition of Mercy* (Dublin: Four Courts Press, 1995), 289–290.
- 8 The Vatican body changed its name (officially in Latin) several times during the ten year period: The Congregation for Religious and Secular Institutes (CRIS) became the Sacred Congregation for Religious and Secular Institutes (SCRIS) and, finally, the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life (CICLSAL). For simplicity, this article uses the acronym CICL throughout.
- 9 Darcy, 133–134. Whereas CICL apparently wanted the Conference limited to consultative and evaluative functions, the responsibilities listed in #69 represent a broader mandate.
- 10 Ibid., 134–135. CICL originally raised the issue in 1986. It was discussed again in April 1991, as well as at the First Institute Chapter.
- 11 Alluding to the difficulties women religious encountered in obtaining approval of revised constitutions during the 1980s and 1990s, Sandra Schneiders speaks of the Vatican as, in effect, requiring a "definition of the vow of obedience as binding the Religious to personal obedience to the Pope in a way not required of the baptised in general," and she maintains that such a definition seriously violates the theology of religious life. See Sandra Schneiders, *Finding the Treasure: Locating Religious Life in a New Ecclesial and Cultural Context* (New York: Paulist Press, 2000), 389.
- 12 Three sisters forced to leave Mercy congregations because of ministerial choices were Agnes Mansour in 1983 and Elizabeth Morancy and Arlene Violet in 1984. Documentation of the case of Agnes Mansour can be found in *Origins* 12 (1983), 621, 676–79 and *Origins* 13 (1983), 34–36, 197–206. See also "The Experience of the Sisters of Mercy of the Union in Public Office," by Helen Marie Burns, R.S.M., in *Authority, Community and Conflict*, ed. Madonna Kolbenschlag (Kansas City, MO: Sheed and Ward, 1986), pp. 1–19.

# Administering the Church's Law "With Mercy"

Doris Gottemoeller, R.S.M.

**L**awyers, judges, juries and courtrooms are a staple of TV-land. Our attention is easily captured by a legal contest between prosecutors and defense attorneys, plaintiffs and defendants, the guilty and the innocent.

The Church has its lawyers and courts as well, and several Sisters of Mercy—some of whom you have already met in these pages—are engaged in the ministry of Church law. I recently interviewed each of them to learn what attracted them to this work and how they experience it in their daily practice. Is it as dramatic as *JAG* or *The Practice*? Do we have the stuff of a new TV series?

There are six practicing canon lawyers in the Institute of the Sisters of Mercy of the Americas: Sisters Claudia Barbre (Portland), Catherine Darcy (Plainfield), Sharon Euart (Baltimore), Lois Keller (Brooklyn), Jeanne Margaret McNally (North Carolina), and Victoria Vondenberger (Cincinnati). They are pioneers in a ministry that became available to non-clerics only after Vatican II. Prior to studying canon law, Lois and Jeanne Margaret served in congregational leadership, and the others were engaged in a variety of parish and diocesan ministries. From their several vantage points, they all saw the need for greater understanding of the Church's law and its applications and the opportunity to be of greater service to religious and clergy and to persons suffering the effects of failed marriages and abusive relationships.

There are two schools in North America that confer the ecclesiastical degrees necessary for the practice of canon law, Catholic University of America and St. Paul University in Ottawa. Sisters Claudia, Lois, Jeanne Margaret, and Victoria all earned their licentiates in canon law at one of these schools; Catherine and Sharon earned doctorates in canon law at St. Paul and Catholic Universities respectively. For several, their studies were

underwritten by specific dioceses in return for a pledge of service for a certain number of years.

When asked what it is they actually *do* to practice canon law, the question elicited a long list of activities. Church administration, seminary teaching, lecturing, workshop presentations, consultation with dioceses, religious congregations, and individuals, writing, and marriage tribunal work were all named. Sharon has served as the associate general secretary of the National Conference of Catholic Bishops and Catherine is the chancellor of the Diocese of Las Cruces, NM. Jeanne Margaret has assisted some fledgling religious congregations through the processes of canonical recognition. Overall, however, the largest effort seems to go into tribunal work, a ministry that several described as a grace filled opportunity to promote healing and reconciliation among some very wounded individuals.

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## Canon Law and Our Mercy Charism

Each sister shared with me her experience of this ministry in the context of our Mercy mission. As Jeanne Margaret pointed out, it often involves helping women and children who have suffered as the result of unhappy marriages. Many women appreciate having a woman as their advocate. Claudia noted that, in the process of giving testimony, some say they've never really thought about "the whole story" of their failed relationship before. The telling of it sometimes begins the healing process. Other sisters mentioned that canonical practice is a type of justice ministry, as individuals are enabled to seek due process when they feel their rights have been violated. Lois pointed out that sisters involved in disputes with their congregational leaders have a right to impartial counsel, even when one's sympathies might lie with one party or another. Sharon feels that the advocacy role of canonists is underutilized today because we don't have sufficient processes in place to protect rights. However, she appreciates the fact that canon law protects good order at the same time that it guarantees leaders the right to act.

**Each sister feels that the canonical ministry is shaped by, and helps shape, her personal spirituality. Citing Catherine again: "Sharing the struggles of others helps you understand your own struggles."**

All of the interviewees made a connection between our charism and the opportunity to reconcile people to God and to the Church. In dealing with marriage cases, they have the opportunity to treat individuals with compassion, alleviating their sense of failure or embarrassment, and extending to them an understanding which they may not have received from Church representatives in the past.

Catherine observed that, since diocesan service is not a corporate ministry of the Sisters of

Mercy, the connection with our Mercy mission is sometimes a question for her: "Administrative work can seem far from the corporal and spiritual works of mercy and some of our sisters are skeptical about working for the Church structure." At the same time, she sees the value of making Church services more accessible to the poor and those without education or language skills.

Each sister feels that the canonical ministry is shaped by, and helps shape, her personal spirituality. Citing Catherine again: "Sharing the struggles of others helps you understand your own struggles. The intense exposure to details of human interaction and family life [in tribunal work] gives you an insight into the human struggle." Claudia said that the ministry has given her an admiration for the resiliency of the human spirit. She sees miracles of grace in the lives of the people she assists.

## Rewards and Frustrations

As with other ministries, the practice of canon law brings its measure of rewards and frustrations. Satisfaction comes from being able to provide specialized expertise to those in need of it and from the gratitude of the recipients. It comes from assisting troubled individuals, from empowering individuals and groups by making the law more accessible, and from organizing or facilitating complex administrative projects. As examples of the latter, Vickie related her experience of developing a collegial or team mentality among the members of the tribunal staff, and Catherine spoke of her efforts to transform bureaucratic processes from a "paper-centered" to a "people-centered" style.

As an example of a frustration, Sharon mentioned dealing with people who take the law very lightly and only use it when it's to their advantage. Vickie cited the pain of knowing there are some people you can't help, because the facts of their case don't warrant an annulment. Claudia suffers over the fact that parties who oppose the annulment are sometimes vengeful toward their former partners, rude or unkind. In dealing with the emotional issues of tribunal work, our canonists mentioned that, while the process has its limitations, it does promote objectivity. As a result, one learns to become more objective in evaluating situations, while empathizing with the sufferings of the petitioner.

There are restrictions placed on non-clerical canonists that constitute a special frustration for our sisters. A non-ordained person cannot be the sole judge or final arbiter of some cases. As Lois pointed out, this often results in the sister preparing all of the documentation and writing the opinion, which is then signed by a priest. Despite this bureaucratic limitation, the sisters generally feel that they are valued and affirmed for their knowledge and competence in the work setting.

### **Skills and Attitudes Needed**

All of the sisters mentioned the importance of a theological background, especially in the areas of ecclesiology, sacramental theology, and the documents of Vatican II. One's beliefs and attitudes toward the Church are key to this ministry. As Sharon noted, studying the theology behind the law has given her a greater appreciation of the impact of Vatican II. Lois mentioned that love for the Church, despite the failings of its members, is paramount.

Numerous skills were identified as valuable for canonical ministry. Often mentioned were skills in research, analysis, and writing. As Sharon said, it is often necessary to be precise and concise in stating what the law says and means lest a misunderstanding be detrimental to a client. Jeanne Margaret noted that a canonist needs to have the ability to interpret the law to others in such a way that they're enlightened and not turned off. A sense of history and of the development of the law over time is also valuable, according to Vickie.

Pastoral skills such as the ability to interview petitioners and clients sensitively without sacrificing objectivity, administrative skills such as the ability to organize and facilitate projects, and academic skills such as facility with languages were all mentioned as valuable for canonical ministry.

The ranks of canon lawyers in the United States have been considerably augmented by women in recent years, and women religious bring the dual gifts of feminine insight and religious charism to this ministry.

By way of advice to potential canonists, our "veterans" suggested that it's important to learn all aspects of the law. Another suggested that it's important to be discerning in one's choice of a place to minister—if you plan to work for a diocese, know the profile of the diocese and its leadership before beginning.

The ranks of canon lawyers in the United States have been considerably augmented by women in recent years, and women religious bring the dual gifts of feminine insight and religious charism to this ministry, as is evidenced by the reflections shared by Sisters Claudia, Catherine, Sharon, Lois, Jeanne Margaret, and Victoria. In the course of a day's work, they frequently encounter the drama of people struggling with broken relationships, perceived or real injustices, and administrative complexities—even if no TV producer ever builds a script around their stories.

The last canon in the entire Code, #1752, states that "the salvation of souls" [read: the transcendent good of persons] "is always the supreme law of the Church." Clearly, Sisters of Mercy have found a new way "to serve God's people and to support all persons who struggle for full dignity," through their administration of that law.





## Contributors

**Helen Amos, R.S.M.** (Baltimore) chaired the committee that developed the Constitutions of the Institute of the Sisters of Mercy of the Americas from 1981 to 1991. After serving as administrator of the Province of Baltimore from 1979 to 1984, she was president of the Sisters of Mercy of the Union from 1984 to 1991. Presently, she serves as executive chair of the Board of Mercy Health Services, Inc., in Maryland. Her M.S. in mathematics is from the University of Notre Dame.

**Mary Rose Bumpus, R.S.M.** (Cincinnati) is acting director of the diploma programs in Christian Spirituality at the San Francisco Theological Seminary in San Anselmo, California, one of the consortial schools of the Graduate Theological Union in Berkeley. She is also an instructor in the Program in the Art of Spiritual Direction. Her Ph.D. in Christian spirituality is from the Graduate Theological Union. She has served as formation director for the Cincinnati Regional Community as well as a counselor for Catholic Social Services in Nashville, TN.


**Catherine C. Darcy, R.S.M.** (New Jersey) obtained the licentiate (J.C.L.) in canon law from the Catholic University of America in 1989. She received the doctorate (J.C.D.) in canon law from St. Paul's University in Ottawa, Ontario, Canada in 1992. Her dissertation, entitled, *The Institute of the Sisters of Mercy of the Americas: The Canonical Development of the Proposed Governance Model* was published by the University Press of America. Presently she serves in tribunal and chancery ministries for the Diocese of Las Cruces, New Mexico.

**Sharon Euart, R.S.M.** (Baltimore) worked for the National Conference of Catholic Bishops, first as secretary for planning and then for a term as associate general secretary (1989–2001). She has been visiting lecturer in the Department of Canon Law at Catholic University of America, and served on the Board of Governors of the Canon Law Society of America (1995–97). She has published numerous articles on pastoral planning, religious life, lay pastoral ministry, the role of women in the Church, episcopal conferences, and the canonical mandate for theologians in Catholic colleges and universities. She holds M.A. degrees in liberal arts, and in administration and supervision from Johns Hopkins University. Her doctorate (J.C.D.) in Canon Law is from Catholic University of America.

**Doris Gottemoeller, R.S.M.** (Cincinnati) is the senior vice president for mission and values integration at Catholic Healthcare Partners, a multi-sponsored health care system headquartered in Cincinnati, OH. In 1991, she was elected the first president of the newly established Institute of the Sisters of Mercy of the Americas. She has served in congregational leadership and on numerous health care, higher education and social service boards. She has published and lectured throughout the U.S. and abroad on topics of ministry, ecclesiology and religious life. She holds an M.S. from the University of Notre Dame and an M.A. and Ph.D. in theology from Fordham University.

**Lois J. Keller, R.S.M.** (Brooklyn) ministers in the Rockville Centre Diocesan Marriage Tribunal as defender of the bond. She holds a Ph.D. in biology from Fordham University, New York, a licentiate (J.C.L.) in Canon Law from St. Paul's University, Ottawa, Canada, and a certificate in pastoral counseling from the Post-Graduate Center for Mental Health, New York. She served on her Regional Leadership Team for thirteen years, both as major superior and Council member. She has taught biology at the high school and college levels and frequently serves as canonical consultant for individual Sisters and religious communities.

**Jeanne-Margaret McNally, R.S.M.** (North Carolina) is director of sponsored ministry and life planning for her regional community, acts as judge in the Metropolitan Tribunal of the Archdiocese of Miami, and adjunct professor of ethics at Barry University in Miami. She holds a masters in nursing, a Ph.D. in psychology, a J.C.L. in canon law, and is a certified mediator. A former president of her regional community, she has many publications, and has held a variety of professional positions and offices.



# Discussion Questions



Amos:

In the two historical stories, one of writing the Constitutions, and the other about becoming an Institute, what remains unfinished. What for you is most stunning in the “basic inspirational text” of the Institute Constitutions?

Bumpus:

How do biblical concepts of “to hear and answer,” and “relationship of trust” affect an understanding of obedience to authority? What do biblical concepts of law, whether in Exodus, Paul’s writings, or Luke, have to say to the invocation of law by authorities in the Church? If law “orients us toward right relationship with God and others,” what signals of “right relationships” are the mark of good law and mature observance?

Darcy:

The 1983 Code of Canon Law was promulgated after many Sisters of Mercy entered religious life. Is our concept of canon law based on an experience of the 1917 Code, or on a knowledge of the 1983 revision? After reading the texts of the “social justice canons” in the 1983 Code, how do they “do for the Church what the Institute Direction Statement does for the Sisters of Mercy of the Americas”?

Euart:

“Canon law is a set of norms created by reason and informed by faith. The canons of the Code concern church order and discipline rather than doctrine and dogma . . . they govern the external life of the Church, the public life of the faith community.” If women religious already have their own Constitutions, what is the need or usefulness for considering the provisions of Canon Law?

Gottemoeller:

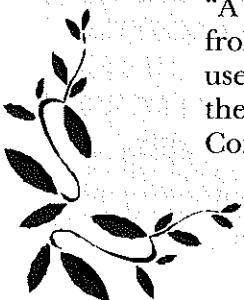
How would you rank these recommendations for their importance in maintaining your sense of membership in the Church as a woman: 1) dealing with frustration of being a non-cleric; 2) knowing you are making use of the knowledge and experience you have in your ministry; 3) having an updated understanding of ecclesiology, sacramental theology and the documents of Vatican II; 4) love for the Church, despite the failings of its members; 5) a sense of history and the development of law and insight over time; 6) confidence in the dual gifts of feminine insight and religious charism; 7) commitment “to serve God’s people and to support all persons who struggle for full dignity.”

Keller:

Do your supplementary documents—directories, procedures, guidelines—include statements which guarantee the rights of community members? What kinds of participative structures acknowledge the rights of members, e.g., consultative committee, circles, assemblies, forums, and gatherings? Are there structures, customs, and practices in your own local community that foster respect for individual rights?

McNally:

“A religious institute is a juridic person and has juridic personality of its own distinct from the natural personalities that make up the community.” How can this distinction be useful in explaining to coworkers the Mercy mission and how religious women carry on their sponsored works in dialogue with three legal codes: ecclesial law, congregational Constitutions, and civil law?



## Information for New Subscribers and Current Readers

**New Subscription:** *The MAST Journal* is published three times a year by the Mercy Association in Scripture and Theology. To subscribe, please fill out the coupon below or a copy of it. Make your check payable to *The MAST Journal* and send to Marilee Howard, R.S.M., MAST treasurer, 2223 L Street, Sacramento, CA 95816.

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## MERCY ASSOCIATION IN SCRIPTURE AND THEOLOGY

**MAST**, the Mercy Association in Scripture and Theology, met for the first time in June 1987 at Gwynedd-Mercy College in Gwynedd Valley, Pennsylvania. Called together by Eloise Rosenblatt, R.S.M. and Mary Ann Getty, twenty Mercy theologians and Scripture scholars from fourteen regional communities formally established the organization to provide a forum for dialogue and cooperation among Sisters of Mercy and associates. The stated purpose of the organization is to promote studies and research in Scripture, theology, and related fields; to support its members in scholarly pursuits through study, writing, teaching, and administration; and to provide a means for members to address current issues within the context of their related disciplines.

**MAST** has been meeting annually since then, usually in conjunction with the annual meeting of the Catholic Theological Society of America, and the organization now numbers fifty, with members living and working in Australia, Canada, the Caribbean, Central and South America, as well as in the United States. Julie Upton, R.S.M. currently serves as MAST's executive director. MAST will hold its annual meeting in the Milwaukee, Wisconsin June 3 to 6, 2001, prior to the CTSA, June 7-10, 2001.

Members work on a variety of task forces related to their scholarly discipline. Present task forces include: Scripture, healthcare ethics, and spirituality. In addition, the members seek to be of service to the Institute by providing a forum for ongoing theological education.

Membership dues are \$20 per year, payable to Marilee Howard, R.S.M., MAST treasurer, 2223 L Street, Sacramento, CA 95816. E-mail: [mhoward@chw.edu](mailto:mhoward@chw.edu).

If you would like to be on the mailing list, call or write: Julia Upton, R.S.M., Executive Director, St. John's University, 8000 Utopia Parkway, Jamaica, NY 11439 (718) 990-1861, or email to [Uptonj@stjohns.edu](mailto:Uptonj@stjohns.edu).

Since 1991, *The MAST Journal* has been published three times a year. Members of the organization serve on the journal's editorial board on a rotating basis, and several members have taken responsibility over the years to edit individual issues. Maryanne Stevens, R.S.M., was the founding editor of the journal, and Eloise Rosenblatt, R.S.M., currently serves in that capacity.

# Book Review

*Camille D'Arienzo, R.S.M. (Brooklyn)*

James Martin, S.J., *In Good Company: The Fast Track from the Corporate World to Poverty, Chastity and Obedience*, Ohio: Sheed & Ward, 2000, paperback, 202 pp. \$15.95.

*In Good Company* is the story of a bright young man who followed a dream from a prestigious college to the financial world's corporate ladder. His swift ascent won him a taste of fame and fortune which, failing to satisfy his expectations, assumed the aspect of a nightmare. James Martin, product of a modest Catholic upbringing, knew that his chosen profession among the climbers of General Electric's empire, was, in his conclusion, "not what I was made for."

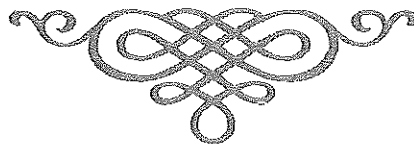
To discover what he was made for required help from perfect strangers: Thomas Merton, C.S. Lewis, and George Bernanos spoke to him of conversion and faith and priesthood. After eight years in Brooks Brothers suits, he was drawn to personal divestiture and a search for meaning. Surprised by his inner longings he considered the priesthood as a way of giving God the energy he was wasting on G.E. A new stranger, this one inside himself, led him to yield to what religious people describe as a "call" and which he describes as "the happy inability to think of anything else."

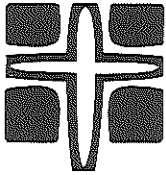
*In Good Company* brings the reader on Jim Martin's journey with the Jesuits. The assignments during his formative years introduced him to Kingston, Jamaica, not to luxuriate in its tourist traps, but to tutor poor, problem boys in the Alpha School, run by the Sisters of Mercy, and to bathe and comfort people in the Missionaries of Charity's hospice for the terminally ill. Bolstered by the power of prayer and community, Jim Martin discovered the treasure that money can't buy.

This candid, unself-conscious autobiography belongs in the hands of every person, man or woman, contemplating religious life or wondering why anyone would choose poverty over affluence, chastity over casual sex, or obedience over self-determination.

James Martin was ordained a priest in 1999 and is associate editor of *America*, the Catholic weekly magazine published by the Jesuits.

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