

February 2017

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# POSSIBLE EFFECTS OF ECCLESIOLOGY ON CANON LAW

REV. GEORGE K. MALONE\*

IT IS AN HONOR and, I might add after our informal meetings together here, a joy to be with you at this eastern regional meeting of the Canon Law Society of America. My own personal experience of having served for nine years as an associate pastor at Chicago's Holy Name Cathedral put me in close contact with most of our chancery and tribunal men—to such an extent that (dare I say it?) I can truly say, “Some of my best friends are canonists.” Having lived on the same floor of the Rectory with the late Monsignor George Casey and Monsignor Ed Burke, I realize that the work of tribunal men is an anguishing ministry—the parish priest frequently encounters happy situations—weddings, baptisms, and the like. But so often the tribunal man meets those situations which have somehow “gone sour.”

I would like to share with you today three brief thoughts which in my opinion reflect the current interaction of ecclesiology and canon law. But first, by way of introduction, may I make one brief comment? In both your discipline and mine, we have all heard much talk about the “new ecclesiology”, both in itself and in relation to other disciplines. Is there a “new ecclesiology?” Personally, I resent the very term itself, since it implies a rather static conception of theology and seems to neglect the notion of organic theological growth. It seems to presuppose that there was a treatise on the church which was omnisciently taught in the past, which is now outmoded and has been replaced by a new treatise on the church taught just as omnisciently as the old! Such a

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presupposition is, of course, false. It is true that Vatican II has succeeded Vatican I. It is also true that new emphases are being placed on points formerly neglected and that former points of emphasis are now being neglected. But most talk of a "new ecclesiology" amounts, in my opinion, to little more than an attention-grabber, a word-game which I just don't have time to play. Enough of that! This morning I wish to present these three points for your consideration.

### **Canon 7 of the Proposed Lex Fundamentalis**

At the October, 1970, convention in New Orleans Richard McBrien briefly discussed Robert Bellarmine's definition of the Church and of church membership. It would be good for us to recall the influence of Bellarmine once again, since it was his theology which shaped Catholic ecclesiology until Vatican II. While not denying its spiritual aspects, Bellarmine defined Church only in its external visible aspects. Conditions for real membership were for him threefold—profession of the same Christian faith, communion of the same sacraments, and rule of legitimate pastors. Distinction was made between membership *in re* and *in voto* to provide for well-meaning persons who did not meet the three conditions. In the middle of the nineteenth century Pope Pius IX employed a further distinction between vincible and invincible ignorance more fully to explain membership *in voto*. This notion of church membership remained basically unchanged through Pope Pius XII's encyclical *Mystici Corporis* in 1943 and the 1949 Holy Of-

fice directive in the famed Leonard Feeney case in Boston.

Vatican II, however, marked a definite change, a change which is most evident in sections 8 and 14 of *Lumen Gentium*, the dogmatic constitution on the Church. Section 8 asserts that Christ's Church, "constituted and organized in the world as a society, subsists in the Catholic Church, which is governed by the successor of Peter and by the bishops in union with that successor." Section 14 asserts:

They are fully incorporated into the society of the Church who, possessing the Spirit of Christ, accept her entire system and all the means of salvation given to her, and through union with her visible structure are joined to Christ, who rules her through the Supreme Pontiff and the bishops. This joining is effected by the bonds of professed faith, of the sacraments of ecclesiastical government, and of communion.

Section 15 then goes on to declare, with regard to other baptized Christians, that the Church is "linked" with them, that they are "in some real way joined with us in the Holy Spirit," and that they are "consecrated by baptism, through which they are united with Christ." In a parallel passage also cited in the footnotes to the *Lex Fundamentalis*, the decree on ecumenism in Section 3 states, "All those justified by faith through baptism are incorporated into Christ. They therefore have a right to be honored by the title of Christian, and are properly regarded as brothers in the Lord by the sons of the Catholic Church."

Obviously, the influence of Bellarmine is still very strong. Just as obviously, Vatican II did not produce a "new ecclesiology." But new dimensions are opened

here—it was not by accident that Section 8 of *Lumen Gentium* states that Christ's Church *as a society subsists in* (italics mine) the Catholic Church. Nor was it by accident that Section 14 speaks of incorporation into the *society of the Church*. In other words, Vatican II admits at least a logical distinction between the concepts "Church," "Society of the Church," and "Body of Christ."

Now let us look at canon 7 of the proposed *Lex Fundamentalis*, which reads as follows:

Those baptized persons are fully incorporated into the Church or the body of Christ on this earth, who possessing the Spirit of Christ, accept the Church's entire system and all the means of salvation given to her, and through union with her visible structure are joined to Christ, who rules her through the Supreme Pontiff and the bishops. This joining is effected by the bonds of professed faith, of the sacraments, of ecclesiastical government, and of communion.

Footnote references are then given to Section 14 of *Lumen Gentium* and to Section 3 of *Unitatis Redintegratio*. At first glance, in fact, canon 7 would seem to be identical with Section 14—however, a careful reading of the first two lines indicates that this is not so. This dropping of references to the societal dimension of the Church disturbs me deeply for two reasons. First, it seems to be a rather sneaky thing to do, especially if one is citing *Lumen Gentium* in a footnote. Secondly, it seems to mark a regression from *Lumen Gentium*, by seemingly reverting to a simple identification of the concepts "Church," "Society of the Church," and "Body of Christ."

As a practical suggestion and request, I ask that the Canon Law Society of America recommend that canon 7 of the *Lex Fundamentalis* be reworded in the exact words of *Lumen Gentium*, Section 14.

### Canon 1323, #3, of the Present Code and its Implications

To the systematic theologian perhaps no canon of the present code is more relevant than canon 1323, #3, which reads, "Nothing is considered dogmatically declared or defined unless it is manifestly certain." I find it very interesting that this canon has been taken over completely as canon 56, #3, of the new *Lex Fundamentalis*. The reason for my interest in this canon as perhaps the most significant point of structural contact between the canonist and the dogmatic/systematic theologian is illustrated in two areas.

A. The first concerns Trent's teaching on the indissolubility of marriage. Now, may I remind you, I am looking at this only as an ecclesiohistorian and not as an expert in sacramental theology or in canon law. Perhaps Father Bevilacqua could comment on this later. Strong arguments have been adduced that Trent intended to define the indissolubility of a *ratum consummatum* marriage. Strong arguments have also been adduced against this position. It is my own opinion that it is not manifestly certain that Trent intended to define such indissolubility. Therefore, it would seem to me in the light of both the present Code's canon 1323, #3, and canon 56, #3, of the new *Lex Fundamentalis*, that discussion can and should begin immediately about structures for the dissolu-

tion of the bond in a *ratum consummatum* marriage with provisions for possible remarriage. I see this as being in no way innovative, but as simply a strict hard-line interpretation of the already existing and proposed new code of canon law.

B. My second point is perhaps related to the first. According to the most traditionally accepted manuals of ecclesiology, the *primary* object of infallibility as defined at Vatican I was the revealed word of God. This, and only this, was proposed as being a dogma of divine faith. The so-called *secondary* objects of infallibility (dogmatic facts, theological conclusions, statements of church law, approval of religious orders' constitutions, and canonizations) were rated at best as "theologically certain" and, therefore, in the light of canon 1323, #3, not infallibly taught. One of the major deficiencies of Hans Küng's recent work, *Infallible?*, is his rather insufficient treatment of this distinction.

As a practical suggestion and request, I ask that the Canon Law Society of America be alert to the significance of canon 56, #3, of the *Lex Fundamentalis* and resist any efforts to change or modify it.

#### **Incardination and Excardination of Diocesan Clergy**

My third point is an extremely practical one. For years now there has been much talk about the problem of clerical celibacy and concern about this issue is rightly justified. But, I am personally convinced, there is another issue of at least equal importance which is hardly ever mentioned and which is of (equal) interest to both

theologian and canonist—that is the problem of incardination of the diocesan clergy.

At Valletta on the island of Malta, a very interesting international congress met last year between May 25-27, 1970, under the aegis of the Sacred Congregation for the Clergy and presided over by His Eminence Cardinal Wright. Although the congress received little attention in this country's press, both secular and religious, its theme was announced as "My Parish the World." The congress dealt generally with the problem of distribution of priests throughout the world. In a very moving talk delivered on May 26, Monsignor Giuseppe Zagon of the Sacred Congregation for the Bishops, while citing the needs of the Spanish-speaking in New York, referred specifically to the 700 parishes in this country ministering to about ten million Polish emigrants and to the ten thousand Croats in Sweden, who have only one priest.

Going beyond the obviously felt needs of immigrant groups, Archbishop Palazzini, Secretary of the Sacred Congregation for the Clergy, spoke on May 26 about the whole concept of incardination according to the Second Vatican Council. In that lecture Archbishop Palazzini reminded his listeners that Christ had simply told his apostles to go into the "whole world" without any restrictions whatever. He then proceeded to point out that the principle of incardination is not a basic one, but is one solely belonging to ecclesiastical structures and brought into being through local and temporal needs.

Preparing the way for such statements was the lecture of Cardinal Wright, in

which His Eminence, while observing that the Council has conserved and strengthened the work of the church on a parochial basis, remarked that "the parish is not sufficient to cope with pastoral work in the modern world. So many other forms of religious assistance and pastoral work in the fulls (sic! fields?) of culture, education, and sports cannot have the parish as their starting point." At this point Cardinal Wright cited the very words of Vatican II's *Decree on the Ministry and Life of Priests* in its 10th Section, "Where an apostolic consideration truly requires it, easier procedures should be devised, not only for the appropriate distribution of priests, but for special pastoral objectives on behalf of diverse social groups, whether these goals are to be achieved in a given area, a nation, or anywhere on earth."

Also preparing the way was the lecture delivered on May 25 by Bishop F. Galea, O.F.M., of Malta in which he notes,

We feel that Christ's priesthood, in more ways than one, claims a universal derivation, inasmuch as all those who participate in His priesthood become incorporated in Him. In fact, the "spiritual gift" which all priests have received at their ordination does not prepare them for a limited and restricted mission, but for a most universal and widest mission of salvation "to the very ends of the earth" (acts 1:8); as a matter of fact, every priestly ministry shares in a widest scope of the universal mission of salvation entrusted by Christ to His Apostles. The priesthood of Christ in whom all priests are true sharers, is destined to all peoples and for all times, and no tie, whether it be that of blood, nationality or age can prevent it from being exercised to its fullest extent.

A practical problem in this whole area

was introduced by Bishop Ladislaus Rubin, Secretary-General for the Synod of Bishops, on May 26, when he observed after some preliminary comments:

The concern of the commissions we are talking about should not be limited to procuring a certain number of priests to fill up the deficit of clergy in some certain territories on the national or international scene. A very special task would be to promote the distribution of clergy who are specialized in some particular form of priestly activity. Here the question arises of how to furnish seminaries with professors and competent educators who will be able to give their students the training which a priest will need in today's world . . . There is a big field here, and one that is of particular interest for the activity of episcopal conferences' commissions for the distribution of clergy.

Enough of Malta, with all due respect to Cardinal Wright! The congress was great in that it suggested drastic changes in procedures for incardination and excardination. But what to say of this theologically and canonically? There is no scriptural basis for incardination—the Apostles traveled around quite a bit. Patristically, we find that St. Augustine complained bitterly about another bishop stealing one of his deacons.

Practically, incardination came into being for two reasons. First, it was intended to protect a priest from his bishop. The bishop could not simply "fire" a priest with whom he disagreed. Secondly, it was intended to protect a bishop and his diocese from a greedy venal priest who was simply seeking a wealthy benefice. One need only consider the thousands of *cleri vagantes* at the time of the Protestant Reformation.

I submit that both of these reasons are

still valid today—that the priest still needs protection from his bishop and that the bishop and diocese still need protection from their priests! In light of the Maltese conference and its suggestions, may I propose the following on two levels:

1) *Theologically speaking*. I submit that priestly ordination involves a sacramental ministry to the universal church, but that a canonical mandate is necessary to exercise this ministry.

2) *Structurally speaking*. I propose to the Canon Law Society of America the following in the light of May 25-27 meeting sponsored by the Sacred Congregation for the Clergy on the Isle of Malta:

a) that the traditional structure of in-

cardination be replaced by a contractual agreement between ordinary and priest—a contract to be renewed each four years at the agreement of each party. This would seem to bring about a greater responsibility from both sides: if the priest is inefficient, he will be fired instead of being guaranteed a sinecure for life; if a bishop is inefficient, he will soon find himself with no priests and, presumably, the U. S. Catholic Conference will find ways to deal with him!

b) that the Canon Law Society of America attempt to implement the Maltese directives in the area of canon law, especially by sponsoring research in the general area of incardination and, more specifically, by investigating practical factors such as hospitalization and retirement benefits on a national level.