

THE NATURE AND USE OF POWER IN THE CHURCH

INTRODUCTION

The subject of power is the focus of this convention, and several of the presentations overlap with the topic assigned here. My own paper will be, for the most part, schematic. It is designed to provoke questions and promote discussion rather than to develop an exposition that is at once comprehensive and detailed. The paper remains always an exercise in ecclesiology, not in social scientific nor even philosophical analysis, although it relies here and there on both.

I have already attempted fuller ecclesiological statements on the subject in books, articles, and lectures, as, for example, in my *The Remaking of the Church*,¹ and in my closing address, "A Theologian Looks at the Role of Law in the Church Today," at the 1981 annual convention of the Canon Law Society of America.²

I do not intend to review or to reconstitute that material here, nor the work of other Catholic ecclesologists who have had similar interests over the past few decades, e.g., Hans Küng,³ Yves Congar,⁴ Patrick Granfield,⁵ Joseph Komonchak,⁶ and others.

First, I shall explore the relationship between power and authority, keeping in mind always the ecclesiological dimension of the terms and of their relationship. Secondly, I shall identify certain major ecclesiological principles which must always govern our assessment of the exercise of power and authority in the Church. Thirdly, I shall raise some specific questions about the use of power in the Church: what are its principal forms; how is it acquired, exercised, and evaluated; what are the pitfalls and/or the typical abuses associated with it? Fourthly, and finally, I shall extend and apply these reflections to the proposed new Code of Canon Law, highlighting the relationship of law and power in the service of the Gospel and the mission of the Church.

I. POWER AND AUTHORITY

(A) Power

Karl Rahner defines power as "a certain self-assertion and resistance proper to a given being and hence as its innate possibility of acting spontane-

¹(New York: Harper & Row, 1973).

²"A Theologian's View of the New Code," *Origins* 11 (December 17, 1981), 430-36.

³See, for example, *Truthfulness: the Future of the Church*, trans. by Edward Quinn (New York: Sheed & Ward, 1968).

⁴See especially *Vraie et fausse réforme dans l'église*, *Unam Sanctum* 20 (Paris: Editions du Cerf, 1950).

⁵See *Ecclesial Cybernetics: A Study of Democracy in the Church* (New York: Macmillan, 1973), and *The Papacy in Transition* (New York: Doubleday, 1980).

⁶Among his various articles see "Ecclesiology and Social Theory: A Methodological Essay," *The Thomist* 45 (1981), 262-83, and his "Ministry and the Local Church," *CTSA Proceedings* 36 (1981), 56-82.

⁷"The Theology of Power," *Theological Investigations*, vol. VI, trans. by Karl-H. and Boniface Kruger (Baltimore: Helicon, 1969), p. 391.

ously, without the previous consent of another, to interfere with and change the actual constitution of that other."⁷ Rahner makes the self-evident point that each of us, simply because we exist, inevitably has power in a certain sense and to a certain degree. Each of us has the capacity to do something affecting another or avoid doing something in relation to another, without the other's consent.

Rollo May's definition is a bit more straight-forward and less philosophically encumbered: the ability to cause or prevent change. For May there are five kinds of power: *exploitative*, which is the most destructive because it presupposes violence or the threat of violence and leaves no choice at all for the victim; *manipulative*, which involves the exercise of power over another in subtle and often unconscious ways and, because of that, without the explicit consent of the other and often, but not always, against the other's best interests; *competitive*, which is employed against another, but not necessarily against the other's best interests; *nutrient*, which is exercised for another, as in the case of a parent or some magnanimous public official; and *integrative*, which is exercised with and for the other, in complete harmony with the other's interests and desires. The closer one approaches integrative power, the greater the love.⁸

Power may be good, bad, or indifferent. It depends on the way it is put to use. Applied for the benefit of others and ultimately for the sake of the Kingdom of God, it is good. Applied against the legitimate interests of others and ultimately against the Kingdom of God, it is evil.

The same can be said of power in the Church. There is nothing wrong with it *per se*. It depends on how it is acquired and exercised. By its very nature, the life of a community requires some interaction of wills in pursuit of some common goal or purpose. Power is necessary to facilitate the interaction of wills. When those wills are not in harmony, we have power conflicts.

Rollo May's typology seems readily applicable to the Church. *Integrative* power is always good. It makes collegiality work and renders Christian community possible. Indeed, we speak of the "power" of the Holy Spirit, who is the ultimate principle of *koinonia*. *Nutrient* power is exercised by Christian parents, to be sure, but also by many who fulfill some pastoral ministry. Therefore, it is frequently a positive reality in the Church. Nutrient power, however, is not so ideal as integrative power because it implies an inferior-superior relationship in a community of fundamental equality. Nutrient power sometimes distorts specific relationships within the Church, as in the case of a bishop who presumes to act as "father" to his priests, some of whom may be his own age or older. If nutrient power is exercised when integrative power is called for, nutrient power is a negative, not a positive, force for the Church. *Competitive* power likewise may be either positive or negative. It is positive when it promotes the success of the best qualified minister or the best conceived pastoral project. Competitive power is negative if it is used unfairly, even in the achievement of a good end, or used only for the attainment of more power for its own sake, regardless of the merits of the competitor or of the competing agency or project. *Manipulative* power is almost always negative when exercised in the Church. It can be justified only in relation to subjects who cannot make sound judgments and decisions for themselves. But these are by defini-

⁸*Power and Innocence* (New York: Norton, 1972), pp. 99-121.

tion children and immature adults—neither of whom are supposed to be models for understanding the composition and responsibilities of the People of God. *Exploitative* power is never justified within the Church, which is not to say that it doesn't exist in the Church. It exists, for example, where workers in Catholic institutions are denied their natural right to organize or are paid below standard wages and fringe benefits. It exists where individuals, women and men alike, but women especially, are compelled to remain in certain ministerial roles, without adequate compensation or recognition, on the grounds that they are in the service of a faith-community and any resistance to their status is equivalent to an assault upon the faith-community itself.

In summary, power exists in the Church as the capacity to cause or prevent change. There are different kinds of power. In itself, power is neither good nor bad. Its ecclesiological value depends upon its exercise and, secondarily, on its mode of acquisition.

(B) Authority

"Authority" is even more difficult to define. It is perhaps most often identified with legitimate power, and yet some philosophers are quick to point out that authority and power are not the same thing. An interrogator with rubber hose in hand has power over his victim, but no authority. On the other hand, authority does have something to do with influencing the thinking and behavior of people.

The word authority is derived from the Latin, *auctor*. Ultimately, all authority is rooted in God, who is the Author, or *Auctor*, of all that is. "Let everyone obey the authorities that are over him, for there is no authority except from God, and all authority that exists is established by God" (Rom 13:1).

Authority is *de jure* when it is attached to, or supported by, the power of an office. A police officer has *de jure* authority. Authority is *de facto* when it is actually obeyed and, therefore, achieves its intended effect. It is the ideal that those who legitimately hold and exercise *de jure* authority should also possess *de facto* authority. Thus, the police officer who enforces the law should also be perceived as a law-abiding citizen himself or herself and therefore worthy of one's respect as well as of one's obedience.

The relationship between power and authority is exceedingly close. All authority implies (but does not absolutely insure) the existence and exercise of some power. Without power, authority is meaningless. Where *de jure* authority is exercised without consent, the use of power is almost inevitably coercive. It seeks to promote order without freedom. *De facto* authority is the possession of authority with consent. The power is not coercive. Rather, it respects and promotes freedom, even as it respects and promotes order.

A more complete understanding of the nature and exercise of power and authority in the Church would require some fuller attention to history. I recommend chapter 7 of Avery Dulles' newest book, *A Church to Believe In*, where magisterium, or the power and authority to teach, is at issue.⁹

Although the Second Vatican Council continued to teach that the pope and the bishops possess supreme authority (and, therefore, supreme power) over the

⁹"The Magisterium in History: Theological Considerations," *A Church to Believe In: Discipleship and the Dynamics of Freedom* (New York: Crossroad, 1982), pp. 103-17.

Church, it says that this authority is always to be exercised as a service and in a collegial manner. Furthermore, it is to be used only for the edification ("building up") of their flocks (LG 27). Pastors, too, are not intended to shoulder alone the whole saving mission of the Church. They must collaborate with their brothers and sisters, including the laity, that all might work together as one for the good of the whole (LG 30). The principle of authority-as-service is reaffirmed not only in the Dogmatic Constitution on the Church but in other conciliar documents as well: the Decree on the Bishops' Pastoral Office in the Church, the Decree on the Ministry and Life of Priests, and the Decree on the Appropriate Renewal of Religious Life.

Recent ecumenical statements on the question of authority have come from the Anglican-Roman Catholic International Commission and the Lutheran-Catholic Dialogue in the United States. The Anglican-Roman Catholic document is entitled "An Agreed Statement on Authority in the Church" and is also known as "The Venice Statement."¹⁰

The authority with which it is concerned is the authority of Christ, which is activated by the Holy Spirit to create community with God and with all persons. The model is definitely not political, sociological, or structural, but rather one of *koinonia*, i.e., a fellowship of loving service in the truth of Christ. Whatever authority the Church possesses is always and only for the sake of promoting community. Essentially, the same approach is taken in the final report of ARCIC on authority in the Church, although much attention is paid there to papal authority in relation to the *koinonia* of the whole Church.¹¹

According to the Venice Statement, "Primacy fulfills its purpose by helping the churches to listen to one another, to grow to love and unity, and to strive together towards the fullness of Christian life and witness; it respects and promotes Christian freedom and spontaneity; it does not seek uniformity where diversity is legitimate, or centralize administration to the detriment of local churches" (n.21).¹² Of interest is the response to the Venice Statement by the Anglican-Roman Catholic Consultation in the U.S.A., which criticized their international counterparts for concentrating too much on the authority of the pope and bishops and too little on the authority of the whole Church, laity and clergy alike.¹³

The Lutheran-Catholic Dialogue also touched upon the question of the teaching authority of the Church in connection with its study of papal infallibility.¹⁴ All Christian authority is rooted in Christ and the Gospel, which is a word of power from God (Rom 1:16). It is proclaimed by various witnesses who share in the authority of Christ.

II. POWER AND AUTHORITY IN THE CHURCH: FOUR PRINCIPLES.

The Church shares in the authority of Christ and in the power of the Holy Spirit. The Church's power and authority are always in the service of its mis-

¹⁰(Washington, D.C.: United States Catholic Conference, 1977).

¹¹See "Authority in the Church II," *Origins* II (April 15, 1982), 693-703.

¹²*Op. cit.*, p. 13.

¹³See "Authority in the Church: Vital Ecumenical Issue," *Origins* 7 (January 12, 1978), 474-76.

¹⁴"Teaching Authority and Infallibility in the Church," *Theological Studies* 40 (1979), 113-66, especially 116-22.

sion: to proclaim the Gospel of the Kingdom of God and to manifest and release the power of the Holy Spirit to re-create and reunite the whole human community. The Church is itself the *sacrament of community*. And this is my first principle, the principle of sacramentality. Whatever authority exists within the Church, as distinct from the general authority to proclaim the Gospel, is for the sake of building and sustaining the reality of community, that Christians themselves might taste the first fruits of the perfect Kingdom and that others outside the Church might be given reason to hope in it at all. Power and authority in the Church, therefore, are always sacramental realities, and their use is always conditioned by the sacramentality of the Church.

Secondly, because the Church is the whole *People of God*, authority and power reside in the community as a whole, although exercised in various ways, by various persons, for the good of the whole. Wherever and whenever authority and power are exercised, they are to be exercised in the manner of Jesus, who was among us as one who serves (Mk 10:45). Indeed, his power was rooted in his voluntary powerlessness (Phil 2:5-11). Authority and power which are detached from the holiness of Jesus Christ are not Christian authority and power. Authority and power which seek to coerce through exploitation, manipulation, or unfair competition, place themselves above the grace of the Holy Spirit, and so are not real Christian authority and power either. Neither are power and authority which are pursued and exercised for their own sake.

Thirdly, the Church is a voluntary community. It comes into being through conversion, i.e., the free response of individuals to the call of God in Jesus Christ by the grace of the Holy Spirit. Authority and power can be exercised only in ways which respect the freedom of the act of faith and the voluntary character of *discipleship* in the Church. There is something at least slightly anomalous about a penal code in the Church.

Finally, the Church is an essentially missionary community, committed as Jesus was to the coming of the Kingdom of God. Authority and power, therefore, are *eschatological* in nature, i.e., they exist always in the service of the Kingdom and never as ends in themselves. The Church's work for the sake of the Kingdom involves proclamation, worship, witnessing, and service. Authority and power exist to promote and facilitate those missionary responsibilities.

III. SOME SPECIFIC QUESTIONS ABOUT THE USE OF POWER IN THE CHURCH.

What follows here is even more schematic in character. I raise five questions concerning the use of power in the Church and provide in each instance some highly compressed answers. It is this part of the paper in particular which invites questions, comments, and discussion related to the present life of the Church.

(A) *What are the principal forms of power in the Church?*

I exclude from consideration here exercises of power which have no direct relation to an ecclesiastical office or ministry, e.g., the nutrient power exercised by parents. The principal forms of ecclesiastical power, therefore, are those residing in, and exercised by, certain key individuals, pastoral leaders, and/or groups and agencies. Power is exercised by the pope, the bishops, coun-

cils, heads of religious orders, pastors, directors of religious education, campus ministers, hospital chaplains, presidents—and perhaps presidents-elect—of theological societies, and on and on. Such power is of various kinds as well: the power to teach, to offer spiritual direction, to administer, to raise and spend money, to assign personnel, and so forth. The more directly and extensively related to the mission of the Church, the more important the power and the more important the office or ministry in which the power resides. There is a hierarchy of powers, just as there is a hierarchy of truths, indeed, just as there is a hierarchy of offices and ministries.

(B) How is power acquired in the Church?

Some acquire power through appointment by someone else with the power to appoint and confer power. Others acquire power through election of various kinds. Others acquire power through ordination, installation, or some similar ritual act. Others acquire power through the recognition of their competence by others, especially by those of equal or greater competence. Still others acquire power almost spontaneously by reason of the force of their personalities and the fruitfulness of their ministerial work, e.g., Dorothy Day or Mother Teresa.

In light of the major ecclesiological principles to which I referred above (e.g., the Church as sacrament, as People of God, as voluntary community of disciples, and as eschatological community), one has to ask if power, acquired in these various ways, has been acquired in a manner consistent with the nature and mission of the Church, and with the values and spirit of the Gospel. Is the present mode of selecting bishops, for example, consistent with the principle that the Church is the whole People of God? Is the use of the power to prevent the unionization of workers in Catholic hospitals consistent with the principle that the Church is a sacrament in the sense that the document on Justice in the World, of the Third International Synod of Bishops, understands it: "While the Church is bound to give witness to justice, it recognizes that anyone who ventures to speak to people about justice must first be just in their eyes."¹⁵

(C) How is power exercised?

Some exercise power in a manner consistent with the nature and mission of the Church and the values and spirit of the Gospel, and others do not. Some offices are canonically invested with more power than they should have. In some cases, the canonical prescriptions may promote effects at odds with the self-understanding of the Church achieved anew at the Second Vatican Council. I shall refer again to the canonical aspect of power in my fourth and final section.

(D) How is power evaluated?

It depends. Some forms of power are accountable to others; other forms of power are not. For all practical purposes, papal power is a power without accountability. (I shall return to this point in the final section of the paper.) The power exercised by a bishop is, in many respects, without accountability, al-

¹⁵*Synod of Bishops: The Ministerial Priesthood/Justice in the World* (Washington, D.C., United States Catholic Conference, 1972), p. 44.

though opportunities for abuse are somewhat more limited. On the other hand, although the power of an ecumenical council is as great in principle as that of a pope, a council is a public event, involving many different kinds of ecclesiastical leaders. Multiply the agents of power and maximize the visibility of its exercise, and you diminish the possibilities for its abuse.

Ultimately, all power in the Church, no matter who possesses it, is subject to the demands of the Gospel and the Church's missionary mandate. In practice, however, most power in the Church is effectively evaluated (or constrained) in canonical rather than evangelical or ecclesiological ways. Thus, the Second Vatican Council's Decree on the Bishops' Pastoral Office in the Church reminds even the college of bishops that although it is "the subject of supreme and full power over the universal Church . . . this power can be exercised only with the consent of the Roman Pontiff" (n. 4; see also *LG* 22).

(E) *What are the pitfalls of power and/or its typical abuses?*

There is no need to review here what other theologians, like Hans Küng, and commentators—journalists, sociologists, and the like—have written or said about abuses of power in the Catholic Church. If we wanted to draw up a laundry list of such abuses, it would not take much time or effort. All the more reason, therefore, to limit our scope and to focus on those pitfalls and/or abuses of power which most directly affect, and have affected, theologians and the theological community.

Such abuses arise out of the conflict between the teaching authority of the hierarchy, on the one hand, and that of the theologians, on the other. Theologians can abuse the power of their competence, communication skills, and popular influence in the Church; and the hierarchy can abuse its power of regulating teaching, of assigning and/or transferring priest-theologians from one place to another, or of forbidding theologians to publish the fruits of their scholarship, or of condemning, or at least casting doubt upon, such work after the fact of publication and without due process.

To be sure, some of the Church's major theologians in the past found themselves in disagreement with official positions at one time or another and, therefore, in power conflicts—e.g., Thomas Aquinas, some of whose theological opinions were formally condemned by the bishop of Paris in 1277 and later by two successive archbishops of Canterbury, one a fellow Dominican and the other a Franciscan. Biblical scholars such as Marie-Joseph LaGrange, O.P., drew scholarly conclusions contrary to the directives of the Pontifical Biblical Commission, but at least some of those views came to be adopted by Pope Pius XII in *Divino afflante Spiritu* (1943). Henri de Lubac, S.J., was undoubtedly one of the "new theologians" criticized in the same pope's *Humani generis* (1950), and yet De Lubac was singled out for special praise by Pope John Paul II during the pope's visit to France in 1980.

Two of the twentieth century's leading Catholic theologians, Karl Rahner, S.J., and Yves Congar, O.P., were for a while forbidden to publish their research because of suspicions in Rome that they were insufficiently orthodox. And the case of John Courtney Murray, S.J., is particularly well known to Catholics in the United States. Forbidden by the Holy Office to publish articles on the subject of Church and State because his interpretations of papal teach-

ings differed from those of more traditional theologians and canonists and especially of Cardinal Alfredo Ottaviani, prefect of the Holy Office, and excluded from the first session of the Second Vatican Council, Murray became one of the council's leading *periti* and the architect of its Declaration on Religious Freedom.

Once again, Avery Dulles has had some wise and useful things to say about the exercise of teaching authority by both magisteria in chapter 8 of his *A Church to Believe In*, which is essentially a reprint of a paper he gave two years ago at this convention.¹⁶ The CTSA itself has just published, jointly with the Canon Law Society of America, an interim report entitled "Cooperation Between Theologians and the Ecclesiastical Magisterium," in which elements of guidelines are suggested for the collaboration of bishops and theologians and for resolving conflicts according to the highest interests of the Church, which means in light of evangelical, ecclesiological, and canonical principles.¹⁷ However, we await the final report with specific norms and guidelines—perhaps by next year's convention.

Few theologians would suggest today that the relationship is an entirely satisfactory one, or that the power which the hierarchy continues to exercise over theologians is without abuse in its exercise. But I also agree with Avery Dulles when he suggests that perhaps the real problem is not the conflict between theologians and bishops—both of whom share a common concern for the Church and its traditions. The real problem today is the apathy of so many members of the Church who couldn't care less what the teachers of the Church have to say—whether they be teaching from the cathedral chair or from the professorial chair.¹⁸

I am also inclined to agree with Raymond Brown that the more severe conflict is not so much the one between theologians and bishops, as between both bishops and theologians, on the one hand, and the so-called "third magisterium" of the non-theological far right, on the other.¹⁹ The thesis that both bishops and theologians are the common enemy now of authority and orthodoxy is vigorously argued in George Kelly's recent book, *The Crisis of Authority*,²⁰ just reviewed in *America* by Msgr. George Higgins.²¹ Higgins is right. The logic of this ecclesiology leads to a censure of the pope himself if he fails to act against some of his truant brother bishops.

IV. POWER, AUTHORITY AND LAW

First, some general ecclesiological considerations on the role of law in the Church. Secondly, some specific application of these principles to the proposed new Code of Canon Law and to its erstwhile companion document, the *Lex Ecclesiae Fundamental*. Although the *Lex Ecclesiae Fundamental* apparently will not be promulgated as such, key sections of it are being incorporated into the new Latin Code. The general ecclesiological reflections on church law

¹⁶"The Two Magisteria: An Interim Reflection," *op. cit.*, 118–32.

¹⁷Ed. by Leo O'Donovan (Washington, D.C.: The Canon Law Society of America, 1982).

¹⁸See Dulles, *op. cit.*, 130.

¹⁹"Magisterium vs. Theologians: Debunking Some Fictions," *Chicago Studies* 17 (1978), 290–307.

²⁰(Chicago: Regnery Gateway, 1982).

²¹"Of Controversy and Controversialists," *America* 146 (June 5, 1982), 442–43.

will follow a closely parallel course with that already marked out concerning power and authority in the Church.

The most fundamental statement one can make about the Church is that it is a mystery, or, in the words of the late Pope Paul VI, "a reality imbued with the hidden presence of God." The Church is at once a community sustained and enlivened by the Holy Spirit, and an institution. If the Church were solely institutional, power, authority, and its laws which govern both would be no different from the power, authority or laws of any comparable organization. But the Church is no ordinary institution. It is the temple of the Holy Spirit and the Body of Christ. The Church is a mystery and a sacrament.

Accordingly, power, authority and law have a unique place and purpose in the Church. Ecclesiastical law exists to facilitate the redemptive presence and power of God in the community of faith and to empower that community for more effective service in and for the world. Insofar as God is ineffable, however, and insofar as the Spirit of God breathes freely across the earth, ecclesiastical law has to be tentative, open-ended, and adaptable not only to changing circumstances, but more particularly to God's unpredictable activities on our behalf.

Since the Church is the whole People of God and not just the hierarchical minority, law is for the sake of the entire Body of Christ. Its primary purpose, therefore, is not to persevere and strengthen the power and authority of officials within the community, but to serve and empower the entire membership as it tries to fulfill, under God's grace, the entire spectrum of missionary responsibilities. If the mission of the Church belongs in principle to every one of the baptized, then law must serve the Christian life, ministries, and mission of the entire membership. Such an ecclesiological view, to be sure, rejects every concept of ecclesiastical law which is at least implicitly predicated on a kind of adversarial relationship between the pastoral leaders of the Church and those who hold no formal ecclesiastical power. There is evidence, it would seem, in both the *Lex Ecclesiae Fundamentalis* and the proposed new Code of Canon Law that the law-makers may have indeed operated on the unstated principle that the many are subject to law and are without effective power and *de jure* authority, while the few who have power and authority are called to administer the law.

The rights of the laity to participate in the various functions, or *munera*, of the Church, for example, are consistently modified by the supervisory authority of the hierarchy. But there are few corresponding limitations on the exercise of that same authority by the hierarchy. Thus, non-bishops are responsible to bishops in the teaching of theology, but to whom are bishops responsible in the formulation and expression of their own theology? Perhaps even more significantly, the same lack of accountability applies to the use of money. Only bishops are exempt from the duty of rendering a full account of their financial dealings.

But even the People of God image has to be qualified. Like the old Israel, the Church is a pilgrim people, which, "while going forward in this present world, goes in search of a future and abiding city . . ." (LG 9). Law, therefore, is not only an instrument of the whole community of faith, but it is an instrument of a community on pilgrimage.

Pilgrimages are, by their very nature, voluntary activities. They are prompted always by faith. Accordingly, the formulator and the interpreter of

law can never forget that the Church is a voluntary community. People enter the Church not under coercion but through a process of conversion. Indeed, coercion and conversion are mutually opposed.

The Second Vatican Council's Declaration on Religious Freedom, for example, declares that men and women cannot discharge their obligations to God "unless they enjoy immunity from external coercion as well as psychological freedom. Therefore, the right to religious freedom has its foundation, not in the subjective disposition of the person, but in his very nature. In consequence, the right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it. Nor is the exercise of this right to be impeded, provided that the just requirements of public order are observed" (n. 2). This stands in some contrast to canon 1263 of the new Code, or at least to the way in which the canon is so bluntly formulated: "The right to coerce delinquent members of the Church by penal sanctions is inherent and proper to the Church."

In any case, if the Church is the whole People of God, then whatever penalties are to be imposed should be imposed evenly across the entire community. An ecclesiastical penal code, therefore, must also attend to the many possibilities of abuse of power on the part of those who exercise jurisdiction in the Church.

Unfortunately, as Thomas Green observes, "The *penal law schema* seems to reflect an implicit view of the Church as an unequal society of those who govern and those who are governed, with an emphasis on penalties for the latter. On the contrary, those in leadership positions frequently are a greater threat to the integrity of the community. Hence, a greater effort should be made to specify possible abuse of official trust."²²

Although the draft document, *Lex Ecclesiae Fundamentalis*, and the new Code explicitly affirm that the Church is the People God and not simply a hierarchical institution (see L.E.F., can. 2,4; 9; 12,3; 28,1; 62; 64), a clear preference for a hierarchical model of the Church perdures. Thus, those who do not share in hierarchical jurisdiction are constantly reminded of their duty of obedience to the pastoral leaders of the Church (L.E.F., can. 12,1; 16; 56, 1 and 2; 59; 60; 61; 64; 72). This hierarchical emphasis is evident in the discussion of the *munera*, in the discussion of the rights of Christians, in the process for the selection of bishops, in the restrained endorsement of pastoral councils and parish councils, in the role of women in the pastoral ministries of episcopacy, priesthood, diaconate, lector, and acolyte.

The *Lex Ecclesiae Fundamentalis* has an excellent statement on the collegial nature of the Church (can. 2,1), consistent with the teaching of the Second Vatican Council (LG 23; although significantly, it does not mention the more pertinent n.26). Unfortunately, much of what follows in the *Lex Ecclesiae Fundamentalis* represents a movement away from the principle of collegiality. Chapter 2 on the hierarchical structure of the Church lays out an organizational plan which is more consistently monarchical than collegial. The emphasis is, almost without relief, upon the papal office and its powers.

The Roman Pontiff, as the document continues to refer to the Petrine

²²"The Revision of Canon Law: Theological Implications," *Theological Studies* 40 (1979), 645.

minister, is still said to enjoy power not only over the universal Church, but also over every particular church within it (can. 31, 1). Indeed, there is no appeal beyond the judgment of the Roman Pontiff (can. 31, 3). The bishops seem to be perceived essentially as helpers of the pope, rather than as fellow bishops and collaborators in the governance of the Church (can. 32, 1). Contrary to the record of history itself, the *Lex Ecclesiae Fundamentalis* requires that an ecumenical council can be convoked only by the pope, and that only he, or someone designated by him, can preside over such a council. Furthermore, he alone can determine its agenda and the questions which the council fathers may even address (can. 36, 1 and 2). All executive, legislative, and judicial power remain vested in the papal office and in the college of bishops, but the precise relationship between the two subjects of authority is still problematical (can. 72). The Roman Curia "exercises that authority in the name of the supreme authority" (can. 74, 2). Not only is it impossible to appeal a judgment of the pope, but he himself is to be judged by no one else (can. 75, 2).

This residually monarchical understanding of the Church is also reflected elsewhere in the new Code. Although canon 277 acknowledges that full and supreme power in the Church belongs not only to the Roman Pontiff, but also to the college of bishops, it insists that this canon must be interpreted in light of the canons carried over from the *Lex Ecclesiae Fundamentalis*, where the special prerogatives of the pope are spelled out in much greater detail.

Theologically, the pope is himself a part of the episcopal college. Following Karl Rahner's argument in his *The Episcopate and the Primacy*, "the primacy of the pope is a primacy *within* and not *vis-à-vis* this college."²³ So there are not two separate agents of supreme power and authority in the Church. That would be contradictory. There is one supreme power and authority in the Church; namely, the college of bishops with the pope at its center and head. To be sure, some might want to quarrel with Rahner's particular interpretation. But that is precisely the point. What we are dealing with here is an ecclesiological argument, which is not finally settled. The *Lex Ecclesiae Fundamentalis* and the Code are doing what canon law should never do; namely, attempting to resolve theological controversies by legal *fiat*.

The proposed canons on the People of God in the new Code also preclude the development of the synod of bishops into a fully deliberative body, and they place the Roman Curia at the service of the pope without explicit reference to the whole college of bishops (can. 297). This latter canon, although not so deficient as its earlier version, represents a step back from the Second Vatican Council's Decree on the Bishops' Pastoral Office in the Church where it is stipulated that the Roman Curia performs its duties not only in the name of the pope but also "for the good of the churches and in the service of the sacred pastors" (n. 9).

So, too, is there an inadequate stress on the importance of national conferences of bishops and on the significance of patriarchal governmental forms in the East. In fact, about fifty references to national conferences of bishops have been removed in developing the latest schema. Indeed, diocesan bishops are still seen as having a direct relationship to the pope rather than a relationship to the see of Rome in and through the whole college of bishops (see can. 34). The

²³Trans. by Kenneth Barker, et al. (New York: Herder and Herder, 1962), p. 77.

same non-collegial orientation is reflected in the Holy See's reluctance to grant any kind of meaningful autonomy to regional councils or to local bishops in the delegation of legislative power to priests' senates, diocesan pastoral councils, or some other body which might enjoy a deliberative competence.

But these are only suggestions of how one might undertake an evaluation of the new Code of Canon Law in light of an ecclesiology of power. I insisted at the outset that this presentation would be schematic in character. I have simply called attention to, and italicized, certain well-established ecclesiological principles and indicated how they might illuminate our understanding of power, authority and law in the Church. My analysis has been essentially positive, for without power, authority, and law the Church could not fulfill its mission. But my analysis has not been without some measure of suspicion toward the use of power, the exercise of authority, and the formulation of law. That suspicion need not be cynical or corrosive, and, in fact, is not so when based on recognizable ecclesiological criteria rather than ideology and self-interest.

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