WORKSHOP: UNIVERSAL AND PARTICULAR LAW IN THE NEW CODE

The workshop explored the theme of universal and particular law in the new code as it relates to the world Church. Three major topics were discussed, beginning with the expectations prior to the new code, then exploring the provisions of the code, and finally discussing some of the theological questions raised by these provisions.

Expectations Prior to New Code

In approaching Vatican II, many bishops presented detailed suggestions for revising elements in the Code of Canon Law. During the conciliar debates, however, a new awareness developed of the appropriateness of restoring the proper role of particular legislation in the life of the Church. Several theological positions were developed which supported this: the increased sense of the competence of diocesan bishops; the collegiality of bishops; the incarnation of the Church in local cultures, calling for greater adaptation even in legal structures. The council also called for a restoration of synods and councils and established new structures such as conferences of bishops which have direct bearing on the development of particular legislation.

In preparing the new code, which Paul VI said was to implement the new way of thinking characteristic of Vatican II, the fifth principle for revision of the code made a specific effort to address the relationship of universal and particular law through the application of subsidiarity. To drafters of the principles, this meant legislative unity in fundamental and major legal statements, but the adaptation to local conditions by particular laws and a greater autonomy of power of governance. The application of subsidiarity was to be in the context of the common good, and in a general manner the system of canon law must be the same for the whole Church in its highest principles with regard to fundamental institutions, the means proper to the Church for obtaining its end, and legislative technique.

However, certain limits were also made clear as to the application of this principle in the new code. The degree of subsidiarity in the Latin Church is not so extensive as in the Eastern Catholic Churches, and the principle does not apply to procedural laws.

The application of this principle was judged variously as the code was being drafted. Americans generally called for greater subsidiarity; others, including other English speaking countries, were not so concerned. In practice the principle produced an increased role for the diocesan bishop, but also resulted in restrictions on conferences of bishops.

Provisions of the New Code on Legislation

In the new code definitions are generally avoided, but descriptions do

occur. For example, "universal" law is law for the universal Latin Church. Its source is supreme authority, and it applies to all Latin Catholics, everywhere, unless there is a local or personal exemption. "Particular" law, on the other hand, is law for a specific place or group of people. It can be for a particular Church (diocese), a province, or a nation. Particular laws can be issued by supreme authority and also by lesser authorities appropriate to the level of Church (diocesan, provincial, national). It is **presumed to apply only to a territory unless otherwise stated** (c. 13, §1), and binds those who belong there while they are in the territory as well as transients. Travellers, however, are bound only for certain types of activities (cc. 12, §3; 13, §§2 and 3).

The code has several types of laws. This can be confusing not only because of the diversity but also because the new classifications are not applied consistently in the various books of the new code.

First there are legislative laws such as canons, constitutions and decrees, enacted only by those with legislative authority. Then there are administrative laws, usually issued by those with executive authority. Some of these laws are called "decrees," ranging from general decrees (which are equivalent to laws - c. 29) to general executory decrees which determine more precisely the method for applying the law or urge the law's observance (c. 31). Administrative laws also include instructions clarifying the prescriptions of laws or determining how to implement them (c. 34), and individual administrative acts which are not laws properly so-called but often have similar effects for individuals. These include another type of decree (a decision or provision in a particular case in accord with the norms of laws - c. 48), precepts (c. 49), and rescripts (c. 59).

The code also lists various types of law makers and participants in the legislative process. A major factor in this is the role of consultation. Within a legislative body such as a provincial council, where clergy, religious and laity are involved, all members have the right to speak (a consultative voice). Only some have the right to vote on the final position, or a deliberative vote (c. 443). All, however, participate in the legislative process. In developing administrative laws, executives are encouraged and at times required to consult with others (c. 127). On certain specific occasions the consent of those who are consulted must be given for the executive to be able to exercise his initiative; at other times, he is not to act until he has at least listened to his advisors.

Legislative law makers at the universal level are the pope and college of bishops, the pope acting alone, and possibly others delegated by supreme authority. If the Roman Curia, for example, has any legislative power, it is only as delegated by the pope.

Particular laws are made by the diocesan bishop in synod or administratively on his own, by bishops meeting with others in provincial councils or issuing administrative decrees at episcopal meetings for the province, and through plenary councils and the conference of bishops at the national level. Provincial and plenary councils are clearly legislative

bodies, but it is debated whether the conference of bishops is properly legislative or is an administrative body with delegated legislative power.

To have some sense of how universal and particular legislation relate, the seminar discussed universal law dealing with the *munus docendi* as found in the eighty-seven canons of Book Three and elsewhere in the code, and then the types of particular legislation which can be issued by supreme authority or authorities at other levels. There are fourteen canons which specifically call for particular legislation either by the diocesan bishop or the conference of bishops regarding *munus docendi.**

Discussion looked to the application of this distinction in the area of the "imprimatur" and the canonical mandate to teach theology. It became apparent that the problems are not so much in the code, although there are ambiguities there, but moreso in the political life of the Church and the practical relationship between local hierarchies and central authorities.

Theological Reflection

Two issues were discussed as part of a theological reflection on the law: what underlying concept of Church is at work, and what sense of "magisterium" underlies the specific example of the law on the *munus docendi*?

Whether the concept of world Church is operative in the code received a mixed evaluation. Provisions are made for particular legislation, with canons providing norms on the structures and processes for such law making (e.g., councils, conferences of bishops, etc.), and by explicit and implicit agenda being given for such legislation.

On the other hand, notable restraints are placed on particular legislation. It cannot go counter to universal legislation, and universal

* These are the canons which mention particular legislation directly or indirectly concerning the *munus docendi*:

Can. 754 - Constitutions & decrees to propose doctrine, proscribe erroneous opinions (all levels of legislating);

Can. 755 - Practical norms for ecumenism (diocesan bishop [DB]; conference of bishops [CB]);

Can. 764 - Particular law can require express permission to preach (national, provincial, diocesan);

Can. 766 - Prescriptions for lay preaching in Church (CB);

Can. 770 - Norms requiring pastors to sponsor parish missions (DB);

Can. 772, §1 - Norms on exercise of preaching ministry (DB);

Can 772, §2 - Norms on radio and TV talks on doctrine (CB);

Can. 775, §1 - Norms on catechetics (DB);

Can. 788, §3 - Statutes regulating catechumenate, defining prerogatives of catechumens (CB);

Can. 804, §1 - Norms on Catholic religious formation in schools (CB);

Can. 806, §1 - Prescriptions for general regulation of Catholic schools (DB);

Can. 831, §2 - Norms for clergy and religious on radio or TV dealing with questions of Catholic teaching or morals (CB);

Can. 236 - Prescriptions for formation of permanent deacons (CB);

Can. 242, §1 - Program of priestly formation (CB).

legislation is quite detailed in many areas of the law. The supreme legislator can make particular laws, even administratively, which supersede those of a lower legislator who may have acted legislatively. Decisions of particular councils and binding decisions of conferences of bishops are subject to *recognitio* by the Apostolic See, continuing the provisions of Sixtus V in reorganizing the Curia after the Council of Trent. The meaning of this *recognitio* is not given in the law, and in practice it has gone so far as to insert changes, delete decisions, and otherwise modify the actions of particular legislators, yet the final text which is returned from the Apostolic See must still be called the work of the local legislator.

There is a very limited sense of custom retained from the 1917 code, and no recognition is given in the code to the fact of non-reception of law by the community.

On another level, is the sense of Church as "people of God" (highlighted in John Paul II's apostolic constitution promulgating the code, *Sacrae disciplinae leges*) consistently operative, or is there a more predominant use of Church as hierarchical institution? The people of God are to participate in councils and diocesan synods, but the sole legislators are the pope and bishops and there is very little required consultation for administrative laws which form the bulk of law making today.

In terms of the papal-collegial tension, are conferences of bishops expressions of collegiality, or only an administrative unit? If the former, their legislative potential is extensive and the current limitations affect only practice. If they are administrative, their legislative activity is only an exception and their potential is limited to what higher authorities are willing to concede.

Turning to the underlying sense of magisterium, it is presented as a distinct *munus* along with sanctifying and governing in the Church. Yet a governance format is used to propose doctrine and proscribe error (c. 754). Discussion centered on the political dimensions of the magisterium, for the influence of certain pressure groups like Catholics United for the Faith (CUF) is clearly have its effect through governmental channels in the Church.

Teaching is presented at times as being done in virtue of the power of truth itself, for to proclaim the faith is a common duty and right of all Christians (c. 211) and freedom of inquiry and expression in theology is affirmed (c. 225). Yet teachers of doctrine are subject to the local ordinary in special ways which themselves could become the topic of particular legislation. For example, seminary teachers are appointed by the bishop (or bishops in an interdiocesan seminary) and can be removed by the same authority (c. 253, §§1 and 3). For schools. the local ordinary has the right to name or approve religion teachers and to remove them or demand that they be removed (c. 805). In higher studies, it is the authorities of the institution who do the hiring and firing (c. 810, §1), but those who teach theology or related sciences need a "mandate" from competent ecclesiastical authority (c. 812; c. 229, §3 on lay persons). There

are serious questions about what this mandate means and how the canon law can be harmonized with American civil law, but these went beyond the scope of the session or the time allotted for it.

JAMES H. PROVOST
The Catholic University of America

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