

CHURCH AND CHURCH LAW

WILLIAM H. ONCLIN

University of Louvain

THE SCOPE of this article is (1) to analyze the Church of Christ under the twin aspects of society and community, and (2) in the light of this complex reality, to disclose the necessity, nature, and function of canon law.

THE CHURCH

The Church, as Christ founded it to gather together the whole of mankind and to elevate all men to communion in His divine life, constitutes a complex reality whose particular nature the councils and popes have countless times precisely stated, and whose diverse aspects numerous theologians have attempted to analyze.

Catholic doctrine on the nature of the Church finds its most recent authorized expression in Pope Pius XII's Encyclical *Mystici corporis Christi* (June 29, 1943),¹ and above all in the Dogmatic Constitution *Lumen gentium* of the Second Vatican Council, promulgated on November 21, 1964.²

According to the teaching of Vatican II, the Church is the people of God, the messianic people destined to bring together all human beings, "established by Christ as a communion of life, charity and truth," and to be "used by Him as an instrument for the redemption of all" (no. 9). This Church is at once both the communion of all those who participate in divine life, in charity, and in truth here on earth and hereafter, and the society of men who are incorporated in it and who, under the direction of the sovereign pontiff and the bishops, pursue in common the end to which they are called, communion in divine life. This society established on earth as well as this communion of saints is the Church of Christ, at once visible and spiritual. Here is how the Council in *Lumen gentium* expresses it: "But the society structured with hierarchical organs and the Mystical Body of Christ are not to be considered as two realities, nor are the visible assembly and the spiritual community, nor are the earthly Church and the Church

¹ AAS 35 (1943) 193-248.

² AAS 57 (1965) 5-112.

enriched with heavenly things; rather they form one complex reality which coalesces from a divine and a human element" (no. 8). And the text of the Constitution refers back to the Encyclicals of Pius XII, *Mystici corporis* and *Humani generis* (Aug. 12, 1950),³ in which the same doctrine concerning the one and only Church of Christ is set forth, at once both Mystical Body and earthly society.

A "complex reality," says the Constitution on the Church. And in effect, as is evident in the text just cited, the Church, one and indivisible, contains several elements—or to put it better, presents diverse aspects.

The Church is an organized *society* on this earth. It is certainly this characteristic, society, which is primarily accentuated, though not exclusively, in the classical definition of the Church given by Robert Bellarmine and cited by Paul VI in one of his recent discourses: "The Church is the community of men united by the profession of the same Christian faith and communion in the same sacraments, under the authority of legitimate pastors, and especially of the sole vicar of Christ on earth, the sovereign pontiff."⁴ These pastors are established to teach mankind the doctrine of Christ, to work for their sanctification, and likewise to direct those who are incorporated in this society; and these latter are submitted to their authority and must obey the laws and precepts decreed by them in order to assure this direction.

The Church is likewise the *Mystical Body of Christ*. As Mystical Body, it includes not only the men who here on earth are united by faith and the sacraments and who constitute what we call the *ecclesia militans*, the Church militant, but also the blessed in heaven, who together form the *ecclesia gloriosa*, the Church in glory, and likewise the souls in purgatory, who compose the *ecclesia patiens*, the Church suffering. Nevertheless, the latter, those who belong to the Church triumphant and the Church suffering, are not submitted to the authority of the pastors established to direct and govern the Church militant, and no law brought forward by this authority can bind them.

Society and Community

To shed more light on this subject in terms adapted to the concepts pertinent to men of our time, I am convinced, as I have written

³ *AAS* 42 (1950) 561-78.

⁴ *De controversiis*, Vol. 2, *De conciliis et ecclesia*, Book 3, chap. 2 (Naples: Giuliano, 1875, Vol. 2, 75).

elsewhere,⁵ that we would do well to have recourse to the distinction presently admitted by sociologists, that is, the distinction between society and community. These two terms are not synonymous, but indicate realities of a different order—or rather, different aspects of social life. It was established for the first time by the German sociologist Ferdinand Tönnies in his *Gemeinschaft und Gesellschaft*, which first appeared in Berlin in 1887; and it has been taken up and developed by others, such as Max Scheler and Franz Oppenheimer.⁶

Society, according to the definition long accepted, is the freely organized and constituted grouping of persons who pursue the realization of a common end. To speak of society is to speak of organized collaboration through the use of common means which are determined in view of attaining a common goal, that is to say, for the common profit of all the members, who pool their activity and who participate in the good realized by this working together. It was in this sense that St. Thomas Aquinas defined society as “adunatio hominum ad aliquod communiter agendum.”⁷ The principal and determining element of society is, therefore, the common goal: it is the goal which men want to pursue or must pursue in common that brings them to constitute a society; and it is this goal which determines the particular nature and the organization of the society. Society is, therefore, described by certain Germans as *Zweckorganisation*, an organization in view of realizing a common goal.

Community is a social reality of another order, although St. Thomas, as also theologians and jurists of the past (and even numerous present-day writers), employed this term as synonymous with society. Community designates the ensemble of persons actually united among themselves through a common, conscious possession of certain characteristics or attributes, essential or accidental; but it is not a community of interests and as such implies in no way the pursuit of a goal in common by the members who compose it. It is, therefore, not a voluntarily constituted organization in view of realizing a common, determined end; it is a simple fact, resulting from the common pos-

⁵ Cf. W. Onclin, “Membres de l'église—Personnes dans l'église,” *L'Année canonique* 9 (1965) 11–32, esp. 27–32.

⁶ Cf. M. Scheler, *Der Formalismus in der Ethik und die materiale Wertethik* (2nd ed.; Halle, 1921); F. Oppenheimer, *System der Soziologie* (Jena, 1922–35).

⁷ *Opusculum 19: Contra impugnantes Dei cultum et religionem*, cap. 3 (Venice, 1593, tom. 17, fol. 131).

session of certain properties and certain ways of being—a common possession consciously possessed.

An example can illustrate the difference between these two notions. The whole of humanity, comprising all the men on this earth, is without any doubt a community, the human community or mankind, the community of all those who possess the same rational nature. But mankind does not constitute, at least in the temporal order, a single organized society comprised of all men. In effect, the world is divided into many States, and one could not, at least up to the present day, conceive of a single world State, a single organized political society, composed of all men; for, as Suarez wrote, and as writers on international law teach, the world contains far too numerous a population and far too many different types of civilization for it to be desirable or even possible that its government be assured from a single center.⁸ Another, still more appropriate example: The Canon Law Society of America, which is constituted to promote the study in common of canon law in America, is a society because it sets up a determined goal which its members, those who are enrolled or incorporated, pursue in the collaboration organized and determined by the statutes of the society. This society, however, does not include all the canonists of this continent; and certainly it does not group together all the canonists dispersed through the world. And yet, all the canonists in the world, even if they do not collaborate with the members of this society by participating in the common work such as it is organized in this society, still possess in common with them and are conscious of possessing in common the properties of having studied canon law and of being interested in the questions which it poses. They do not participate in the works organized by the society; nonetheless they belong to one same community, the community of canonists—that is a fact.

And so, between the community, which is a simple, social fact, and society, which is a social group organized in view of a common goal, there is an essential difference: these two social realities are not of the same order, or, they make up two different aspects of the same complex reality.

The difference between society and community necessarily entails

⁸ Cf. W. Onclin, "L'Idée de la société internationale en Europe occidentale avant Grotius," *Recueils de la Société Jean Bodin* 15 (1961) 219–39, esp. 233–34.

consequences concerning the norms which govern the rapport among the members who compose them.

Only society, since as such it alone entails the pursuit of a determined end, proposes the organization of the means which must be put into practice to assure the common realization of the goal it has fixed for itself. In other words, only a society proposes a juridical order, a legal structure, whose dispositions govern the constitution of the society and the ordered collaboration of its members toward the attainment of the common goal which it has proposed to pursue. Likewise, every society, no matter which it may be, implies the creation of those rules which must govern the co-operation of the members in view of the common goal: *ubi societas, ibi ius*. The erection of societies freely founded by their members entails the establishment of statutes on the basis of a contract freely consented to by the members. The constitution of necessary societies, to which men are obliged to belong, necessarily demands the creation of a legal structure to which they must submit.

The case is not the same for a community. It does not involve, as such, the common pursuit of a determined goal, does not pose the question about the means to be employed in common for the realization of the goal, and for this reason it does not require the creation of a juridical order, of a legal structure which would organize the means and thus assure collaboration among its members. Without doubt, there do exist duties between the members of the same community, duties of reciprocal affection and solidarity. But these duties are not duties of a juridical nature, which are introduced by statutes or imposed by the constituted authority for the purpose of guaranteeing collaboration among the members; they are rather duties of a moral nature, which result from the communion itself that exists among the members of the community, and the more intense this communion, the more demanding the resultant duties.

The Church As Community and Society

Let us now apply these notions to the Church. It is at once both a spiritual community extending beyond this world, and a society constituted and organized in this world.

It is *community*. However, in trying to state precisely what this community consists in, it is important to distinguish between objective

truth, known by God, and the knowledge which men can have of it, and thus also the authority constituted in the ecclesiastical society. It is important, therefore, to make the distinction between, on the one hand, the *forum Dei*, the judgment of God, who, as the Apostle says, "scrutatur corda" (Rom 8:27; 1 Cor 2:10), and, as Stephen V says, "solus novit corda filiorum hominum" (c. 20, C. 2, q. 5), and, as Urban II says, "secretorum cognitor et iudex est" (c. 11, D. 32), and, on the other hand, the *forum ecclesiae*, "quae non iudicat de occultis," as Innocent III expressed it (c. 33, X, V, 3) and the ordinary gloss on the Decree of Gratian (ad c. 11, D. 32, v^o *secretorum*).

Coram Deo, according to the judgment of God, this community, which is the *corpus Christi mysticum*, includes all those who, be they in this world or the next, are united in accepting the same truths, the truths of the faith, and who have communion in the same supernatural life, conferred by baptism received *in re* or *in voto* and nourished by the sacraments.

Coram ecclesia, according to the judgment of the authority constituted in the Church society on this earth, the ecclesial community, in its most complete sense at least, includes those who have in common the baptism of water and the sacraments, profess the same truths, the truths of the faith, acknowledge submission to the legitimate authority constituted within the Church society, and have not, by a manifest sin (can. 2293, §3) or by a delict, broken their bonds with this communion of the faithful.

The Church is likewise *society*, society constituted and organized on this earth. The Constitution *Lumen gentium* affirms this societal character: "Haec unica ecclesia," the Church which is at once both "coetus adspectabilis" and "communitas spiritualis," "in hoc mundo ut societas constituta et ordinata, subsistit in ecclesia catholica, a successore Petri et episcopis in eius communione gubernata" (no. 8). The Church as society, considered under its societal aspect, includes and can only include the baptized who are in this world, because these latter are still *in statu viae*, and they can and must pursue the supernatural end which they have been called to realize. As a constituted and organized society, the Church cannot include those who belong to the Church triumphant or the Church suffering, those who are effectively or virtually *in statu termini*. They have attained their goal, and

in view of their attainment can no longer therefore collaborate with the members of the Church militant under the direction and authority of the pastors established to govern this collaboration. Therefore, only those who are incorporated on this earth in the Church-society constitute this Church.

Nevertheless the Church *in hoc mundo societas constituta et ordinata* is not a reality different from the Church *corpus Christi mysticum*. The Church-society is integrated into the Church-community and is at the service of the Mystical Body. It is the same Church of Christ which is both Mystical Body and organized society in this world. In this world it is the society which must govern its members and help them to realize the communion of life, of love, and of truth, the full and entire belonging to the community of saints, to the Mystical Body of Christ, the coming in them of the kingdom of God, of which Christ as head of the Mystical Body is the image. As the Constitution on the Church recalls (no. 7), referring to St. Paul, all the members must conform themselves to Him until Christ be formed in them (Gal 4:19). The formation of Christ in them, which the Church-society on this earth must promote, realizes their belonging to the Mystical Body and is therefore the principle of their belonging to the community of the Church.

Thus the Church of Christ, Mystical Body of Christ on the one hand and hierarchically organized society on the other, is at once both community and society. The distinction between these two notions can, it seems, contribute to explaining its complex reality.

CHURCH LAW

The Church has and must have her juridical order, called canon law, which, dating from the first centuries, has been developed over the course of centuries. Why is canon law necessary, and what are, in the complex reality of the Church, its nature and its proper function? These are the questions we will briefly treat at this time.

Necessity of Canon Law

As we have already stated, a *community* is not governed by a juridical order. Since a community, as such, does not pursue a common determined goal, it does not involve the organization of means to

permit the realization of this goal. In other words, it does not posit a juridical structure which by adopted laws and precepts organizes collaboration in view of securing a common goal.

The Church, considered under the community aspect proper to itself, does not posit law. As community of faith, hope, and charity, it cannot be governed by prescriptions of law. Without doubt, the belonging to the Mystical Body creates among the members, conscious of this communion which they share, some duties. Nonetheless these duties result from the communion which unites them, and are not introduced and imposed by competent human authority in order to establish a juridical order. The magisterium of the Church teaches us these duties; Church law, which can draw out their practical consequences, does not create them.

If the Church were only a spiritual community, there would be no canon law. Hence, those who consider the Church exclusively an interior and spiritual reality refuse it the right to possess a canon law. The Reformers of the sixteenth century had, at least at the beginning, maintained that the Church was nothing more than the spiritual community of all those who are justified by faith and by grace. Their successors generally abandoned this way of thinking, and this is what allowed the creation of a Reformed law, the *protestantisches Kirchenrecht* and the *Canon Law of the Church of England*. In more recent times, however, there are still some, such as Rudolf Sohm and those who belong to his school, who see in the expression "Church law" a contradiction in terms. According to Sohm, "the essence of the Church is spiritual, the essence of law is material," and he deduces from this that "ecclesiastical law is a contradiction to the nature of the Church." "The true Church of Christ," he writes, "does not know any ecclesiastical law."⁹ Even today there are many Christians who do not hide their contempt for ecclesiastical laws; they too profess, at least implicitly, that the Church is exclusively a spiritual community.

Yet the Church is equally *society*, and thus, as with every society, it must have its laws, its precepts, its jurisprudence. The Council teaches that when it affirms: "This 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 communion with him"

⁹ R. Sohm, *Kirchenrecht 1: Die geschichtlichen Grundlagen* (Leipzig, 1892) 459.

(no. 8). The successor of Peter and the bishops have not only the charge of teaching and sanctification, but also the charge of governing, and they have, therefore, the powers required to accomplish their charge. "The Lord Jesus," says the Constitution *Lumen gentium*, "... calling to Himself those whom He desired, appointed twelve to be with Him, and whom He would send to preach the kingdom of God (cf. Mk 3:13-19; Mt 10:1-42). . . . He sent them first to the children of Israel and then to all nations (cf. Rom 1:16), so that as sharers in His power they might make all peoples His disciples, and sanctify and govern them (cf. Mt 28:16-20; Mk 16:15; Lk 24:45-48; Jn 20:21-23)." In a recent allocution Paul VI distinctly affirmed this character of society proper to the Church: "The Lord wished that His Church be a truly organized, visible, and religious society, having the powers proper to a perfect and sovereign society, having its own laws, its own ends. This is a fundamental truth which has solid and manifest roots in the New Testament." Therefore, continued the Pope, in the first century of Christianity the holy and beautiful voice of the martyr Ignatius of Antioch was lifted to speak about the different degrees of the primitive hierarchy of the Church—bishops, priests, deacons: "without them, one cannot speak of Church."

Of course, the Lord did not formally call His Church a society, but the constitution that He gave it, the goal which He set for it, and the organization with which He provided it prove that it is a society. He wanted it to be the grouping of the faithful who, under the authority of Peter and his successors and the apostles and their successors who direct them, would work together to realize the goal which is theirs in common, the formation of Christ in them, the formation of the communion whose head is Christ.

The Church is *societas*. And every society posits a legal structure: *ubi societas, ibi ius*. The competent authority granted to the Church for governing must therefore bring to bear the prescriptions, laws, and precepts necessary or useful to assure the guidance of the faithful, to help them pursue their supernatural end, by creating the conditions which are indispensable for this pursuit.

The contemporary disregard of a good number of Christians for the laws of the Church is a clear indication of the opposition to canon law.

Pope Paul VI, in his allocution of August 17, 1966, insisted on clarifying the present situation:

We know well that the Church's activity aiming at promulgating new laws is viewed with antipathy on many sides, as if this activity were opposed to the liberty of the sons of God and in opposition to the spirit of the gospel, as though it impeded the historical development of the ecclesiastical organism, which seems to be lagging behind the historical development of temporal society. But we do not see how the Catholic Church, if it wants to remain faithful to the principles of its divine Founder and consistent with them, can be exempted from providing for itself "a canon law." If the Church is a visible society, hierarchically engaged in a mission of salvation which admits but one well-determined realization, guardian of the Word which must be rigorously preserved and apostolically handed out, responsible for the salvation and the evangelization of the world, it cannot avoid giving laws which flow in a coherent way from revelation and from the ever-renewed needs of its life, exterior as well as interior.¹⁰

And yet, as we all know, there were numerous Fathers of the Council who accused the Church of "juridicism." Rare were the interventions of Fathers who did not criticize the proposed texts for being too juridical.

It is undeniable that the authority of the Church, under the influence of the schools of canon law, which since the twelfth century were intimately linked to the schools of civil law, has given the impression that it wanted to solve all the problems posed by the life of the Church through the promulgation of laws. It is also undeniable that, under the same influence, it has made too much use of juridical formulas proper to state laws.

We cannot deny, however, that the Church, since its divine Founder wished it to be a society, must have its own particular laws. Also, the accusation of "juridicism" which has been leveled at the Church cannot be justified if it aims at the very existence of canonical laws. It is understandable if it proposes that the promulgation of laws is not the only means, or even the principal means, which authority has at its disposal, and that the canonical laws must be inspired even more by the pastoral mission of the Church and be more adapted to the actual conditions under which the Church must fulfil its mission. The Pope likewise stated this in his allocution of August 17: "To correct the

¹⁰ *Osservatore romano*, Aug. 17-18, 1966, p. 1.

possible drawbacks of what we call 'juridicism,' the first remedy does not consist so much in abolishing ecclesiastical laws as in substituting better formulated canonical prescriptions for the otherwise imperfect or anachronistic canonical prescriptions."

We can conclude that the Church, an organized society on this earth, necessarily requires a canon law, but also that canon law as it presently exists in the Church presents numerous shortcomings, and that it ought to be profoundly recast in order to answer to the needs of the Church's mission in the present day. This conclusion gives rise to the question of knowing what the guiding principles are which ought to inspire the revision of the law. But before treating this, it is necessary to say a few words about the nature or the notion of canon law.

Nature of Canon Law

From all that has preceded it follows that canon law is an ensemble of positive prescriptions, namely, the ensemble of prescriptions which, in view of the realization of the common spiritual good of the faithful, are decreed by the authority in the Church constituted to govern it, or which are at least received and confirmed by this authority. To be canonical in the strict sense of the term, these prescriptions must emanate directly or indirectly from the authority on which Christ conferred the responsibility of directing His Church. Understood in a much broader sense, however, canon law likewise includes the divine laws which are concerned with the constitution and organization of the Church. Yet it does not include all the divine laws, natural or positive, unless, in view of the common good, they have been sanctioned by the authority on which Christ conferred the power to govern His Church.¹¹

Of course, the divine laws, natural or positive, since they are imposed on all men, are equally imposed on the Church, which even finds its foundation in divine positive law. By this fact, however, these divine

¹¹ So A. Van Hove, *Prolegomena ad Codicem iuris canonici* (Mechlin, 1945) no. 54, pp. 60-61; G. Michiels, *Normae generales iuris canonici* 1 (Paris, 1949) 4-5, 10-12; A. Vermeersch-I. Creusen, *Epitome iuris canonici* 1 (Mechlin, 1963) no. 21, p. 20. The opposite opinion is held by K. Mörsdorf, *Lehrbuch des Kirchenrechts* 1 (Munich, 1964) 21-22, where he writes: "Alles göttliche Recht ist unmittelbar anwendbares Kirchenrecht, auch wenn es nicht in kirchliche Satzung gekleidet ist, und zugleich Recht höchster Ordnung, das der menschlichen Rechtsbildung durch kirchliche Satzung und durch kirchliche Gewohnheit vorgeht." The same opinion is proposed by J. M. Ribas Bracons, "El derecho divino en el ordenamiento canónico," *Revista española de derecho canónico* 20 (1965) 267-320.

laws do not become canonical laws. Since they are imposed on men in order to direct them in the pursuit of the individual supernatural end, they do not enter into the canonical order and are thus not part of canon law, except in the case when, in view of the end proper to the society which is the Church, they have been positively sanctioned by the authority on whom, according to the will of its Founder, it is incumbent to direct the faithful and to organize collaboration among them in view of a common goal, a collaboration which is the essence of every society.¹²

Nevertheless, Church law, because it must help to realize a common spiritual good, conforming to the message which Christ brought to the world, cannot be considered simply identical with the laws of societies which pursue a common temporal end. Moreover, Church law must first of all take its inspiration from divine laws in general, divine natural laws and positive laws, and should take its inspiration from the message which Christ gave to the world.

Function of Canon Law

Canon law is one of the means the authority of the Church possesses to accomplish the mission of direction with which she is charged. It is one of the means put at the disposal of this authority to assure collaboration among the faithful—collaboration for the sake of realizing the common spiritual good in conformity with the message of the gospel applied to the conditions of our times.

The question involved here is, then, one of determining the principles which should guide the revision of canon law.

The revision of the Code must be the work of all the Churches, and therefore the Commission for the Revision of the Code seeks the collaboration of the bishops heading these Churches as well as that of their canonists and theologians. Thus the Commission has asked the episcopal conferences of all countries to submit their suggestions regarding the revision of canon law. Furthermore, the consultors attached to the Commission have been and will again be chosen from among the canonists and theologians of various countries. Obviously, institutions such as the American Society of Canon Law can certainly contribute,

¹² Van Hove, *loc. cit.*

through their observations and suggestions, to the work of the revision of canon law. But my specific point here is this: What are the orientations to be given to canon law, the general basic ideas which should inspire this work of revising the law of the Church? Here are some general considerations.

1) As has been said earlier, the Church, as a society on this earth, is in the service of the community which constitutes the Mystical Body of Christ. It follows that canon law, which is one of the means by which the Church as a society must assure the end proper to her, is likewise at the service of this community and thus at the service of the charismatic Church. It therefore follows as well that canon law should promote the ever more perfect realization of the communion of faith and charity to which, in various ways, all the baptized belong, and to which all men are called and destined. Canon law should, therefore, on the one hand avoid as much as possible, in the institutions it creates and the expressions it uses, anything which could hinder the development of this communion; thus, it should avoid, as much as possible, anything which could be harmful to ecumenical action, as well as anything which could alienate from the Church those who do not yet belong to the communion of faith and charity. On the other hand, it should positively favor this same communion by creating institutions and enacting laws which can promote it.

2) At the service of the community, the Church as an organized society can have no other proper purpose than that of aiding her members in the pursuit of their supernatural end. She does not replace them in the pursuit of this end, for Christians themselves are the ones who must build the kingdom of God by forming Christ in themselves. The Church, a society on this earth, must aid them in the accomplishment of this work. She does so in teaching the message of Christ. She does so in dispensing to the faithful the means of sanctification. She does so as well in creating for the faithful the required conditions in which they can pursue this end, in offering them desirable institutions and in directing them through her laws and precepts. Such is the proper purpose of law in the Church. And the ensemble of these required conditions in which the faithful can pursue their spiritual end is what we mean by the expression "common good." Likewise, canon law should not seek to

rule everything. Its field of action is constituted solely by the demands of the common good, and it must include only those measures which by their nature promote this common good. The common good is the proper end of all law. It is also the purpose of the law which the Church employs.

3) Canon law being at the service of the common good, it should not be involved directly and formally in the domain of the individual conscience. Let us understand this correctly: no one pretends that the laws enacted by the Church, as well as those legitimately imposed by the state, do not involve in themselves the obligation in conscience to observe them. Quite the contrary. However, the fundamental reason for this obligation in conscience is not in the positive laws themselves. It is, rather, in the divine law which imposes these societies on men and which therefore obliges their members to submit themselves to the laws which these societies must enact in order to assure their proper end, the realization of the common good.

Natural divine law imposes on man the creation of States, for without the State man cannot realize the temporal good which he ought to attain, and which is the indispensable condition for his pursuit of his supernatural end. It follows that citizens are obliged by this divine law, and therefore in conscience, to conform to the just laws which competent State authority considers necessary or useful to have and impose for the realization of the temporal common good. Its enacted laws involve a legal obligation whose principle is the constituted authority, before whom citizens have to answer for the accomplishment of this juridical obligation.

These laws also involve the obligation in conscience of conforming to them. The principle of this obligation, however, is not the State authority, but God, who in imposing the State commands the observance of the laws which it legitimately enacts. The State is neither the principle nor the arbiter of this obligation in conscience, and from this we conclude that so-called merely penal laws are nonsense; the State is only the principle and arbiter of the legal or juridical obligation.

The positive law of God obliges men to join the Church, enjoining them to enter it through baptism. Christ, who confided to His Church the dispensing of the means of salvation, prescribed that men take part in her: "He who believes and is baptized will be saved" (Mk 16:16).

“Truly I say to you, unless one is born of water and the Spirit, he cannot enter the kingdom of God” (Jn 3:5). Referring to these words, the Second Vatican Council teaches us that the Church in pilgrimage upon the earth is necessary for salvation: “Christ,” it concludes, “present to us in His Body, which is the Church, is the one Mediator and the unique way of salvation. In explicit terms He Himself affirmed the necessity of faith and baptism and thereby affirmed also the necessity of the Church, for through baptism as through a door men enter the Church” (*Lumen gentium*, no. 9; no. 14 in NCWC translation).

The Church, which as a constituted society must realize the spiritual common good, is the judge of what is necessary for this common good. The laws enacted by its authority carry with them for the faithful a legal, canonical obligation of observance, and the faithful answer for this observance before the ecclesiastical authority itself. Canonical laws likewise produce for the faithful the objective obligation in conscience to submit to them; but the principle of this obligation in conscience is the divine precept in virtue of which men must enter the Church and thence conform themselves to the laws and the precepts that the authority of the Church enacts for the realization of the spiritual common good. The constituted authority of the Church is not directly the principle of this obligation in conscience from which she cannot dispense and whose nature or gravity she cannot modify. Thus it seems preferable that the Church, in the laws which constitute its juridical order, abstain from referring to the obligation in conscience which these laws involve, and avoid such expressions as, for example, *graviter onerata conscientia* (canons 117; 305, 459, par. 1; 545, par. 4, etc.).

Undoubtedly, the authority of the Church—as that of the State in its proper domain—is judge of the greater or lesser importance of her prescriptions for the realization of the common good, and consequently she is judge of the canonical or juridical gravity imposed. However, in order to affirm the objective gravity of her prescriptions by reason of the demands of the common good, she should make use of expressions which emphasize this gravity, such as *gravi obligatione tenentur*, without mentioning the obligation in conscience.

4) Revised canon law must be inspired by the spirit of the Second Vatican Council. The principles established by the Council should find

in the Code both their faithful expression and their integral application. A pastoral concern should dominate in the fashioning of the Code, in conformity with the demands of our times.

5) Last but not least, the new Code should above all and in all be conformed to the gospel message which Christ brought to the world. The prescriptions it contains must not deviate from it but, on the contrary, must be ever inspired by it.