

THE REVISION OF CANON LAW: THEOLOGICAL IMPLICATIONS

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THE SECOND Vatican Council profoundly desired to bring the Church up to date (*aggiornamento*) and make it a more vital instrument of God's saving presence in a rapidly changing world. Crucial to the revitalization of the Church's mission was the reform of its institutional structures. Understandably, then, a significant aspect of postconciliar reform has been an unprecedented effort to reform canon law. Indeed, the time-honored relationship between total ecclesial renewal and canonical reform was recognized by Pope John XXIII in his calling for the revision of canon law as early as January 1959, when he announced the forthcoming Second Vatican Council.¹ Two decades have elapsed since that initial call for canonical reform, and the process of revising the Code of Canon Law (henceforth Code) seems to have reached a critical stage. A consideration of some key moments in that process should help one gain a better perspective on the present status of canonical reform.²

The Pontifical Commission for the Revision of the Code of Canon Law (henceforth Code Commission) was established by John XXIII on March 20, 1963.³ However, it began to function only after the Council, since a principal aspect of its mandate was to reform the Code in light of conciliar principles. Only then could the Code be an instrument finely adapted to the Church's life and mission.⁴ On November 20, 1965 Pope Paul VI

¹ See AAS 51 (1959) 65-69. See also J. J. Ryan, "Canon Law in the Gregorian Reform Epoch (c. 1050-1125): Historical Perspectives in the Present Age of Renewal," in *Law for Liberty: The Role of Law in the Church Today*, ed. J. Biechler (Baltimore: Helicon, 1967) 38-51; also "A Historical Perspective on the Role of the Law in the Church," *ibid.* 201-2.

² For a detailed report on developments in the work of the various Code Commission study groups up to 1976, see T. Green, "The Revision of the Code: The First Decade," *Jurist* 36 (1976) 353-441; also R. Castillo Lara, "Estado actual de los trabajos de la Pontificia Comisión para la Revisión del C.I.C.," *Ius canonicum* 16/32 (July-Dec. 1976) 37-48. Some popular surveys of the revision process are P. Gradauer, "Das Kirchenrecht in Dienst der Seelsorge," *TPQ* 125 (1977) 55-65; T. Green, "Revision of Canon Law: Progress and Problems," *Priest* 33/10 (Oct. 1977) 34, 37-41; J. Jukes, "Fulfilling the Law and the Prophets," *Clergy Review* 63/5 (May 1978) 187-91; F. Morrisey, "The Role of Canon Law Today/The Pastoral Guide to Canon Law," *Chicago Studies* 15/3 (1976) 236-53, esp. 247-53. For two recent discussions of the present state of the question relative to the reform of the Code, see F. Morrisey, "The Revision of the Code of Canon Law," *Studia canonica* 12 (1978) 177-98; G. Sheehy, "Reflections on the Current State of Law in the Church," *ibid.* 199-210.

³ AAS 55 (1963) 363.

⁴ Paul VI, "The Goals of Canon Law," *Origins* 6/38 (March 18, 1977) 602-5; F. Morrisey, "The Spirit of Canon Law/Teachings of Pope Paul VI," *Origins* 8/3 (June 8, 1978) 33, 35-40.

solemnly inaugurated the work of the Code Commission and asked it to consider among other things the possibility of a fundamental or constitutional law for the whole Church.⁵

How has the Code Commission been organized for its work? It is composed of cardinal members and consultors, who are to formulate the various schemata or drafts of revised law.⁶ The consultors are divided into fourteen study groups or *coetus*, largely based upon the organization of the Code. Hence these study groups work in the following areas: general norms; the sacred hierarchy; religious; physical and moral persons in general; the laity and associations of the faithful; marriage; the sacraments other than marriage; the magisterium; temporalities; procedures; penalties. Several other study groups do not correspond precisely to parts of the Code. They deal with the systematic organization of the new Code, the fundamental or constitutional law, and administrative procedure.

Thus far the process of revision has been conducted as follows. After a particular study group completes a given schema, it is forwarded to the pope through the cardinal members of the Code Commission. If he finds it acceptable as a working text, it is then sent to various groups for their evaluation: the bishops of the world through the episcopal conferences, the dicasteries of the Roman Curia, pontifical universities, and the Union of Superiors General. Subsequently the various study groups are to prepare revised schemata in light of these evaluations. The next stage of the process after this revision is not entirely clear. In fact, it is a matter of notable concern, as will be indicated later.

How has the process developed since the Council? The various study groups have been working since January 1966. Since 1969, progress reports on their activity can be found in *Communicationes*, the official journal of the Code Commission. A particularly significant moment in the revision process was the 1967 Synod of Bishops, when the Code Commission offered a detailed position paper on the basic principles to be followed in revising the Code. These principles were discussed at some length and approved by the Synod as guidelines for the ongoing work of the Code Commission. The Synod likewise approved the preparation of a new systematic organization of the law to reflect conciliar insights and contemporary legal developments more faithfully than the Code. This new organization was approved by the cardinal members of the Commission in 1968. During the past decade, all the schemata prepared by the various study groups have been sent to those officially involved in the consultative process. The most recent development was the forwarding of five schemata for evaluation in early 1978, the critiques of which were

⁵ AAS 57 (1965) 985-89.

⁶ For the most recent listing of Code Commission members, see *Communicationes* 10 (1978) 33-46.

to be transmitted to Rome by the end of the year. These matters will be considered in greater detail in the next section of this article. Here we have offered simply a brief overview of the process during the past decade.

The revision of canon law seems to have been the subject of comparatively little examination in professional theological journals. Actually, if one differentiates the specific working of the Code Commission from the general problematic of the reform of various canonical institutes, it is also true that the former has been rather infrequently considered even in professional canonical literature. Yet this is an extremely significant ecclesial enterprise with notable theological-legal-pastoral implications. Accordingly it seems useful to reflect on the various schemata published by the Code Commission in order to clarify some significant theological issues raised during the past decade. This article is written from a canonical perspective, but I hope it will be of service to theologians whose acquaintance with the relevant canonical literature may be rather minimal. Consequently every effort will be made to cite canonical sources that will aid theologians in probing further various issues that cannot be explored in depth here.

The article is divided into two main sections, one more *expository* and the other more *critical* in character. Part 1 examines the main orientations of the working of the Code Commission during the past decade. It considers the guiding principles for the revision of the Code, the proposed reorganization of the new law, and significant features of the different schemata. The massive amount of material makes it necessary to adopt some criterion in deciding on the issues to be dealt with. Accordingly this part of the article largely explores noteworthy differences between the Code and the new schemata. Furthermore, some schemata are of greater theological interest and raise more notable theological problems than others, e.g., *Lex fundamentalis*, sacramental law, schema on the People of God. Hence they are considered at somewhat greater length than other schemata of a more technical legal character, which do not pose the same crucial theological problems, e.g., penalties, procedural law, temporalities. The main organizational lines of these latter schemata are considered, and references are made to canonical literature that may be useful to those seeking to examine them further.

Part 2 attempts to deal systematically with various criticisms of the proposed schemata. This is rather risky, given the complexity of the issues raised and the problem of synthesizing the main points of those criticisms with their different emphases and structure, however much they agree on certain points. This section of the article is largely based on the insights of different canonists and professional canonical societies in the United States, Canada, and the British Isles. However, occasional

references are made to critiques of the schemata other than in the English-speaking world. Furthermore, the various criticisms of the schemata are discussed in accord with certain principles of institutional reform. There is perhaps a certain overlapping among these principles, but they should facilitate an understanding of the key points of criticism of the schemata.⁷

These reflections, I trust, will foster more profound theological-canonical collaboration, which is indispensable for a healthy evolution of the Church's pastoral life. When canonists and theologians work exclusively in isolation, this impairs the effectiveness of their distinctive enterprises and blunts the creative impact they might otherwise have on the Church's life and mission. Granted that theology and canon law are distinct disciplines with their own proper terms, methodologies, and approaches to the mysteries of Christian faith, theology is still the matrix from which law grows in the Church. If canon law is not rooted in theology, then canonists can hardly escape the reproach of being legal positivists in their consideration of various religious concerns.⁸

One striking feature of postconciliar American canonical reflection has

⁷ The author is indebted to the Austrian theologian Ferdinand Klostermann, who articulated certain principles of institutional reform which are helpful in analyzing the work of the Code Commission. See F. Klostermann, "Reform of Church Structures," in M. Cuminetti and F. V. Johannes, eds., *Rethinking the Church (La fine della Chiesa come società perfetta)* (Dublin: Gill and Macmillan, 1970) 142-93, especially 142-56. See also J. Herranz, "Orientamenti e prospettive della revisione del codice di diritto canonico," *Il diritto ecclesiastico* 1-2 (1978) 42-59; J. Manzanera, "Diez años de legislación postconciliar," *ibid.* 290-320.

⁸ For some reflections on the theological implications of institutional reform in the Church, see G. Balanza, "L'Incidenza della teologia postconciliare nella riforma del diritto canonico," *Monitor ecclesiasticus* 95 (1970) 264-89; W. Bassett, "A New Canon Law and the Crisis of Reform," *JES* 10 (1973) 233-58; *id.*, "Institutional Renewal through Canonical Reform," *Living Light* 10 (1973) 107-18; *id.*, "Canon Law and Reform: An Agenda for a New Beginning," in *Toward Vatican III: The Work That Needs to Be Done*, ed. D. Tracy (New York: Seabury, 1978) 196-213; L. de Echeverria, "The Theology of Canon Law," *Concilium* 28 (1967) 7-15 (American edition); M. Fahey, "Continuity amid Structural Changes," *TS* 35 (1974) 415-40; T. Jimenez-Urresti, "Canon Law and Theology: Two Different Sciences," *Concilium* 28 (1967) 17-24; C. Kemmeren, "Recent Trends in the Science of Canon Law towards a Theology of Canon Law," *Jurist* 25 (1965) 24-45; R. McBrien, *The Remaking of the Church* (New York: Harper & Row, 1973) esp. 70-136; T. O'Meara, "Theological Reflections on Institutional Renewal in the Church," *PCLSA* 32 (1970) 1-14; W. Onclin, "Church and Church Law," *TS* 28 (1967) 733-48; L. Orsy, "Towards a Theological Conception of Canon Law," *Jurist* 24 (1964) 383-92; *id.*, "The Life of the Church and the Renewal of Canon Law," *Jurist* 25 (1965) 24-45; *id.*, "Law in the Church: Theological Reflections," *Way* 11 (1971) 313-23; *id.*, "The Canons on Ecclesiastical Laws Revisited: *Glossae* on Canons 8-24," *Jurist* 37 (1977) 120-27; G. Thils, "L'Écclésiologie d'aujourd'hui et la révision du droit canonique," *RTL* 5 (1974) 26-46; *id.*, "La révision du droit canonique et les problèmes ecclésiologiques qu'elle rencontre," *RTL* 9 (1978) 329-41. Volume 66 (1977) of *Periodica* contains a variety of thought-provoking articles on this whole problematic.

been its distinctively *interdisciplinary* focus. There has been a studied effort to involve theologians and other professionals in various aspects of the complex task of canonical reform. Since 1966, a series of interdisciplinary symposia sponsored by the Canon Law Society of America (henceforth CLSA) has explored such issues as the role of law in the Church,⁹ the meaning of Christian freedom and ecclesial rights,¹⁰ the meaning of ecclesial unity and diversity,¹¹ the nature of shared responsibility in the Church,¹² the significance of constitutional development,¹³ and the ecclesial role of women.¹⁴ New procedures for resolving conflicts¹⁵ and selecting bishops¹⁶ have resulted from significant interdisciplinary sharing. Finally, as a result of a 1974 "Think-Tank" at Douglaston, New York,¹⁷ the CLSA has committed itself to a series of interdisciplinary seminars researching such fundamental issues as *communio*,¹⁸ *missio*,¹⁹ and ministry.

Before I close this introductory section, a few qualifications are in order. First, contemporary canonical reform should not be identified exclusively with the work of the Code Commission. Ever since the pontificate of John XXIII, there has been an extraordinary burst of official legislative activity. Perhaps not since the Gregorian Reform has there been such significant legislative development within the Church.²⁰

⁹ Biechler, *Law for Liberty* (n. 1 above).

¹⁰ J. Coriden, ed., *The Case for Freedom: Human Rights in the Church* (Washington: Corpus, 1969).

¹¹ J. Coriden, ed., *The Once and Future Church: A Communion of Freedom* (New York: Alba, 1971).

¹² J. Coriden, ed., *Who Decides for the Church? Studies in Coresponsibility* (Hartford: Canon Law Society of America, 1971).

¹³ J. Coriden, ed., *We the People of God: A Study of Constitutional Government for the Church* (Huntington, Ind.: Our Sunday Visitor, 1968).

¹⁴ J. Coriden, ed., *Sexism and Church Law: Equal Rights and Affirmative Action* (New York: Paulist, 1977).

¹⁵ *On Due Process: A Summary of Actions Taken by the National Conference of Catholic Bishops on the Subject of Due Process* (Washington: U.S. Catholic Conference, 1970). This plan received papal approval; see *Jurist* 32 (1972) 291-92.

¹⁶ *Procedure for the Selection of Bishops in the United States: A Suggested Implementation of Present Papal Norms* (Hartford: Canon Law Society of America, 1973). This procedure has been submitted to the National Conference of Catholic Bishops and to the Sacred Congregation for Bishops but has not received official approval. This procedure largely depended upon an earlier interdisciplinary effort sponsored by the CLSA: W. Bassett, ed., *The Choosing of Bishops* (Hartford: Canon Law Society of America, 1971).

¹⁷ *Jurist* 35 (1975) 336-42.

¹⁸ *Jurist* 36 (1976) 1-245.

¹⁹ The papers from this seminar will be published in a forthcoming special issue of the *Jurist*.

²⁰ For indications of recent legislative development, see T. Bouscaren and J. O'Connor, eds., *The Canon Law Digest 6: Officially Published Documents Affecting the Code of Canon Law 1963-1967* (New York: Bruce, 1969); J. O'Connor, ed., *The Canon Law Digest*

Furthermore, bibliographical sources such as the *Ephemerides theologiae Lovanienses*, the *Répertoire des institutions chrétiennes*, and *Canon Law Abstracts* offer extensive listings of monographs and periodical literature on various aspects of canonical reform.²¹ However, this article deals only with the initial phase of the activity of the Code Commission. Nevertheless, this limitation is not as problematic as it might first appear; for the work of the Code Commission in large measure reaffirms the above-mentioned contemporary legal development and in one way or another raises all the key issues of institutional reform discussed in recent canonical literature. Furthermore, this article does not examine the responses of the various Code Commission study groups to the evaluations of different individuals and groups involved in the official consultative process. This is because these responses are still incomplete, since the official consultative process ended only several months ago. Some responses of the various study groups are available in *Communicationes* and will be cited in the initial part of the article. However, it seems better to wait until all such responses have been officially published before assessing their implications for further canonical development.

THE WORK OF THE CODE COMMISSION: KEY ORIENTATIONS

The main purpose of this expository section is to identify the main orientations of the work of the various Code Commission study groups, particularly those developments of notable theological importance. The vast amount of material precludes a detailed discussion of individual canons. Hence the primary focus of the following comments is the highlighting of differences between the Code and the new schemata. The presentation will be organized chronologically, beginning with a discussion of the principles for the revision of the Code at the 1967 Synod²² and terminating with a consideration of the five most recent schemata issued for consultation in early 1978.

7: *Officially Published Documents Affecting the Code of Canon Law 1968-1972* (Chicago: Canon Law Digest, Chicago Province S.J., 1975). Four additional loose-leaf supplements have incorporated legislative developments through 1976. See also F. Morrissey, "Recent Ecclesiastical Legislation and the Code of Canon Law," *Studia canonica* 6 (1972) 3-77. For an overview of key trends in postconciliar legislative development, see Manzanares, "Diéz años"; H. Schmitz, "Tendenzen nachkonziliarer Gesetzgebung," *Archiv für katholisches Kirchenrecht* 146 (1977) 381-419.

²¹ See especially no. 29 of the special supplements to *Répertoire des institutions chrétiennes* entitled *Revision of Canon Law/Réforme de droit canonique* (1965-77).

²² For the text of the principles and a résumé of the discussion at the 1967 Synod, see *Communicationes* 1 (1969) 77-108; also R. Cunningham, "The Principles Guiding the Revision of the Code of Canon Law," *Jurist* 30 (1970) 447-55; W. Bassett, "Canon Law and Reform," *ibid.* 200-201. Bassett sharply criticizes the revision process thus far and sees the principles approved by the Synod as precluding the significant reform of the Church called for by Vatican II.

A prerequisite for the orderly elaboration of various schemata is clarity about fundamental principles underlying the whole legal-reform enterprise. Understandably, then, one of the first significant steps in the functioning of the Code Commission was its articulation of basic principles for the revision process. These principles were submitted for approval to the 1967 Synod of Bishops.

The Synod endorsed ten principles, of which the following seem of noteworthy theological interest. The new Code is to modernize and adapt the 1917 Code, with particular emphasis on protecting the rights and defining the obligations of the various members of the People of God. It is to strive to minimize conflicts between the internal forum and the external forum, while focusing primarily on the Church's external social order. The new law is to highlight the individual and collegial authority of bishops. It should implement the principle of subsidiarity by facilitating the bishop's exercise of his pastoral office, free from unwarranted constraints imposed on him through past centralizing tendencies. It should emphasize the fundamental equality of all believers and provide appropriate judicial and administrative measures to protect subjective rights against the nonaccountable exercise of authority. Frequently during the past decade various schemata have explicitly indicated that they are based at least partly on the above-mentioned principles. Likewise, the critiques of the schemata are frequently grounded in these principles. Hence they have continued to influence the canonical reform process rather significantly.²³

The organization of a legal text is not merely a technical legal matter without broader ramifications.²⁴ Traditionally one principle of interpretation of law has been to situate a given text within a broader framework. This may help to clarify its meaning after an examination of its formulation has proven unsatisfactory.²⁵ Hence, in light of the concern to revise the Code according to contemporary conciliar insights and legal developments, it is not surprising that the issue of the organization of the revised law was posed at the very outset of the revision process.

After the promulgation of the Code, questions were raised about its organization, particularly the structuring of Book III *De rebus* (canons

²³ For a recent expression of concern that the revision process is not meeting the pastoral-legal needs of the Church, see Canon Law Society of America, "Concern Expressed about Code Revision Thus Far," *Origins* 7/22 (Nov. 17, 1977) 337, 339-40; also in *Jurist* 38 (1978) 209-13. This statement raises questions about conflicting interpretations of the principles guiding the revision of the Code.

²⁴ For the 1967 Synod discussion of the reorganization of the Code, see *Communicationes* 1 (1969) 101-13.

²⁵ The first part of canon 18 of the Code on nonauthentic interpretation of the law states: "Leges intelligendae sunt secundum propriam verborum significationem in *textu et contextu* consideratam . . ." (emphasis mine).

726–1551). Under this general rubric quite diverse legal issues are treated, e.g., sacraments and sacramentals (canons 731–1153), sacred times and places (1154–1254), divine worship (1255–1321), magisterium (1322–1408), benefices (1409–1494), and temporalities (1495–1551). The Roman-law term *De rebus* certainly has a proper technical meaning. Yet our renewed awareness of the richness of the Church's liturgical life makes it questionable whether it is appropriate as an organizing principle for sacramental discipline.²⁶ Criticism of the somewhat artificial organization of Book III is but the most noteworthy example of questions raised about the adequacy of the Code's organization. Notable shifts in our theological understanding of various realities treated in Church law further strongly suggest that an organizational shift is most appropriate.²⁷

A principal ecclesiological theme underlying the Code Commission's reorganization of the law is the conciliar emphasis on the Church's sharing in the triple office of Christ as Priest, Prophet, and King. Accordingly the major change in the proposed reorganization of the Code approved in May 1968 is the provision for three significant sections treating various legal issues under the general rubric of the Church's triple *munera*. Hence there is to be (1) a section on various implications of the Church's *munus docendi*, (2) a section on the Church's *munus sanctificandi* incorporating norms on the sacraments and sacramentals and divine worship (sacred times and places), and (3) a section on the Church's *munus regendi* dealing with the various organs of governance in the universal Church and particular churches. The other sections of the proposed law largely reflect the organization of the Code: (1) a section on the various sources of law and on the ways in which laws are established, modified, interpreted, and dispensed from; (2) a section on the People of God, including a new body of norms describing the basic rights and obligations of believers as well as the traditional general principles on persons in the Church, followed by sections on the hierarchy and on religious; (3) a section on the temporal goods of the Church or patrimonial law; (4) a section on penal law; finally (5) a section on the protection of rights containing both the traditional judicial procedure specified in the Code and a new section on administrative recourse.

Apparently the above-mentioned provisional organization is still operative. As recently as last year it was restated in the introduction to the

²⁶ G. Leclercq, "Théologie, personalisme chrétien et droit sacramental," in *Liber amicorum Monseigneur Onclin*, ed. J. Lindemans and H. Demeester (Gembloux: Duculot, 1976) 236–38. P. Lombardia, *Escritos de derecho canónico* 1 (Pamplona: Ediciones Universidad de Navarra, 1973) 380–86.

²⁷ For a brief consideration of these shifts, see Manzanares, "Diéz años" 291–92; also N. Timpe, *Das kanonistische Kirchenbild vom Codex iuris canonici bis zum Beginn des Vaticanum Secundum: Eine historisch-systematische Untersuchung* (Leipzig: St. Benno GMBH, 1978).

schema on general norms with one noteworthy modification. The general rubric *munus regendi* was dropped, since it was felt impossible to confine the treatment of various governmental functions to only one book of the revised law.²⁸

Lex fundamentalis

Some brief introductory reflections seem appropriate. The initial suggestion that the *Lex* might be appropriate was made in an address of Paul VI to the Code Commission on November 20, 1965. Shortly afterwards the cardinal members of the Commission approved the formulation of a basic set of norms to be considered the *ius constitutum* for the whole Church. An initial draft of the *Lex* was discussed in June 1966 by the members of the central committee of consultors. Subsequently a revised second text was considered by the same body in April 1967 and approved in substance. However, a special committee was established to rework the document further. Cardinal Pericle Felici, the president of the Code Commission, reported to the 1967 Synod on the progress of the *Lex* undertaking and solicited the bishops' collaboration in the project. After more revisions the second text was sent to the Vatican Press in May 1969²⁹ and subsequently forwarded for evaluation to the cardinal members of the Code Commission, the consultors of the Congregation for the Doctrine of the Faith, and the members of the International Theological Commission. This document was not sent to all the bishops for their comments. However, numerous copies became available and a special CLSA committee prepared its first report on the *Lex* based on this version (*Textus prior*). This report was presented to the annual convention in New Orleans in October 1970.³⁰ An amended version of the above-

²⁸ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum Libri I de normis generalibus* (Typis Polyglottis Vaticanis, 1977) 3-4: Index Generalis Provisorius Novi Codicis Iuris Canonici: "Normae generales, De Populo Dei, De Ecclesiae munere docendi, De Ecclesiae munere sanctificandi, De Sacramentis et sacramentalibus, De locis et temporibus sacris deque cultu divino, De iure patrimoniali Ecclesiae, De sanctionibus in Ecclesia, De tutela iurium seu de processibus. . . De munere tamen regendi necessarium visum est ut tractetur, iuxta diversitatem materiae, sive in Libro II (ubi normae simul traduntur de personis atque de organis et officiis quibus potestas regiminis exercetur) sive etiam in Libris V, VI, et VII. Ideoque non adest liber specificus qui inscribitur 'De munere regendi,' quia hoc plures secumferret repetitiones." For some reflections on the organization of the new law, see H. Schmitz, "De ordinatione systematica novi Codicis iuris canonici recogniti," *Periodica* 68 (1979) 171-200.

²⁹ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema legis ecclesiae fundamentalis cum relatione* (Typis Polyglottis Vaticanis, 1969). For clarity, this article differentiates the "canons" of the Code, which are the law for the most part, from the "norms" of the various schemata, which are largely only *proposed law*.

³⁰ W. LaDue *et al.*, "A General Analysis of the Proposed Schema on the *Lex fundamentalis*," *PCLSA* 32 (1970) 29-46.

mentioned *Textus prior* was sent to the bishops of the world for their comments in the spring of 1971.³¹ This document (*Textus emendatus*) was also evaluated by the CLSA and discussed at its annual convention in Atlanta in October 1971.³² After some noteworthy criticism of the project, the special committee on the *Lex* was expanded and has been reworking the *Textus emendatus* since then.³³ No subsequent version has been distributed officially for further consultation, even though the special committee's work has apparently been completed. A 1978 request by the NCCB for a copy of the latest version of the *Lex* to facilitate evaluation of the schema on the People of God was rejected, and it was stated that the definitive text of the document was not ready. Further developments in this matter seem dependent on a decision by Pope John Paul II regarding further consultation of the bishops concerning the *Lex* and the other schemata that have been evaluated during the past decade.³⁴

The basic structure of the *Lex* has not varied significantly since the May 1969 *Textus prior*—the first to be assessed by the CLSA. Individual norms have been altered; for the purposes of this brief exposition, however, it seems sufficient merely to highlight the main points of the *Textus prior* as clarified in the *relatio* accompanying the document.³⁵

³¹ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema legis ecclesiae fundamentalis, Textus emendatus cum relatione de ipso schemate deque emendationibus receptis* (Typis Polyglottis Vaticanis, 1971).

³² W. LaDue *et al.*, "A Critique of the Revised Schema on the *Lex fundamentalis*," *AER* 165 (1971) 3–17.

³³ For a detailed report on the comments of the bishops on the *Textus emendatus*, see *Communicationes* 4 (1972) 121–60. For subsequent progress reports on the work of the expanded committee, see *Communicationes* 6 (1974) 59–72, 149–76 (interaction of Cardinal Felici and bishops at 1974 Synod); 8 (1976) 78–108; 9 (1977) 83–116, 274–303. See also A. Gauthier, "The Progress of the '*Lex ecclesiae fundamentalis*,'" *Studia canonica* 12 (1978) 377–88.

³⁴ These conclusions seem warranted by a comment of Cardinal Felici in an address to the cardinal members of the Commission during a May 1977 meeting. His address is entitled "Brevis conspectus historicus Commissionis eiusque competentiae" and is found in *Communicationes* 9 (1977) 62–79. This is the most recent official overview of the work of the Commission. In discussing the *Lex* on p. 79, Felici observes: "... novum schema Legis Ecclesiae Fundamentalitatis, iuxta animadversiones Episcoporum recognitum, definitive ex parte specialis Coetus mixti completum et approbatum habetur. Quae postea pro tam difficili sed magni momenti schemate facienda sint pendent, uti patet, a voluntate supremi Legislatoris."

³⁵ The following detailed outline of the *Lex* is taken from pp. 4–5 of W. LaDue, "A Written Constitution for the Church?" *Jurist* 32 (1972) 1–13:

Introduction

Chapter I. *The Church as People of God*

C.1—the nature, goal, and structure of the Church

C.2—the Church's unity in diversity

First a word or two on the underlying purpose of the document. The special committee states that it is attempting to articulate the basic elements of Church order valid for both the Latin and Eastern Churches. These elements pertain to the constitution of the Church from its foundation or at least from its earliest history. A concern for legal security suggests that it would be better not to refer to the provisional character of the *Lex*, even though not all its components are judged *iure divino*. Certain *iure ecclesiastico* elements are included, since the Church must be presented as it presently exists in history. The document is suitably called *Lex fundamentalis*, since it is a body of general constitutional-law principles. Such a title reflects the committee's concern to articulate the basic theological-juridical principles undergirding all levels of the Church's organization and operation. The document is to set forth those theological principles basic to the Church's constitutional order. Yet it is not to be primarily a theological draft. For all practical purposes, the *Lex* is to articulate briefly the Church's present self-understanding as a complex, multileveled community existing within human society and embodying divine and human elements. Its primary sources are various magisterial statements, especially the documents of the Second Vatican Council.

Article 1—*The Church People in General*

Cc.3-5—*basic equality; universal vocation; religious freedom and responsibility*

Cc.10-25—*"bill" of basic rights*

Cc.26-30—*diverse states in the Church*

Article 2—*The Hierarchy*

Cc.31-33—*ministry as service; the Pope and the episcopal college, other ministries*

Cc.34-36—*the papacy*

Cc.37-38—*the bishops in general*

Cc.39-46—*the college of bishops*

Cc.47-48—*the individual bishops*

Cc.49-50—*priests and deacons*

Chapter II. *The Ministries of the Church*

Cc.51-53—*the three munera derived from Christ; participation of bishops, priests, and laity*

Article 1—*The Teaching Function*

Cc.54-62—*the prophetic role of the Church; the Pope; bishops, priests, laity*

Article 2—*The Sanctifying Function*

Cc.63-74—*the sacraments, their effects and their ministers; prayer, cult of saints*

Article 3—*The Shepherding Function*

Cc.75-83—*Legislative, executive, and judicial power; the shepherding functions of the Pope, bishops, priests, and laity*

Chapter III. *The Church and the Human Community*

C.84—*the Church as a leavening agent*

Cc.85-87—*the Church and the temporal order; political society; the human family*

C.88—*religious freedom (individual and corporate)*

Cc.89-94—*liberties for the Church*

C.95—*the Church as a moral person and agent of peace in the world*

The *Lex* is divided into an introduction and three chapters. The introduction clarifies the Church's divine origin and its character as a spiritual community and human society requiring its own juridical order. The Church's divine mission is realized in part through a continual refinement of its juridical structures. Its unity in faith does not preclude disciplinary diversity corresponding to the various conditions and situations of the individual local churches.

Chapter 1 is introduced by two norms describing the Church as the People of God, with its members sharing the responsibilities of a common priesthood. This People of God exists and fulfils its mission through various local churches and regional groupings of churches.

Article 1 of the first chapter clarifies the implications of Church membership. Particularly significant are norms 10–25, articulating the basic rights and responsibilities of believers, rooted in baptismal equality and prescinding from whether they are laity, clerics, or religious. The norms specify such rights as freedom of speech and inquiry, the right of association, and various procedural and remedial rights. A final series of norms indicates the diverse forms of living out the fundamental Christian vocation within the Church.

Article 2 of the first chapter articulates the various members of the hierarchy, called to provide appropriate pastoral care for the People of God. It deals first with the Roman pontiff and then with the bishops as a college and as pastors of individual local churches. It subsequently treats priests and deacons, particularly in terms of their relationship to the bishop in the pastoral care of the local church.

Chapter 2 considers the *munera* or ministries of the Church in some detail. It discusses the Church's teaching, sanctifying, and shepherding functions and apportions various responsibilities for implementing those functions. Generally the order of Vatican II is followed, with somewhat of an emphasis on the Church's sanctifying function. The pope and bishops have the principal responsibility to fulfil the ecclesial *munera*; priests and deacons participate in these *munera* to a lesser extent; and finally there is a brief allusion to the role of the nonordained in the realization of these essential ecclesial functions. The section on the Church's teaching mission begins by succinctly referring to the prophetic role of all the baptized, but it continues by examining in detail the magisterial responsibilities of the hierarchy in descending order. The norms on the Church's sanctifying mission principally consider the sacramental system and view the sacraments largely as actions of grace perfecting individuals; sacral power over the sacraments is described as resting principally with bishops and then with priests. A particularly significant feature of the norms on the Church's shepherding mission is the distinction of legislative, judicial, and executive functions at every level of ecclesial life.

Chapter 3 of the text is somewhat of an innovation legally in its consideration of the Church's relationship to the human community in general and to various specific human communities. This section underscores the Church's role as a leavening agent for the transformation of the human community and explicates the principle of religious freedom for individuals and communities of believers. Most of the chapter explores the implications of this freedom for the Church in the pursuit of its mission.

This very brief résumé can only give the reader a brief glimpse of some significant issues treated in this document and its revised version, which were the subject of notable controversy during the early part of this decade. Some of its more problematic features will be mentioned in the critical section of this article. The literature cited in the footnotes should be consulted for further discussion on the above-mentioned issues.³⁶

*Schema on Administrative Procedure*³⁷

A major concern of the 1967 Synod was the protection of the human and ecclesial rights of believers against arbitrary administrative discretion. This reflected a strong emphasis on the fundamental dignity of the human person both in *Pacem in terris* and in several conciliar documents, especially *Dignitatis humanae*. The principles for the revision of the Code embodied a consciousness that Church law did not adequately protect the rights of persons affected by administrative action. Accordingly, in October 1969, a special subcommittee of the study group on procedural law undertook the preparation of a schema on administrative procedure. This was forwarded to the bishops for evaluation in April 1972.³⁸ There has been only one official indication of the status of the

³⁶ Besides the works already cited, the following critiques of the *Lex* might be noted: W. Aymans *et al.*, "Lex ecclesiae fundamentalis," *Archiv für katholisches Kirchenrecht* 140 (1971) 407-506; J. Beyer *et al.*, *Periodica* 61 (1972) 525-670; A. Dordett, "Zum Entwurf der 'Lex fundamentalis,'" *Wort und Wahrheit* 26 (1971) 308-17; P. Gismondi, "La Lex fundamentalis ecclesiae," *Il diritto ecclesiastico* 84 (1973) 154-64; Istituto per le Scienze Religiose, *Legge e vangelo* (Brescia: Paideia, 1972); W. Kasper *et al.*, *Kein Grundgesetz der Kirchen ohne Zustimmung des Christen* (Mainz, 1971); *De Lege ecclesiae fundamentali condenda: Conventus canonistarum Hispano-Germanus Salmanticae diebus 20-30 ianuarii 1972 habitus* (Salmanticae: San Raimundo de Peñafort, 1974); A. Maroni, ed., *Lex fundamentalis ecclesiae: Atti della Tavola Rotonda* (Milan: Giuffrè, 1973); Redacción Ius Canonicum, *El proyecto de Ley fundamental de la Iglesia* (Pamplona: Universidad de Navarra, 1971). For a detailed listing of materials on the *Lex*, see special issue of *Répertoire des institutions chrétiennes* on revision of the Code (n. 21 above).

³⁷ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum de procedura administrativa* (Typis Polyglottis Vaticanis, 1972).

³⁸ Green, "Revision of the Code" 356; *Communications* 2 (1970) 191-94 and 4 (1972) 35-38. For comments on the schema, see I. Gordon, "De tribunalibus administrativis propositis a Commissione Codici Iuris Canonici Recognoscendo et suffragatis ab Episcoporum Synodo," *Periodica* 57 (1968) 602-52; E. Bernardini, "Commento allo schema 'De procedura administrativa,'" *Apollinaris* 45 (1971) 126-36; R. Kennedy, "Administrative Law: New

schema since the September 1972 deadline for forwarding such evaluations to Rome. The schema on procedural law sent to the bishops in 1976 stated that canons 397–435 of that document were to deal with administrative procedure. However, the text of the norms was not included in the schema, thus making it impossible to judge whether any changes had been made in the schema as a result of the 1972 consultation.³⁹

The schema is divided into five sections but may be briefly summarized under two general headings: (1) general norms for the exercise of administrative decision-making authority and (2) general norms for recourse from administrative decisions.

Among the noteworthy features of the section on the exercise of administrative authority are the following: (a) an administrator must obtain all necessary facts and proofs before issuing a decree; (b) he must make known in writing to the persons likely to be affected the facts and factors under consideration and the reasons for the decree; (c) he must grant a hearing to all whose rights could be injured and afford them the right of counsel unless the delay could be harmful.

The schema provides two main alternatives for recourse against administrative decisions: (a) hierarchical recourse, which has been a traditional feature of the law, and (b) administrative courts, which are a distinctly new development. Recourse to the immediate superior of the administrator is itself subject to the norms of administrative activity mentioned above. The one taking recourse always has the right to counsel. Such recourse is to be preceded by a sincere attempt at conciliation. The superior in question has the same power as the author of the decision and may confirm, modify, or nullify it.

Recourse may be taken to a newly created administrative court if the administrative decree in question allegedly violated substantive or procedural law, the general principles of law or canonical equity, or if the reasons given in it were not true. Conciliation must likewise precede such recourse; yet, unlike the hierarchical superior above, the administrative court may not modify the decree but may only confirm or nullify it. One court is to be established in each nation, with the possibility of additional regional courts and an appeal court at the discretion of the episcopal conference.

Proposed Roman Norms," *PCLSA* (1972) 98–103; F. McManus, "Administrative Procedure," *Jurist* 32 (1972) 417–18. The Kennedy article is particularly helpful for readers familiar with Anglo-American legal traditions.

³⁹ For an official report on various evaluations of the schema, see *Communicationes* 5 (1973) 235–53, which discusses sixty-five responses from various sources on the proposed canons. Also C. Lefebvre, "De nonnullis technicis animadversionibus episcoporum in schema 'De procedura administrativa,'" *Ephemerides iuris canonici* 29 (1973) 179–97.

*Schema on Penal Law*⁴⁰

In December 1973 a schema on penal law was sent to the bishops for evaluation. Their responses were to be forwarded to the Holy See by March 1974.⁴¹ The draft is divided into three sections: (1) *Praenotanda*, indicating key features of the text, especially changes from the Code; (2) a proposed *motu proprio Humanum consortium*, articulating certain theological-legal themes helpful in understanding the schema; and (3) 73 norms divided into two general headings: offenses and penalties in general (45 norms) and penalties for specific offenses (27 norms), followed by a concluding norm dealing with special situations for which a given penalty is not explicitly prescribed.

The following points briefly summarize key themes of the *Praenotanda* and *Humanum consortium*. Penal law is necessary in light of the Church's societal character; yet it is unique and differs from civil penal law in light of the Church's salvific character. Throughout Church history there have been different views on the need for penalties, but there has been a constant concern to preserve the Church's spiritual-moral integrity. Pastoral concerns are pre-eminent in the schema; penalties are to be employed only as a last resort, with due regard for the rights of individuals. A concern for the implementation of the principle of subsidiarity accounts for a significant reduction in the number of specific penalties in universal law (from 101 in the Code to 25 in the schema). The schema leaves more discretion for infra-universal legislators and specifies only those offenses so clearly incompatible with the Christian life as to require uniform punishment throughout the Church. A major development is the restriction of penal discipline to the external forum to minimize possible conflicts of fora. Accordingly, henceforth no penalty would bar one from receiving the sacraments of penance and anointing of the sick.

⁴⁰ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema documenti quo disciplina sanctionum seu poenarum in Ecclesia Latina denuo ordinatur* (Typis Polyglottis Vaticanis, 1973). See Code, canons 2195-2414. For official reports on the work of the penal-law study group prior to publication of the schema, see *Communicationes* 2 (1970) 99-107, 194-95.

⁴¹ Green, "Revision of the Code" 357. For general commentaries on the proposed schema, see T. Green *et al.*, "Report of the Special Committee of the Task Force of the Canon Law Society of America on the Proposed Schema *De delictis et poenis*," *PCLSA* 36 (1974) 130-40; *id.*, "The Future of Penal Law in the Church," *Jurist* 35 (1975) 212-65; V. De Paolis, "De recognoscendo iure poenali canonico," *Periodica* 63 (1974) 37-67; *id.*, "Animadversiones ad schema documenti quo disciplina sanctionum seu poenarum in Ecclesia Latina denuo ordinatur," *Periodica* 63 (1974) 489-507; J. Provost, "Revision of Book V of the Code of Canon Law," *Studia canonica* 9 (1975) 135-52; A. Scheuermann, "Das Schema 1973 für das kommende kirchliche Strafrecht," *Archiv für katholisches Kirchenrecht* 143 (1974) 3-63; H. Zapp, "Zur kanonischen Strafrechtsreform nach dem Entwurf der Kodex Kommission," *Oesterreichisches Archiv für katholisches Kirchenrecht* 27 (1976) 36-59.

Other noteworthy features of the schema are the explicit exemption of non-Catholics from the Church's penal discipline, the simplification of the rather complicated norms of the Code on imputability, an emphasis on judicial process in the infliction of penalties as opposed to the *de facto* emphasis now on administrative procedure (frequently less sensitive to the exigencies of protecting human rights), an emphasis on *ferendae sententiae* as opposed to *latae sententiae* penalties, the practical elimination of complicated reservations of penalties, and the increased competence of ordinaries in remitting such.

Several official reports in *Communicationes* have indicated the study group's assessments of the evaluations of the schema; yet nothing further has transpired relative to its promulgation.⁴²

*Schema on Sacramental Law*⁴³

Unlike most schemata, the sacramental-law draft reflects the combined work of two Code Commission study groups. The study group on marriage met seventeen times from October 1966 to January 1973, while the study group on the other sacraments met eleven times from February 1967 to February 1973. Apparently representatives of the two groups met in January 1974 to prepare a unified schema for transmission to those involved in the consultative process. The schema was issued for evaluation in the spring of 1975, and responses were due back in Rome by the end of the year.⁴⁴

⁴² For official reports on how the study group is dealing with the evaluations of different parts of the schema, see *Communicationes* 7 (1975) 93-97: comments of bishops on penal-law schema; 8 (1976) 166-83: reworking of norms 1-15; 9 (1977) 147-74: reworking of norms 16-47; 9 (1977) 304-22: reworking of norms 48-73.

⁴³ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema documenti pontificii quo disciplina canonica de sacramentis recognoscitur* (Typis Polyglottis Vaticanis, 1975). See Code, canons 731-1142. For an official report on the canons on baptism, see *Communicationes* 3 (1971) 198-202; for confirmation see *Communicationes* 3 (1971) 202-5; for the Eucharist see *Communicationes* 4 (1972) 51-59. There are no detailed reports on the canons concerning penance, anointing, and orders. For the marriage canons, see *Communicationes* 3 (1971) 69-81; 5 (1973) 70-93; 7 (1975) 41-62.

⁴⁴ For a commentary on the whole text, see the Canon Law Society of Great Britain and Ireland, *Report on Schema documenti pontificii quo disciplina canonica de sacramentis recognoscitur*, October 1975; T. Green, "Sacramental Law: Reflections on the Proposed Schema," *PCLSA* 37 (1975) 70-83; J. Manzanares and T. Barbarena, "Nueva codificación del derecho sacramental: Anotaciones al esquema propuesto por la Comisión Pontificia," *Salmanticensis* 24 (1977) 101-28; F. Morrisey, "The Renewal of Sacramental Canon Law after the Second Vatican Council," *Eglise et théologie* 5 (1974) 347-73. For a commentary on the norms other than those on marriage, see E. Cappellini, "Penitenza e unzione degli infermi nella prospettiva del futuro codice canonico," *Rivista del clero Italiano* 56 (July-Dec. 1975) 652-57; id., "I sacramenti dell'iniziazione cristiana nella futura legislazione canonica," *ibid.* 739-744; id., "Il sacramento dell'ordine nel progetto di riforma del codice," *ibid.* 58 (Jan.-June 1977) 425-31; T. Green *et al.*, "Reflections on Other Parts of the

Probably the most satisfactory way of commenting on this theologically significant text is to note its main orientations as articulated in the *Praenotanda*⁴⁵ and then discuss the key points of the sections on the sacraments in general and on the individual sacraments. As noted above, the focus is primarily on changes from the Code.

The schema's two principal objectives are said to be fidelity to Vatican II and adaptation to contemporary pastoral needs; these are also key criteria governing the various evaluations of the schema. Theological considerations and definitions are generally avoided, since the norms are to clarify discipline, not expound doctrine, even though the latter underlies the law. The simplification of the Code is evident in the reduction of the number of norms from 412 to 361. Yet the text stresses that it

Proposed Draft *De sacramentis*," *PCLSA* 37 (1975) 194-205; id., "The Revision of Sacramental Law: Perspectives on the Sacraments Other Than Marriage," *Studia canonica* 11 (1977) 261-327. For a commentary on the norms on marriage, see G. Alberigo *et al.*, *La riforma del matrimonio dopo il Concilio* (Rome: Officium Libri Catholici, 1975); M. Campagnola, "La riforma del matrimonio canonico nello schema 'De matrimonio,'" *Il diritto ecclesiastico* 81 (1970) 426-437; G. Cereti, "Ancora sullo schema canonum de matrimonio," *Il tetto* 13 (1976) 338-49; P. Fedele, "A proposito delle innovazioni proposte dalla Commissione per la Revisione del C.I.C. in tema di consenso matrimoniale," *L'Année canonique* 17 (1973) 365-412; O. Fumagalli-Carulli, "L'Incapacità psichica nella riforma del matrimonio canonico," *Ephemerides iuris canonici* 32 (1976) 91-128; id., "La definizione del matrimonio nella riforma del diritto matrimoniale canonico," *ibid.* 33 (1977) 218-33; id., "Innovazioni conciliari e matrimonio canonico," *Il diritto ecclesiastico* 1-2 (1978) 331-425; O. Giacchi, "Diritto e spiritualità nello schema di riforma del matrimonio canonico," *Ephemerides iuris canonici* 31 (1975) 7-37; id., "La definizione del matrimonio nella riforma del diritto matrimoniale canonico," *ibid.* 33 (1977) 218-26; T. Green *et al.*, "Report of a Special Committee of the Task Force on the Marriage Canons of the Proposed *Schema documenti pontificii quo disciplina canonica de sacramentis recognoscitur*," *PCLSA* 37 (1975) 205-17; Green, "The Revision of Marriage Law: An Exposition and Critique," *Studia canonica* 10 (1976) 363-410; P. Huizing, "La conception du mariage dans le Code, le Concile et le schéma *De sacramentis*," *Revue de droit canonique* 27 (1977) 135-46; L. Kaufmann, "Verkirchlichung der verweltlichten Ehe?" *Orientierung* 39 (1975) 163-68; C. Lefebvre, "Brèves remarques au sujet des conclusions d'un débat sur le schéma *De matrimonio*," *Ephemerides iuris canonici* 31 (1975) 36-46; F. Morrisey, "Proposed Changes in Canonical Matrimonial Legislation," *Jurist* 33 (1973) 343-57; id., "Matrimonial Legislation: Towards New Church Law," *Origins* 4 (1974-75) 321-29; id., "Proposed Legislation on Defective Matrimonial Consent," *PCLSA* 36 (1974) 71-82; U. Navarrete, "Schema iuris recogniti 'De matrimonio': Textus et observationes," *Periodica* 63 (1974) 611-58; J. O'Connell, "Sunt incapaces matrimonii contrahendi," *Australian Catholic Record* 53 (1976) 24-43; P. Wirth, "Das neue kirchliche Eherecht: Kurzer Überblick und kritische Würdigung," *Oesterreichisches Archiv für katholisches Kirchenrecht* 26 (1975) 324-44. For an alternative proposal for marriage law, see P. Huizing, "Alternativentwurf für die Revision des kirchlichen Gesetzbuches für ein revidiertes Eherecht," in *Für eine neue kirchliche Eheordnung*, ed. P. Huizing (Düsseldorf: Patmos, 1975) 83-105.

⁴⁵ *Communicationes* 7 (1975) 27-40. The presentation of the material on the sacraments depends largely on the *Praenotanda* and the author's two articles in *Studia canonica* cited in the preceding note.

incorporates all those norms that are relevant for the whole Church, particularly because of the significance of the sacraments in symbolizing and fostering ecclesial communion. The schema proposes to allow greater discretion for episcopal conferences and individual bishops in shaping discipline.

Introductory Norms on the Sacraments (Code, canons 731-736;
Schema, norms 1-8)

Norm 1 stresses the significance of the sacraments as the principal means of salvation and key elements in building up the People of God. Norm 2 modifies the restrictiveness of canon 731,2 on *communicatio in sacris* in light of conciliar and postconciliar developments and treats of various possibilities for such *communicatio*. Norm 3 states that in doubt about the valid administration of a sacrament it is presumed not to have been administered and is to be conferred absolutely and not conditionally as in canon 732,2. Norm 4 indicates a preference for a communal celebration of the sacraments, given their ecclesial character.

Baptism (Code, canons 737-779; Schema, norms 9-39)

The basic organization of the Code is kept with few major changes. There are references to deacons and catechists as ordinary ministers in light of recent developments. The norms on baptism in emergency situations are simplified and there is a strong insistence on the illicity of baptizing a child without parental permission and a reasonable hope of Catholic upbringing. Ecumenical developments underlie new norms explicitly recognizing non-Catholic baptisms and permitting non-Catholics to act as sponsors or Christian witnesses. Sponsorship no longer creates a spiritual relationship—a marriage impediment according to canon 1079. Finally, the requirement of baptism *quamprimum* after birth is mitigated for pastoral reasons.

Confirmation (Code, canons 780-800; Schema, norms 40-60)

The basic organization of the Code is likewise kept. A more theologically nuanced introductory norm clarifies the nature and purpose of confirmation, its matter and form, and the episcopal blessing of the chrism. There is greater latitude for priests to confirm in accord with recent legal dispositions, e.g., danger of death, reception of convert, special deputation, etc. The episcopal conference or local custom may determine the appropriate age for reception of the sacrament. The significance of the sacrament within the Christian initiation process accounts for norms explicitly calling for renewal of baptismal promises and suggesting the same sponsor in baptism and confirmation. Like

baptism, there is no reference to spiritual relationship flowing from sponsorship.

Eucharist (Code, canons 801-869; Schema, norms 61-129)

Certain organizational changes in the schema are noteworthy. Instead of the Code's dichotomy between the Eucharist as sacrifice (canons 801-844) and sacrament (canons 845-869), the schema offers a more integral view of the two under the general rubric of the Eucharistic celebration (norms 61-98). Material on the custody and veneration of the Eucharist and sacred processions, treated in the Code's section on divine worship (canons 1265-1275, 1290-1295), is more logically situated in the second chapter of the schema (norms 99-108). Finally, the material on stipends, which was incorporated in the Code's section on the Eucharist as sacrifice (canons 824-844), is treated in the third chapter of the schema (norms 109-129).

The introductory norm on the Eucharistic celebration is more theologically nuanced than the corresponding canon in the Code. The first chapter reflects certain postconciliar liturgical developments. Provision is made for bination and trination in case of pastoral need. Concelebration with ministers of other communions is prohibited. Contemporary developments providing for extraordinary ministers of the Eucharist and reception of communion more than once a day and under both species are restated in the norms. Likewise, they take cognizance of the mitigated discipline on the Eucharistic fast. More logically, the precept of Mass on Sundays and holydays is situated here rather than in the Code's separate section on sacred times. Finally, three general norms on liturgical authority, language, and dress are included in this section.

Chapter 3 of the schema treats stipends in detail, in a fashion comparable to the Code. Certain members of the study group suggested placing the discussion of this issue in the schema on temporalities. However, in light of the Code's organization and the relationship of stipends to the Eucharist, it was decided to treat this institute in this schema. The *Praenotanda* consider in detail the historical roots of the institute, its relationship to Church support, and the law's concern to preclude abuses and ensure the faithful observance of Mass obligations.

Penance (Code, canons 870-936; Schema, norms 130-180)

Several organizational changes might be noted. An introductory section deals with sacramental absolution and reflects the pastoral norms on general absolution of June 1, 1972.⁴⁶ Chapter 2 on the minister of the

⁴⁶ AAS 64 (1972) 510-14.

sacrament also includes norms on the place of the sacrament, which were formerly incorporated in a separate section of the Code (canons 908–910). The Code's section on the reservation of sins (canons 893–900) is omitted.

Besides the above-mentioned norms on general absolution, the schema attempts to facilitate access to the sacrament by specifying that all priests empowered to hear confessions do so validly everywhere *ipso iure* and licitly, provided they follow the norms of the diocesan bishop. It is explicitly stated that in common error of fact or law or in positive and probable doubt of fact or law the Church supplies jurisdiction for the sacrament. Finally, the church is said to be the normal place for confessions, with specific determinations to be made by the episcopal conference.

Anointing of the sick (Code, canons 937–947; Schema, norms 181–189)

There is little worthy of note here except a somewhat more theologically nuanced introductory norm and a slightly modified norm on the recipient of the sacrament.

Orders (Code, canons 948–1011; Schema, norms 190–241)

Organizationally the schema is basically the same as the Code, except for its omitting chapter 5 of the Code on the rites and ceremonies of ordination (canons 1002–1005).

Like the other sacraments, there is a more theologically nuanced introductory norm on the significance of orders. The schema deals only with episcopacy, priesthood, and diaconate and considers the ministries of lector and acolyte only to the extent that they are prerequisites for the diaconate. The schema thereby reflects the postconciliar *motu proprio Sacrum diaconatus ordinem*,⁴⁷ *Ministeria quaedam*,⁴⁸ and *Ad pascendum*.⁴⁹ Greater discretion is accorded the episcopal conferences in setting a higher age for diaconate and priesthood. Finally, there is an effort to simplify the material on irregularities and impediments, both as regards the reception of orders and the exercise of orders already received.

Marriage (Code, canons 1012–1143; Schema, norms 242–361)

As might be expected, this section of the schema raises the most significant questions, which concern the canons of the Code that have not been changed as well as those that have been modified.

The organization of the schema is basically the same as the Code, with the exception of its omitting the last chapter of the Code on second marriages (canons 1142–1143).

The preliminary norms introduce a noteworthy change, omitting the

⁴⁷ AAS 59 (1967) 697–704.

⁴⁸ AAS 64 (1972) 529–34.

⁴⁹ AAS 64 (1972) 534–40.

Code's hierarchy of marital finalities. Canon 1013 states that the procreation and education of children are the primary end of marriage, and mutual assistance and the remedying of concupiscence are its secondary ends. The schema, however, describes marriage as a lifelong partnership between a man and woman ordered to the procreation and education of children. The initial norm of the schema restates canon 1012 of the Code on Christ's institution of the sacrament of marriage and the inseparability of the sacrament and a valid contract among the baptized. Likewise restated is the so-called *favor iuris* for marriage of canon 1014. Both of these latter canons continue to provoke significant canonical discussion.

The section on preparation for marriage is modified somewhat by the schema's provision for greater discretion for episcopal conferences in specifying formalities regarding the clarification of freedom to marry. The episcopal conferences would also be empowered to establish impediments and could also raise the minimum age for marriage. Recent changes in documents such as *De episcoporum muneribus*⁵⁰ enhancing the dispensing power of bishops relative to impediments are restated. Yet non-Catholics and Catholics who have formally or notoriously left the Church are no longer subject to merely ecclesiastical impediments. The changes of *Matrimonia mixta*⁵¹ on ecumenical marriages are succinctly expressed in the schema.

The schema introduces some particularly significant changes on marital consent. These reflect *Gaudium et spes* 47–52 as well as contemporary tribunal developments relative to grounds for nullity. Marital consent is defined as an act of the will whereby a man and woman by virtue of a mutual covenant constitute a perpetual and exclusive communion of conjugal life naturally ordered to the generation and education of children. This *ius ad communionem vitae* significantly changes canon 1081 specifying the object of marital consent as the *ius in corpus*. Furthermore, the schema indicates various general categories of psychic incapacity for marriage: total incapacity of eliciting consent because of a mental illness or disturbance impeding the use of reason, serious defect of discretion relative to marital rights and obligations, and incapacity of assuming and fulfilling essential marital obligations because of a serious psychosexual anomaly. Furthermore, substantial error about a quality of a prospective spouse invalidates a marriage if the communion of life is gravely disturbed and if the error is fraudulently induced.

The schema maintains the obligation of canonical form—a matter of noteworthy canonical discussion and debate. However, as is true for impediments, neither non-Catholics nor Catholics who have formally or notoriously left the Church would be bound by the form. Contemporary

⁵⁰ AAS 58 (1966) 467–71.

⁵¹ AAS 62 (1970) 257–63.

developments enabling ordinaries to dispense from the form (*Matrimonia mixta*) and requiring it only for liceity in Catholic-Orthodox marriages are restated in the schema.

No significant changes are evident in the norms on the dissolution of the bond. However, there is a brief summary of recent Holy See practice relative to "privilege of the faith" cases. The Code's provision for the dissolution of a nonconsummated marriage through solemn religious profession (canon 1119) is omitted in the schema.⁵²

*Schema on Procedural Law*⁵³

In early 1977 a schema of 446 norms on ecclesiastical procedure was forwarded to the bishops and others involved in the official consultative process. The covering letter, dated November 3, 1976, stated that evaluations of the schema were to be sent to the Holy See by the end of September. This was the schema of the greatest interest to canonists working in ecclesiastical tribunals. It stimulated widespread criticism, especially in the United States, but also in Australia, Canada, Great Britain, Ireland, and Scotland.⁵⁴ This was because of recent developments

⁵² For official reports of the study groups reworking the schema in response to the various evaluations, see *Communications* 9 (1977) 117-46 (marriage); *ibid.* 323-39 (schema as a whole and sacraments in general); 340-44 (anointing of the sick); 345-78 (marriage); 10 (1978) 47-74 (penance); *ibid.* 74-85 (confirmation); 86-127 (marriage); 179-208 (orders).

⁵³ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum de modo procedendi pro tutela iurium seu de processibus* (Typis Polyglottis Vaticanis, 1976); Code, canons 1552-2194. For official reports on the work of the procedural-law study group prior to publication of the schema, see *Communications* 2 (1970) 181-91; 4 (1972) 59-69. See also Green, "Revision of the Code" 428-41; P. Wirth, "Zur künftigen Gestalt des kirchlichen Streitverfahrens," *Diakonia et Ius: Festgabe für Heinrich Flatten zum 65. Geburtstag*, ed. H. Heinemann, H. Hermann, and P. Mikat (Paderborn: Schöningh, 1973) 131-49.

⁵⁴ For individual critiques of the schema, see M. Bonnet, "La nullité d'un mariage: Un conflit ou un 'constat,'" *L'Année canonique* 22 (1978) 165-80. H. Flatten, "Der Eheprozess im Entwurf zum künftigen Codex iuris canonici," *Archiv für katholisches Kirchenrecht* 146 (1977) 36-73; T. Green, "Procedural Law: Reflections on the Proposed Schema," *PCLSA* 39 (1977) 63-81; G. Lesage, "Procédures matrimoniales d'après le schéma 'De processibus,'" *Studia canonica* 11 (1977) 213-24; A. Vitale, "La riforma del processo canonico," *Il diritto ecclesiastico* 1-2 (1978) 322-30. For group evaluations of the schema, see Canon Law Society of Great Britain and Ireland, *Report on the Schema canonum de modo procedendi pro tutela iurium seu de processibus* (no place of publication is given; however, a copy of the text might be available at the editorial office of the Society: Archbishop's House, Westminster, London, England SW1P 1Q); T. Green *et al.*, "Report of a Special Committee of the Task Force of the Canon Law Society of America on the *Schema canonum de modo procedendi pro tutela iurium seu de processibus*." This unpublished report is available from the Office of the Executive Coordinator, Canon Law Society of America, 1933 Spielbusch Ave., Toledo, Ohio 43624. See also H. Schmitz, "Stellungnahme der 'Tagung katholischer Kirchenrechtler 1977' zu den Entwürfen für die Neuordnung von Ordens- und Prozessrecht," *Archiv für katholisches Kirchenrecht* 146 (1977) 681-86. See also my article

in particular procedural law, which had notably expedited the processing of marriage nullity cases. It was feared that some or all of these developments would be jeopardized by a universal-law text such as the schema which would entirely replace them. A special *ad hoc* committee has been established by the Commission to rework the schema in light of the evaluations of different individuals and groups. It has reported on its first two sessions in a recent issue of *Communicationes*,⁵⁵ but its work is far from finished.

Like the schema on administrative procedure, this schema does not seem to raise significant theological issues and is probably of minimal concern to theologians. Hence only some general comments are offered on the main principles guiding the study group in reforming procedural law. They are followed by a general overview of the schema's main divisions. The second, critical part of this article will articulate some significant elements of the criticism of the schema. This seems to be the most useful approach for readers of this journal.

The schema primarily envisions the swift and sure administration of justice in order to enhance the confidence of believers in the protection of their rights. There is a need to recognize the influence of legal-cultural diversity, especially in such matters as rules of evidence. Yet procedural law must be substantially the same throughout the Church, since each believer must be able to present his case directly to Rome should he desire to do so. Hence the schema attempts to strike a balance between decentralization and a unitary organization of justice, between an expeditious process and security in protecting both the public and private good. The critiques of the schema address it largely in terms of these stated purposes.

The schema is structured as follows:

- a. Judgments in general: norms 1-136
- b. Contentious judgments in general: norms 137-317
- c. Variations on the basic theme of the contentious judgment: norms 318-379
 - 1) Summary contentious process: norms 318-334 (a distinctly new feature of the schema)
 - 2) Marriage cases: norms 335-376
 - a) Nullity actions: norms 335-355
 - b) Separation cases: norms 356-361
 - c) Nonconsummation cases: norms 362-372
 - d) Privilege-of-the-faith cases: norms 373-376

"Marriage Nullity Procedures in the Schema *De processibus*," *Jurist* 38 (1978) 311-414. Finally see C. Lefebvre, "Les tendances générales préconisées dans le projet des livres IV, V, VI et VII du Code," *Studia canonica* 12 (1978) 211-24.

⁵⁵ *Communicationes* 10 (1978) 209-72.

- 3) Arbitration: norms 377-379
- d. Criminal judgments: norms 380-396
- e. Administrative procedures: norms 397-449
 - 1) Administrative procedure in general: norms 397-435
 - 2) Removal and transfer of pastors: norms 436-449

*Schema on Religious Law*⁵⁶

In the spring of 1977 a schema of 126 norms on religious law was issued for consultation purposes by the Code Commission. Since the procedural-law schema had been sent out earlier in the year, this marked the first time that two schemata had been distributed for consultation at approximately the same time. The covering letter, dated February 2, 1977, noted that evaluations of the schema were to be transmitted to the Holy See by the end of the year. Thus far only one official report has indicated how the schema has been reworked in light of the evaluations. This report deals not with specific norms but with general questions such as the title and structure of the schema.⁵⁷

The schema is divided into two general sections. The first part contains all those norms deemed necessary or useful for the life of all religious institutes. It prescind from the differences between institutes in the strict sense (three vows and obligation of common life), institutes of associated apostolic life (known in the Code as societies of common life without vows), and secular institutes. This part deals with the constitution of such institutes, their dependence on ecclesiastical authority, their government, the administration of goods, admission into the institute,

⁵⁶ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum de institutis vitae consecratae per professionem consiliorum evangelicorum* (Typis Polyglottis Vaticanis, 1977); Code, canons 487-681. For the official reports on the work of the study group on religious law, see *Communicationes* 2 (1970) 168-81; 5 (1973) 47-69; 6 (1974) 72-93; 7 (1975) 63-92. For commentaries see J. Beyer, "De institutorum vitae consecratae novo iure," *Periodica* 63 (1974) 145-68, 179-222; 64 (1975) 363-91, 533-98; 65 (1976) 13-57, 243-96; M. Boucher, "Un nouveau droit proposé aux instituts religieux," *Studia canonica* 11 (1977) 351-88; J. Gallen, "New Canon Law for Religious in Detail," *Review for Religious* 35 (1976) 232-50; id., "Norms Omitted in the New Canon Law for Religious," *ibid.* 597-603; id., "Function of the Evangelical Counsels," *ibid.* 735-39; id., "The Proposed Spiritual Canons," 37 (1978) 294-302; id., "The Proposed Canons Explained I," *ibid.* 38 (1979) 414-35; A. Gutierrez, "Schema canonum de institutis vitae consecratae per professionem consiliorum evangelicorum," *Commentarium pro religiosis et missionariis* 58 (1977) 3-34; id., "Schema novi iuris pro institutis perfectionis christianae," *ibid.* 193-209; F. Morrisey, "The Spirit of the Proposed New Law for Institutes of Consecrated Life," *Studia canonica* 9 (1975) 77-94; J. Murphy O'Connor, "The New Law versus the Gospel: Some Considerations," *Review for Religious* 34 (1975) 873-87; K. O'Rourke, "The New Law for Religious: Principles, Context, Evaluation," *ibid.* 34 (1975) 23-49; C. Regan *et al.*, "The Schema of Canons on Institutes of Life Consecrated by Profession of the Evangelical Counsels," *PCLSA* 39 (1977) 98-111; M. Said, "The Present State of the Reform of the Code concerning the Section 'De Institutis Perfectionis,'" *Studia canonica* 8 (1974) 213-36.

⁵⁷ *Communicationes* 10 (1978) 160-79.

obligations of institutes and their members, and separation from the institute. The second part clarifies certain characteristic and specific elements proper to each of the above-mentioned three major forms of consecrated life approved in the Church today.

The guidelines for revision of this section of the law are worthy of comment in terms of five key principles.⁵⁸ The *principle of spirituality* means that the norms are to be so expressed as to foster the work of divine grace in the lives of those consecrated to the Lord. Hence the schema embodies scriptural and theological elements and also contains numerous pastoral norms of an exhortatory character. The *principle of individuality* reflects the law's concern to facilitate each institute's knowledge of its original inspiration, distinctive patrimony, and role within the Church's mission. The *principle of subsidiarity* implies that the constitutive principles of consecrated life should be precisely and clearly stated. However, other norms should be flexible enough to be easily adaptable to different spatiotemporal conditions. This is a specific application of a more basic value articulated among the principles for the revision of the Code approved by the 1967 Synod. The *principle of shared responsibility* calls for a more democratic exercise of power within religious institutes. Hence the norms on their internal government should ensure the widest possible participation by members of the institutes. The *principle of equality* requires the elimination of any discrimination between various types of institutes of perfection, particularly between male and female institutes and between individual male and female religious. This should enable the various institutes to find their proper identity, rediscover the spirit of their founder, and formulate legislation appropriate to their needs.

Finally, the new legislation for religious reflects certain characteristics. It is significantly influenced by the divine vocation of each institute within the Church's life and mission. There is a profound respect for the internal governmental autonomy of each institute, which will facilitate the articulation of appropriate particular law enabling it to remain faithful to its charism and original inspiration. The successful implementation of the schema presupposes a marked degree of maturity and responsibility on the part of all members of the religious institutes.⁵⁹

*Schema on General Norms*⁶⁰

In January 1978 the five remaining schemata previously not available for evaluation were sent to those involved in the official consultative

⁵⁸ This terminology is utilized in the O'Rourke article mentioned in n. 56 above.

⁵⁹ For a detailed examination of particular changes from the Code, see the articles referred to in n. 56 above.

⁶⁰ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum Libri I de normis generalibus* (Typis Polyglottis Vaticanis, 1977); Code, canons 1-86, 103-6, 145-

process. A brief consideration of each completes the expository part of this article. The evaluations of these schemata were to be forwarded to the Holy See by the end of October 1978. At the time of the writing of this article (April 1979), it is still much too early to indicate the response of the various Code Commission study groups to the different evaluations.

The schema on general norms largely deals with technical legal matters, probably of minimal theological interest. Hence a few observations on the schema's organizational changes would seem to suffice. The various headings of the Code are restated; yet there are several new institutes as well. Among the headings of the Code that are maintained are the following: the general introductory norms (1-7), the sources of law (8-29), certain parts of title 3 on singular administrative acts, i.e., chapter 3 on rescripts (56-74), chapter 4 on privileges (75-84), and chapter 5 on dispensations (85-93), and finally the computation of time (176-179). Among the new headings in the schema are the following: general decrees and precepts and instructions (norms 30-35); two other parts of title 3 on singular administrative acts, i.e., chapter 1 on general norms governing administrative acts (36-45) and chapter 2 on singular decrees and precepts (46-55); statutes and orders (94-95); the exercise of the power of governance (96-111); juridical acts (112-117); ecclesiastical office (118-172); prescription (173-175); precedence (180).

What is particularly noteworthy organizationally is that several institutes formerly dealt with in Book II of the Code under the general rubric *De clericis* are situated now in the schema on general norms. This is because they deal with matters relevant to all the books of the Code and affect all members of the Church and not simply clerics. This is true for the norms on the exercise of the power of governance, since in some instances laymen exercise such power now, contrary to its restriction to clerics in the Code (canon 118).⁶¹ It is also true for the norms on

210. The section in the Code on general norms encompasses only canons 1-86; however, material dealt with in the other canons (Book II of the Code) is also included in the schema. For official reports on the work of the study group on general norms, see *Communicationes* 3 (1971) 81-94; Green, "Revision of the Code" 359-65, 370-72. For a commentary on certain aspects of the schema prior to its publication, see F. Urrutia, "Adnotationes quaedam ad propositam reformationem libri primi Codicis iuris canonici," *Periodica* 64 (1975) 633-60. There has been only one published article evaluating the schema after its appearance: K. Lüdicke, "Zum Entwurf der Codex-Reform Kommission für die Normen über des kirchlichen Verwaltungshandeln," *Archiv für katholisches Kirchenrecht* 147 (1978) 124-32. However, the CLSA Task Force on the Revision of the Code endorsed three critiques of the schema: an overview of the whole schema by Francis G. Morrissey, a commentary on the section on dispensations by Richard R. Ryan, and reflections on the section on the exercise of power of governance by Robert T. Kennedy. (These and other CLSA evaluations of the following schemata may be obtained by contacting Rev. Donald E. Heintschel, Canon Law Society of America, 1933 Spielbusch Avenue, Toledo, Ohio 43624.)

⁶¹ One notable postconciliar illustration of lay exercise of ecclesiastical jurisdiction is the possibility of a layman's participating in a collegiate tribunal in marriage cases along with two clerics. See article V,1 of *Causas matrimoniales* in AAS 62 (1970) 442.

ecclesiastical office. The strict definition of ecclesiastical office in the Code restricted it to clerics (canon 145), but it may now be held by the nonordained in light of the conciliar redefinition of the term.⁶² Furthermore, the schema logically incorporates norms on general principles governing juridical acts, whereas the Code had situated them in the introductory canons of Book II *De personis* (canons 102-105).

A key concern of the 1967 Synod was the more precise differentiation of various functions of ecclesiastical governance (legislative, administrative, and judicial) and the individuals and groups exercising them. Accordingly an effort is made to clarify the meaning of these different functions in the section on the exercise of the power of governance, even though the majority of the norms deal with administrative power. Furthermore, there is a special effort to distinguish legislative acts, which pertain to the section on the sources of law (title 1), and administrative acts, which are discussed in great detail in title 3.

*Schema on the People of God*⁶³

Besides the *Lex fundamentalis* and the revised sacramental law, the most significant text from a theological standpoint is the recently issued schema on the People of God. The schema represents the combined efforts of four different study groups—a factor probably accounting for certain terminological and conceptual inconsistencies.⁶⁴ The document attempts to articulate the basic lines of the Church's organization for mission. It purports to rework Book II of the Code in light of conciliar insights and postconciliar legal developments. It is the schema most comparable to the *Lex fundamentalis*, both in terms of the issues it

⁶² In *Presbyterorum ordinis* 20, ecclesiastical office is defined in a way comparable to the broad understanding of the term in the Code: "... quodlibet munus stabiliter collatum in finem spiritualem exercendum."

⁶³ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum Libri II de populo Dei* (Typis Polyglottis Vaticanis, 1977); Code, canons 87-102, 107-44, 211-725, 1352-71.

⁶⁴ The norms on physical persons (norms 2-15) and juridical persons (70-80) were prepared by the study group on physical and juridical persons. For an official report on the work of this group, see *Communicationes* 6 (1974) 93-104; T. Green, "Revision of the Code" 365-72. See also H. Müller, "Ius condendum de personis in genere," *Periodica* 68 (1979) 119-37. The norms on the basic obligations and rights of believers (norms 16-38), associations of the Christian faithful (39-69), and the Christian laity (523-33) were prepared by the study group on the laity and associations of the faithful: *Communicationes* 2 (1970) 89-98; Green, "Revision of the Code" 399-404. The norms on the formation of clerics (norms 81-119) were prepared by the study group on the magisterium: *Communicationes* 8 (1976) 108-66; Green, "Revision of the Code" 413-20. The rest of the norms of the schema were prepared by the study group on the sacred hierarchy: *Communicationes* 3 (1971) 187-97 (clerics in general); 4 (1972) 40-50; 5 (1973) 216-35 (clerics in particular); 7 (1975) 161-72 (coadjutor and auxiliary bishops); 8 (1976) 23-31 (pastors); Green, "Revision of the Code" 372-89. For a commentary on the last section on pastors, see G. Lobina, "Parrocchia e parroco nei nuovi orientamenti giuridici postconciliari," *Apollinaris* 49 (1976) 418-49.

considers and the theological-canonical problems it raises. The following comments clarify the main features of its organization and some key points of differentiation from the Code.⁶⁵

The schema is divided into two main parts, an initial part dealing with persons in general in the Church (norms 1-80) and a second, more substantial part treating different groups within the Church and different levels of ecclesiastical organization (norms 81-533).

The first part of the schema is subdivided in turn into two titles, one on the Christian faithful (physical persons—norms 1-69) and the other on juridical persons (called moral persons in the Code—norms 70-80). The first title contains significant new material when contrasted with the Code. Its second chapter considers in detail the basic obligations and rights of all believers, prescinding from their specific situation in the Church and their ordained or nonordained status (norms 16-38). This significant issue was also considered in the *Lex fundamentalis* in some detail. It will be commented upon more extensively in the second part of this article; for it is one of the most problematic areas of the *Lex* and the schema, with broad ramifications throughout the schema. The material on associations of the faithful has been significantly reworked in contrast to the Code, in order to implement more realistically the exercise of the basic right of association (norms 39-69).

The second part of the schema is divided into four main sections: on clerics (norms 81-154), the Church's hierarchical organization (155-397), religious (398-522),⁶⁶ and laity (523-533). Particularly noteworthy organizationally are the following points. The material on the formation of clerics, formerly dealt with in Book III of the Code on the magisterium, is incorporated in this schema (norms 82-119) prior to the discussion of the incardination of clerics. Several items on the Church's hierarchical organization treated in the Code are not specified in the schema. For example, the canons on the pope and the ecumenical council are not

⁶⁵ The CLSA Task Force has prepared two critiques of the schema, the first completed and sent to the American bishops in July 1978, the second completed and sent to the bishops in January 1979. Both critiques are available from the office of the CLSA executive coordinator mentioned in n. 60 above. The first critique is also available from USCC Publications Office, 1312 Massachusetts Avenue, NW, Washington, D.C. 20005. The first critique is a general overview of the whole schema, more expository than critical in character, yet raising some key problems in the schema. The second critique offers a more profound theological-canonical analysis of certain key problems, e.g., obligations and rights of believers, the overly hierarchical ecclesiology of the schema, the intermediate level of Church government, and particularly the status of ecclesiastical regions and the relationship between particular councils and episcopal conferences. It also offers alternative formulations of norms in light of the above analysis.

⁶⁶ The schema simply makes a reference to the material on religious, which was already forwarded to the bishops and others for evaluation as a separate schema. However, the text of such norms is not included in the present schema. See n. 56 above.

included; and the schema implies that these issues transcend the Latin Church and hence should not be incorporated in a Latin Code. The schema refers to the *Lex* in this regard and also states that the *Lex* will treat the critical issue of the relationship between the pope and the college of bishops. Interestingly enough, there are no norms on the various dicasteries of the Roman Curia; the schema cryptically states that these norms will be available later. These various lacunae make it somewhat difficult to assess the schema properly.

The schema treats ecclesiastical regions and provinces in greater detail than the Code (norms 185–188), and this is likewise true for episcopal conferences (199–210). In dealing with the structure of the particular churches, the schema, unlike the Code, differentiates between norms affecting bishops in general (225–232) and diocesan bishops (233–260). The rest of the norms on the particular churches (261–397) follow the basic structure of the Code; yet provision is made for certain new, conciliar-inspired institutes to be mentioned later. Finally, the schema attempts to remedy the inadequacies of the Code (canons 682–683) by providing for a more detailed treatment of the obligations and rights of the laity (norms 523–530) and their associations (norms 531–533).

Besides the above-mentioned organizational changes, the following points seem noteworthy. Despite sharp criticism to be mentioned later, the articulation of various basic obligations and rights of believers is a commendable effort to concretize a major concern of the 1967 Synod—the more adequate protection of the subjective rights of the faithful. The increasingly significant phenomenon of associations of believers is discussed in some detail. Such associations are differentiated no longer in terms of their finality, as in the Code, but in terms of their relationship to Church authority (public or private).

The schema provides for the new institute of the Synod of Bishops in accord with the *motu proprio Apostolica sollicitudo*⁶⁷ and somewhat updates the norms on papal legates in light of the *motu proprio Sollicitudo omnium ecclesiarum*.⁶⁸

The schema stresses the continued existence of particular councils (norms 189–198), even though some advocated abolishing them in light of the increased competence of episcopal conferences. The study group's stress on the value of nonepiscopal participation in such councils (called plenary and provincial councils in the Code) seems noteworthy, even though there are problems in the concrete structuring of such institutes.

The schema broadens the selection-of-bishops process, particularly as regards episcopal input, although questions are raised about its adequacy vis-à-vis the participation of the rest of the People of God (norm 228).

⁶⁷ AAS 57 (1965) 775–80.

⁶⁸ AAS 61 (1969) 473–84.

The schema strives to integrate certain provisions of the Code along with relevant sections of *Christus Dominus* 11-21 in dealing with the distinctive rights and obligations of the episcopal office. There is an effort to distinguish more precisely the bishop's legislative, administrative, and judicial responsibilities and those officials aiding him in fulfilling them. The treatment of the diocesan curia is comparable to the Code except for the introduction of three new juridical figures: the moderator of the curia to co-ordinate diocesan administrative activities (norm 286), the episcopal vicar (treated with the vicar general in norms 288-294), and the diocesan business manager (307). The diocesan synod (270-280) is fundamentally the same as in the Code; however, provision is made for more notable nonclerical participation.

One of the most noteworthy postconciliar institutes, the council (senate) of priests,⁶⁹ is discussed at some length in norms 309-315. A new body, the college of consultors, to be chosen from the members of the council of priests, fulfils some but not all of the functions traditionally associated with the diocesan consultors. While the above-mentioned institutes are required, another conciliar-inspired body, the diocesan pastoral council,⁷⁰ is only recommended (norms 326-329).

The section on parishes and pastors (norms 349-376) is somewhat revised in contrast to the Code. The role of pastor is refined in light of *Christus Dominus* 30-31. There is an openness to team ministry and to nonpriests fulfilling significant parish leadership functions, despite an emphasis on a priest supervising the exercise of such pastoral care. Limited tenure for pastors is possible with episcopal-conference authorization, and provision is also made for more extensive consultation on the appointment of a pastor than is true in the Code.

*Schema on the Church's Teaching Mission*⁷¹

The 85 norms of this schema replace the canons of the Code on the magisterium, except for those on formation and education for ministry dealt with in the preceding schema. Many norms are new and reflect the influence of conciliar texts such as *Ad gentes*, *Gravissimum educationis*, and *Inter mirifica*. The schema contains an introductory section and five titles on various dimensions of the Church's teaching mission; some brief comments on each seem appropriate.

⁶⁹ *Presbyterorum ordinis* 7; *Ecclesiae sanctae* I, 15.

⁷⁰ *Christus Dominus* 27; *Ecclesiae sanctae* I, 16.

⁷¹ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum Libri III de ecclesiae munere docendi* (Typis Polyglottis Vaticanis, 1977); Code, canons 1322-51, 1372-1408. For the official report of the study group on the magisterium, see n. 64 above. James A. Coriden has prepared an evaluation of this schema for the CLSA Task Force; a copy is available at the office of the executive coordinator (see n. 60 above).

The introductory section (norms 1-5) offers some general principles on the Church's teaching mission; yet the *Praenotanda* indicate that this section must be interpreted in light of the treatment of similar issues in the *Lex fundamentalis*.⁷²

The reworked norms on heresy, schism, and apostasy state that bad faith is presupposed if such ecclesiastical offenses are to be verified in practice. Of ecumenical significance is a new norm on the promotion and direction of the ecumenical movement.

Title 1 on the ministry of the word (norms 7-32) is divided into chapters on preaching (11-24) and on catechetics (25-32). Several introductory norms (7-11) deal with those who are responsible for proclaiming the word of God, the means whereby they fulfil this task, and the need for a canonical mission. The section on preaching is somewhat open to lay preaching. However, it prohibits laypeople from preaching the homily at the Eucharist in its restating of conciliar and postconciliar norms on the homily. The norms on catechetics describe the diversity of catechetical responsibilities more adequately than the Code. Provisions are made for episcopal-conference catechetical competence as well as for more significant lay catechetical involvement.

Title 2 on the Church's missionary activity (norms 33-41) notably expands the treatment of an issue hardly discussed in the Code. It clarifies the appropriate responsibilities of those called to direct and promote the Church's missionary enterprise, especially the college of bishops. The schema specifies the meaning of missionary action, the concept of the missionary, and the notion of the catechumenate, including admission into this institute.

Title 3 on Christian education (norms 42-71) is the most significant section of the schema. It is the part of the Code which is most notably reworked, particularly in light of *Gravissimum educationis*. Several introductory norms (norms 43-47) affirm the basic Christian right to education for human and spiritual maturity, the special educational role of parents, and the fact that such education should be viewed as a basic Christian priority. The first chapter, on schools (norms 48-57), stresses parental freedom in the choice of schools. It generally reflects a more nuanced view of the Catholic school situation than the Code. It emphasizes the respective leadership roles of the episcopal conferences and individual bishops in providing a comprehensive program for the formation and education of Catholic youth. The second chapter, on institutions of higher learning (norms 58-71), is much more detailed than the Code, which hardly deals with this significant cluster of issues. Particular emphasis is placed on the supervisory role of Church authorities in

⁷² Norms 54-61 of the *Textus emendatus* are relevant in this connection.

different aspects of the educational enterprise, e.g., the authorization whereby a university or college bears the name "Catholic," the overseeing of the teaching of Catholic doctrine in such institutions, the granting of a canonical mission for the teaching of theology. Several norms deal with the erection, purposes, and governance of universities and faculties of ecclesiastical studies.

Title 4 somewhat revises the Code on the prior censorship of books (norms 72-84), yet it is more generally entitled "the means of social communication and particularly books." Its introductory norm specifies the varied responsibilities of different members of the Church in using the media properly so as to maintain the integrity of the faith. Most of the remaining norms deal with the vigilance tasks of Church authorities relative to the censorship of books, largely based on the 1975 decree *Ecclesiae pastorum* of the Sacred Congregation for the Doctrine of the Faith.⁷³

Title 5 restates the Code on the profession of faith (norm 85).

*Schema on Sacred Times and Places/Divine Worship*⁷⁴

This schema of 72 norms should be assessed in connection with the sacramental-law schema considered earlier. It is viewed as the second part of Book IV of the revised law, which would govern all aspects of the Church's cultic mission. It integrates material from two sections of Book III of the Code, i.e., part 2 on sacred times and places and part 3 on divine worship.

The Code is simplified both by a reduction of the number of canons and by the omission of certain titles, e.g., title 18 on sacred furnishings (canons 1296-1306). Primarily liturgical norms in the Code are generally omitted in the schema, which maintains them only if they are principally disciplinary in focus and are needed to foster the Church's external order. The schema omits norms in the Code that seem more pertinent to particular law. This is also true for certain minute matters that hardly seem proper issues for universal law and can be adequately addressed by other types of regulations.

The first and major section of the schema treats various issues involving sacred places (norms 1-40). Besides clarifying certain terms, the schema

⁷³ AAS 67 (1975) 281-84.

⁷⁴ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum Libri IV de ecclesiae munere sanctificandi Pars II: De locis et temporibus sacris deque cultu divino* (Typis Polyglottis Vaticanis, 1977); Code, canons 1154-1264, 1276-89, 1296-1321. For an official report of the appropriate Commission study group, see *Communicationes* 4 (1972) 160-68; Green, "Revision of the Code" 404-13. Frederick R. McManus has prepared an especially thorough evaluation of this schema for the CLSA Task Force; a copy is available at the office of the executive coordinator (see n. 60 above).

simplifies the formerly complex norms on Christian burial. This corresponds better to contemporary circumstances and offers more latitude for particular legislation. The schema briefly restates the current discipline on cremation.⁷⁵ It places primary emphasis on the Church's duty to provide the service of Christian burial rather than focus on stipendiary considerations, as was somewhat characteristic of the Code. The schema omits the Code's detailed listing of those deprived of Christian burial. It simply states that believers are to be given Christian burial unless this would cause public scandal. Even in such circumstances the individual is to be given Christian burial if there were any signs of repentance.

The second and briefest section of the schema considers various issues related to sacred times (norms 41-49). There are several innovations here either because of recent Holy See declarations or because of the need to adapt to changing customs and differing social contexts. Holydays of obligation are reduced to Sundays, Christmas, and a Marian feast to be determined by the episcopal conferences. The conferences may likewise add other days of precept. The Code's somewhat casuistical understanding of servile work is transcended by the schema's stress on avoidance of any type of involvement which would preclude divine worship, the enjoyment of the Lord's day, and proper relaxation of mind and body. The episcopal conferences are generally competent to determine the days and format of penitential discipline, which is eminently advisable in Lent, especially on Fridays and particularly on Good Friday. Fasting is mentioned as an appropriate penitential practice; however, there is no explicit reference to abstinence.

The third and final section of the schema deals with various issues of divine worship (norms 50-72). A new norm expresses succinctly the differing liturgical competencies of the Holy See, the episcopal conferences, and individual bishops in light of conciliar and postconciliar developments. The *Praenotanda* state that overly rigid norms on *communicatio in sacris* are to be avoided. The first part of the revised Book IV contains norms on *communicatio* as regards the various sacraments. This section of the schema generically authorizes Catholic participation in the worship of other communions in light of the directives of episcopal conferences and individual bishops. It also authorizes non-Catholic use of Catholic facilities in accordance with episcopal-conference norms. Finally, the schema simplifies the norms on cult of the saints, relics, and images and stresses the bishop's responsibility to ensure the integrity of devotional practices and proper preservation of images and relics. The norms on vows and oaths are changed only slightly.

⁷⁵ Sacred Congregation for the Doctrine of the Faith, Instruction on cremation, July 5, 1963, AAS 56 (1964) 822-23.

*Schema on Temporalities*⁷⁶

Like several other documents previously mentioned, this schema of 57 norms probably is of little theological interest despite its profound legal-economic significance for the life of the particular churches. Hence a few comments on its structure and a couple of significant developments seem sufficient.

The schema reworks two sections of Book III of the Code, one dealing with the traditional institute of ecclesiastical benefices and the other concerning temporal goods. It is divided into five general sections: general principles (norms 1-12), the subject of ownership (13-17), the administration of temporal goods (18-34), the acquisition and alienation of temporal goods and especially contracts (35-44), and pious wills and foundations (45-57).

A particularly significant factor underlying the new schema is a recognition of the obsolescence of the benefice system throughout most of the Church and the corresponding need to provide for an orderly transition to a new system of support of ecclesiastical officeholders.⁷⁷ In line with the emphasis of Vatican II, the new law stresses the ecclesiastical-office aspect of the benefice institute, with the income of the benefice and the capital itself being transferred to a new diocesan institute for the support of the clergy (*massa communis*).

The Code Commission study group specifies as a primary finality of the schema the adaptation of the Code to the spirit and specific mandates of Vatican II.⁷⁸ There is likewise an effort to respond more fully to the principles for revision of the Code approved by the 1967 Synod, particularly the need to implement more seriously the principle of subsidiarity. This is especially true in this schema, given diverse civil-law statutes and economic variables operative throughout the Church, which greatly affect the regulations on temporal goods. An example of this is the increased competence of episcopal conferences in the alienation of the goods of ecclesiastical juridical persons.

⁷⁶ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum Libri V de iure patrimoniali ecclesiae* (Typis Polyglottis Vaticanis, 1977); Code, canons 1409-1551. For an official report of the work of the study group on temporalities, see *Communicationes* 5 (1973) 94-103; Green, "Revision of the Code" 420-28. Ladislav M. Orsy, S.J., has prepared an evaluation of the schema for the CLSA Task Force; a copy is available at the office of the executive coordinator (see n. 60 above).

⁷⁷ Canon 1409 describes the benefice as follows: "Beneficium ecclesiasticum est ens iuridicum a competente ecclesiastica auctoritate in perpetuum constitutum seu erectum, constans officio sacro et iure percipiendi redditus ex dote officio adnexos."

⁷⁸ Specific reference is made to *Presbyterorum ordinis* 17, 20, 21; *Apostolicam actuositatem* 10; and *Christus Dominus* 28.

AN EVALUATION OF THE WORK OF THE CODE COMMISSION: SIGNIFICANT THEMES

After considering some noteworthy aspects of the Code revision effort, the author approaches the more difficult task of clarifying certain significant themes in the evaluations of the schemata. This is doubly difficult because of the complex issues treated in the schemata and because of the varied approaches of the different evaluations. At the risk of a certain artificiality, the following reflections are organized according to certain general categories for the sake of intelligibility.

There is also a risk of not presenting a properly nuanced appraisal of an undertaking as complex as the revision of the Code. The Code Commission study groups have conscientiously and diligently attempted to revise the Code in light of Vatican II and contemporary legal-pastoral developments. There are numerous positive features in the schemata, some of which are noted in the following reflections. However, the following comments are largely critical in character. This reflects the fact that the evaluations generally take for granted the schemata's positive features. They focus attention on problem areas needing reconsideration if the revision process is to meet legitimate expectations for a reformed law reflecting the best insights of our theological-legal tradition.

Furthermore, the different evaluations frequently vary in the seriousness of their criticism of the different schemata. Generally speaking, the CLSA evaluations are notably more critical than those of canonists in the British Isles and in Canada. For several years the author has chaired the CLSA Task Force on the Revision of the Code. Hence the following comments are more critical of the revision process than might be true for a canonist operating from a somewhat different perspective. Furthermore, the insights of canonists in other professional canonical societies are communicated through the prism of the author's reading of their works. It is hoped, however, that the nuances of different assessments of the schemata are reflected fairly, particularly when there is a noteworthy difference of opinion on an issue.⁷⁹

Like many of the evaluations, the following critical reflections are organized according to *substantive* and *methodological* perspectives. The more detailed substantive reflections are structured largely according to the principles of institutional reform articulated by the Austrian pastoral theologian Ferdinand Klostermann. However, they are modified somewhat according to certain critical principles of the Spanish canonist Julio Manzanares in his reflections on the first decade of postconciliar legal

⁷⁹ It is impossible here to explore the different types of approaches of canonists to the complex task of legal reform. For an insightful consideration of such different approaches, see Bassett, "Canon Law and Reform" 206-10.

reform.⁸⁰ These substantive reflections are followed by some brief methodological reflections on the Code revision process.

Substantive Reflections

The following substantive reflections are organized according to the following general headings: (1) the principle of historicity, (2) the pneumatic-charismatic principle, (3) the principle of fundamental Christian equality and coresponsibility, (4) the principle of collegiality, (5) the principle of dialogue, (6) the principle of subsidiarity, and (7) various theological issues not easily discussed in terms of the above-mentioned principles.⁸¹ A brief explanation of each principle is followed by an exploration of its implications for an analysis of the evaluations of the schemata. As noted earlier, the focus is almost entirely on evaluations of the schemata by the CLSA and professional canonical societies in the English-speaking world and in Canada. The treatment of the various principles varies in detail, depending on how extensively such evaluations examine the various issues.

Finally, it should be noted that the various principles tend to overlap occasionally, since in numerous instances they are closely related. Furthermore, many of the specific theological-legal problems discussed normally raise various questions, and hence it is impossible rigidly to classify them under one heading exclusively.

Principle of Historicity⁸²

Lumen gentium 8 emphasizes the union of divine and human elements in the Church. Increased attention to its human element implies a deeper awareness of the need for ongoing institutional reform. This is because change affects individual believers and the world in which the Church's mission is to be realized. The principle of historicity means the perennial call to reform of a pilgrim community moving through history, yet never fully adequately mediating God's salvific presence in different human settings.⁸³ Accordingly the Church cannot be viewed as structurally static and fixed but must be characterized by a certain dynamism and openness to institutional development in the Spirit.

The issues raised in connection with this general rubric are closely related to the methodological concerns to be considered later. However, a few observations are in order here. The CLSA critiques of the *Lex* and the various evaluations of the *People of God schema* strongly emphasize

⁸⁰ See n. 7 above.

⁸¹ There is no special significance in the ordering of the various principles. The author largely follows Klostermann, modifying his approach where necessary for clarity's sake.

⁸² Klostermann, "Reform" 143-45; Bassett, "Canon Law and Reform" 198-200.

⁸³ *Gaudium et spes* 44; *Unitatis redintegratio* 6.

that the Church is presently experiencing significant institutional development that is far from over.⁸⁴ This holds true for conciliar-inspired canonical institutes such as the synod of bishops, episcopal conferences, councils of priests, and diocesan pastoral councils. It is also applicable to canonical institutes such as assemblies of religious men and women, associations of priests, and local or national associations of the laity. All such bodies are still in the process of developing and have evolved differently throughout the Church. This makes legal descriptions of such entities risky, both as regards such entities in themselves and even more so as regards their interrelationships. This is particularly a concern regarding the institutes of the synod of bishops (norms 156-163) and the council of priests (norms 309-315), where the *People of God schema* expresses the *ius vigens* but notably restricts future possibilities. It is also a problem regarding the relationship of the episcopal conference and so-called particular councils (norms 189-198) and the interaction of the council of priests (norms 199-210) and the diocesan pastoral council (norms 326-329).⁸⁵

A healthy approach to legal development in the Church today involves a respect for the fluidity of the above-mentioned legal-pastoral developments. Premature crystallization of the present legal form of evolving institutions might well frustrate significant future growth. Admittedly, every community requires a certain measure of legal security for its proper functioning. However, we must avoid a false security founded upon an unwise crystallization of institutional forms perhaps adequate today but possibly counterproductive tomorrow. In 1966 the *motu proprio Ecclesiae sanctae* stressed the need for an ongoing learning process relative to the pastoral efficacy of various laws. This caution still seems appropriate even after a decade and a half.⁸⁶

Another related issue, raised especially in connection with the *People of God schema*, is the danger that the revised law may be prematurely obsolete because of developing pastoral realities. While norm 529 of the schema is somewhat open to lay ministries, there is a danger that its

⁸⁴ LaDue, "Revised Schema" (n. 32 above) 5; T. Green *et al.*, "Initial Report of CLSA Task Force Committee on the Schema canonum Libri II de populo Dei" (unpublished) 13; *idem*, "Second Report of CLSA Task Force Committee on the Schema canonum Libri II de populo Dei" (unpublished) 29; Bassett, "Canon Law and Reform" 204.

⁸⁵ Green, "Initial Report" (n. 84 above) 24 and 36.

⁸⁶ See Litt. Ap. *Ecclesiae sanctae*: "Quas cum attento animo consideraverimus, censemus tempus nunc esse commemoratas normas edi. Attamen, *cum de materia agatur ad disciplinam pertinente, de qua rerum experientia plura adhuc suggerere potest* cumque ceterum propria Commissio operam det Codici Iuris Canonici recognoscendo atque emendando, in quo universae Ecclesiae leges ratione magis congruente, accommodata atque definita simul ordinabuntur, Nos sapienter prudenterque facturos esse putamus, si hasce normas ad experimentum ediderimus" (AAS 58 [1966] 757).

provisions will seem somewhat dated and pastorally unresponsive, given contemporary ministerial developments. This is especially true for those involving women in significant pastoral leadership roles. The Canadian Report on the schema stresses the importance of ample episcopal-conference discretion in responding to shifting pastoral imperatives. This is especially true for the so-called "newer churches" of the Third World, which would be needlessly burdened in confronting their own mission exigencies by the schema's overly detailed organizational requirements.⁸⁷

Finally, this concern to avoid prematurely canonizing present discipline without regard for future developments was also expressed in the evaluations of the *sacramental law schema*. The Code Commission study groups diligently attempted to integrate post-Code legal developments fairly carefully into the schema. Frequently, however, there was a tendency to canonize the *ius vigens* without sufficient regard for contemporary theological-pastoral developments, e.g., the norms on Eucharistic sharing (norm 2) and on general absolution (norms 131-134). A principal CLSA objection to the schema was its tendency to legislate answers to widely controverted theological, pastoral, and canonical questions not definitively resolved by the magisterium. Such an approach is detrimental to the Church's life and mission, since it makes progress in those areas less likely. This significant theological issue will be discussed briefly later.⁸⁸

Pneumatic-Charismatic Principle⁸⁹

Conciliar and postconciliar documents increasingly stress the dignity of the human person. *Gaudium et spes*, *Dignitatis humanae*, and principles 6 and 7 guiding the revision of the Code emphasize that the

⁸⁷ Response of St. Paul University to the Pontifical Commission for the Revision of the Code of Canon Law on the Proposed Schema canonum Libri II de populo Dei (unpublished) 11 and 14.

⁸⁸ Green, "Marriage Law" (n. 44 above) 406-10; Green, "Sacraments Other Than Marriage" (n. 44 above) 324-27. In this connection the following general observation might be made relative to the whole revision process. Generally speaking, the commentators on the various schemata as well as the Code Commission officials take for granted that the appropriate model of law in the Church is that of a Code comparable to the 1917 Code, however significantly updated. While the CLSA from time to time has raised questions about the present process, the issue of whether the Code format is the most appropriate way of legislating in the Church today has received relatively little scholarly attention. A helpful examination of the broader issues involved in formulating a new Code in a time of significant cultural-institutional crisis is the article by Bassett noted earlier, "Canon Law and Reform," especially 203-6. For a more detailed examination of this problematic, see F. Finocchiaro, "La codificazione del diritto canonico e l'ora presente," *La Chiesa dopo il Concilio* 2/1 (Milan: Giuffrè, 1972) 647-67. See also F. Zanchini di Castiglionchio, "Codification and 'Aequitas canonica,'" *Concilium* 87 (1973) 143-52 (American edition).

⁸⁹ Klostermann, "Reform" 145-46; Manzanares, "Diéz años" 293-96 (dignidad de la persona y correlativa tutela de sus derechos); Thils, "Problèmes ecclésiologiques" 338-41.

protection of personal rights is a key postconciliar legal imperative.⁹⁰ The 1971 Synod forcefully calls for the consistent vindication of rights within the Church if the ecclesial proclamation of justice is to be credible.⁹¹

Another important conciliar development is the reaffirmation of the significant place of the Holy Spirit within the Church. He is its most important source of unity and growth in Christ, distributing His manifold gifts for the building up of the community. There are profound implications for legal revision and institutional reform in the conciliar rediscovery that all believers are endowed with the gifts of the Spirit and not simply those in positions of hierarchical authority.

In brief, the pneumatic-charismatic principle means that ecclesial structures must facilitate the development and exercise of the gifts of the Spirit. Church law should articulate clearly the fundamental rights of believers and adequately protect their exercise within the community. Subsequent comments indicate positive and negative features of the revision process in terms of these general concerns. The interrelationship between this principle and the next one on the fundamental equality of believers is apparent during this discussion. The operative concept of the relationship between ordained and nonordained members of the com-

⁹⁰ Principle 6 (De tutela iurium personarum) reads in part: "Quaestio eaque gravis in futuro Codice solvenda proponitur, videlicet, qua ratione iura personarum definienda tuendaque sint. Sane potestas una est eaque residet in Superiore sive Supremo sive inferiore, nempe in Romano Pontifice et in Episcopis diocesanis in respectivo ambitu competentiae. Quod unicuique, pro communitatis sibi assignatae servitio tota competat, unitatem firmat potestatis, eamque pro pastoralis cura subditorum admodum conferre nemo dubitabit. Verum tamen usus huius potestatis in Ecclesia arbitrarius esse non potest, idque iure naturali prohibente atque iure divino positivo et ipso iure ecclesiastico. Unicuique christifidelium iura agnoscenda ac tuenda sunt, et quae ex illis congruenter derivantur ob insitam sociale conditionem quam in Ecclesia acquirunt et possident."

Principle 7 (De ordinanda procedura ad tuenda iura subjectiva) reads in part: "Neque id sufficit ut tutela iurium in iure nostro convenienter vigeat. Agnoscenda enim sunt iura subjectiva vera et propria sine quibus ordinatio iuridica societatis vix concipitur. Proclamari idcirco oportet in iure ecclesiastico principium tutelae iuridicae aequo modo applicari superioribus et subditis, ita ut quaelibet arbitrariorum suspicio in administratione ecclesiastica penitus evanescat. Haec finalitas obtineri solummodo potest mediantibus recursibus sapienter a iure dispositis ut ius suum quod quis ab inferiore instantia laesum reputet, in superiore restaurari efficaciter possit. Dum in Codice Iuris Canonici recursus et appellationes iudiciales sufficienter regulatae secundum iustitiae exigentias reputantur, e contra communis opinio canonistarum censet recursus administrativos non parum deficere in ecclesiastica praxi et administratione iustitiae. Exinde necessitas ubique persentitur ordinandi in Ecclesia tribunalia administrativa secundum gradus et species, ita ut defensio iurium in eisdem habeat propriam et canonicam proceduram quae apud auctoritates diversi gradus apte evolvatur."

The above quotations are taken from *Communicationes* 1 (1969) 82-83. See also Paul VI, "The Goals of Canon Law," *Origins* 6/38 (March 10, 1977) 602-5; F. Morrissey, "The Spirit of Canon Law/Teachings of Pope Paul VI," *Origins* 8/3 (June 8, 1978) 33, 35-40.

⁹¹ Declaratio *Convenientes ex universo*, AAS 63 (1971) 433.

munity plays a significant part in Church organization. In fact, this is probably the most fundamental theological issue underlying the whole legal revision process.

Positively speaking, the most noteworthy legal developments regarding the dignity and rights of believers are the expression of their basic rights and obligations in the *Lex*⁹² and in the *People of God schema* (norms 16-38) and the preparation of the *administrative procedure schema*. The specification of fundamental rights and obligations of all believers significantly improves the Code. This is especially true for the laity, to whom the Code explicitly devotes only one significant canon on basic rights.⁹³ The study group on the laity and associations of the faithful wisely views the recognition and protection of Christian rights as integral to a good legal order and an important way of assuring the vital ecclesial involvement of all believers.⁹⁴ The protection of believers against arbitrary administrative discretion, as envisioned by the *administrative procedure schema*, is another especially crucial service of a reformed legal order.

Certain other positive features of the schemata might be noted. There are certain constructive developments in the *penal law schema*: the reduced number of penalties, the practical elimination of reserved penalties, the view of penalties as a last resort when other pastoral-legal measures have failed, the abolition of particularly obnoxious penalties such as denial of Christian burial, the restriction of penalties to the external forum, and the fairly consistent stress of *ferendae sententiae* as opposed to *latae sententiae* penalties.⁹⁵

The norms on associations of the faithful in the *People of God schema* (norms 39-69) positively implement the fundamental right of association of all believers (31,1) and specifically of clerics (137). This institute transcends the Code's strictly lay perspective (canons 684-735) and seems to respond to the study group's concern to harmonize the institutional

⁹² The basic rights and obligations of believers are specified in norms 10-24 of the *Textus prior* and norms 10-25 of the *Textus emendatus*.

⁹³ Canon 682 reads thus: "Laici ius habent recipiendi a clero, ad normam ecclesiasticae disciplinae, spiritualia bona et potissimum adiumenta ad salutem necessaria." The still more basic canon 87 on membership in the Church might also be cited in this context: "Baptismate homo constituitur in Ecclesia Christi persona cum omnibus christianorum iuribus et officiis, nisi, ad iura quod attinet, obstat obex, ecclesiasticae communionis vinculum impediens, vel lata ab Ecclesia censura." It might also be observed that a properly nuanced view of the Code should note that many canons specify various clerical responsibilities. These ministerial imperatives could well be seen as implicit affirmations of lay rights, particularly but not exclusively in the sacramental arena.

⁹⁴ For a discussion of these concerns, see *Communicationes* 2 (1970) 89-93; Green, "Revision" (n. 2 above) 400-402.

⁹⁵ Green, "Penal Law" (n. 41 above) 255.

and charismatic principles in the life of the Church.⁹⁶

The contemporary concern to vindicate certain procedural rights of believers is reflected well in norms 82 and 338 of the *procedural law schema*. They would afford access to Church courts for all, including the nonbaptized, without former restrictions on non-Catholics and on spouses allegedly responsible for the nullity of their marriages.⁹⁷

Finally, the *schema on the Church's teaching mission* is commended for its recognition of the primacy of conscience in several norms⁹⁸ and its mentioning in other norms of the concepts of personal rights, freedom of choice, human development, and social responsibility.⁹⁹

Despite the above positive features, profound reservations have been expressed about the adequacy of the revision process regarding substantive and procedural rights. This is particularly true regarding the status of the nonordained, especially women, in the revised law. The following exposition is divided into substantive and procedural considerations, although there is a close relationship between the two.

Substantively speaking, a major criticism of the *Lex*¹⁰⁰ and the *People of God schema*¹⁰¹ is their unsatisfactory explicitation of the fundamental Christian rights and obligations. This is an extremely complex issue; yet only a few significant concerns can be expressed here. The above-mentioned documents overemphasize the obligations of believers to the

⁹⁶ Green, "Initial Report" (n. 84 above) 10-12. The Canadian report suggests various simplifications of the schema on pp. 22-25.

⁹⁷ For such restrictions see canons 1964 and 1971 of the Code, and articles 3 and 12 of the 1936 Instruction *Provida mater* of the Sacred Congregation for the Sacraments. See also Green, "Marriage Nullity Procedures" (n. 54 above) 366-67, 396-97.

⁹⁸ This seems evident in norms 2, 4, and 36.

⁹⁹ This seems evident in norms 21, 42, 43, 45, 47, 49, 58, 60, 62, and 71. These comments are made in J. Coriden, "Initial Report of Task Force Committee on the Draft of the Canons of Book Three: The Church's Teaching Mission" (unpublished) 2.

¹⁰⁰ LaDue, "Proposed Schema" 39-40. On p. 39 LaDue expresses the problem succinctly: "Although it is most heartening to see that the schema has included a presentation of the rights of all the faithful, it must be noted that nearly every declaration of a right in these canons is accompanied by a statement of qualifications and limitations of the right. It is true that legal and moral norms are not absolutes, but are restricted by competing values. The fact, however, that every legal right is limited does not mean that the limitation should be expressed as forcefully as the right itself in the very constitutional provision which declares the right. This tends to dim and weaken the right, rendering it ineffectual. An articulation of basic prerogatives such as this must be phrased more positively, and without all the qualifications and limitations now present in the text. Greater confidence should be manifested in the good will of the Church people through a stronger emphasis upon their rights of participation, and more confidence should also be shown in their capacity to exercise their rights wisely." Cf. id., "Revised Schema" 12.

¹⁰¹ Green, "Initial Report" 6-10 and "Second Report" 6-22 (n. 84 above). A significant portion of this latter report offers alternative formulations of basic Christian rights and obligations reflecting the concerns of the CLSA Task Force. Cf. Response of St. Paul University (n. 87 above) 20-22.

detriment of their rights. The formulation of rights is overly conditioned, so that their limitations appear essential to the rights themselves and not related to their responsible exercise. There seems to be a needless fear of abuse resulting in multiple qualifications of the rights, contrary to the clarity and simplicity of their affirmation in conciliar and other sources. The sacramental grounding of fundamental ecclesial rights and obligations is hardly as clear as it might be. Frequently the laity are viewed more as subjects of the hierarchy than as mature Christians with a sacramentally-based dignity and right to share in the Church's mission. The above documents fail to take seriously enough the legal significance of charisms. These ground the laity's right and duty to share in the Church's mission in their own distinctive fashion and not simply in a way derivative of the apostolate of the hierarchy.

Though the issue of the fundamental equality of believers is considered later, some of its implications for the ecclesial status of women might profitably be dealt with here. The question of the ecclesial position of women is actually part of the broader question of the legal status of the laity. However, several specific problems related to the legal situation of women in various schemata indicate their inferior legal status, even prescinding from the issue of ordination.¹⁰²

There are some positive developments relative to the status of women in the *People of God schema* when contrasted with the Code. Norm 17,1 prohibits sex discrimination regarding basic Christian rights and obligations. Norm 193 requires the presence of major superiors of communities of religious women in particular councils and provides for the facultative presence of other women. Norm 273 requires the presence of superiors of communities of women religious at diocesan synods and provides for the facultative presence of other women. However, there are still some notable problem areas. Norm 9 on domicile and norm 14 on rite reflect a somewhat sexist approach inadequately sensitive to fundamental conjugal equality. No provision is made for women religious at the synod of bishops, although members of clerical religious institutes may participate in such sessions. Apparently women may not be papal legates, although the basic duties of this office (norms 181-182) apparently require neither orders nor jurisdiction. Finally, although norms 529,2-3 provide for women's functioning *de facto* in various official ministries, norm 529,1 precludes their being formally installed in lay ministries.¹⁰³ Such ministerial discrimination is entirely unjustified, since these ministries are open to laymen and the issue of ordination is not relevant in this context.¹⁰⁴

¹⁰² R. Metz, "Le statut des laïcs, et celui des femmes en particulier, dans l'église aujourd'hui," *Studia canonica* 12 (1978) 125-44.

¹⁰³ The schema restates norm VII of the August 15, 1972 motu proprio of Paul VI *Ministeria quaedam*; see AAS 64 (1972) 529-34.

¹⁰⁴ Green, "Second Report" 28-29; also Response of St. Paul University 12, 18-19.

Another document reflecting a prejudicial stance regarding the ecclesial service of women is the *procedural law schema*. A major focus of the CLSA evaluation is the detrimental effect of the schema's promulgation on various groups in the Church. For example, increasing burdens will be placed on tribunal personnel because of certain legal changes. If the schema's proposed requirement of a mandatory appeal in marriage cases becomes law, this will require a significant commitment to the staffing of appellate tribunals. This burden has been eased during the past decade, since special American procedural norms (henceforth APN) have permitted the possible waiver of such an appeal in certain cases. In practice, this waiver of the appeal and the resolution of marriage cases with only one judgment for nullity have become standard operating procedures in most American tribunals. However, this particular issue is only a part of a much broader personnel problem facing American tribunals because of a notably increased case load during the past decade.¹⁰⁵ In light of this problem, the schema's restrictiveness relative to the tribunal service of women is incomprehensible.

What is the nature of the problem? The postconciliar period has seen a slow but perceptible increase in the options for *laymen* functioning in tribunals. This gradual clericalization of the decisional process in marriage cases is evident in the schema's provision for laymen serving as auditors, assessors, defenders of the bond, and promoters of justice. At times laymen may serve as judges in a collegiate tribunal with two clerics.¹⁰⁶ These changes largely reflect articles 5 and 6 of the 1971 *motu proprio* of Paul VI *Causas matrimoniales*¹⁰⁷ on expediting marriage cases. They attempt to cope with shortages of clerical personnel while indicating a respect for lay judicial competence. Despite this openness to *laymen* in tribunals, there is no provision for laywomen in such capacities. Such a negative approach sharply contradicts official affirmations of the importance of women being more significantly involved in ecclesial life.¹⁰⁸

¹⁰⁵ This issue cannot be pursued here. For a consideration of the problems of appellate tribunals, see D. Burns, "Procedures in Second Instance Courts," *PCLSA* 39 (1977) 112-30. For reflections on the personnel problems of American tribunals, see D. Burns *et al.*, "Report of Committee on Tribunal Assistance," *PCLSA* 35 (1973) 138-47. For an assessment of the APN, see T. Green, "The American Procedural Norms—an Assessment," *Studia canonica* 8 (1974) 317-47; L. Wrenn, "The American Procedural Norms," *AER* 165 (1971) 175-86.

¹⁰⁶ Norms 20,1 (judge), 23 (assessor), 27,2 (auditor), and 35,1 (promoter of justice and defender of the bond) are germane in this connection.

¹⁰⁷ AAS 63 (1971) 441-46.

¹⁰⁸ In commenting on the October 1976 Declaration of the Congregation of the Doctrine of the Faith on the admissibility of women to the ministerial priesthood, Archbishop Joseph Bernardin stated: "Whatever mistaken opinions theologians or teachers of earlier times held, the Church today fully recognizes the equality of women and men, repudiates unjust discrimination based on sex, and encourages efforts to bring women increasingly into roles of leadership in the Church. Many women desire this, and progress has been made. The

Furthermore, it contradicts a basic principle of canonical reform, that the law should not readily bar individuals from exercising ecclesial ministries unless it is an extremely serious matter of ecclesiastical discipline affecting the common good.¹⁰⁹ In brief, the law should foster juridical parity between laymen and laywomen, prescinding from differentiations rooted in ordination. Integrity of character and legal expertise, not sex, should be the basis for tribunal appointments.¹¹⁰

A significant CLSA concern¹¹¹ relative to the *People of God schema* is the status of laicized priests—a concern not as prominent, however, in the other evaluations. First of all, it seems that the bishop or religious ordinary and not the Holy See should be the competent authority in this matter. However, that is not the precise issue here. The schema does not seem adequately pastoral, especially in the case of a priest who genuinely desired ordination, was ordained, but now seeks to resign from the active ministry and remain a Catholic in good standing. The ordained minister should have his right to resign from the active ministry for due cause recognized in law. The law should also express a concern for his offering continued ecclesial service, as was affirmed in the 1969 NCCB statement on priestly celibacy. Norm 153, however, simply states that the resigned priest is freed from all clerical obligations and loses any clerical rights and ecclesiastical offices and dignities. This rather negative approach does little to foster the continued use of the resigned priest's gifts for the service of the community.¹¹²

fact that they are not priests should not be treated as an obstacle to achieving their goals. The need to identify and open up new ministerial and decision-making roles for women in the Church becomes more urgent, not less, in light of this declaration" (*Origins* 6/33 [Feb. 7, 1977] 520-21). Likewise, in a recent address to the Rota, Paul VI observed: "Nor should the Code lightly lay down laws which would make acts void or persons disqualified, unless their object be of great importance and truly necessary for the public good and ecclesiastical discipline" ("The Goals" [n. 90 above] 604).

¹⁰⁹ "Principia quae Codicis iuris canonici recognitionem dirigant, (de quibusdam mediis fovendi curam pastorem in Codice)," *Communicationes* 1 (1969) 80: "... neve leges irritantes actus iuridicos vel inhabilitantes personas facile Codex statuatur, nisi earum obiectum magni momenti sit, et bono publico ac disciplinae ecclesiasticae vere necessarium."

¹¹⁰ Green, "Marriage Nullity Procedures" 392-94.

¹¹¹ Green, "Initial Report" 17-19 and "Second Report" 43; Response of St. Paul University 27.

¹¹² For the Nov. 13, 1969 NCCB statement on celibacy, see *Catholic Mind* 68 (January 1970) 55-64; *Priest* 26 (January 1970) 63-75. For the current norms on laicization, see *Sacra Congregatio pro Doctrina Fidei*, "Normae ad apparandas in curiis diocesanis et religiosis causas reductionis ad statum laicalem cum dispensatione ab obligationibus cum sacra ordinatione connexis" (AAS 63 [1971] 303-8). English translation in *Jurist* 31 (1971) 672-77. See also the interpretation of certain points in the above norms issued by the same Congregation on June 26, 1972 in AAS 64 (1972) 641 f. English translation in *Jurist* 33 (1973) 49-52. For a very useful article on the possibilities of resigned priests being involved in the life of the Church, see J. Provost, "The Involvement of Dispensed Priests in the

The above schema's treatment of the status of permanent deacons is criticized by several commentators for not recognizing the special situation of such ministers, particularly those who are married. The potential ecclesial service of permanent deacons would be enhanced were the schema somewhat modified. This applies to norms 120-127 on incardination and excardination and norm 131 on residence (given increased occupational mobility in our society). It also applies to norm 144 on clerical dress, norms 146-148 on employment, and norm 149 on military service. Norm 135,2 of the above schema and norm 287 of the *sacramental law schema* prohibiting the remarriage of permanent deacons should be modified, since family commitments may at times suggest such remarriage. In any event, dispensations for remarriage are granted regularly.¹¹³ Discussions of norm 222 of the *sacramental law schema* on the title of ordination raise the question of the appropriate support of permanent deacons. Frequently such clerics will be self-supporting through their professional commitments. However, if a permanent deacon is fully committed to ecclesial service, the particular church should guarantee him adequate support in meeting his family responsibilities. This is not entirely clear, however, from the above-mentioned norm.¹¹⁴

Finally, the CLSA evaluation of the *religious law schema* questions the adequacy of its delineation of the relationship between bishops and religious institutes. The legitimate autonomy of such institutes seems somewhat compromised by certain norms¹¹⁵ and by some poorly defined expressions such as the "external works of the apostolate," which might imply that the only ecclesial apostolate is that of the bishops.¹¹⁶

Procedurally speaking, the *penal law schema* poses some problems.

Official Ministry of the Church," *Jurist* 34 (1974) 143-53. On the laicization process, see T. Tierney, "Return to the Lay State: The Meaning, Practice and Reform of Laicization," *Studia canonica* 8 (1974) 277-94.

¹¹³ Green, "Second Report" 46-47; Green, "Marriage Law" 389.

¹¹⁴ Green, "Sacraments Other Than Marriage" 319. For a recent discussion of canonical issues affecting the permanent diaconate, see J. Hedderman, "Issues in the Development of the Permanent Diaconate," *Origins* 8/19 (Oct. 26, 1978) 300-304. Also *PCLSA* 40 (1978) 109-16.

¹¹⁵ The following norms seem especially questionable: norm 18 (authority of bishops vis-à-vis religious institutes); 19,5 (competence of bishop relative to governance of diocesan institutes); 22 (subjection of pontifical institutes to Apostolic See and bishop); 23 (visitation of bishop).

¹¹⁶ C. Regan *et al.*, "The Schema of Canons on Institutes of Life Consecrated by Profession of the Evangelical Counsels," *PCLSA* 39 (1977) 98-111, at 103. For some helpful reflections on this issue, see L. Orsy, "Hierarchy and Religious: Responsibilities, Rights and Duties," *PCLSA* 39 (1977) 19-29. Some commentators also criticize the restrictions on religious serving as baptismal sponsors in norm 28 of the sacramental-law schema. This interferes unnecessarily with their freedom to exercise their properly ecclesial responsibilities (Green, "Sacraments Other Than Marriage" 277).

Perhaps here more than in any other part of the revised law, there is an understandable concern for protecting the rights of individuals/groups possibly subject to penal action.¹¹⁷ Several commentators call for a general norm unequivocally expressing the exigencies of due process in penal procedures. This would specify the importance of honoring such rights as the right to counsel, the right to recourse, the right to confront one's accuser, the right to a fair hearing, etc. Norm 28,1 affirms in principle that penal procedures are to be judicial rather than administrative in character; and this seems likely to ensure greater protection of personal rights. However, the norm also permits fairly easy recourse to extrajudicial procedures under certain conditions. Accordingly the judge/superior should be bound to some type of consultation before utilizing such extrajudicial procedures. A very real practical problem is the actual adequacy of the tribunal system in expeditiously providing the judicial recourse theoretically envisioned in the schema. The present system is hardly able to meet the upsurge in marriage cases. This makes it extremely unlikely that it will be able to deal realistically with possible penal actions in the foreseeable future.

Norms 52 and 53 of the schema make some commentators uneasy because of their rather imprecise formulation. Norm 52 states that a "just penalty" may be imposed on one impugning or condemning—apart from heresy—the teaching of a pope or general council or disobeying a lawful precept or prohibition of the Apostolic See or one's ordinary or moderator.¹¹⁸ Norm 53 proposes an interdict or other just penalty for public actions against ecclesiastical authorities.¹¹⁹ There is a potential danger here that Church authorities may absolutize their personal theological positions while not allowing ample room for a healthy pluralism. Perhaps there is some wisdom in the proposal of a national theological commission to help resolve conflicts between members of the academic community and Church authorities. Every effort should be made to preclude situations reflecting even a semblance of arbitrariness or inadequate concern for the exigencies of academic freedom.¹²⁰

¹¹⁷ Green, "Penal Law" 257–60, 262, 267, 269.

¹¹⁸ Norm 52 reads: "Iusta poena puniri potest: 1) qui, praeter casum de quo in 48,1 (heresy), doctrinam a Romano Pontifice vel a Concilio oecumenico traditam impugnat vel damnatam docet, et ab Apostolica Sede vel ab Ordinario admonitus non retractat; 2) qui aliter Sedi Apostolicae, Ordinario, vel Moderatori legitime praecipienti vel prohibenti non obtemperat, et post monitum in inoboedientia persistat."

¹¹⁹ Norm 53 reads: "Qui publice aut subditorum similitates vel odia adversus Sedem Apostolicam vel Ordinarium excitat propter aliquem potestatis vel ministerii ecclesiastici actum, aut subditos ad inoboedientiam in eos provocat, interdicto aliisque iustis poenis puniri potest."

¹²⁰ This proposal was made in the following source: National Conference of Catholic Bishops, *On Due Process* (Washington: USCC Publications Office, 1969) 10–11.

Concerns about vague terminology in the schema are also expressed in connection with norms 58 and 63 penalizing those unlawfully exercising a priestly function or other sacred ministry or abusing an ecclesiastical office. This is also true for the final norm 73, which provides for a penalty even if the offense is not specified in law, provided that there is scandal and the offense is especially serious. The use of the phrase “de re valde gravi” does not seem to adequately preclude possibly arbitrary discretion of superiors and the abuse of the rights of individuals. Finally, the CLSA evaluation expresses significant reservations about norm 10, which presumes penal imputability if there is an external violation of the law. This is not as objectionable as the Code’s presumption of *dolus* or intent to violate the law (canon 2200); yet it contradicts the fundamental Anglo-American presumption of innocence until guilt is proven that should also characterize ecclesiastical discipline.

While the issue of the protection of rights does not surface frequently in the *People of God schema*, there are several instances of inadequate checks on possibly arbitrary episcopal discretion.¹²¹ Greater clarity is required regarding possible recourse against the recalling of a cleric serving outside his diocese of incardination (norm 124,3) or against denial of excardination (norm 125). While the CLSA evaluation calls for a decentralization of the decisional process relative to laicization, it also stresses the need for some recourse for the cleric against the possible arbitrary discretion of his bishop or religious ordinary. The commentators generally applaud the provisions on the diocesan synod (norms 270–280) for their openness to broader ecclesial involvement. However, there is concern about the bishop’s prerogatives of deferring a synod (norm 271,1), suspending or dissolving it (280,1). The norms do not even explicitly require a just cause for such action nor do they provide for any mandatory consultation prior to such a decision.¹²² Finally, there should be some type of recourse to the metropolitan or some other supradiocesan body against possible episcopal arbitrariness in dissolving the council of priests (norm 315,3). The norm refers to the council’s not fulfilling or gravely abusing its function for the good of the diocese; likewise the bishop is expected to consult the college of consultors before taking such action. Yet the members of the college of consultors are themselves part of the council. Hence one might question the adequacy of such a consultative process.

The CLSA evaluation of the *religious law schema* questions the adequacy of its protection of the rights of members of religious institutes,

¹²¹ Green, “Initial Report” 15–16, 18, 31, 34.

¹²² The Code (canons 356–62) does not explicitly permit the bishop to defer holding a synod, to suspend it, or to dissolve it, even though it clearly functions in a consultative fashion and the bishop is viewed as the sole legislator in the diocese.

even though it recognized that some of these concerns are treated in the schema on administrative procedure.¹²³ It is particularly concerned about lacunae in the schema in such areas as interrogation of members by moderators, privacy, and separation from the institute.¹²⁴

Finally, as a last point under this general rubric of the pneumatic-charismatic principle, some concerns are expressed about the adequacy of the protection of the rights of petitioners in marriage cases in the *procedural law schema*. A significant development in the American Procedural Norms is norm 7, providing that the residence of either spouse furnishes a basis for competence in hearing a nullity petition. Traditionally the favor of the law has rested with the other party involved in the case (respondent) according to the maxim "actio sequitur forum rei." This was partly based on a view of the formal process as a *contestatio* or conflict of rights, in which the respondent was being brought unwillingly into the court action. However, in practice in North America at least, marriage cases are rarely a genuine *contestatio*.¹²⁵ The petitioner generally approaches a Church court for the sake of peace of conscience and a clarification of sacramental status. The temporal issues involved in the divorce action have already been resolved in civil court; hence the petitioner usually has only a purely spiritual motivation. Frequently the other spouse agrees with the nullity request, is indifferent to the whole action, or simply cannot be located. Hence the granting of equal access to the court of the petitioner or respondent hardly prejudices the rights of the latter. The factor of societal mobility also makes it extremely necessary at times that the petitioner's court be competent to deal with the case. This is especially true when the petitioner is non-Catholic and seeks to validate an irregular marriage or enter into marriage with a Catholic. This is frequently the first contact that the non-Catholic has with the Church; and it can be quite detrimental pastorally if the court of his or her residence is unable to handle the case for lack of competence. Hence there is considerable concern about norm 337 of the schema,

¹²³ The present uncertain status of the schema on administrative procedure itself raises some basic questions about the viability of the protection of rights and the redress of grievances throughout the revised legal order.

¹²⁴ Regan, "Canons on Institutes" (n. 116 above) 102-3. The following norms call for reconsideration in this regard: norm 32,2 (the interaction of the visitator and the members of religious institutes), 36 (relationship between the moderator and members of an institute, particularly regarding the sacrament of penance), 46 (requisites for admission to institute), 49,4 (the freedom of moderators to request secret information prior to admission of a candidate), 75-85 (separation from the religious institute), 87 (treatment of one leaving the religious institute) and norm 104,1,1* (transfer from one monastery to another of the same monastic family).

¹²⁵ For a helpful discussion of the change in context in the processing of marriage cases and some thought-provoking proposals for procedural-law change, see G. Lesage, "Pour une rénovation de la procédure matrimoniale," *Studia canonica* 7 (1973) 253-79.

precluding the petitioner's court from being directly competent to handle the case.¹²⁶

Principle of Fundamental Christian Equality and Coresponsibility¹²⁷

Lumen gentium 9 strongly emphasizes the fundamental equality of believers regarding certain basic ecclesial realities: baptism, destiny, Lord, and mission. That this fundamental equality precedes structural differentiations within the community is particularly evident in the Council's situating chapter 2 on the People of God prior to chapter 3 on the hierarchy. The common call of all believers to involvement in the Church's mission is reaffirmed in chapter 4 on the laity (*Lumen gentium* 32) and then again in the Decree on the Laity (*Apostolicam actuositatem* 2).

This principle of fundamental Christian equality does not permit structures reflecting a stratified ecclesiology, dividing the People of God into two classes. It requires the complementing of a vertical authority structure with a horizontal structure of solidarity (Klostermann). Such a principle does not admit of paternalistic patterns of governance inadequately sensitive to the profound spirit of community that should characterize intraecclesial relationships.

Principle 6 guiding the revision of the Code calls for the articulation of a common legal status of all believers, duly embodying canonically the theological principle of fundamental Christian equality. It does this even while acknowledging the legitimacy of functional differentiations within the Church.¹²⁸

The study group on the laity and associations of the faithful indicated the Code's stratified ecclesiology as one of its principal defects. A key task of contemporary institutional reform is the articulation of a legal order respecting both functional diversity and fundamental equality in the realization of the Church's mission.¹²⁹ The following reflections eval-

¹²⁶ Green, "Marriage Nullity Procedures," 376-78.

¹²⁷ Klostermann, "Reform" 146-49; Manzanares, "Diéz años" 297-302 (corresponsabilidad de todos los bautizados en la edificación de la Iglesia); Thils, "L'Ecclésiologie" passim; id., "Problèmes ecclésiologiques" 333-38.

¹²⁸ "Et quoniam non omnes eandem functionem in Ecclesia habent neque idem statutum omnibus convenit, merito proponitur ut in futuro Codice ob radicalem aequalitatem quae inter omnes christifideles vigere debet, tum ob humanam dignitatem tum ob receptum baptisma, statutum iuridicum omnibus commune condatur, antequam iura et officia recensentur quae ad diversas ecclesiasticas functiones pertinent" (*Communicationes* 1 [1969] 83; emphasis mine). For some reflections on the tensions involved in realizing these various values, see J. Finnegan, "The Detroit Conference—A Call to Action as a Model of Church Governance," *PCLSA* 39 (1977) 10-18.

¹²⁹ The following observation of the *coetus* on the laity and associations of the faithful seems applicable in this regard: "... ex una parte *servatur hierarchica structura* quae ex voluntate Dei ad Ecclesiam pertinet, *vitatur ex altera parte visio stratificata* membrorum

uate the various schemata in light of this basic criterion. Obviously, certain problem areas in the various documents are emphasized; however, this should not draw attention away from the positive features of the same texts. It might be observed that the most significant criticisms of the revision process thus far surface in this area. This is especially true for the various CLSA evaluations; but it is also true for the Canadian critiques to a lesser degree and for the British-Irish commentaries though to a still lesser extent.

The basic frame of reference for this discussion is the CLSA evaluations of the *Lex*, especially the critique of the *Textus prior*. These evaluations generally criticize the *Lex*'s failure adequately to view the Church as the People of God with a diversified mission in the world embracing sanctifying, teaching, and pastoral-governance components. The *Lex* reflects too much of a perfect-society ecclesiology emphasizing the Church as a self-sufficient institution comparable to other institutions with its own distinctive rights and prerogatives. It views the Church's various *munera* largely from a hierarchical perspective, whereas one must focus more sharply on the integral role of all the People of God, especially the nonordained, in the realization of these *munera*. While the *Lex* improves the Code, there is still an urgent need to rethink its fundamental approach to the Church's *munera* to do justice to the insights of chapter 2 of *Lumen gentium* and paragraphs 33–36 of chapter 4 in particular.¹³⁰

1) *The Church's sanctifying mission*. A common criticism of several schemata is their inadequate understanding of the communal dimension of the sacraments, which are viewed too much from an individualistic perspective. There is a need to stress more forcefully the communal aspect of sacramental celebrations and the appropriate distribution of ministerial roles in such celebrations.¹³¹ Frequently the schemata consider the faithful more as recipients of the Church's sacred ministrations than as active participants in its liturgical life.¹³²

Populi Dei, quae a non paucis considerata est unus ex praecipuis defectibus systematicis in Codice nunc vigente, quaeque longe superata est a Concilio Vaticano II. Ius canonicum plene fiat oportet *ius populi Dei*, ius nempe *quod dirigat ac promoveat vitam totius communitatis ecclesialis, attenta non solum diversitate functionali fidelium, sed etiam eorum radicali aequalitate*. Ex hoc vero consequitur ut normae Codicis concipi nequeant tamquam complectentes quosdam circulos clausos personarum aut institutorum eoque minus uti complexus legum qui unice ordinet officia ecclesiastica, sed contra *intelligendae sint sensu communitario ac pastoralis*, uti ius nempe quo universa Ecclesia regitur" (*Communicationes* 2 [1970] 96 emphasis mine).

¹³⁰ LaDue, "Proposed Schema" 35, 37–38, 41; id., "Revised Schema" 11–14.

¹³¹ Green, "Sacraments Other Than Marriage" 269, 325–26.

¹³² F. McManus, "Recommendations: Schema of Canons of Book IV *De ecclesiae munere sanctificandi*, Part Two, *De locis et temporibus sacris deque cultu divino*" (unpublished) 13.

This overly individualistic perspective on sacramental celebration is especially clear in the *sacramental law schema*. It is clear in the schema's minimal emphasis on pastoral preparation for baptism and in its failure to stress the proper role of the parents and the community at large as emphasized in the *Ordo*. Similar problems surface regarding the sacrament of confirmation, where it is crucial that the community at large be seriously involved in adequate catechesis for a sacrament of spiritual maturity implying a special commitment to the community. There should be a more forceful stress on the communal nature of the Eucharist and on its ecclesial roots. The norms on penance seem overly preoccupied with possible abuses of the sacrament, specifically in its communal form. The schema fails to recognize the communal thrust of the *Ordo poenitentiae*. One might wonder why the schema does not authorize communal absolution after individual confession. Even though it contradicts number X of the 1972 norms on general absolution, it is in accord with an older liturgical tradition. There is likewise an inadequate sense of the communal dimension of anointing of the sick and a failure to recognize the *Ordo's* stress on the roles of different members of the community in ministry to the sick and dying. Several commentators fear a possible clericalization of ministries and note an inadequate stress on their distinctly lay character, particularly since they are a prerequisite for the reception of orders. These commentators also question the institute of admission to the ministry in norm 214, since it seems to blur the distinctness of ordination to the diaconate as the initial stage of ordained ministry.¹³³ Finally, questions are raised about the inadequate provisions for nonclerical involvement in preparation for and celebration of Christian marriage.¹³⁴

2) *The Church's teaching mission*. Generally speaking, both the *Lex* and the *schema on the Church's teaching mission* fail to stress adequately the prophetic role of the whole People of God. For example, the infallibility of the whole People of God is considered before that of the magisterium in Vatican II but not in the *Lex*. However, hierarchical prerogatives can be defined effectively only within the broad framework of a clear and unambiguous presentation of the varied roles of the People of God.¹³⁵ The *schema on the Church's teaching mission* still differentiates between the *ecclesia docens* and the *ecclesia discens*. Likewise it fails adequately to stress the necessary interaction between the activity of the magisterium and the influence of the *sensus fidelium*. Furthermore, the stress of *Dei verbum* on the magisterium's service of the Word of God does not seem to be properly implemented in practice. Finally, the

¹³³ Green, "Sacramental Law" 269, 275, 288-89, 303-4, 312, 322.

¹³⁴ Green, "Marriage Law" 384.

¹³⁵ LaDue, "Proposed Schema" 42-43; id., "Revised Schema" 12-13.

schema tends to confuse the sacred function of teaching with its specifically clerical dimension, normally associated with the exercise of the powers of orders and jurisdiction in the Church.¹³⁶

More specifically, ministerial formation is still viewed largely in terms of priestly formation in the *People of God schema*. However, there is a need for a broader focus on formation for various ministries. There is a value in the interaction of those preparing for priestly ministry and those committing themselves to various nonordained ministries in the Church.¹³⁷

The *schema on the Church's teaching mission* focuses somewhat nervously on hierarchical control of teaching activities at different levels. Though the concern to protect the integrity of the faith is laudable, the means emphasized in the schema are often repressive, e.g., overemphasis on canonical mission and prior censorship. Furthermore, given changing societal conditions, such measures would be probably ineffective in practice. The Canadian Report is especially concerned about the attitudes of fear and distrust of scholarship that seemingly underlie the schema. On the contrary, openness to sound independent scholarship is indispensable if the schema is to be credible in the modern world.¹³⁸

In the same schema, norm 18 on lay preaching options is broader than the Code, even though laity are forbidden to preach the homily during the Eucharist. However, lay preaching options might still be expanded, especially in situations where the laity exercise significant parish leadership roles.¹³⁹

3) *The Church's pastoral-governance mission*. The CLSA evaluations of the *Lex* generally criticize its inadequate stress on the charismatic shepherding role of the whole People of God and its overemphasis on the ecclesial position of those in authority. Yet the role of the hierarchy can be understood properly only in terms of its service to the whole People of God. Furthermore, a stress on the governmental rights of all believers is inadequate without appropriate mechanisms to implement those rights.¹⁴⁰

Norm 96 of the *general norms schema* is hardly satisfactory in affirm-

¹³⁶ Coriden, "Teaching Mission" 3-4; Report of St. Paul University to the Pontifical Commission for the Revision of the Code of Canon Law on the Schema canonum Libri III de ecclesiae munere docendi" (unpublished) 2-3.

¹³⁷ Green, "Initial Report" 14-15 and "Second Report" 23; Response of St. Paul University (n. 87 above) 25.

¹³⁸ Coriden, "Teaching Mission" 4-7; Report of St. Paul University (n. 136 above) 3 and 15.

¹³⁹ Report of St. Paul University (n. 136 above) 6.

¹⁴⁰ LaDue, "Proposed Schema" 44 and "Revised Schema" 13-14. See id., "The Right of Church People to Participate in Ecclesial Decision-Making," *Studia canonica* 7 (1973) 179-90.

ing that the laity are incapable of possessing ecclesiastical jurisdiction as such, even though they may exercise it occasionally with proper hierarchical authorization. Church authorities may co-ordinate the exercise of such jurisdiction; but this is quite different from granting the capacity for such jurisdiction. Such lay capacity for significant governmental roles seems grounded in various conciliar texts such as *Apostolicam actuositatem* 2, 3, and 10 and *Lumen gentium* 31. There is a juridical anomaly in allowing the exercise of governmental power by those incapable of possessing it. Furthermore, the schema perpetuates a preconconciliar ecclesiological disparity between the ordained and the laity. The laity still seem basically subject to the hierarchy, and the primordial importance of the sacraments of initiation for participation in the Church's mission does not seem to be taken as seriously as the sacrament of orders.¹⁴¹

The following comments explicitate some implications of the above-mentioned inadequate view of lay participation in the Church's mission when one examines different schemata.

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 abuses of official trust.¹⁴²

The problems of an overly hierarchical ecclesiology, pointed out in connection with the *Lex*, also are notably evident in the *People of God schema*. In fact, an entire section of the second CLSA Report synthesizes various problem areas under this general rubric, particularly regarding the structuring of the particular church.¹⁴³

The norms on the synod of bishops make it clear that it is almost exclusively an episcopal body. It may be premature to suggest that it be more truly a gathering of the whole Church and not simply of bishops. However, this proposal seems legitimate, since at other levels of ecclesial life provisions are made for so-called mixed councils involving representatives of the entire People of God. Even though the nonepiscopal members of such councils do not enjoy deliberative competence, the study group on the sacred hierarchy felt that there was an advantage in maintaining such institutes in the schema despite the increasingly significant role of episcopal conferences.¹⁴⁴

Norm 228 on the selection of bishops improves the Code, at least as regards episcopal input; yet it still is unsatisfactory regarding significant

¹⁴¹ Kennedy, "Observations on Book I, Canons 96-111" 1-2; Response of St. Paul University (n. 87 above) 11.

¹⁴² Green, "Penal Law" 252-53, 271.

¹⁴³ Green, "Second Report" 23-30.

¹⁴⁴ Green, "Initial Report" 21.

involvement by other members of the particular churches. This is legally unacceptable, given the ecclesial importance of this particular undertaking. Certain basic ecclesial values do not seem adequately embodied in the proposed norm: (1) the informed involvement of an appropriate cross section of the faithful, (2) the important role of the presbyteral council, (3) the potentially decisive role of the episcopal conference in the choice of candidates, and (4) the importance of ascertaining diocesan needs as well as concentrating on the personal qualities of potential episcopal candidates. Points 1 and 4 are especially significant in connection with the present discussion. Broader ecclesial involvement in the selection process seems to be grounded logically in the earlier affirmation of the basic Christian right to be involved in the Church's mission and to express one's opinion on issues affecting the well-being of the church (norms 27-28).¹⁴⁵

The norms on various diocesan entities tend to personalize the particular church in the figure of the bishop. Hence they fail to see the basic frame of reference for diocesan law to be that of a believing people diversely structured for a multifaceted mission. This tendency is evident in several respects, some more problematic than others: (1) the tendency to describe the diocese and comparable juridical entities in terms of the ecclesiastical figure who heads them (norms 217-224); (2) the conception of the quinquennial report as the personal responsibility of the bishop and not as the report of a portion of the People of God to the rest of the People of God (norm 257); (3) the tendency to view the diocesan synod more as an instrument of episcopal governance than as a significant assembly of the whole People of God of a particular church (norms 270-280).¹⁴⁶

A particularly problematic institute in the *People of God schema* is the diocesan pastoral council. The somewhat impoverished provisions for this institute in norms 326-329 contrast sharply with its encouragement in certain conciliar and postconciliar sources. Norm 326 speaks of the establishment of such an entity "quatenus pastoralis sollicitudo id sua-deat," and norm 248,1 speaks of the bishop's constituting it "quantum adiuncta id sinant." This is far less encouraging than the "valde optandum" terminology of *Christus Dominus* 27, *Ecclesiae sanctae* I, 16, and number 204 of the Directory on the Pastoral Ministry of Bishops.¹⁴⁷ Furthermore, *Ad gentes* 30 and *Ecclesiae sanctae* III, 20 stress the

¹⁴⁵ Green, "Initial Report" 29 and "Second Report" 23.

¹⁴⁶ Green, "Second Report" 23-25.

¹⁴⁷ See also January 25, 1973 Circular Letter on diocesan pastoral councils of the Sacred Congregation of the Clergy. This was not published in the *Acta apostolicae sedis*, but an English text is available in *Jurist* 34 (1974) 168-71. Though this text is not cited explicitly in the schema, it is the basis in part at least for norm 327 on the membership of the council.

significant role of the pastoral council in preparing for a diocesan synod. Undeniably, circumstances differ greatly throughout the Church, so that perhaps in the missions the specific form of the pastoral council as indicated in the official documents may not always be possible. However, one basic legal principle to be stressed is the bishop's responsibility to introduce suitable organs for consultation according to diocesan needs and resources.¹⁴⁸ Number 6 of the January 1973 Congregation of the Clergy circular letter recognizes the bishop's responsibility to judge whether the conditions are appropriate for the establishment of the diocesan pastoral council. However, it also urges him to foster the circumstances necessary for its establishment and proper functioning; yet this obligation is not mentioned in the schema. Whatever accounts for the schema's deficiencies regarding this institute, it is one of the most noteworthy indications of the document's problematic ecclesiology.¹⁴⁹

Problems relative to lay leadership options arise at the parish level as well. Certainly the schema has some positive features. For instance, nonclerics may function in significant parish leadership positions in the absence of clerics (norm 349,3). This reflects the *de facto* pastoral experience of the Church in numerous areas. However, even in this situation a priest is to function as the proper pastor and moderate parish pastoral ministry. Generally speaking, the section of the schema on parishes (norms 349-376) is really a section on pastors, with minimal attention given to other members of the parish community. There is no reference to parish councils or comparable consultative bodies, contrary to number 179 of the Directory on the Pastoral Ministry of Bishops, which speaks of a parish council as a component of a genuinely vital parish community.¹⁵⁰ While norms 249-250 speak of the bishop's respon-

¹⁴⁸ In the Directory on the Pastoral Ministry of Bishops, see no. 95 (principle of responsible co-operation) and no. 135 (establishment of councils); see Response of St. Paul University (n. 87 above) 15.

¹⁴⁹ Green, "Initial Report" 35-36 and "Second Report" 25-27; Response of St. Paul University (n. 87 above) 4 and 15. The *Lex* was also deficient in this respect (LaDue, "Revised Schema" 8). Another problem area in the schema at the diocesan level is the so-called episcopal council, which is suggested as a possible vehicle of co-ordinating various diocesan enterprises (norm 285,3). Its restriction to clerics seems particularly questionable in areas where nonclerics occupy significant diocesan leadership positions, e.g., education, finances, social concerns.

¹⁵⁰ "Episcopus *optimam* illam existimabit formam paroeciae . . . in qua laici, pro iniuncto sibi officio, pastorale Consilium paroeciale participant et apostolatus opera ipsorum propria dirigant." See also *Apostolicam actuositatem* 10 and 26. The former text reads as follows: "Paroecia exemplum perspicuum apostolatus communitarii praebet, omnes quotquot ibi inveniunt diversitates humanas in unum congregans et Ecclesiae universalitati inserens. Assuescant laici intime cum sacerdotibus suis uniti in paroecia operari; *problemata propria ac mundi et quaestiones ad salutem hominum spectantes, collatis consiliis examinanda et solvenda, ad communitatem Ecclesiae afferre*; omnique incepto apostolico et missionali suae familiae ecclesiasticae adiutricem operam pro viribus navare" (emphasis mine).

sibility to encourage various lay initiatives, nothing comparable is stated regarding the obligations of the pastor. The schema is relatively satisfactory on the pastor's liturgical and magisterial roles, but it says very little about his pastoral leadership role, contrary to its conciliar source *Christus Dominus* 30.¹⁵¹

A final point might be noted regarding the general rubric of the fundamental equality of believers, specifically as applicable to the law for religious men and women. The CLSA evaluation of the *religious law schema* generally welcomes its effort to implement the above-mentioned principle. However, it is violated in norm 25,1 on the *potestas regiminis*, which is restricted to pontifical clerical institutes, and in norm 107 on the cloister.¹⁵²

Principle of Collegiality¹⁵³

A fundamental Vatican II theme is its emphasis on the doctrine of episcopal collegiality. As is stated in the position paper of the CLSA Symposium on unity and collegiality in the Church,

... the bishops who are united to the pope and to their fellow bishops in hierarchical communion constitute a collegial body possessing supreme power in governing the Church. ... The unity of the Church and the fruitfulness of its mission is assured interiorly by the presence of the Spirit, and exteriorly by the presence of the college of bishops within the Church, and by the pope as the principle of unity within the college.

The pope, however, never acts as a purely private person when he acts as the head of the Church. He is always head of the college and a member thereof. The primacy of the pope is a primacy within rather than over against the episcopal college. The Church is governed by the college in such wise that the pope is not the mere instrument of the college, while the college is not merely his executive organ. Indeed the Catholic Church does not recognize the pope to be its absolute monarch, nor the bishops as the mere delegates of the pope. The supreme and full power for governing the Church, in view of its higher mission for the sake of the Kingdom of God, has been conferred upon the whole college. This power is exercised in different modes and forms, but it is radically one.¹⁵⁴

¹⁵¹ Green, "Initial Report" 37-38 and "Second Report" 27-28; Response of St. Paul University (n. 87 above) 38.

¹⁵² Regan, "Canons on Institutes" 103. In this connection McManus questions whether dispensing power in relation to sacred times is intrinsically linked to the power of orders or to the pastoral office. Hence the restriction of such power to moderators of clerical institutes in norm 43 of the *schema on sacred times and places/divine worship* should be re-examined. He suggests that lay moderators should be able to grant such dispensations. There has been far more significant lay exercise of the *potestas regiminis* in the past (McManus, "Recommendations" [n. 132 above] 20).

¹⁵³ Klostermann, "Reform" 149-53; Manzanares, "Diéz años" 303-7 (colegialidad episcopal); Coriden, *Once and Future Church* 267-74 (position paper).

¹⁵⁴ Coriden, *Once and Future Church* 268-70.

The above quotation gives some idea of the complexity of the theological-legal issues involved in the papal-episcopal relationship. Structuring this complex relationship is hardly an easy task, and hence critics of such efforts should be judicious in their evaluations. However, it is a foundational issue in Church order, and hence it is not surprising that evaluations of the *Lex* and, to a lesser extent, the *People of God schema* devote serious attention to it. Special consideration is also given to the synod of bishops, one potentially significant form of the exercise of such collegial power. Finally, collegiality can be viewed at another level in terms of the fraternity existing between a bishop and the priests of a particular church. While this is not collegiality strictly speaking, it is a noteworthy form of the fundamental unity binding those called by ordination to the service of God's People. Hence some concluding remarks in this section examine one aspect of this bishop-priest relationship, i.e., the council of priests, particularly in the *People of God schema*.

A major criticism of the *Lex* is its failure to structure the papal-episcopal relationship in the balanced terms of chapter 3 of *Lumen gentium*. The *Lex* tends to detach the pope from the broader context of the college of bishops, since it treats the pope first before the college, and its discussion of the latter reality hardly reflects the richness of the conciliar formulations. The section on the hierarchy begins with the rubric *De hierarchia in ecclesia constituta*. This in turn is divided into *De summo pontifice* and *De episcopis*, which is subdivided into *De collegio episcoporum* and *De episcopis singulis*. On the contrary, it is more in keeping with the conciliar texts to speak of the college first and then the pope, individual bishops, patriarchs, metropolitans, and episcopal conferences.

The critiques of the *People of God schema* also question its treatment of papal-episcopal relationships. One problem in evaluating this schema is the unavailability of the revised *Lex*, to which the former occasionally refers, particularly in this crucial area. However, the schema clearly is not faithful to the understanding of *suprema auctoritas* in the conciliar texts. It reflects those aspects of Vatican II dealing with the Roman pontiff; however, it systematically deletes reference to the solicitude of the college of bishops for the welfare of the universal Church. The initial norms 155-156 in the section on the Church's hierarchical structure are situated under the general rubric *De Romano pontifice deque collegio episcoporum*. Yet they deal exclusively with the Roman pontiff and situate the synod of bishops, the college of cardinals, and the Roman Curia on the same level of service to the Roman pontiff in the personal exercise of his supreme pastoral office. This hardly does justice to the relevant ecclesiological values to be concretized legally.

A striking illustration of the schema's inadequate view of papal-episcopal relationships is the synod of bishops. The same concerns surface in critiques of the *Lex* and the *People of God schema*. However, since the schema considers the issue at greater length, its evaluations are the major sources for the following brief reflections.

The schema (norms 157-163) largely restates the 1965 *motu proprio Apostolica sollicitudo* of Paul VI, with its forceful assertion of the synod's subjection to the Roman pontiff. It is seen largely as a consultative body aiding the pope in the personal exercise of his primatial power. There is minimal sensitivity to its reflecting the solicitude of the world episcopate for the good of the universal Church. In fact, the schema drops the significant phrase "partes agens totius catholici episcopatus," which describes the institute's representative character both in *Christus Dominus* 5 and in the *motu proprio*. Furthermore, the synod's potential for deliberative competence is expressed somewhat more negatively in the schema than in the *motu proprio*. It may be premature to seek a more meaningful deliberative role for the synod, enabling it to function in a more genuinely collaborative fashion with the pope. However, the schema should not preclude such evolution.

A related issue in the *People of God schema* is the relationship of the college of bishops and the Roman Curia. Obviously, a fundamental problem in assessing this issue is the absence of norms on the Curia, of which brief mention is made in norms 156 and 176. However, the bishops should have an opportunity to evaluate the proposed norms on the Roman Curia, given the ecclesial significance of this entity. One disturbing aspect of the schema is its violation of *Christus Dominus* 9, which emphasizes that the Roman Curia is to serve the college of bishops as well as the Roman pontiff. However, the schema speaks of the Curia explicitly only in terms of its service to the Roman pontiff. A practical implication of this point is the present Code revision process, which seems largely an enterprise controlled by the Curia, with the college of bishops intervening only periodically and somewhat peripherally. Such interventions take the form of occasional Code Commission reports to the various meetings of the synod of bishops on progress in the legal revision process. They also take the form of occasional opportunities for the bishops to evaluate the schemata prepared by the different Code Commission study groups. This approach to legal reform is hardly satisfactory; however, this point will be discussed later in the section on the revision process.¹⁵⁵

¹⁵⁵ LaDue, "Proposed Schema" 40, 44; id., "Revised Schema" 10, 17; Green, "Initial Report" 19-21 and "Second Report" 31-34; Response of St. Paul University (n. 87 above) 4, 15, 28.

Finally, a few comments are in order regarding the bishop-council of priests relationships. Norm 48 of the *Textus prior* of the *Lex* expresses well the relationship between the bishop and his presbyterate as articulated in *Presbyterorum ordinis* 7 and *Christus Dominus* 28. However, it does not explicitly refer to the council of priests, contrary to its being explicitly encouraged in the first of the above-mentioned texts and mandated in *Ecclesiae sanctae* I, 15. The same problem is true for the *Textus emendatus* as well.

The *People of God* schema treats the council of priests in norms 309-315. It largely reflects *Ecclesiae sanctae* I, 15 and the April 1970 circular letter of the Congregation for the Clergy,¹⁵⁶ although it does not explicitly refer to the latter document. It somewhat adequately reflects the *ius vigens* and accordingly merits praise from that standpoint. Yet there are noteworthy reservations about the schema's provisions for this potentially significant institute. It apparently precludes significant evolution relative to the deliberative competence of such councils. Number 9 of the circular letter states that such bodies enjoy deliberative power wherever universal law specifies this or in individual cases where the bishop deems it appropriate. However, norm 314,2 more restrictively limits such competence to those exceptional cases determined by the conference of bishops. The council's pre-eminently elective character, stressed in number 7 of the circular letter, is de-emphasized in the schema; norm 311,1 speaks of a "congrua pars" being elected, as differentiated from the "maior pars" of the former text. Norm 315,3 provides for the possible dissolution of the council if it does not fulfil or seriously abuses its responsibilities for the good of the diocese. Due-process exigencies call for some type of recourse to the metropolitan or some other supradiocesan body to preclude possibly arbitrary episcopal discretion in such a significant issue. Finally, some concern has been expressed because the council of priests ceases to exist *sede vacante* (norm 315,2). This is in accord with the present law; however, the Code Commission study group on the sacred hierarchy in its 1972 progress report had indicated that the council would continue in existence *sede vacante*. This would better express the continuity of the presbyterate during the *sede vacante* situation.¹⁵⁷

Principle of Dialogue¹⁵⁸

Vatican II views the Church as the sacrament or sign of the intimate union of God with humanity and of the unity of persons among them-

¹⁵⁶ AAS 62 (1970) 459-65.

¹⁵⁷ LaDue, "Proposed Schema" 40 and "Revised Schema" 8; Green, "Initial Report" 33-34 and "Second Report" 45-46; Response of St. Paul University (n. 87 above) 12.

¹⁵⁸ Klostermann, "Reform" 155; Manzanares, "Diez años" 313-16 (principio ecuménico); T. Green, "Reflections on the People of God Schema," *PCLSA* 40 (1978) 13-33.

selves (*Lumen gentium* 1). The Council opened the Church to the world and to other religious traditions, especially but not exclusively other Christian communions. The Decree on Ecumenism calls on all believers according to their respective capacities and responsibilities to foster deeper communion among the churches (*Unitatis redintegratio* 5). Institutionally speaking, this means that the Church structures should be neither parochial nor sectarian but must be fully open to the task of implementing various aspects of the ecumenical imperative. Church law must be continually reassessed to determine whether it fosters or hinders the various facets of the ecumenical dialogue.

Unfortunately, ecumenical considerations have not been a major factor in the reform of canon law. There is no significant reference to such factors in the principles guiding the revision of the Code. Except for an Anglican and a Greek Orthodox observer on the *Lex* study group, there do not seem to have been any representatives of other communions on the various study groups. Hence it is not surprising that ecumenical considerations rarely surface throughout the extensive progress reports of the different study groups. Postconciliar canonical literature relatively rarely treats ecumenical issues *ex professo* except for obvious legal-pastoral questions such as ecumenical marriages or *communicatio in sacris*.¹⁵⁹ Despite the above-mentioned problems, certain ecumenical considerations arise in the various critiques of the schemata and might be considered briefly here. They largely concern relationships between Catholics and members of other Christian churches.

Positively speaking, the Code is improved in several areas. According to norm 12,2 of the *general norms schema*, non-Catholics are explicitly exempt from all ecclesiastical laws unless the law provides otherwise. This principle is specifically applied to them in norm 1,2 of the *penal law schema*. Nevertheless, one might question the fact that both norms leave open the possibility of occasionally binding those who are not members of our communion. Another positive change is the exemption of non-Romans from matrimonial impediments of Church law in norm 263 of the *sacramental law schema*. This new approach would modify canon 12 of the Code generally binding all the baptized, with its problematic consequences for members of other communions, especially regarding

¹⁵⁹ For a consideration of some ecumenical dimensions of the revision of Church law, see F. McManus, "The Consequences of the Decree on Ecumenism for the Law of the Church," *Jurist* 35 (1975) 162-74. Also of interest are several articles in the 1977 *Jurist* which are also papers given at the Consultation on Church Law sponsored by the World Council of Churches in Geneva, March 29-April 1, 1974: L. Vischer, "Church Law and the Ecumenical Movement" 1-13; G. Göransson, "Church-State Relationships and Their Influence on the Ecumenical Movement" 14-31; H. Ammer, "Ecumenical Church Law: Issues and Questions" 32-55.

laws invalidating juridical acts or preventing certain persons from enjoying legal capacity in certain areas.¹⁶⁰

Still more positively, one may note the theoretical and practical recognition of the validity of baptism in non-Roman communions as expressed in norm 19 of the *sacramental law schema*. Furthermore, several points in the *People of God schema* are noteworthy. A fundamental Christian responsibility is striving for unity among the churches (norm 20). A key obligation of the bishop is fostering an ecumenical consciousness in the particular church (norm 236). Finally, ecumenical observers may participate in diocesan synods (norm 273,3), contrary to the Code's strictly Catholic orientation relative to this institute.¹⁶¹ While the CLSA evaluation sees the *schema on the Church's teaching office* as positively fostering the ecumenical movement, the Canadian Report has some notable reservations about the somewhat paternalistic, overly cautious tone of norm 5 concerning the promotion and co-ordination of the ecumenical movement.¹⁶²

Negatively speaking, various evaluations criticize the absence of significant ecumenical input into the legal revision process. However, this point will be discussed later. Ecumenical problems relative to the schemata can be considered from two perspectives: (a) their inadequate concept of non-Catholics and (b) their rather restrictive approach to ecumenical relationships.

As regards the first issue, the view of non-Romans in the *sacramental law schema* is questionable, particularly as regards its conception of the ecclesial reality of non-Roman communions. This same issue can be posed regarding the *Lex* and the *People of God schema*. Particularly in the section on the fundamental rights and obligations of believers, it is not entirely clear what are the canonical implications of baptism, especially in light of the conciliar stress on the profound baptismal bond among believers. One wonders whether the schema has considered the internal as well as the external factors constituting ecclesial incorporation. This raises the profound theological-legal question on the meaning of incorporation in the Church, the precise implications of which seem far from clear.¹⁶³ Finally, a general issue raised in connection with the *Lex* and the *People of God schema* is the interrelationship between various levels of governance in the Church. It seems ecumenically imperative that there be greater room for diverse structural forms within the *communio* of the churches. Undeniably, a significant factor contributing to

¹⁶⁰ Green, "Penal Law" 253-54; id., "Marriage Law" 385.

¹⁶¹ Green, "Second Report" 30.

¹⁶² Coriden, "Teaching Mission" 2; Report of St. Paul University (n. 136 above) 5.

¹⁶³ LaDue, "Proposed Schema" 38-39; Green, "Marriage Law" 374; id., "Initial Report"

past ecumenical difficulties has been increasingly centralized governmental patterns in the Roman communion. Yet serious questions are raised both about the *Lex* and the *People of God schema* regarding the adequacy of papal-episcopal relationships. There still seems to be too much of an emphasis in both on papal prerogatives and too little stress on the integral leadership role of the college of bishops. In fact, the papal role seems to be treated frequently in isolation from the rest of the college. This necessarily engenders suspicions about how seriously ecumenical concerns are taken in the revision process.¹⁶⁴

In several areas, particularly the *sacramental law schema*, rather restrictive policies are stated relative to ecumenical praxis. These are hardly conducive to a positive evolution of interchurch relationships. This is particularly true because we are presently in a very fluid situation ecumenically. One can observe different rates of ecumenical progress in various countries and even in different parts of the same country. This is also true regarding different religious communions in their relationships with the Roman Church. Furthermore, progress in bilateral and multilateral dialogues and "grass-roots" developments such as covenanting of parishes and increased ecumenical commitment to common Christian concerns are significant factors to be reckoned with. In such a situation premature canonization of the ecumenical *status quo* would be notably counterproductive; this would also be the case for overly detailed universal norms insufficiently attentive to variables in the particular churches.

Accordingly certain norms in different schemata can be criticized. Norm 2 of the *sacramental law schema* is unduly restrictive regarding the reception of the sacraments by Western non-Catholic Christians. The June 1972 instruction of the Secretariat for Promoting Christian Unity speaks of "spiritual need" as a basis for *communicatio in sacris*, given the importance of frequent spiritual sustenance for personal spiritual growth and deeper incorporation into Christ's Church.¹⁶⁵ Yet the norm speaks only of "grave necessity" as a basis for sacramental sharing. This seems limited to rather drastic circumstances such as persecution, imprisonment, or danger of death. Norm 68 on the Eucharist specifically prohibits concelebration with ministers of other communions. This clearly represents the *ius vigens*, yet it is inadequately sensitive to evolving ecumenical progress. It embodies a view of the Eucharist only as the symbol of unity fully achieved and not as a possible means of fostering

¹⁶⁴ LaDue, "Proposed Schema" 35-36; Green, "Initial Report" 25 and "Second Report" 30. On the interrelationship of various levels of governance in the Church largely from an ecumenical perspective, see W. Bassett, "Subsidiarity, Order and Freedom in the Church," *Once and Future Church* 205-65. See also Anglican-Roman Catholic International Commission, *An Agreed Statement on Authority in the Church—Venice, 1976* (Washington D.C.: Publications Office, United States Catholic Conference, 1977).

¹⁶⁵ AAS 64 (1972) 518-25.

deeper relationships among the churches. Ecumenical marriage norms generally reflect the *ius vigens*, especially the 1970 motu proprio *Matrimonia mixta*.¹⁶⁶ However, it may be questioned whether religious differences should continue to be viewed technically as impediments to marriage. It seems more appropriate to view this factor within the framework of norms on preparation for marriage. This is true, given the Council's more pastoral, less polemical orientation in this area and the regular granting of dispensations for such unions. Furthermore, norm 346 on privilege-of-the-faith procedures is criticized for its preconciliar posture that seems inadequately sensitive to the rights of conscience of non-Catholics. These norms positively require non-Catholics to promise the Catholic baptism and education of any children born of the union. Recent developments, however, stress this as an exclusive obligation of the Catholic party, with the non-Catholic party simply being informed of the Catholic party's commitment.

In the sacramental arena, needless insensitivity to the Orthodox churches is evident in several instances. This seems true in the *sacramental law schema*, where norm 2,2 makes no provision for consultation with Orthodox hierarchs before authorizing *communicatio in sacris*, and norm 98, which does not explicitly require such consultation before the Eucharist is celebrated in Orthodox churches in the absence of an appropriate Roman Catholic church. In both instances explicit provision is made only for consultation with the respective Latin ordinary. A similar concern for Orthodox sensibilities arises in connection with norm 47 of the *schema on sacred times and places/divine worship*, which notes that the Sunday precept may be fulfilled in any "ritu catholico." This may needlessly offend Orthodox Christians, especially in view of the thrust of *Unitatis redintegratio* and *Orientalium ecclesiarum* as well as numbers 55-63 of the 1967 Ecumenical Directory.¹⁶⁷

Finally, there are inconsistencies in the *People of God schema* regarding non-Catholic observers in Roman Catholic conciliar processes. The schema improves the Code in norm 273,3 providing for ecumenical observers in the diocesan synod. Yet there is no provision for such ecumenical involvement in the synod of bishops (norm 161), particular councils (193), or the diocesan pastoral council (327). Actually, perhaps even more significant than the involvement of non-Catholic observers in Catholic conciliar processes is the steady evolution of synodal forms of governance within the Roman communion, contrary to the overly monarchical patterns of governance common until fairly recently.

¹⁶⁶ AAS 62 (1970) 257-63.

¹⁶⁷ On the various sacramental law issues, see Green, "Sacraments Other Than Marriage" 271-72, 290; id., "Marriage Law" 385, 399. See also McManus, "Recommendations" 22-23. For the first part of the Ecumenical Directory, see AAS 59 (1967) 574-592.

The *People of God schema* raises problems relative to the association of Catholics and non-Catholics. Generally the section on associations of the faithful is praised rather highly. However, it does not seem to be aware of the ecumenical implications of this significant contemporary phenomenon. Norm 46,3 seems to be the only norm directly dealing with ecumenical involvement in such associations. It states that non-Catholics may belong to Catholic associations unless the Catholic faith would be jeopardized. It would be naive to pretend that there are no problems in ecumenical collaboration, at least partly due to doctrinal divergences. However, the schema's rather negative posture clearly contradicts the openness to the rich possibilities of such involvement of a document such as the February 22, 1975 instruction¹⁶⁸ of the Secretariat for Promoting Christian Unity on ecumenical collaboration at various levels.¹⁶⁹

Principle of Subsidiarity¹⁷⁰

The Church is a *communio ecclesiarum*, a fraternity of local churches brought together by the Spirit into a single body. The history of the Catholic Church, in large measure, is the record of balancing one value against the other, of observing the integrity of the local church (apostolicity) without diminishing the unity of the Church universal (catholicity).¹⁷¹

Far from eliminating such a tension, the law should attempt to deal with it creatively. Particularly since Vatican II, there has been a growing consciousness of the need to respect diverse legal-cultural traditions in the particular churches. There is a need to foster a unity that is not equivalent to uniformity. This is a prerequisite for the free development of the different gifts and charisms of the Spirit (*Lumen gentium* 23; *Orientalium ecclesiarum* 2). Besides a healthy theological, liturgical, and ascetical pluralism, there must also be a genuine canonical pluralism that need not hinder but rather can enrich Church unity. This is true not only for the Eastern Churches but also for the Latin Church as well. And in fact we should speak increasingly of Latin *Churches* as well, since quite different models of Catholicism seem operative in the churches of Korea, Brazil, and the United States, to indicate only a few examples. And in a period of increasing sensitivity to the richness of the ethnic diversity within American Catholicism, it seems equally unjustified to speak in rather monolithic terms such as "American Catholicism."¹⁷²

¹⁶⁸ This text was not published in the AAS but was issued by the Secretariat in various languages. For an English text, see J. O'Connor, ed., *The Canon Law Digest Supplement through 1975* at canon 1258.

¹⁶⁹ Green, "Second Report" 29-30.

¹⁷⁰ Klostermann, "Reform" 155-56; Manzanares, "Diéz años" 307-9 (unidad en la variedad); 309-13 (principio de subsidiariedad); Thils, "Problèmes ecclésiologiques" 329-33; Green, "Reflections on the People of God Schema" (n. 158 above) 19-22.

¹⁷¹ Coriden, *Once and Future Church* 269.

¹⁷² For a recent examination of cultural diversity in American Catholicism, see chap. 11,

The incarnation of the Church in various cultures requires greater freedom of initiative for those called to leadership roles in the various churches. The value of pluralism may be relatively easy to affirm theoretically; however, working out its implications in practice and refashioning relationships between the Holy See and the local churches is a complex undertaking. In fact, there seems to be a contrast between rather forceful doctrinal affirmations in this area and relatively cautious postconciliar efforts at restructuring governmental relationships between the universal Church and the particular churches.¹⁷³ The delicacy of this movement towards decentralized structures is evident in principle 5 for the revision of the Code approved by the 1967 Synod. It affirms the need for greater pastoral discretion for individual bishops, yet it recognizes the value of reserving certain issues to the Holy See for the good of the universal Church. There must be a certain fundamental unity in basic principles of Church order and in its fundamental institutions; yet it is also important that there be a greater latitude for creative initiatives in particular legislation. Interestingly enough, the principle distinguishes between Eastern Churches, the diversity of whose discipline seems fairly well recognized, and the Latin Church, where there is a fear of a counterproductive particularism if a great deal of disciplinary latitude were afforded the various churches.¹⁷⁴

"The Neighborhood," in A. Greeley, *The American Catholic: A Social Portrait* (New York: Basic Books, 1977) 213-31.

¹⁷³ "Pero quizá en este principio, mas que en ningún otro, la audacia de la doctrina se ha visto contrastada por la cautela en las aplicaciones. Principalmente si pensamos que la Iglesia latina se encuentra lo mismo en el area de países occidentales que en las cristianidades de Asia o Africa de mentalidad y tradición cultural tan dispar. En liturgia, B. Luykx aboga por la necesidad y la urgencia de rehacer todo el trabajo realizado en los organismos romanos para llegar a un rito adaptado a la cultura africana, desde cuya defensa el habla. Lo mismo podríamos decir en otros sectores de la disciplina y desde otras mentalidades. Pero es evidente que entramos en un campo complejo, erizado de dificultades tanto por aquello que se ha de asumir como por el discernimiento entre lo que exige la imprescriptible unidad católica y los revestimientos culturales llamados a ser sustituidos. La disciplina no debe frenar el necesario impulso; pero es normal que pruebe y verifique las conclusiones llegadas desde otros campos. Aunque también es normal el deseo de que esta delicada tarea la emprenda en estrecho diálogo con la teología y todo el conjunto de ciencias antropológicas" (Manzanares, "Diez años" 308-91).

¹⁷⁴ Principle 5 reads in part: "De applicando principio subsidiarietatis in ecclesia:

"5. Quae modo dicta sunt ad applicationem principii *subsidiarietatis* in iure canonico indubitanter pertinent. Attamen longe distant a pleniore profundioreque applicatione principii ad legislationem ecclesiasticam. Principium confirmat unitatem legislativam quae in fundamentis et maioribus enunciationibus iuris cuiuslibet societatis completae et in suo genere compactae servari debet. Propugnat vero convenientiam vel necessitatem providendi utilitati praesertim institutionum singularium tum per iura particularia ab iisdem condita tum per sanam autonomiam regiminis potestatis executivae illis recognitam. 'Episcopis, ut Apostolorum successoribus, in diocesibus ipsis commissis per se omnis competit potestas ordinaria, propria ac immediata, quae ad exercitium eorum muneris pastoralis requiritur, firma semper in omnibus potestate quam, vi muneris sui, Romanus Pontifex habet sibi vel

Not surprisingly, then, a principal issue in evaluations of the schemata is their adequacy in articulating a better balance between the Holy See, episcopal conferences, and individual bishops in the decisional process. Together with the issue of the relationship of the nonordained and the ordained in the Church's public ministry, this issue of the ecclesial implications of the principle of subsidiarity is the major concern of the commentators. However, the issue is usually posed somewhat more forcefully by the CLSA evaluations than by the British-Irish and Canadian commentaries. In brief, the issue is precisely this: How willing is the Holy See to limit its interventions in the life of the particular churches to those situations when it is a question of promoting or protecting the common good of all the churches?

This issue can best be approached from two general perspectives. First, the evaluations articulate some general expressions of concern about the application of the principle of subsidiarity, prescinding from its application to specific issues. Secondly, they comment on the appropriateness of its application in various schemata. This latter discussion is organized according to three general rubrics corresponding to the provisional ordering of the revised Code: the Church's sanctifying, teaching, and pastoral-governance mission. The first and third issues are greatly discussed by the commentators; however, the second issue is only minimally a concern in the literature.

Understandably, the practical meaning of the subsidiarity is considered at length in the discussions on the *Lex* and the *People of God schema*,

alii Auctoritati causas reservandi' (Decr. de pastoralis Episcoporum munere in Ecclesia *Christus Dominus* n. 8 a). Causae reservatae in novo Codice clare apparere debent. Convenit nempe ut potestas suprema, quae exercitium potestatis Episcoporum ultimatim regit, et certis limitibus intuitu utilitatis Ecclesiae et fidelium, circumscribere potest, in iis decernendis enucleate procedat. Videtur autem id fieri nequire, saltem convenienter pro hodiernis adiunctis, ad modum cuiusdam indicis. In Codice ipso opportune eae proponantur.

"Systema iuris canonici, unum pro tota Ecclesia esse debet in summis principiis, quoad institutiones fundamentales, quoad mediorum Ecclesiae propriorum ad finem suum obtinendum descriptionem sive denique quoad technicam legislativam, quae omnia congruentius pro bono communi generali modo proponuntur.

"Haec iuris canonici conformatio a Concilio Oecumenico in conficiendis Decretis suis disciplinaribus apprime servata est. Per eam unitas legis ecclesiasticae egregie affirmata est, moderata tamen plurimis determinationibus competentiarum apud legislatores particulares.

"Alienum autem videtur a mente et spiritu Concilii Vaticani II, salvis disciplinis Ecclesiarum Orientalium propriis, ut in Ecclesia occidentali Statuta peculiaria adsint, quae veluti formam praebeant specificam legibus ecclesiarum nationalium. Attamen id significare non debet in legislationibus particularibus maiorem amplitudinem et autonomiam non desiderari, praesertim in iure a Conciliis nationalibus regionalibus condendo, adeo ut aspectus peculiare ecclesiarum singularium non apparere non possint. Momentum harum peculiarum legislationum in novo Codice Iuris Canonici accuratius esset describendum praesertim in re administrativa temporali, cum regimen bonorum temporalium iuxta leges propriae nationis magna ex parte ordinari debet."

since these documents more than any others deal with the interrelationships of various levels of Church governance. The former does so in a more generic and the latter in a somewhat more specific fashion. Reaction to the *Lex* is somewhat mixed. Its affirmation of the communion of the churches in norm 2 of both versions is especially praiseworthy. However, there is a need to stress more forcefully the significance of patriarchal governmental forms in the East and the emergence of newer forms of regional collegiality such as episcopal conferences in the West. The *Lex* tends to view the bishops almost exclusively as individuals in their relationship with the Holy See and prescind almost entirely from a consideration of intermediary levels of government. Both *Lex* versions are questionably successful in their efforts to express adequately the increasingly significant phenomenon of episcopal collegiality.

Undeniably, the competence of individual bishops and episcopal conferences has been expanded in various schemata following the *Lex*. The evaluations of the *People of God schema* welcome this development and note the schema's positive features. However, it is still seriously questionable whether the schema adequately implements the principle of subsidiarity. This will be evident when reference is made to individual institutes, leaving a good deal to be desired in this regard. Greater cognizance must be taken of the size and diversity of the Latin Church and of the uniqueness of individual churches within the *communio*. This is especially true for the so-called Third World churches, since the schema in many respects is appropriate in a Western European-North American milieu but decidedly out of place elsewhere. However, universal discipline should be equally applicable to all the churches and not simply to those which have become more organizationally developed over the centuries.

A related question raised in connection with the *People of God schema* is the relationship between individual bishops and the episcopal conference. Discussions on the legal implications of subsidiarity have largely focused attention on the greater or lesser decisional pre-eminence of the episcopal conferences vis-à-vis the Holy See. Generally speaking, enhanced competence for the conferences is applauded and restrictions on such competence lamented. Yet there is a danger of creating an intermediary decisional power as inadequately sensitive to diverse ecclesial circumstances as an overly centralized universal code. The legitimate discretion of individual ordinaries may be unduly compromised by increasing stress on the decisional prerogatives of intermediary bodies such as episcopal conferences and particular councils. This is perhaps less true in the latter case, given the relatively undeveloped form of these institutes today. Accordingly there is a call for a better balance between the decisional pre-eminence of the episcopal conference and the appropriate discretion of individual ordinaries in shaping the mission of their partic-

ular churches. If only those matters absolutely necessary for the unity or utility of the universal Church should be reserved to the Holy See, *a pari* only those matters absolutely necessary for the unity or utility of the particular churches in a given territory should be reserved to the episcopal conference or particular council. Obviously, the practical implementation of such imperatives will take much time, patience, prayer, and reflection on the pastoral experience of the various churches.¹⁷⁵

1) *The Church's sanctifying mission.* Questions have arisen about the precise relationship of the *sacramental law schema* to the *schema on sacred times and places/divine worship*. The proposed Book IV on the Church's sanctifying mission is preferable to the Code's somewhat non-integrated treatment of such realities throughout Book III.¹⁷⁶ However, there are still problems in the way the two schemata deal with certain interrelated issues. One such issue is the competent authority in liturgical matters. This is treated in norm 90¹⁷⁷ of the *sacramental law schema* in the section on the Eucharist, and in norm 51¹⁷⁸ of the *schema on sacred times and places/divine worship* in the section on divine worship.

First, there should not be two different norms treating this issue. Secondly, the treatment of this basic issue should be more nuanced than is true in either norm. It should take adequate cognizance of all the significant concerns of *Sacrosanctum concilium*, particularly numbers 22, 36–40. Thirdly, the following specific points might be noted. Technically, it is not the role of the Holy See to approve vernacular translations of official Latin liturgical texts. Hence the term "approbare" in norm 51 is inappropriate. *Sacrosanctum concilium* 36, 3 makes it clear that the appropriate terms describing the Holy See's action regarding episcopal-conference decisions concerning vernacular versions of texts are "probare seu confirmare." This differs from the issue of the "usu et modo linguae vernaculae," where explicit Holy See authorization is called for.

¹⁷⁵ LaDue, "Proposed Schema" 38, 41, 44; id., "Revised Schema" 8–9, 14–15; Green, "Second Report" 42–44; Response of St. Paul University (n. 87 above) 13–16.

¹⁷⁶ See n. 26 above; Green, "Sacraments Other Than Marriage" 270–71; McManus, "Recommendations" 28–30.

¹⁷⁷ Norm 90 reads as follows: "(CIC 818). 1. Supremae Ecclesiae auctoritatis atque ad normam iuris Episcoporum Conferentiarum et Episcoporum tantummodo cum sit Sacram moderari Liturgiam, nemini licet quidpiam proprio marte in ritualibus precibus et caeremoniis addere, demere aut mutare. 2. Inter probatas celebrationis Eucharistiae formulas liturgicas, eam sacerdos in singulis casibus eligat qua fidelium utilitati eorumque participationi magis consulatur."

¹⁷⁸ Norm 51 (CIC 1257) reads as follows: "Apostolicae Sedis est liturgiam ordinare, libros liturgicos necnon eius versiones approbare; idem ius competit Episcopis eorumque coetibus intra limites vero propriae competentiae. Quapropter nemo omnino alius, etiamsi sit sacerdos, quidquam proprio marte in liturgiam addat, demat, aut mutet." The McManus critique of this norm is fairly detailed and elaborate. This article attempts simply to point to significant features of that critique in relationship to the subsidiarity issue.

Furthermore, a significant postconciliar liturgical development is the provision for adaptations and accommodations not only by episcopal conferences but also by diocesan bishops and by presidents of the liturgical assembly, be they priests or even deacons. This liturgical discretion should be explicitly incorporated in a basic norm on the appropriate liturgical authority in light of *Sacrosanctum concilium* 38.

A still more fundamental issue in this context is the matter of permissible liturgical adaptations by particular churches. Vatican II has given fresh impetus to the task of recovering the Church's authentic liturgical tradition and en fleshing it in various cultures. Yet, it is seriously questioned whether the revised law envisions an end to additional liturgical adaptations and a return to post-Tridentine centralization and uniformity. The revised law should express a general principle or two on the responsibility of the episcopal conferences/individual bishops in dialogue with the Holy See to foster liturgical progress in harmony with our liturgical tradition (*Sacrosanctum concilium* 37-40). Finally, it was noted earlier that perhaps we should speak not of the Latin Church but of the Latin Churches, given the diverse ecclesial experiences throughout Western Catholicism. Obviously this is a profound matter involving possibly significant disciplinary change. Yet, an examination of the discussion leading to the formulation of *Sacrosanctum concilium* 4 reveals that its principle of equal respect for all rites embraces not only existing Latin and Eastern rites but also any new rites to be recognized in the future. Such a significant point should be expressed in the revised law.¹⁷⁹

Several other less significant issues deserve mention under this general rubric. They are discussed according to the general ordering of the *sacramental law schema*. First, its provisions for the various formalities surrounding sacramental celebration are too complex, and the episcopal conferences should enjoy more discretion in such matters as registration and proof of celebration, time and place of celebration, etc. This point is

¹⁷⁹ McManus reworks norm 51 as follows to do justice to the relevant values expressed in this section:

"1. Sacrae Liturgiae moderatio et ordinatio sunt apud Romanum Pontificem (vel: Apostolicam Sedem) et Episcopum diocesanum (vel: Ecclesiam particularem) necnon, ad normam iuris, coetus Episcoporum.

"2. Apostolicae Sedis est libros liturgicos lingua latina exaratos approbare, Conferentiarum Episcopaliū autem conversionem textus latini in linguam vernaculam.

"3. Nemo alius, etiam sit sacerdos vel diaconus, quidquam proprio Marte in liturgiam demat aut mutet.

"4. Intra limites in libris liturgicis statutos, est Conferentiarum Episcopaliū vel etiam, iuxta adiuncta, Episcopi dioecesanī et parochi aut praesidis aptationes liturgicas definire sine confirmatione Apostolicae Sedis; aptationes autem profundiores consensum Apostolicae Sedis requirunt.

"5. Praeter ritus Latinos nunc vigentes Supremae Auctoritati reservatur agnitio ritus omnino novi Ecclesiae Latinae."

specifically addressed only regarding baptism, but it seems generally applicable throughout sacramental law. Several institutes in the norms on the Eucharist are too detailed for universal law and belong in lower-level legislation, e.g., norms on Eucharistic reservation and veneration (norms 99–108) and on stipends (109–129). The same is true for indulgences in the norms on penance (162–180). This is not primarily a canonical issue and can be better dealt with simply by referring to an appropriate source such as the Apostolic Constitution *Enchiridion indulgentiarum* of January 1, 1967.¹⁸⁰ The norms on orders improve the Code, yet they can be simplified further. This is especially true regarding the institute of irregularities and impediments (norms 223–232), particularly because of their historically- and culturally-conditioned character. The general law should specify a few fundamental principles, with particular applications to be determined by the episcopal conference.

2) *The Church's teaching mission.* As noted earlier, this issue surfaces rather infrequently in the different schemata. Outside of the *schema on the Church's teaching mission*, magisterial considerations are not an explicitly prominent factor in the revision process. The evaluations of the *People of God schema* generally welcome its effort to provide more significant latitude for infra-universal legislation in ministerial formation and education. It strives to integrate conciliar and postconciliar developments on ministerial formation. It also calls for the formulation of appropriate episcopal-conference directories to facilitate the proclamation of the gospel in various sociocultural settings. Nevertheless, the schema's intentions are vitiated by its overly detailed norms (82–119), so that its desired flexibility seems unduly compromised. Hence it should be streamlined so as to specify general principles on ministerial formation to be implemented by the *Ratio fundamentalis institutionis sacerdotalis* of the Sacred Congregation for Catholic Education and appropriate episcopal-conference directories.¹⁸¹

The CLSA evaluation of the *schema on the Church's teaching office* finds it rather positive regarding the competence of infra-universal legislators. Many matters are to be determined by episcopal conferences, diocesan bishops, or religious superiors. Furthermore, numerous norms explicitly allude to and recognize sociocultural differences among peoples—an obvious reason for seriously implementing the principle of subsidiarity in this area.¹⁸²

3) *The Church's pastoral-governance mission.* The *religious law*

¹⁸⁰ AAS 59 (1967) 5–24.

¹⁸¹ Green, "Initial Report" 14–15. On p. 15 suggestions are offered relative to the issues to be treated in universal law. See also Response of St. Paul University (n. 87 above) 10–11.

¹⁸² Coriden, "Teaching Office" 2. He alludes to thirty references to the conferences in the schema.

schema is well received in light of its implementation of the value of subsidiarity. No other *schema* so aptly clarifies the relevance of this consideration for legal reform.¹⁸³ This is true even though the specific circumstances of religious communities obviously must be considered in this context. The CLSA evaluation praises the *schema* in this regard, though it suggests the re-examination of certain norms which are too detailed or unwisely attempt to specify the content of particular legislation.¹⁸⁴

The *penal law schema* has been received somewhat favorably, at least partly because it confines its focus to general penal principles. There is a commensurate increase in the competence of infra-universal authorities and a much less detailed specification of universal penalties than in the Code. However, it is noted that centralization in the past has resulted frequently from an effort to protect believers against nonaccountability and arbitrariness by lower-level superiors. Hence it is appropriate that the competence of individual ordinaries be somewhat restricted here and that greater emphasis be placed on episcopal-conference determination of penal guidelines and provision for recourse against lower-level penal enactments.¹⁸⁵

Another document generally received favorably is the *schema on temporalities*—though not without certain reservations.¹⁸⁶ It allows

¹⁸³ The following excerpts from guiding principles 2-3 for the revision of religious law bear noting in this context: "... ius commune seu universale sancire debet dumtaxat principia generaliora quae omnibus Institutis faciliter applicari possunt ... ex una parte cavetur contra 'livellationem,' quae dicitur, Institutorum vitae consecratae propter normas iuris communis nimis particulares et minutas, et ex alia adiuvantur Instituta eorumque sodales, ut per veram et accommodatam renovationem propriam identitatem et proprium spiritum iterum inveniant, si illa iam deperdiderint, vel ad illa servanda et roboranda ...

"... normae iuris universalis foveant, promoveant et exstimulent in Institutis studium profundum eorum indolis, propositi, inspirationis et loci quem in Ecclesia Christi occupant. Instituta deinde gaudere debent congrua libertate ut haec omnia convenienter et opportune exprimantur in propriis constitutionibus seu statutis ... considerata sunt diversissima adiuncta, temporis, spatii, culturae, gradus evolutionis socialis populorum etc. in quibus sodales diversorum Institutorum, et eiusdem Instituti, vitam agere et apostolicam missionem perficere obligantur. Nisi autem normae iuris communis sint vere generales, etsi disciplinares sint, et nisi statuta propria disciplinaria Institutorum vere flexibilia sint, vita et activitas Institutorum vitae consecratae fieret nimis dura et amitteret illam suavitatem quae confert quam maxime ad finem huius vitae aptius consequendum" (pp. xii and xiv of *Praenotanda*).

¹⁸⁴ Regan, "Canons on Institutes" 101. Among the norms raising problems in this connection are the following: 28 (terms of office for religious moderators); 52,1 (specification of at least a year for canonical probation) and 54,3 (specifications of goals of probation period and tasks of religious director and assistants in realizing such goals).

¹⁸⁵ Green, "Penal Law" 260-61.

¹⁸⁶ Response of Saint Paul University to the Pontifical Commission for the Revision of the Code of Canon Law on the "Schema canonum Libri V de iure patrimoniali ecclesiae" 1 (unpublished). See L. Orsy, "Report of the Task Force Committee on the Draft of the Canons of Book Five: The Law Regarding Church Possessions" 6. Orsy judges that there is

greater scope for the implementation of general norms by individual bishops and episcopal conferences. This is particularly understandable in light of civil-law differences and economic variables throughout the Church. The Canadian report stresses the increased role of the conferences and suggests the advisability of establishing a conference secretariate for economic affairs if its varied responsibilities are to be fulfilled competently. However, an Australian report on the schema raises questions about whether it reflects the experience only of very developed ecclesiastical-civil orders. It is questioned whether much of the schema can be applied in underdeveloped or emerging nations.

Critics of the *sacramental law schema* praise certain changes in marriage law enhancing episcopal-conference discretion. For example, the conferences would be empowered to establish impediments (norm 262,3) and raise the minimum age for marriage (282,2). Yet some evaluations, such as that of the CLSA, desire even greater latitude for episcopal-conference competence. This view is not shared by other commentators, who view the schema as properly balanced between universal and particular law and fear a dangerous particularism if the discretion of the conferences were expanded further. The CLSA evaluation favors greater freedom for the conferences in determining premarriage formalities. This seems to be an appropriate area for the type of pastoral directory envisioned by *Christus Dominus* 44, especially in light of sociocultural variables throughout the Church. This is especially true if this issue is seen more properly in terms of pastoral care for marriage rather than simply clarifying the freedom from impediments of the parties. Furthermore, it seems questionable that universal law should maintain impediments such as abduction (norm 289) and public propriety (293). These should better be left to lower-level legislators, given the culturally-conditioned factors giving rise to them. The schema recognizes the increased competence of the conferences regarding marital separation—a relatively insignificant issue today in American tribunal practice. Nevertheless, the norms on marital separation (norms 347–351) still seem too detailed for universal law. Perhaps it should simply specify the basic principle that spouses are obliged to maintain a community of life and then indicate that the conferences and individual bishops are to provide for situations in which separation is sought, e.g., causes, provisions for children. This issue has civil-law implications in certain civil-ecclesial contexts, and it

still an unresolved conflict between Roman-law concepts and terminology underlying the schema and other legal systems. He also observes that more extensive use could be made of the civil-law system, at least in certain countries. There is a need for closer collaboration between the legal experts of the episcopal conferences and the members of the Code Commission.

seems fitting that the episcopal conferences deal with such variables as responsibly as possible.¹⁸⁷

This reference to civil-law variables naturally leads to some brief considerations on the *procedural law schema*, where numerous critiques have questioned the schema's adequacy in balancing the exigencies of universal law and a healthy legal pluralism. This issue is pursued in some detail in the CLSA report; however, only a few general observations can be made here.¹⁸⁸ The study group states as a key objective the establishment of a better balance between universal and particular law than the Code. The various critiques logically take this as a basic criterion for measuring the schema's adequacy. It certainly has some positive features when contrasted with the Code. On balance, however, episcopal-conference/individual-bishop options are rather marginal and do not do justice to the positive legal-pastoral experience of countries such as the United States with particular norms such as the American Procedural Norms (APN). Such norms can and should be refined and efforts are being made to do so. In fact, they reflect rather well the basic values intended by the schema. Nevertheless, promulgation of the schema unfortunately will preclude further refinement of the APN, inasmuch as they will cease to be operative. A major deficiency of the schema is its failure to recognize the diverse circumstances in which the Church exercises its mission, contrary to the *schema on temporalities* mentioned earlier. The *procedural law schema* seems to operate from the perspective of a Church existing in a concordat situation, with ecclesiastical nullity or separation judgments having civil-law implications. However, *de facto* most of the particular churches do not function in such a concordat arrangement—certainly not the ones that process the majority of marriage cases.¹⁸⁹

¹⁸⁷ Green, "Marriage Law" 374, 376-77, 385, 388-89, 399-400.

¹⁸⁸ Green, "Marriage Nullity Procedures" 383-91.

¹⁸⁹ *Ibid.* 387: "First of all there is a certain measure of procedural law diversity already existing: Code/*Provida*, the Oriental procedural law promulgated in the *motu proprio Sollicitudo* of Pius XII of January 6, 1950, special norms for missionary countries and various particular indults of the past decade including the APN. Such diversity does not seem notably counterproductive in terms of the value of ecclesial unity. In fact it has enabled Church tribunals to respond more creatively to the exigencies of a creative administration of ecclesial justice. What is necessary is not to suppress such diversity but still further to refine and improve the particular law institutes that have recently developed.

"Legally it would be most unwise were the schema not to recognize the contemporary diversity of socio-cultural contexts in which ecclesial justice is to be administered: a) Concordat states where Church law has civil effects and civil law canonizes Church decisions. b) Communist states where Church and state are in an adversary position & where international Church law helps to maintain religious freedom. c) Missionary areas where three laws may be operative: customary law of people, colonial law imposed by a foreign power, distinctively Church law. d) U.S. situation with Church-state separation where Church decisions have no civil effects but civil courts usually recognize internal Church decisions."

A specific example of the above-mentioned problem is the schema's requirement that all third-instance cases be processed at the level of the Holy See (norm 44). This is contrary to the desire of numerous commentators that third-instance courts be established in various countries. This would minimize tribunal costs and procedural delays, foster a jurisprudence more attentive to sociocultural variables, and reflect better the responsibility of conferences of bishops to provide for pastoral-legal concerns. In brief, adequately harmonizing the ecclesial values of unity and diversity has never been easy in this area, as in any other area of law. However, imposition of an overly detailed universal procedural law responding to a concordat context hardly is the most adequate way of approaching this task.

Finally, several concerns may be expressed about the principle of subsidiarity in the *People of God schema*. Earlier it was observed that greater episcopal-conference/individual-bishop discretion seems imperative in the area of ministerial formation and education. A related concern is the fashioning of new ministerial forms responding to shifting patterns of postconciliar ecclesial ministry. This has implications for such matters as the creation of new ministries, the changing role of women in the Church, the restructuring of parish leadership roles, and possibly the modification of traditional celibacy requirements in the Latin Church. Obviously this last point is a delicate one, which calls for prayer and reflection on the Church's ministerial needs and experience, particularly that of the married diaconate. Clearly, neither the *sacramental law schema* (norm 217) nor the *People of God schema* (norm 135) envisions any disciplinary change in this area. However, perhaps this is an example of an issue where greater latitude must be provided for episcopal-conference initiative due to diverse pastoral exigencies. This obviously presupposes consultation with the Holy See and other conferences, lest ecclesial unity be significantly jeopardized.¹⁹⁰ Questions are also raised about apparently excessive Holy See intervention in the conciliar life of the particular churches. This is true in such matters as the approving of the holding of regional councils (norm 189), the approving of the president of such councils (191,3), and the reviewing of the statutes of such councils and episcopal conferences prior to promulgation (197 and 206). Furthermore, the schema (norm 228) provides for more adequate episcopal-conference involvement in the selection of bishops than the Code. Yet, still greater episcopal-conference input in the decisional process seems

¹⁹⁰ For a balanced discussion of the canonical implications of new ministerial developments in the Church, see J. Coriden, "Ministries for the Future," *Studia canonica* 8 (1974) 255-75. For a helpful treatment of various canonical issues affecting clerics, see the consensus statement of a 1972 Catholic University symposium on law and priestly life and ministry. It was published as "Canonical Reflections on Priestly Life and Ministry," *AER* 166 (1972) 363-92; 388-92 deal with the celibacy issue.

appropriate, such as is envisioned in the proposed CLSA procedure for the selection of bishops. While this would be a change from present USA praxis, it would represent no dramatic innovation when compared with the noteworthy input in the decisional process enjoyed by some secular governments and other ecclesial bodies elsewhere in the Church. This procedural diversity is recognized in the presently operative papal norms governing the selection of bishops in the Latin Church.¹⁹¹

Before closing these reflections on the canonical implications of the principle of subsidiarity, some comments seem in order relative to the status of individual bishops. As noted earlier, the proposed revised law must be assessed carefully, lest it unduly compromise a significant conciliar theme: the necessary autonomy and freedom of the diocesan bishop in exercising his office (*Lumen gentium* 27; *Christus Dominus* 8).

Norm 102 of the *general norms schema* prohibits a legislator other than the supreme Church authority from delegating legislative power. This is contrary to the fairly ample latitude it envisions regarding the delegation of executive and judicial power. This is a questionable restraint on the exercise of legislative power by those empowered by the Holy Spirit to govern the particular churches. It seems to violate the principle of subsidiarity in precluding the bishop's empowering the council of priests, the diocesan pastoral council, or some other body to enjoy deliberative competence. There should be greater trust in the wisdom of those called to exercise such noteworthy leadership roles in the particular churches.¹⁹²

Norm 246 of the *People of God schema* prompts some concern because it does not fully reflect the freedom bishops should enjoy in dispensing from universal legislation.¹⁹³ It is not easy to reconcile the related values of the bishop's sacramental power and autonomy and the pope's responsibility to safeguard the unity of the universal Church. The integration of these values has been fully worked out neither in theory nor in practice;

¹⁹¹ Canon Law Society of America, *Procedure for the Selection of Bishops in the United States* (1973). This work also offers an English translation of the above-mentioned papal norms, the original text of which is found in AAS 64 (1972) 386-91. Article V, 2 of the proposed CLSA procedure states the responsibilities of the National Conference of Catholic Bishops Committee on the Nomination of Bishops as follows: 1) To receive the results of the Regional Meetings, and while preserving these intact, to add any observations which seem pertinent. 2) To finalize the list of candidates for a particular office of bishop. 3) To maintain records and files relative to the selection of candidates. 4) To make recommendations to the NCCB regarding the operation of these Procedures. Article VI proposes that selection of candidates for any episcopal office be made by the Holy See only from a list of three to five candidates drawn up by the NCCB Committee. Article VII indicates the process whereby this list would be composed.

¹⁹² Kennedy, "Observations on Book I" 3.

¹⁹³ Green, "Initial Report" 29-30 and "Second Report" 44; Response of St. Paul University (n. 87 above) 14 and 16.

hence the formulation of an appropriate norm is difficult. However, the schema is less satisfactory than either *Christus Dominus* 8 or the 1966 *motu proprio* of Paul VI *De episcoporum muneribus*.¹⁹⁴ Both strongly affirm the value of episcopal discretion even while recognizing the legitimacy of papal reservations in matters of consequence for the universal Church. The schema, for example, unduly restricts the bishop's dispensing power to disciplinary laws "which directly intend the spiritual good of the faithful." This qualification is understandable when one considers the reason for dispensing but hardly acceptable when one considers the type of law from which one dispenses. There may well be laws which do not directly intend the spiritual good of the faithful but from which a dispensation is still called for, e.g., 1971 norms on the status of laicized priests.

The CLSA report, much more than the other evaluations, emphasizes the importance of the laicization process being handled in the particular church rather than in Rome. The bishop who has incardinated the priest and guided him in his ministerial commitments should likewise have the right to accept his resignation from the active ministry for due cause. This would do justice to the relevant pastoral-legal variables better than the present practice. Likewise, readmission to the active ministry should be within the province of the above-mentioned bishop or possibly the bishop of residence of the resigned cleric. Due provision should be made for specifying the criteria for such readmission and for notifying the Holy See and the bishop of incardination if the latter is not the ordinary readmitting the cleric to the active ministry.¹⁹⁵

The *procedural law schema's* requirement of recourse to the episcopal conference for authorization of one-judge tribunals (norm 24,4) seems to violate the principle of subsidiarity in tribunal organization. Such decisions should be within the competence of the officialis or at least the bishop of the diocese. Requests for such one-judge authorizations are granted regularly in any event.¹⁹⁶

Finally, in the *schema on sacred times and places/divine worship*, norm 12 seems to violate the conciliar decree *Christus Dominus* 35, 4, which subjects the public worship of exempt religious to the authority of the local ordinary. The norm concerns the ordinary's discretion to make certain determinations relative to hours of sacred services in churches in his diocese; it explicitly makes an exception for exempt religious, contrary to the conciliar intent.¹⁹⁷

¹⁹⁴ AAS 58 (1966) 467-71.

¹⁹⁵ Green, "Initial Report" 18 and "Second Report" 43.

¹⁹⁶ Green, "Marriage Nullity Procedures" 380.

¹⁹⁷ McManus, "Recommendations" 7. He also suggests reformulating norm 49 on the authority of bishops regarding penitential days (and feast days). Obviously, the study group intends to restrict initiatives by individual bishops in this area while reserving such

Various Theological Issues

Several issues of a more comprehensive character cannot easily be situated for discussion under any of the preceding rubrics. However, this survey of theological issues in the legal revision process would be incomplete without an allusion to the following points. They may be considered under three general headings: (1) inadequate use of sources, especially conciliar texts; (2) problems concerning basic theological premises underlying various schemata; (3) tendency to resolve legislatively issues still subject to scholarly inquiry. The schemata most subject to these criticisms are the *Lex*, the *sacramental law schema*, and the *People of God schema*. However, occasional references are made to other schemata raising similar issues. Though the issues are complex, the comments here are somewhat brief, since their purpose is simply to highlight certain concerns in the schemata.

1) The inadequate-use-of-sources rubric can be interpreted in different ways. At times it means a direct contradiction of conciliar and postconciliar sources. Occasionally it refers to a selective citation of such sources and especially a tendency to take them out of their proper context. It may imply a failure to take adequate cognizance of such sources in the revision of the law. This concern about the adequacy of sources arises in some critiques of the *Lex*.¹⁹⁸ It is a noteworthy problem as well in the norms on marriage¹⁹⁹ and on the other sacraments.²⁰⁰ McManus notes

competence to the conferences. Nevertheless, the discretion of individual bishops should be expressed in such a way that it does not seem as if a *facultas* is being conferred upon them. Rather, it should be clear that such competence is related to their innate pastoral authority.

¹⁹⁸ See *Notes for a Critical Analysis of the Schema of the Lex ecclesiae fundamentalis* (Bologna: Istituto per le Scienze Religiose, 1971) passim but esp. 14–19.

¹⁹⁹ The problems regarding sources can be illustrated briefly through the following quotation: "There are some particularly negative features: a) the failure to transcend adequately the Code's contractualist perspectives; b) the still unsatisfactory articulation of the partnership-procreation dimensions of marriage and the omission of a positive reference to conjugal love; c) the failure to attend to some significant jurisprudential developments, e.g. annulments because of relational incapacity due to other psycho-sexual anomalies; d) the schema's strong jurisdictional rather than pastoral focus and its inadequate sensitivity to the distinct features of a sacramental Christian marriage; e) undue limitations on the competence of episcopal conferences in such areas as marital preparation and ecumenical policy; f) inadequate sensitivity to the changed post-conciliar ecumenical context and its implications for ecumenical marriages; g) the failure to take adequate cognizance of the faith dimension in sacramental celebration as stressed in *Sacramentorum celebratio* and the various liturgical *ordines*; h) an overly hierarchical view of the Church and an inadequate sensitivity to the role of the community and especially married couples in marriage discipline; i) certain terminological deficiencies, e.g., *administratio* instead of *celebratio* (Green, "Marriage Law" 406–7).

²⁰⁰ The following quotation gives a brief overview of certain problems relative to the sources: "Some particularly negative features of the schema should be noted in this

several instances of this problem in the *schema on sacred times and places/divine worship*.²⁰¹ Finally, it is a noteworthy issue in the *schema on the People of God*—an issue addressed rather systematically in the Canadian report on the document.²⁰²

connection: a) an inadequate view of the sacraments as means to be correctly used to achieve certain spiritual effects rather than as mysteries of faith, redemptive actions of Christ and his Church, signs showing forth and making present the grace of the Spirit; b) a failure to emphasize adequately the properly communal character of sacramental celebration with due recognition for the integral roles to be played by the different members of the faith community; c) a failure to perceive the role of minister in broader terms than the faithful observance of official rites and ceremonies—as important as this is; d) a failure to reflect adequately the dynamic process of Christian initiation and a commensurate failure to do justice to the institute of the catechumenate; e) a tendency to overemphasize the absolution aspect of Christian reconciliation with a commensurate failure to stress its other dimensions and highlight the varied possibilities for its celebration; f) a failure to do justice to present possibilities for ecumenical sharing; g) a failure to take genuinely seriously the legitimate legislative role of the episcopal conferences with a commensurate tendency to over-legislate in such areas as the time and place of sacramental celebration and the recording of such where necessary, the institute of stipends, the training and formation of candidates for the diaconate and priesthood, etc.” (Green, “Sacraments Other Than Marriage” 325–26).

²⁰¹ The following examples indicate some of his concerns: Norm 28 on Christian burial should take greater cognizance of the *Ordo exsequiarum, Praenotanda*, n. 1–2 (p. 14). Norm 44 on feast days should speak in terms of “*praeceptum Missam participandi*” rather than “*praeceptum Missae assistendi*” to be properly faithful to *Sacrosanctum concilium*. In fact, in accord with the May 25, 1967 Instruction *Eucharisticum mysterium* (28), it would be better not to refer directly to the precept but rather to the Eucharistic celebration of the Sunday observance (p. 21). In norm 45 the limitation of the second feast day of precept, in addition to the Lord’s day, to a Marian feast seems contrary to the intent of chapter 5 of *Sacrosanctum concilium* with its insistence on the priority of feasts of the *Mysterium Christi*, especially nos. 108 and 111 (p. 22). Finally, it is unfortunate that the significant 1966 Apostolic Constitution *Paenitemini* is not included in title 5 of the schema on penitential days (p. 24).

²⁰² The following issues are considered in various parts of the CLSA evaluations; however, they are integrated in one introductory section of the Response of St. Paul University (n. 87 above; pp. 4–5), and this seems particularly helpful to the reader: “The following items are of particular concern:

“1) *The rights of the faithful*: the limitations of rights incorporated into the schema are not generally found in the conciliar sources from which they are apparently drawn.

“2) *The Synod of bishops*: the schema, in canon 157, does not reflect adequately the thrust of the *motu proprio* ‘*Apostolica sollicitudo*’ (September 15, 1965), especially as regards the nature and competence of the Synod. It is not presented as an instrument expressing the teachings on collegiality, but rather as a body sharing in the papal power. As Pope Paul VI stated when establishing the Synod, ‘We desired that after the Council the Christian people would continue to enjoy the abundant benefits which Our close union with the Bishops brought them during the Council itself.’ This dimension could be strengthened in the schema.

“3) *The Roman Curia*: the schema does not seem to mention, in canon 176, the role of the Curia as a service to the College of bishops as well as to the Pope, as was understood in *Christus Dominus*, Nos. 9–10.

2) Problems concerning basic theological premises underlying schemata surface in the critiques in at least two forms: a request that something comparable to a *theological preamble* precede the norms, or a *dissatisfaction with the organization* of a text and a request that its underlying premises be clarified. This concern arises first in discussions of the *penal law schema*.²⁰³ While the CLSA report and the British-Irish analysis of the *penal law schema* praise certain positive features, they both express reservations about the adequacy of the document's expression of theological values undergirding the Church's penal order. The British-Irish analysis, however, approaches the issue somewhat differently than the CLSA. The former judges that the accompanying *motu proprio Humanum consortium* expresses rather well certain theological values to which the canons give expression, e.g., pastoral purposes of penal law, protection of People of God against certain forms of anti-eclesial behavior, value of greater discretion for infra-universal legislators in light of the principle of subsidiarity. The British-Irish analysis states, however, that the law when promulgated will be separated from the *motu proprio*. Hence there is a danger that it may be interpreted and applied without a proper sense of the underlying theological concerns. Hence the British-Irish evaluation suggests incorporating certain themes in an introductory norm setting the tone for the whole schema. On the contrary, the CLSA has more profound reservations about the schema's theological presup-

"4) *Dispensing power of bishops*: canon 246 gives a more restrictive interpretation of a bishop's dispensing power than is found in *Christus Dominus*, No. 8b. For instance, the addition of the word 'directe', when referring to the spiritual welfare of the faithful, modifies somewhat the thrust of the conciliar decree. Likewise, the various restrictions imposed on this power.

"5) *Senates of priests*: the circular letter of April 11, 1970 (S.C. for the Clergy) assigns a broader deliberative competence to priests' councils and insists more on their elected character than does the schema (cc. 309, 311).

"6) *The pastoral council*: there is less encouragement in the schema (c. 326) for a diocesan pastoral council than we find in *Christus Dominus* (27), *Ecclesiae sanctae* (I, 16), or the Directory for the Pastoral Office of Bishops (No. 204).

"7) *Parish councils*: the schema does not seem to refer to corporate bodies at the parish level. The thrust of *Apostolicam actuositatem* (Nos. 10, 26) and of the Directory on the Pastoral Office of Bishops (No. 179) took a different view on the matter.

"8) *Role of pastors*: the schema does not reflect the thinking of *Christus Dominus*, No. 30,3, on the leadership role of the pastor, even though it reflects No. 30,1-2, on his cultic and magisterial functions."

²⁰³ While the *Lex* is criticized for its theological inadequacies, there is little or no doubt about its operative premises because of the detailed *relationes* and footnotes accompanying each version. One key problem in analyzing other documents, especially the *People of God schema*, is a lack of clarity about the text's guiding purposes and sources. Hence an indispensable preliminary stage of any sound evaluation is attempting to clarify these issues even before commenting on the document. Unfortunately, at times even the *Praenotanda* accompanying the text are not especially helpful in gaining an understanding of the mind of the particular study group in question.

positions, even given the *motu proprio Humanum consortium*. The validity of penal law seems to be simply taken for granted without any persuasive rationale, even though the *motu proprio* refers to certain relevant theological themes. This seems problematic especially today, when many people have problems accepting the legitimate role of law within the Church and most especially the relevance of penal law. The CLSA report does not intend to affirm that such a rationale is not possible. Rather, it insists that there must be serious reflection on such themes as the Church in service to the kingdom, the role of ecclesiastical authority as service, the legitimate freedom of believers, the sinful dimension of the Church as a pilgrim community constantly in need of reform.²⁰⁴

The issue of a possible theological preamble surfaces still more sharply in connection with the *sacramental law schema*. There is fairly general agreement that the schema has attempted to integrate post-Code developments into the legal corpus and thereby bring it into minimal conformity with the conciliar documents and postconciliar liturgical *ordines*. There is a certain advantage in having readily accessible the *ius vigens* on sacramental practice. Yet it may be questioned whether having the law accessible precisely in the form of succinct norms of a revised Code is the most appropriate format. It is questioned whether the schema as a whole responds to the Church's legitimate expectations for a theologically based, pastorally sensitive, and legally precise body of sacramental norms.

One significant reservation about the schema is that the norms are frequently separated from their rich theological-liturgical matrix, in which alone they can sensitively guide pastoral practice. One particularly positive feature of certain postconciliar legislative efforts has been the attempt to situate norms in their appropriate theological-pastoral context, e.g., the 1966 Apostolic Constitution *Paenitemini* on penitential practice.²⁰⁵ The task of expressing the theological values underlying the revised law is hardly easy, and questions may be raised about the wisdom of incorporating theological affirmations within the canons themselves. Nevertheless, the present process of codification runs the risk of dissociating the law from its broader theological-pastoral context. Only within this framework can it be seen as a distinctly ecclesial *sui generis* legal enterprise.²⁰⁶

²⁰⁴ Green, "Penal Law" 251-52, 270-71, 273-74.

²⁰⁵ AAS 58 (1966) 177-98.

²⁰⁶ The following reflections from an unpublished evaluation of the schema by the Department of Canon Law of the Catholic University of America seem noteworthy in this context: "... it is desirable that doctrinal or theological affirmations not be made in canon form but placed in a theological preface or introduction to the various sacraments as in the apostolic constitution *Paenitemini*. Such a format would highlight the role of law in the

The issue of the organization of the *sacramental law schema* and its relationship to the *schema on sacred times and places/divine worship* also seems noteworthy. It was noted earlier that serious questions have been raised over the years about the organization of Book III of the Code *De rebus* and specifically the materials affecting the Church's life of worship.²⁰⁷ The proposed reorganization of the law would entitle Book IV of the revised Code *De munere sanctificandi ecclesiae*. As presently planned, it would have two sections, one on the sacraments and the other on sacred times and places and divine worship. The proposed reorganization clearly improves the Code, yet it still is not fully satisfactory, because its view of the relationship between sacramental discipline and the law on divine worship is not an integral one. Part of the material on divine worship in the Code is incorporated in the section on the sacraments (canons 1265–1275, 1290–1295), and the rest is to be placed in a separate section of the revised Book IV. Furthermore, norms 50–53 in the *schema on sacred times and places/divine worship* (comparable to canons 1256–1259 of the Code) are fairly generic in nature and belong at the beginning of the revised Book IV, even before the material on the sacraments and sacramentals. Accordingly a concern for the law's conformity with *Sacrosanctum concilium* and sound sacramental theology suggests an alternative, more integral reorganization of the above-mentioned materials.²⁰⁸

Finally, questions regarding fundamental theological concepts arise in connection with the *People of God schema*. There seems to be a lack of clarity relative to the schema's organizing principles; yet such clarity is crucial if the schema is to be of maximal service to the Church. This prompts the initial CLSA report to suggest the possibility of a theological preamble preceding the schema and articulating some of its key themes. This might be particularly beneficial regarding such issues as the meaning of the mission of the Church, the meaning of *Christifidelis*, the role of the whole People of God in realizing the Church's mission, the relation-

Church in the service of faith-doctrine. It would demonstrate much more clearly the contingent character of the ecclesiastical law, subject to considerable change and development. It would also eliminate the confusion resulting from undifferentiated mingling of theological affirmations, disciplinary regulations and moral exhortations. There is indeed a long tradition for placing both beliefs and rules in juridical form, but in the contemporary world this juridicizing of doctrine has muddled the distinction between Church law and Church teaching and the methodologies and processes proper to each" (quoted in Green, "Marriage Law" 409). For comments on this issue in the *sacramental law schema*, see Green, "Marriage Law" 376, 409; id., "Sacraments Other Than Marriage" 281, 288, 302–3.

²⁰⁷ See n. 26 above.

²⁰⁸ McManus ("Recommendations" 2) suggests the following organization: (a) Preliminary canons De cultu divino; (b) Part 1, De sacramentis; (c) Part 2, De ceteris actibus et elementis cultus divini: De temporibus sacris, De locis sacris, De sacramentalibus, De cultu sanctorum etc., De voto et iureiurando.

ship of the particular churches to Rome and to the other particular churches in the *communio*.

Despite these laudable objectives, however, it may be questioned whether such a preamble is an appropriate way of realizing them. This is because of the difficulty of expressing the ecclesiology or, better, ecclesiologies of Vatican II in a legal text. It seems an unduly risky enterprise to canonize one particular theological approach among several precisely in a time of notable theological development. This seems neither legally satisfactory nor theologically productive. Reservations expressed in the critiques of the *Lex* about the wisdom of expressing theological insights in canonical terms seem relevant in this connection.²⁰⁹

In light of the increased awareness of the difficulty of formulating such a theological preamble, the second CLSA report on the *People of God schema* concentrates on reorganizing the schema in order better to express conciliar principles and postconciliar theological insights. Obviously this is an extremely complex issue presupposing a detailed analysis of the schema, which cannot be attempted here. However, it is possible to offer some brief comments on two noteworthy points in the schema's reorganization.

Perhaps the most notable change is dropping the separate section on the laity (norms 523–533) and incorporating it into the chapter on the fundamental rights and obligations of believers (16–38). The above-noted separation makes it appear that the laity are the exception in the Church, whereas *de facto* they are the majority of believers (*Christifideles*). Theirs is the normal Christian status, whereas the special rights and obligations of clerics and religious should be seen in relationship to those of the laity. Secondly, the basic organization of the alternative schema differs significantly from the actual schema under consideration. It is based on the principle that the Church of Christ is a *communio*, an association of persons who share in the same spiritual realities and are united together by a multiplicity of bonds which arise from their common patrimony. The first part of the alternative schema would deal with the component elements of that *communio*: the basic baptismal rights and obligations of believers, sacred ministers or clerics, lay ministries, religious, and other associations of the faithful. The second part of the alternative schema would deal with various levels of the structuring of the *communio* of the People of God for mission. This second major part of the alternative schema would articulate the principal offices of Church government and the various support institutions at the universal, diocesan, and supradiocesan levels. This seems to be a more workable and theologically adequate approach than the schema, which is divided into

²⁰⁹ T. Green, "Reflections on the People of God Schema" 14; id., "Initial Report" 2–3, 41–43; LaDue, "Revised Schema" 5–6.

two general sections comparable to the Code: persons in general (physical persons and juridical persons) and persons in particular (sacred ministers, the Church's hierarchical constitution, religious, and laity).²¹⁰

3) An interesting text in the *People of God schema* is norm 239,3 on the bishop's magisterial responsibilities. It calls for his preserving the unity and integrity of the faith. Yet he is to recognize legitimate freedom in the pursuit of doctrinal understanding, while avoiding premature decisions on issues still subject to legitimate scholarly debate.²¹¹ This is a wise approach in a period of significant institutional change and ongoing scholarly reflection. The Church is still gradually appreciating the implications of conciliar insights and applying them to pastoral practice. Accordingly a cautious, somewhat *ad experimentum* approach to legislation seems judicious, lest certain institutes be prematurely canonized, thereby precluding a healthy flexibility in responding intelligently to changing pastoral circumstances. This issue was addressed *ex professo* only in the *sacramental law schema*,²¹² however, it is a significant one

²¹⁰ Green, "Reflections on the People of God Schema" 15-16; id., "Second Report" 2-5, 54-55 (Appendix I). The Response of St. Paul University (n. 87 above; pp. 6-10) also devotes itself to a reorganization of the schema. Its approach is somewhat the same as the CLSA; yet it reflects some notable differences, particularly regarding the so-called middle level of Church government. In passing, it might be noted that the issue of a possible theological preamble also surfaced briefly in the CLSA evaluation of the *religious law schema*; however, it did not seem to be a significant concern. It was suggested that the norms on the theological foundations of consecrated life might be taken out of the schema and placed apart as a separate introduction or preamble (Regan, "Canons on Institutes" 99).

²¹¹ "Integritatem et unitatem fidei credendae aptioribus mediis firmiter tueatur, iustam libertatem tamen in veritatibus ulterius perscrutandis agnoscens, nec quaestiones de quibus periti legitime inter se dissentiunt dirimens."

²¹² As regards the marriage norms, the following issues need to be addressed much more seriously, since they are far from settled matters: "... a) the identity between the sacrament and valid consent in marriages of the baptized—the relevance of faith to a genuinely sacramental union; b) the connection between procreation and the relationship of the couple in an integral view of Christian marriage—the effect of various socio-cultural factors on that reality; c) the significance of the favor of the law for substantive and procedural law; d) the implications for administrative practice of contemporary discussion on the transphysical dimensions of consummation; e) the continued relevance of the institute of canonical form and the possibility of recognizing as valid yet non-sacramental certain marriages of the baptized; f) the meaning of the institute of dissolution/dispensation of the bond; g) its significance and the relevance of nullity-validity categories as adequate ways of institutionalizing our commitment to marital permanence and the healing of those experiencing marital breakdown; h) the legislative competence of the universal Church and the particular churches—options for particular law initiative in response to socio-cultural variables; i) the relationship between the College of Bishops and the Roman Curia particularly in formulating universal law; j) the respective competencies of Church and State in marriage regulation—the possibility of increased civil competence in areas not particularly related to the Church's unique mission to those in sacramental marriage" (Green, "Marriage Law" 407-8).

throughout the whole legal-revision undertaking. Obviously, disciplinary canons cannot reflect every significant current of theological development or likely future development. Yet, unfortunately, the norms in the *sacramental law schema* frequently tend to canonize certain disciplinary positions without regard for developments in the various liturgical *ordines* or ongoing theological reflection. They tend to exceed the competence of the Code Commission in stating authoritatively what has not yet been definitively taught by the college of bishops. Such an approach by the Code Commission may be prompted by an understandable desire to foster legal security in the Church. However, there is a danger of buying a seemingly desirable legal security at the price of obscuring the indispensable maturing process of reflection, pastoral experience, and prayer that is indispensable for genuinely responsible ecclesial change.

Methodological Reflections

As noted earlier, this article concludes with some brief reflections on methodological issues, i.e., concerns related to the Code revision process. These issues have been raised throughout the revision process, though they are addressed more extensively in some evaluations than in others.²¹³ Generally speaking, the CLSA critiques raise methodological questions more frequently and more seriously than the other evaluations. With reference to the *People of God schema*, however, such methodological concerns are forcefully expressed in other evaluations as well. This may well be because the whole process has now reached a critical point.

At this point all the schemata have been forwarded for evaluation to the bishops and others involved in the consultative process. Some have been reworked by the appropriate study groups in light of those evaluations. During the 1977 Synod of Bishops it was indicated that further

As regards the other sacraments, the following issues need to be addressed much more seriously, since they too are far from settled matters: "... a) the failure to give attention to the need for liturgical adaptation to different cultures and traditions and the spiritual needs of varying worshipping communities; b) an apparent unwillingness to be open to legitimate ecumenical developments in areas such as Eucharistic hospitality and concelebration among clergy of various traditions; c) an apparent preference for canonizing the status quo in the area of general absolution and an inadequate openness to healthy developments in penitential practice; d) a tendency to legislate as if significant questions were not being raised relative to such institutes as stipends and indulgences; e) a failure to consider broader possibilities for diaconal ministry in regard to the anointing of the sick; f) a restrictiveness with regard to broader ministerial possibilities for married persons and women especially" (Green, "Sacraments Other Than Marriage" 326).

²¹³ This issue is addressed most thoroughly in connection with the *Lex* (LaDue, "Revised Schema" 5, 15), the *sacramental law schema* (Green, "Marriage Law" 400-406, 408), the *procedural law schema* (Green, "Marriage Nullity Procedures" 410-11), and the *schema on the People of God* (Green, "Initial Report" 3, 43-44; id., "Second Report" 49-50). See also Green, "Reflections on the People of God Schema" 23-25.

consultation of the world episcopate depended on a decision of the Holy Father. Yet such consultation of bishops and other members of the particular churches is absolutely indispensable if the various schemata are to be acceptable to the whole Church. This is especially true today, when the credibility of Church law is not something taken for granted by many. Rather, this must be demonstrated through the evident service that law renders the Church's ongoing life and mission. This is also true given the faithful's rising expectations for increased participation in decisional processes vitally affecting their lives.²¹⁴

A process of discussion and dialogue comparable to Vatican II itself is clearly in order for an undertaking as serious as the revision of universal law. Such a suggestion of the need for further broad consultation hardly questions the competence, diligence, or good intentions of the members of the various Code Commission study groups. It simply reflects an increased sensitivity to the legal implications of a view of the Church as a structured community of believers sharing in different ways in the varied dimensions of Christ's priestly mission. It also is based upon an understanding of the integral role of the college of bishops in an enterprise so vital to the well-being of the Church universal.²¹⁵

One problem noted on several occasions is that the bishops seem to be generally precluded from serious collegial reflection on the various schemata. Technically the pope and the bishops should be the key leadership figures in the implementation of conciliar reforms. Yet the bishops have largely been on the periphery of the legal revision process, intervening periodically during the past decade to comment on already prepared documents. They have had no real assurance that they would be able to assess the schemata after they are revised by the study groups in response to episcopal comments and other consultative input. At Vatican II the final texts approved by the bishops reflected a painstaking process of revising proposals and reformulating drafts before they were finally acceptable to the Council fathers. At the heart of the conciliar experience was the sustained interaction of the bishops of the world among themselves, with the members of the Roman Curia and the various *periti* and observers. Obviously such a process cannot be duplicated easily; yet some

²¹⁴ For a couple of helpful articles on the new context within which legal revision must take place, see G. Lesage, "Un nouveau style de droit canonique," *Studia canonica* 6 (1972) 301-4. Also F. Morrisey, "Preparing Ourselves for the New Law: Law Alone Will Not Hold the Church Together," *Studia canonica* 7 (1973) 113-28. For a stimulating article on the role of the community in the acceptance of law, see G. King, "The Acceptance of Law by the Community: A Study of the Writings of Canonists and Theologians, 1500-1750," *Jurist* 37 (1977) 233-65.

²¹⁵ The following sources place particular emphasis on the significant role of the college of bishops in fostering the good of the universal Church: *Lumen gentium* 23; *Christus Dominus* 6; Directory on the Pastoral Ministry of Bishops 39-53.

kind of similar provision for further individual and corporate input seems indispensable for a genuinely productive revision process.

Thus far another significant problem has been the *ad hoc* character of the evaluation process. There has been no opportunity to assess the revision process as a whole and especially to clarify the interrelationships between various schemata such as the *Lex* and the *People of God schema*. This is also true for the *sacramental law schema* and the *schema on sacred times and places/divine worship* as well as for the *procedural law schema* and the *schema on administrative procedure*.

A related issue is the relatively brief time for consultation, especially when contrasted with the time spent preparing the various schemata.²¹⁶ Such a short period of time is hardly adequate for serious dialogue between the Holy See and the particular churches. This is especially true if alternatives to the schemata are to be prepared. Yet this seems imperative if those evaluating the schemata are to do more than simply react to already prepared texts without being creatively involved in the shaping of new legal forms.²¹⁷

What might be the stages in a more adequate consultative process? First, there should be a thorough reworking of the schemata by the appropriate Code Commission study groups. This means more than a merely technical co-ordination of the various documents to eliminate inconsistencies, duplications, unevenness in style, and the like. It means taking serious cognizance of the input of all involved in the consultative process thus far, especially the episcopal conferences. The schemata should be examined carefully to see if they are faithful to the guiding principles of legal reform approved by the 1967 Synod. They should be analyzed to see whether they reflect conciliar orientations and postconciliar developments. The schemata should be reviewed thoroughly to eliminate norms that are unnecessary or not certainly useful. They should also be examined to ensure their correspondence to the principles of institutional reform noted earlier in this article.

Secondly, after this revision by the various study groups, the reworked schemata should be submitted to the conferences of bishops and other official consultative bodies. At this stage it is crucial that there be the

²¹⁶ For example, apparently seven years elapsed during the elaboration of the *penal law schema*, yet only three months were allowed for consultation. Apparently eight years were necessary for the elaboration of the *sacramental law schema*, yet only four months were allowed for consultation.

²¹⁷ For an example of a possible alternative model of legal reform, see P. Huizing, "Alternativentwurf für eine Revision des kanonischen Eherechts," in *Für eine neue kirchliche Eheordnung*, ed. P. Huizing (Düsseldorf: Patmos, 1975) 83-105. Huizing's proposed new Church order on marriage encompasses the following headings: preamble and introduction, marital consent, admission to canonical marriage, impediments in general, impediments in particular, invalid/broken marriage, validation and final norm.

widest possible consultation in the particular churches. While the bishops have an indispensable role in this enterprise, they can hardly be isolated from their brothers and sisters in the particular churches whom they are called to serve in a leadership capacity. Such consultation should certainly involve, but hardly be limited to, corporate entities such as councils of priests and diocesan pastoral councils. Furthermore, a special effort should be made to involve women in the consultative process. In light of various affirmations of the fundamental equality of believers and the need to respect the charisms of all, it is incomprehensible that no women are members of any of the Code Commission study groups. This deficiency is especially noted in the evaluations of the *religious law schema* and the *sacramental law schema*, particularly regarding the marriage norms. However, it is a legitimate criticism that is applicable to the whole revision process.

Finally, the schemata should be reworked by the study groups in light of this second round of consultation. Then they should be submitted to a special session of the synod of bishops for final approval. Such synod authentication is not canonically necessary, but it seems extremely important if the revised law is to gain wide acceptance throughout the Church. If representatives of the episcopal conferences could share insights and experiences and perhaps enjoy a deliberative vote regarding the wisdom of promulgation, the dangers of premature codification without an ecclesial consensus could more likely be avoided.

In closing it might be noted that another issue with greater long-range import is the question of ongoing *aggiornamento* of the Church's legal corpus in response to changing theological-pastoral exigencies. This was hardly a significant preoccupation at the time of the promulgation of the Code in 1918. It was a different world characterized by much less significant societal change. Furthermore, a much more static, overly institutional ecclesiology dominated the thought patterns of the framers of the Code. On the contrary, Vatican II views the Church as a pilgrim community constantly called to reform and to a perceptive reading of the signs of the times. This vision has significant legal implications, for it implies that regular canonical updating must be a fundamental institutional priority. This does not mean simply occasional interpretations of disputed statutes but more profoundly the designing of models of legislative renewal at all levels of the Church. It is important both to reflect on past ecclesial precedents for such legal reform and to learn from appropriate civil-law models. Only through such regular rethinking and reformulating of our legal institutes will Church law be able to be a vital force in serving the Church's salvific mission.