

The Jurist

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PETER AND PAUL SEMINAR: AN HISTORICAL NOTE

JAMES A. CORIDEN*

Ladislav Orsy originated the plan, based on the experience of the Groupe des Dombes,¹ for a dialogue between canonists and theologians. The motivation for the discussions was ecumenical, to further the union of the Christian churches; but the focus was on canonical structures of the Church that, in their present form, inadequately express the Church's own theological convictions.

John Huels and James Coriden joined Orsy in inviting a small group to meet at Saint Paul University, Ottawa, Ontario, on June 14-15, 1998, just after the annual convention of the Catholic Theological Society of America (CTSA). Ten persons engaged in a spirited exchange and many issues emerged. The group focused specifically on the question: What modifications, based on the Church's teachings, need to be made to canonical structures in the interests of Christian unity? Individual topics were selected and a meeting was set for the following year.

The Seminar group gathered again in Miami, Florida at the Hyatt Regency Hotel, on June 6-8, 1999, immediately before the CTSA meeting. After reminding itself of its goals and methods, the group discussed in detail the first drafts of five papers which were circulated just before the meeting. Progress was made and additional authors were suggested.

The final meeting of the Seminar took place in San Jose, California, at the Fairmount Hotel, on June 6-8, 2000, again just before the annual meeting of the CTSA. The revised drafts of six papers were subjected to thorough discussion. The group agreed on approaching *The Jurist* for possible publication of the papers. Conversations and correspondence regarding further revisions of the following six papers continued throughout most of 2001.

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¹ The Groupe des Dombes is an ecumenical group of Catholic and Reformed theologians and pastors in France founded in 1937. Over the years the group has published various documents exploring different ecumenical issues.

The seven Seminar participants who authored the papers are grateful to Thomas Green, the editor of *The Jurist*, for his gracious and painstaking editorial efforts, and to his predecessor of blessed memory, James Provost, for his encouragement of their publication. We are indebted to one another for the genial collegueship, constructive criticism, and stimulating scholarship which each brought to and shared in our sessions. May these modest products of the seminar reflect honor on our apostolic patrons, Peter and Paul, and contribute in some small way to the unity which the Risen Lord desires for his Church.

INTRODUCTION: THE SCOPE AND SPIRIT OF THE PETER-PAUL SEMINAR

LADISLAS ORSY, S. J.*

The purpose of the PETER-PAUL SEMINAR was to contribute in a modest way toward promoting and sustaining the inner balance of the Church of Christ. More precisely, it was an effort to demonstrate through practical examples how a close relationship can, and should, be created between theology and canon law. The two disciplines serve the Church well when they serve it together; and when they operate in harmony, they promote the unity of the diverse communities.

To recall two events in history will help us to understand even more fully the *raison d'être* of the PETER-PAUL SEMINAR. One is the promulgation of the bull *Benedictus Deus* by Pope Pius IV in 1564¹, the other is the convocation of Vatican Council II by Pope John XXIII in 1959. Each of these events initiated a particular, and at the time new, trend in the life of the Church.

Pius IV confirmed the "deliberations" of the Council of Trent, and then set the rule for their interpretation:

To avoid any perversion and confusion, which could arise if it were permitted to anyone who so wished to publish his own comments on, and interpretation of, the decrees of the council, with apostolic authority we order that . . . no one must publish, in any manner whatsoever, without our authorization, commentaries, glossaries, annotations, *scholia*, or interpretations of any kind concerning the council's decrees; or to state anything for whatever reason, not even under the pretext of corroborating them, or promoting their implementation, or under some other pretension.²

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¹ See Denzinger-Schönmetzer, 1847-1850.

² "Ad vitandam praeterea perversionem et confusionem, quae oriri posset, si unicuique liceret, prout ei liberet, in decreta Concilii commentarios et interpretationes suas edere: Apostolica auctoritate inhibemus omnibus. . . : ne quis sine auctoritate Nostra audeat ullos commentarios, glossas, annotationes, scholia, ullumque omnino interpretationis genus ipsius Concilii decretis quocumque modo edere aut quidquam quocumque nomine, etiam sub praetextu maioris decretorum corroborationis aut executionis alioque quaesito colore statuere." See Denzinger-Schönmetzer, 1849; author's translation.

This was a far reaching change: it would be difficult to find a precedent for it. It introduced a new method for theologians and canon lawyers, a method that was to touch the very nature of their disciplines. The criterion for finding the meaning of a conciliar text "in truth" was no longer reason enlightened by faith but rather the approval of an administrative office, the Congregation of the Council, which the pope established for the purpose. Theoretically, the new norm governed the handling of the pronouncements of the council only; however, practically, since the conciliar texts covered so many doctrinal and disciplinary issues, it touched the whole field of theology and canon law. It virtually put an end to the intellectual passion generated by Abelard's method of searching for truth by contrasting affirmations with negations, *sic et non*; it terminated Gratian's investigations to find a concordance among the discordant canons through *distinctiones*; also (alas!), it exiled Aquinas's subtle strategy of finding the right responses *via* relentless questions and objections, *videtur quod non . . . sed contra est . . .* No matter what charism in wisdom or prudence a "doctor" in the Church may have possessed, the final word about "truth" was reserved to an office.

Of course, there is such an abundance of energies in the Church that no ordinance can strangle its vitality. The post-Tridentine centuries produced giants in holy life and apostolic zeal; giants who helped the Church to recover from the shock of the Reformation and experience a new expansion and prosperity the world over. Yet, the same centuries were not marked by that creativity in ecclesiastical sciences which characterized the patristic or scholastic period. In particular, canon law was conceived as rooted more in the will of the superior than in the operation of reason enlightened by faith. Ecclesiastical jurisprudence consisted in endless analyses of the texts and contexts of laws; however, critical questions concerning their relationship to theological values were hardly ever raised.

Such developments led the eminent historian of canon law, Gérard Fransen, from Louvain, to conclude that in the post-Tridentine centuries the life of the Church was dominated by a "canonical nominalism;" he could have used the term "legal positivism."³

"Positivism" in legal sciences is an approach that focuses entirely on the legal norms and takes little or no notice of the source that gives life to them and of the environment that nourishes them, the universe of values. Positivism in canon law focuses on the rule of "ecclesiastical discipline" and

³ See "L'application des décrets du Concile de Trente: Les débuts d'un nominalisme canonique," *L'Année Canonique* 27 (1983) 5-16.

pays little or no attention to the theological values that give meaning to them.

Experience teaches that such a "nominalist" or "positivist" approach to law is bound to lead to frustration and tension in the community: when people do not perceive a value behind a law, they sense an emptiness and they refuse to obey it. Contempt for the law follows inevitably, and so does a loss of respect for the legislator.

John XXIII reversed the trend. He returned to our ancient tradition: if the Church needs *aggiornamento*, it must come from the universal episcopate. To achieve that end, he made sure that the bishops had all the freedom to debate. They made good use of it over the four sessions of the council, perhaps even more in the intermissions. They deliberated through affirmations and negations, through distinguishing authorities, through questions and objections; it was an immense and exhilarating exercise in "faith seeking understanding"—Abelard, Gratian, and Aquinas would have enjoyed it. And "understanding" faith did find: in the long history of the Church there was no period when in so few years so many insights into the Christian mysteries came to light.

Most importantly, a wholesome image of the Church emerged from the debates; an image in which there is no place for the fragmentation that is the bad fruit of canonical nominalism. In a Church of "communion," theology and canon law, that is, vision and legislation, must be in union. Theological values must be promoted and supported by legal norms, and no legal norm has the right to exist except in the service of a theological value. To find the right relation and the correct balance between the two disciplines, scholars from both sides must work together with one mind and one heart—for the good of the people.

In 1998, the PETER-PAUL SEMINAR arose: a small attempt to move the great vision of the council forward.

The members' commonly agreed point of departure was simple: in any community laws exist in order to support and to promote authentic values; in the community of believers laws exist to support theological values. It cannot be in any other way.

The group then, taking into account the particular interest of each member, identified a number of theological insights emerging from the council, insights demanding practical provisions in the form of legislation, such as primacy, episcopacy, infallibility, collegiality, unity, the position of the laity, all of them of major importance in view of the unity of

the Christian churches. Each member then accepted the task of studying the relationship between a given theological value and the subsequent legislation (some of it in the 1983 Code of Canon Law, some in other documents) to see how far the practice followed the insight. Each study had to be a critical investigation, searching for the truth without prejudice and passion, *sine ira et studio*. If the laws were found wanting, the researcher was encouraged to suggest fair improvements in them. In other terms: four "precepts" guided the work of the seminar: *first*, identify a theological value; *second*, identify the structures and norms meant to serve that value; *third*, see if the structures and norms give full scope to that value; *fourth*, suggest improvements and corrections as needed. This basic pattern is present in each paper; beyond that, the group wished to respect the personal approach of each researcher. Here and now, the results are presented to the public through the courtesy of *The Jurist*.

The principal achievement of such an enterprise is not so much in the propositional positions or in the legislative suggestions put forward by the members as it is in the method they were using. All their affirmations can be amended, should new evidence demand it. All their tentative "canons" can be improved, should new circumstances ask for it. The basic principle, however, that all laws must be in the service of theological values has an enduring validity. To say the contrary, such as "the canons should not be in the service of theological values," would be to advocate a patent absurdity.

Indeed, the principles and method adopted by the PETER-PAUL SEMINAR could (and should) become powerful instruments for interpreting and evaluating all our laws. They could (should) serve as sound guides toward any future revision of the 1983 Code of Canon Law. In such a revision (which is bound to come), there is no better way to proceed than first to identify the theological values which demand legislation, and then make sure that the law does justice to such values. In this way, and only in this way, will the ideal of canon law become a reality: norms and structures in the Church exist to provide freedom for God's people to receive the gifts of the Spirit; or better still, they exist to create a favorable environment for God's Spirit to distribute his gifts.

By way of conclusion, the intent of the seminar is best summed up by its title: it was named after Peter and Paul. From early times Peter was honored as the principle of unity, Paul was remembered as an apostle blessed with creativity. In the PETER-PAUL SEMINAR theologians and canon lawyers assembled and searched together for creative insights in order to strengthen the inner harmony of the one Church of Christ.