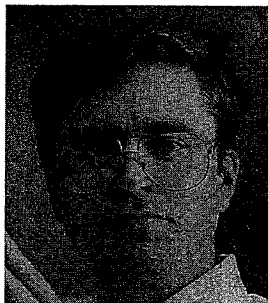


FIVE THINGS EVERY BISHOP NEEDS TO KNOW ABOUT CANON LAW

By Edward N. Peters



A bishop who really commits to knowing the canons affecting his actions has the credibility to extend that requirement to his priests, diocesan staff, parish workers, and faithful at large.

To make the claim that there are five things every bishop needs to know about canon law suggests some assumptions that should be considered prior to presenting the five points.

One assumption might be that bishops don't already know the five things I'll recommend in this essay. But of course, making suggestions does not imply that the recipient is unaware of the ideas. Given the Holy See's care in the selection of episcopal candidates, little in this essay will come as a revelation to those men who have risen to the rank of diocesan bishop. Instead, I hope that this formulation of certain suggestions might help bishops to address canonical issues in a more fruitful way.

Others might suppose that, if bishops do not know and apply the five things about canon law discussed herein, their ministries and dioceses would be doomed to grave, perhaps irreversible, damage. To that let me observe (none too originally) that if the Church were really at the mercy of any of the various groups working within it (including canon lawyers), it would have disappeared long ago. There is an element of that divine protection for the Church as a whole that extends also to its legal system and its officers, a fact which, provided it is not parlayed into an excuse for carelessness or abuse, should be a consolation to us all.

Yet another assumption might grant that, while the aspects of canon law presented here concern important matters in Church life, bishops ought to be able to hand these matters over to knowledgeable and trustworthy subordinates, freeing themselves to concentrate on more central ecclesial issues. Canon law, after all, as John Paul II affirmed in his apostolic constitution *Sacrae Disciplinae Leges*, "is not intended as a substitute for faith, grace, charisms, and especially charity in the life of the Church."

Certainly it is true that in every governing structure, the operations of its legal system eventually become the province of specialists, and likewise that not every able leader in a society need be a legal scholar thereof. In fact, for the Church's first five centuries, no pope or bishop could have told us clearly what canon law was. So much for its radical necessity. But at the same time, no one denies that any leader, whether civil or ecclesiastical, who has practical familiarity with the laws of that society, will have an easier go of it. At a minimum, a firm grasp of the points outlined below should aid bishops in recognizing canonical advisors worthy of their confidence.

Having briefly addressed a few assumptions suggested by my recommendations, I had planned to turn immediately to the specific points. But almost the first thing I realized was that, had I been asked to write this

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essay even five, but certainly ten, years ago, my first suggestion would have been different from what it is today. The reasons behind this evolution are important to consider.

Ten years ago, given ecclesiastical demographics, the typical diocesan bishop in America would have been trained under the 1917 Code and, although he might have had only a seminary sequence in canon law, nevertheless, his canonical education would have highlighted the incredible length and breadth of ecclesiastical issues treated by the Church's legal system. Moreover, the canonical concepts and categories he learned would have reflected those of St. Pius X and Pietro Cardinal Gasparri. Of course, the Church and the world to which it ministers underwent breath-taking changes in the decades following 1917, while codified canon law remained essentially unchanged until 1983. Thus, to the bishop of ten years ago, my advice would have been something like: "Please be conscious of the fact that the 1917 Code of Canon Law was completely revised in 1983, and that consequently, many approaches to ecclesiastical governance which were quite sound under the old code are inadequate under the new."

While I might have needed forgiveness for a certain temerity then, the advice itself would have been basically sound. Paul VI had been suggesting the same thing throughout the post-Conciliar canonical reform period. The revised Code of Canon Law, he frequently observed, was going to require a "*novus habitus mentis*" or a "new way of thinking," in order to be interpreted and applied correctly. John Paul II has made the same point repeatedly throughout his lengthy pontificate.

Ten years ago, indeed, every practicing canonist had the experience of advising bishops, (and not just bishops, of course, but they are the focus of these remarks) who were clearly, however understandably, still approaching issues treated under the 1983 Code with the assumptions and techniques of the 1917 Code unduly in mind. Many times, to be sure, these were minor matters which occasioned pleasant opportunities to explain some canonical revisions; other times, though, the stakes were more serious, particularly when bishops confronted problems requiring resort to sections of the law that had undergone extensive revisions in the 1983 Code, major topics such as marriage and annulments, the enhanced place of consultation and consent, substantive and procedural rights of the faithful, and the implications of renewed ecclesiastical subsidiarity.

IT IS NOT AS HARD AS IT SEEMS

Today, then, my first suggestion must take into consideration the fact that the number of diocesan bishops really trained under the 1917 Code (as opposed to simply being ordained while it was still technically operative) is small and dwindling. Moreover, canon law, and in particular canon law training, suffered an inordinately long lame-duck period due to the fact that the reform of the 1917 Code was announced in 1959, but was not completed until 1983. The problem has, therefore, shifted from one wherein a significant percentage of key ecclesiastical leaders received their formative training under a legal system that had been abrogated, to one wherein many of today's ecclesiastical leaders received essentially no legal training whatsoever.

Canon law was not exactly a popular academic major among priests and seminarians, let alone laity, from the early 1960s to the 1980s. Those relatively few who took anything more than, say, an overview course on marriage law, generally had to study canon law from blurry photocopies of various revision schemata constantly prefaced by comments like: "The most recent proposal says . . ." or "One draft under consideration holds . . ." Against, then, the already aggravating backdrop of a pervasive post-Conciliar antinomianism, young clerics saw that the days of the 1917 Code (in their minds, a thick document indistinguishable from canon law in general) were clearly numbered, while the absence of canon law textbooks in the classroom further reinforced the perception that canon law was a discipline without clear parameters. Canonistics, which till then had been a science shared by academe and chanceries, became the nearly exclusive province of professors over practitioners. Thus it happened that many men now ordained to the episcopacy were first exposed to canon law during highly unsettled times, and they learned to defer unnecessarily to canonical experts instead of attempting their own informed reading of the text.

And so today, my first piece of advice to bishops concerning canon law is simply this: Know that a venera-

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ble and complete legal system, touching more or less directly every important aspect of Church life, exists in one, comprehensive volume, and that regardless of your academic formation in canon law, you can make effective use of this law in your ministry, perhaps in ways you have never imagined before. I have worked with bishops who, while not trained as canonists, nevertheless had read Church law carefully, so I know they were in a much better position than were others to understand and make wise selections from among the legitimate options their canonical advisors could later set before them.

The second thing that every bishop needs to know about canon law flows from the first and offers reinforcement of it. It too requires some prefacing remarks.

The Catholic Church's attitude toward canon law rests on fundamentally very different foundations than does, say, the Anglo-American attitude toward civil law. Grounding the American attitude toward law is the idea that law is meant, in large part, to restrict the degree of authority government has over our lives and that its legitimacy flows from the consent of the people being governed. All of this is good healthy Lockean and Jeffersonian democracy.

But contrast this with the Catholic Church's attitude toward its law. The authority of popes and bishops does not depend in any sense on the consent of the subjects they govern. Church history shows us, in fact, that the rise of canon law in the Church was not occasioned by the needs of the faithful to mark out liberties in the face of a power-grabbing hierarchy, but rather was spawned by the needs of shepherds in Christ to facilitate the exercise of their pastoral jurisdiction and, over time, to bring consciously to bear the virtues of justice and equitable treatment upon those blessed enough to be called children of God. From its most ancient roots, then, canon law has been a plow in the hands of the hierarchy, not a sword in the hands of the faithful.

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THE LAW FAVORS BISHOPS

Thus, when the Legislator set his signature to the 1983 Code, his primary goal was to ensure that the institution founded by Christ to lead men to God, and the popes and bishops who rule over that Church, would have the administrative wherewithal to accomplish their task in an upright way. From this flows my second suggestion: Bishops need to be conscious of the fact that the Code of Canon Law, for very sound theological and administrative reasons, was written in their favor, and that therefore, provided they follow its sometimes tedious requirements, they will be upheld in virtually any dispute occasioned by their decisions and actions.

Let's consider briefly two concrete problems most bishops have to face sooner or later: the removal of an unworthy pastor before the expiration of his term, and the closing of an all-but-abandoned parish. Now, no bishop walks into his office and says, "Gee, I feel like having some fun today. I think I'll get rid of crazy Fr. Bob and then, I dunno, maybe I'll close a couple parishes." To the contrary, both tasks are approached with a heavy heart. Either scenario can provoke fierce opposition from clergy and faithful alike. Both offer numerous opportunities for the disregard of rights, the abdication of duties, and general discord among the People of God. But both are problems long faced by Church leaders and both are capable of being justly addressed in accord with canon law.

In the case of the removal of an unworthy pastor, for example, a sequence of 12 canons (cc. 1740-1752) guides bishops and pastors alike in reaching an informed decision about the priest's continuance in ministry, but at every stage, the 1983 Code clearly reinforces the ultimate authority of the bishop over the situation. Similarly, though admittedly without the neat sequence of steps laid down for pastor removal cases, bishops and faithful confronted with the possibility of closing a parish must have resort to the canons on juridic personality (cc. 113-123), ecclesiastical property (cc. 1254-1310), and delivery of pastoral services (cc. 515-552) to understand how in fairness a bishop may proceed in order to arrange parishes as he ultimately deems necessary. While the results in either case might not be to everyone's liking, the very appearance of having acted in accord with law and justice can help sow the seeds of rehabilitation in the case of a priest removed from ministry, or of reconciliation among new parishioners in the case of faithful who have lost their former parish. I shall return to the importance of bishops being seen as trying to do justice in my final suggestion.

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WHAT GOES ON IN THE TRIBUNAL

At this point, let me shift the focus away from internal matters that are of interest primarily to Catholics, and look directly at an area in which many non-Catholics, and sometimes secular society itself, maintain an ongoing interest. I speak of marriage and annulments. To put it simply: Every diocesan bishop needs to understand the canons, both substantive and procedural, under which his tribunal operates.

Tribunal work is an area in which non-canonist bishops seem especially reluctant to enter. That's understandable. Marriage canon law is ancient and complex. It has spawned more canonical literature than all other topics in canon law combined, making it a daunting field for non-degreed persons. Diocesan tribunals operate under serious time and resource restraints, and are often subject to extensive public criticism from the faithful, the secular media, and other agencies in the Church, even though tribunals, due to privacy constraints, can rarely reply with the kind of detail needed to address such concerns. And, as if all those factors discouraging direct episcopal involvement in tribunals were not enough, the basic facts on which most actual annulment petitions turn are frequently depressing, tedious, saddening, and even nauseating. I have offered the analogy of tribunals serving as crash investigators, picking through the debris of wrecked marriages trying to figure out what went wrong. There is nothing attractive about it, however important it might be.

Despite these obstacles, canon law recognizes the diocesan bishop as the chief judge in his diocese (c. 1419). It is difficult to see how bishops can give effective leadership to their tribunals, at a time when they might need it most, if they do not have an actual working knowledge of the substantive canons on marriage and the procedural canons under which annulment cases are heard. But even beyond that reason for deeper episcopal involvement, tribunals are repositories of immense information on trends in marriage, or at least trends in failed marriages. Any effort to communicate the insights of tribunal personnel to those responsible for helping the bishop to develop effective diocesan marriage preparation programs (and such coordinated efforts are too few) would be greatly enhanced if the bishop himself thoroughly understood what the tribunals are actually seeing and doing.

ADVICE OR CONSENT

For my fourth suggestion, I consider an issue bishops face nearly every day and suggest that: Bishops need to understand the greatly enhanced strengths, and the inescapable limitations, of the new canonical require-

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Contrary to popular perception, canon law cannot threaten recalcitrants
with dire consequences in the next life. (Well, not directly anyway.)

ments of consultation and consent as part of their regular decision-making process. In a host of ways too numerous to list here, the 1983 Code, in contrast to the 1917 Code, requires bishops to seek advice sincerely about, and at times to obtain consent to, many of their proposed actions.

This major change in approach comes as part of the general tendency of the 1983 Code to grant local bishops much more decision-making authority than was common under the former law. The new canons on consultation and consent concretize the opportunity to make legitimate use of a wide range of talents and expertise among the people of God in the local Church. But while there is greater local autonomy for pastoral policies, there is also a greater requirement to make sure such policies reflect local needs as opposed to institutional preferences. Indeed, the scope of issues potentially involving consultation or consent requirements is vast: ordination and continued ministry of priests, most diocesan budget and finance issues, diocesan pastoral councils and synods, distribution of parishes and numerous clergy matters, renovation of churches, enactment of disciplinary norms, supervision of schools and, well, the list just goes on and on.

But, to consider only the most basic distinction here, consultation does not mean consent (c. 127) and bishops need to know in advance which they are seeking, if only to explain to those with whom they are conferring the differing expectations attached to their discussions. Particularly in America, we are inclined to see committees and councils as policy-making bodies, which under canon law they rarely are. At many times in the past, such groups have had to be reigned in, a difficult task obviously, and one that might not have been necessary if all those involved, including the bishop, had been better able to articulate the theology and practical aspects of the 1983 Code's greatly enlarged emphasis on consultation and consent in Church life.

AN AID TO 'ENFORCEMENT'

My final suggestion, like those above, will not be news to bishops, but rather, affords them an opportunity to consider how canon law is an important part of the Church's overall structure and contributor to its mission, and how their duties to enforce ecclesiastical dis-

cipline (cc. 391-392) both depend on and contribute to their leadership in other areas.

Canon law's enforcement mechanisms differ profoundly from that of any other major legal system. There are no canonical police, no canonical jails. The direct financial power of the Church over its members is limited to a tiny percentage of its population. Moreover, contrary to popular perception, canon law cannot threaten recalcitrants with dire consequences in the next life. (Well, not directly anyway.)

In a legal system, therefore, wherein physical, financial, or eschatological coercion is all but non-existent, how do bishops enforce the law? They do so most effectively by their own personal example of adhering to law. In other words: Bishops must come to know and accept the operations of canon law in their lives and ministries, in order to call, most convincingly, their subjects to lives and works in accord with the ecclesiastical discipline by which all are bound. A bishop who, notwithstanding only a cursory exposure to canon law many decades before, really commits to knowing the canons affecting in his actions, has the credibility to extend that requirement, adapted to their conditions, to his priests, diocesan staff, parish workers, and faithful at large. A bishop who accepts the limitations that canon law places on his own plans or preferences, has the credibility to expect others to temper their desires in accord with that same law. In brief, a bishop who lives with law can lead with law.

The final canon of the 1983 Code, treating dryly of some procedural requirements to be honored in pastor transfer cases, concludes with a remarkable crescendo, reminding bishops that "the salvation of souls, which must always be the supreme law on the Church, is to be kept before one's eyes." May the suggestions in this essay help our bishops to apply canon law in ways ever more conducive to the good of the Church and the welfare of souls.

Edward N. Peters has doctoral degrees in canon and civil law. His annotated translation of the 1917 Code of Canon Law will be released by Ignatius Press later this year.