

THEOLOGICAL TRENDS

Canon Law and Ecclesiology I

THE STRUCTURES of the Church can illumine or obscure the idea of the community of Christ; they can make it a beacon of light or they can so disfigure it as to make it virtually unrecognizable'.¹

But what are the structures that are considered necessary for the Church's task? There would seem to be very few that go back to the beginnings and can claim the authority of Christ and his Apostles. It is the task of theology and in particular of ecclesiology to provide guidance about Church structures. The revival of Ecclesiology in the Catholic Church since the Council has shown a desire to ensure that the structures of the Church do express the teaching of sound theology. Canon Law has, of course, a role to play here, but it is a subsidiary role. The law of the Church should be a reflection of the theology of the Church. That is to say, in matters concerning structures and institutions, the role of Canon Law should be to formulate in clear and practical terms the Church's theological teaching. Canon Law should not, therefore, be divorced from theology. Canon Law should not be regarded as a collection of legal prescriptions arbitrarily laid down by authority. On the contrary, it should be the embodiment of sound theology.

Since this is the case, one should expect the law of the Church to reflect the theology of its period. In this article I shall discuss the ecclesiology that was current at the beginning of the twentieth century, giving an outline of its historical development and its characteristics. I shall then indicate how this approach to the nature of the Church found expression in the Code of Canon Law that was promulgated in 1917. In conclusion, I shall briefly discuss the new approach to ecclesiology expressed in the documents of the Second Vatican Council, and consider how this has been embodied in the canonical legislation promulgated since the Council. In a subsequent article I hope to consider how this new ecclesiology is reflected in the draft *schemata* for the revised Code of Canon Law.

By 'classical' ecclesiology I mean the approach to the Church that formed the centre of discussion in the theological text-books, *De Ecclesia* ('On the Church'), which were in common use in the nineteenth and early twentieth centuries. It provides a clear and ordered picture of the institution of the Church, a hierarchical society with a highly centralized form of government. The pope is the supreme monarch, and his legates carry out his policy in every part of the Church. There is general direction from and by the central government — the pope and the Roman Curia. The pattern of the Roman Church is taken as the pattern of orthodoxy and

the test of loyalty of all Christians everywhere. There is strict subordination of all authority and a stress on conformity to roman usages and roman instructions. Church structures are coloured by this monarchical conception of papal authority. There is a hierarchical conception of ecclesiastical office and a very juridical presentation of the Church. I would like to indicate the general development of this view of the Church.²

It has had a very long run and goes back well beyond Trent and the Counter-Reformation. It can be traced back to the Gregorian Reform of the eleventh century and the activity of that great reformer Pope Gregory VII (1073-85). The condition of the Church during the first half of the eleventh century was pitiful. There had been a succession of popes 'protected' and controlled by the Emperor. The poverty and ignorance of priests had led to a widespread neglect of the Church's mission. Local churches had come under the control of secular rulers who frequently nominated and deposed bishops at will, and their patronage was exercised largely in their own interests. The practice of simony seems to have been not uncommon. Such were the conditions that the reforming popes of the mid-eleventh century set out to reform. The aims of the movement for reform were to purify the Church of manifold abuses and to free it from secular control, but it opened a new chapter in the history of ecclesiastical authority.

Fr Yves Congar argues that 'the reform begun by St Leo IX and continued with such vigour by St Gregory VII represents a decisive turning-point from the point of view of ecclesiological doctrines in general, and of the notion of authority in particular'.³

The determination to free the Church from the control of secular princes led to a strong affirmation of the freedom and independence of the Church, and an emphasis on the Church's right to be treated as an independent and spiritual body, ruled by its own laws and directed by its own spiritual authority, the pope. In this way, an ecclesiology developed in which the Church was considered more and more as an independent society on a par with the Empire. The pope came to be regarded as the 'universal bishop', while the local churches of latin Christendom seemed to owe their existence to the fact that the pope needed local bishops to help him in his government of the universal Church, which tended to be seen as one large diocese with the local bishops regarded as papal delegates.

This view was not accepted by all in the Church. There was opposition not only from the secular princes but also from local bishops. And this in turn led to intense activity on the part of papal theologians and canonists to show that their presentation of the Church was in harmony with ancient ecclesiastical tradition. The result was a series of collections of conciliar decrees, papal letters, and patristic texts, whose function was to provide support for the centralized authority that was being exercised by the Bishop of Rome over the universal Church. In this way a formidable *corpus* of

pontifical law developed, and the foundations were laid for the growth and development of canon law. It is in this period that the great medieval collections of canon law began to make their appearance.

It is, of course, possible to see all this as the expression of a thirst for power and domination on the part of Gregory VII and his successors. The legal revival did tend to foster greater centralization and concentration of power and authority in the hands of the pope. There is, however, another side to the story. What Hildebrand and those who supported him were striving after was nothing less than the radical *reform* of the Church. They were out to eradicate flagrant abuses from the christian community. They looked to Canon Law to help them in their efforts to rid the Church of corruption and bring it back to the pristine practice of christian ideals. Their declared intention was for a spiritual and interior reform through the restoration of what was considered to be the discipline of the early Church. The canon law was to be an instrument of this restoration. With this in mind they searched out patristic and conciliar texts which they hoped would be received as authoritative by all Christians, and which would protect the rights of the Church against unwarranted claims of secular rulers. It was this that lay behind the struggle over lay investiture.⁴

There were, of course, a number of currents of reform in the eleventh, twelfth and thirteenth centuries, of which the juridical was only one. The religious revival which can be seen in the Cluniac Movement, in the Cistercian expansion and in the rise of the Franciscans and Dominicans, is an eloquent witness to this deeper search for spiritual renewal and reform within the Church. It was, however, the juridical current that had the most lasting effect on ecclesiology. The desire to protect the Church resulted in a sharp distinction between clergy and laity:

It became increasingly natural to speak of the ecclesiastical hierarchy as 'the Church'. Of course, everyone knew that there was another, more ancient, sense of the word which embraced the whole body of the faithful, but even when the word *ecclesia* was used in this wide sense, the role of the laity began to be seen as a very humble one. The *ideal* Church of the twelfth and thirteenth centuries was a society of disciplined and organized clergy directing the thoughts and activities of an obedient and receptive laity — kings, magnates and peasants alike.⁵

The two centuries that followed the pontificate of Gregory VII saw the consolidation of a centralized power in which the pope emerged, not only as supreme spiritual ruler of the Church, but also as a temporal monarch on an equal footing with other secular rulers of the day. This development was fostered by the steady growth of such institutions as papal legates, judges-delegate, papal provision and confirmation and the like.

Seculars and Mendicants

Another situation in which the development of the 'classical' ecclesiology can be seen is the conflict that arose between the secular clergy and the friars in the late thirteenth and early fourteenth centuries. The popes from Innocent III onwards gave their blessing and protection to the Franciscans and Dominicans as centralized religious orders under a general superior, and gave them a universal mission throughout the Church. The friars could be deployed all over the Church; and they were bold and successful missionaries. This again was done in the interests of spiritual reform; but it roused opposition from local clergy who maintained that the friars were being given excessive privileges. The clergy stressed the importance of the local Church and argued that its government should be by the local bishop and his clergy, and must be based on local customs and traditions. They protested against what they considered excessive papal privileges granted to the friars. Those, on the other hand, who defended exemption, emphasized the universal authority of the pope, and argued that the urgent need for reform demanded that the friars should have freedom to preach throughout the whole Church. This was the justification for the steady growth of religious exemption — a cause of frequent complaint for centuries to come.

Conflict between the Pope and the King of France

Under Pope Boniface VIII (1294-1303) we see the final elaboration of that highly centralized system of government which had begun with Gregory VII. We need not go into detail about the conflict between Boniface VIII and the King of France; but this conflict did influence the development of ecclesiology. The defence of the Church against the french king led to the appearance of the earliest systematic treatises on the nature of the Church. The theologians who wrote these put a great emphasis on papal supremacy, and the style and content of their works were to form the pattern for future treatises *De Ecclesia*. Their central theme was *potestas ecclesiastica*, that is to say, the power of the pope. This was their principal concern, as their titles clearly indicate: *De Regimine Christiano*, by James of Viterbo (c. 1301); *De Ecclesiastica Potestate*, by Giles of Rome (c. 1301);⁶ *De Potestate Papae et de Jurisdictione*, by Hervé de Nedellec. This preoccupation with power and jurisdiction and centralized organization was to continue as the central concern of students' manuals, *De Ecclesia*, right up to the beginning of the twentieth century.

The conciliarist crisis and the Reformation

The conflict between the Pope and the King of France, in a variety of forms, was to continue for centuries. It led to a conflict between two ecclesiological images: the centralized, monarchical image, defended by advocates of papal government, and the collegial image, put forward by the local churches. Each contained important truths about the nature of the

Church, but, if exaggerated and taken to extremes, each could lead to serious aberrations. This can be seen in the conciliarist crisis which reached its climax at the beginning of the fifteenth century. The conflict this time was between papal and episcopal authority, between the highly centralized papal court and the local bishops. It came at a time when the long exile in Avignon and the Great Schism had reduced the power and prestige of the Papacy to a particularly low state. There was urgent need for reform in the Church, but the Papacy was so weakened and divided that it was in no condition to initiate or carry through any real reform. This led to an appeal to the supreme authority of the general council of all the bishops. It was felt by many that the divisions caused by anti-popes left no alternative, and these 'conciliarists' defended their view by going back to the relationships that had obtained between pope and bishops before the Gregorian Reform of the eleventh century. The Council of Constance had in fact resolved the Schism in 1417, but little progress had been made along the road of needed reform.

Luther, therefore, and the other reformers inherited a whole movement of protest within the Church: protest against the roman centralized authority which was supported by the ecclesiology of the conciliarist movement. They inherited, too, a growing indignation against the manner of life of many ecclesiastics and religious. Thus, the whole institutional structure of the Church was called into question and rejected by the protestant reformers, who now put the emphasis on interior conversion and the invisible communion of saints. Papal authority was rejected.

The catholic reaction was to re-emphasize the importance of the institutional structure of the Church in general, and to exalt in particular the supreme authority of the pope. In this way the centralized roman authority was re-asserted with greater vigour than ever, and ecclesiologists concentrated even more on expounding and defending papal supremacy. The aim now tended to be a demonstration that the structure developed by the Gregorian Reformers was precisely the one that had been instituted by Christ. The emphasis was juridical and authoritarian, and there was an insistence on externals and visibility. These are, of course, important aspects of the Church, but they are only part of the picture. The result, however, of this 'apologetic', polemical emphasis was that ecclesiology became more and more a treatise on the public law of the Church; a hierarchiology, to use Fr Congar's term.

Gallicanism and the First Vatican Council

There is one final movement which should be mentioned because of its importance in the development of the classical ecclesiology. Gallicanism is a movement that extended over several centuries and took on a variety of forms. It expressed french opposition to the extensively developed roman centralization. (A similar opposition can be found in Febronianism in

Germany⁷ and Josephinism in Austria.⁸) Gallicanism was out for a more independent Church in France, and it appealed for support to the traditions of the first millenium of Christianity. This appeal to ancient canons and privileges is a distinctive feature of french anti-Romanism. Its defenders wished to remain Catholic, but they rejected the 'ultramontanist' ecclesiology of such writers as St Robert Bellarmine. They wanted to ensure that the local churches were given their true place and importance in the Church. In doing so, however, they tended to exaggerate their case, and this led in turn to an insistent defence by the roman theologians of papal authority.

These two views of the Church were very influential in the discussions that took place at the First Vatican Council. There was the roman school of thought which supported the strengthening of papal authority over the whole Church, and was suspicious of anything that might have a flavour of Gallicanism or Febronianism. Nor is it irrelevant to recall that the Pope, Pius IX, was at that time in Italy politically very much on the defensive. There was, too, a minority school of thought which stressed the importance of the local church and local customs and traditions; it also insisted on the collegial aspect of the whole episcopate. As is well known, attention at the Council was concentrated on the primacy and infallibility of the pope. Because the Council had to suspend its activities on account of the political situation, there was no time to go on and deal with the whole treatise on the Church as had been planned. This meant that *Pastor Aeternus* had a decisive effect on the development of classical ecclesiology, since a large part of the treatise was now taken up with explaining and defending the doctrine of primacy and infallibility as set forth in that conciliar decree.

Greater attention than ever was focused on the papacy, while the general episcopate tended to play a diminishing role in the government of the Church. All this resulted in what can only be described as an impoverishment of ecclesiology.

Classical ecclesiology and the Code of Canon Law

This very centralized ecclesiology expresses the thinking about the nature of the Church which was common in the early years of this century. And as one would expect, this is the view of the Church that was embodied in the Code of Canon Law promulgated in 1917. This envisages a highly centralized, tightly-knit structure of Church government in which the Roman Curia exercises a firm control over the universal Church. Of course, the very idea of a detailed code of law which would apply throughout the whole of the Latin Church presupposes a highly centralized conception of the Church.

An emphasis on centralism and uniformity can be seen throughout the Code; a few examples, chosen more or less at random, will illustrate what I mean. Canon 5 in Book I discusses local customs that are contrary to the

general law. A number of these are expressly condemned by the Code and have to be eradicated. Other local customs — which are not expressly condemned — in certain circumstances ‘can be tolerated’ (*tolerari possunt*). That is to say, if they are more than one hundred years old they should be discouraged, but may be permitted to remain if the local bishop thinks it imprudent to attempt to suppress them at once. In short, local customs as such are considered undesirable. Another example can be drawn from the legislation concerning dispensations. Canon 81 expressly forbids local bishops to grant dispensations from the general law of the Church. They may not do so even in individual cases, unless this faculty has been expressly granted them by the Roman Pontiff, or where recourse to the Holy See is difficult and the delay that would arise from referring the case to Rome would result in serious harm. Moreover, even in such cases, the dispensation must be one which the Holy See not only can, but usually does grant. This is very strict centralism, though it should be remembered that such strictness in theory was considerably modified in practice by the grant of special faculties to bishops for five or ten years at a time. But the very need for these quinquennial faculties presupposes a highly centralized structure of Church government.

Book II of the Code provides another clear illustration of the same theological outlook. This book is mainly concerned with clerics and with religious, and its whole structure reflects the classical ecclesiology we have been considering and a very ‘clerical’ approach to the Church. Title VII, for example, is significant: ‘Concerning the supreme power, and those who share in it by virtue of ecclesiastical law’ (*De suprema potestate deque iis qui eiusdem sunt ecclesiastico iure participes*). Only after the Roman Pontiff, ecumenical councils, cardinals, papal legates and others have been considered, does the Code go on to deal with local bishops in *Titulus VIII*. These are to be freely appointed by the pope, and they are instructed to send in regular reports to the Holy See on the state of their diocese. Part II of Book II contains the canonical legislation on religious life; and here again we have a very centralized and standardized approach, in which the charismatic aspect of the religious vocation receives very little attention.

Other examples could be given, but enough has been said, I hope, to substantiate the statement that the Code of Canon Law embodied a highly centralized view of the Church, and brought this view to bear on every area of life within the Church. Tight roman control is everywhere apparent, and there is very little emphasis on collegiality or subsidiarity.

An evaluation of classical ecclesiology

Before going on to consider how this approach to the nature of the Church was revised at the Second Vatican Council, it may be of some use to pause and reflect on both the positive and the negative aspects of the classical ecclesiology.

On the positive side, there were three important advantages in the centralized view of the Church. First of all, it did in fact encourage a sense of unity in the Church. The Church was clearly presented as forming one society, one flock, one kingdom. It promoted a sense of unity that had beneficial results. Secondly, it fostered a united effort towards missionary expansion in attempting to preach the Gospel to all men. This is clearly apparent in the activity of the Franciscans and Dominicans in the thirteenth century. It is evident, too, in the great missionary expansion of the Counter-Reformation period, and again in the widespread work directed by the Congregation for the Propagation of the Faith in the nineteenth century. And thirdly, the centralized roman authority clearly affirmed the autonomy and independence of the Church in its relation to secular rulers, and it did at times free the Church in a number of places from undue domination by local political rulers. It tended to direct men's minds away from nationalistic prejudices towards the idea that the Church should be above political, national or racial interests. The christian community had its own distinctive existence and should be governed by its own criteria.

On the other hand, this centralized approach did bring with it a number of definite disadvantages. In the first place, it displayed authoritarian tendencies. Emphasis was placed on authority, especially on the supreme authority of the pope, a tendency, too, towards a complete identification of God's will with the institutional form of authority; whilst freedom of speech within the Church was greatly restricted. The pope as 'universal bishop' tended to exercise direct control over the whole Church. Secondly, the attitude fostered by this view of the Church was inevitably somewhat monolithic and absolutist. Uniformity, rather than unity, was stressed; local traditions were not encouraged. Conformity with roman practice became the touchstone of catholic orthodoxy and orthopraxis. A great mass of detailed legislation was imposed upon the whole Church by means of Instructions from the Roman Congregations, and permissions had to be sought from Rome for relatively trivial matters. Thirdly, the Church tended to be identified with its organizational structure; and this became the theological focus, to the neglect of other important aspects of the Church and her teaching. The treatises *De Ecclesia* resembled treatises on the constitutional law of the Church.

Fourthly, there was general neglect of the charismatic aspect of the christian community. The continual inspiration of the Spirit did not generally form a prominent part in the study of ecclesiology. This is particularly evident in canonical legislation on religious life, which stressed uniformity and standardization. Fifthly, a privileged position in society was claimed for ecclesiastical dignitaries. The level of Catholicism was measured by the honour paid to the hierarchy, and an exaggerated importance was often attributed to episcopal pomp and ceremony. Lastly, and perhaps most important of all, the idea of the Church as a communion

of local churches was neglected, and the initiative and responsibility of the local church were often crushed by the central authorities. The local episcopal office was devalued. We should not forget, of course, that intervention by Rome was often salutary for the local church and was often asked for by the local church; and it often protected charismatic movements — such as the Franciscans — against local rulers. The reform aims of the central government were frequently admirable, but the methods used were stifling. Episcopal collegiality was not really a practical reality in the government of the Church.

The Ecclesiology of Vatican II

The Second Vatican Council has altered course and veered away from the classical ecclesiology we have been considering to a doctrine of the Church that is more aware of the importance of the local churches. The universal Church was now seen not primarily as a society of individuals, but as a body with different organs, each having its own proper characteristics, a communion of churches, together making up the Catholic Church. This view is, in fact, a return to the perspective of the early Church in which the idea of *communio* among the churches was an important reality. Just how the Council has taken up a different stance on this matter is particularly evident in its teaching on the status of the local churches and on the role of the diocesan bishop. In conclusion, I would like to indicate how this teaching has influenced the revised canon law promulgated since the Council.

The Constitution on the Liturgy attributes greater importance to the diocese than had hitherto been the case, and it has relinquished much of the rigid uniformity that had characterized the classical ecclesiology. The Church is now intent on fostering a substantial unity throughout the universal Church, whilst at the same time acknowledging that such unity can co-exist with extensive variations in local liturgies. A similar approach can be seen too in the Dogmatic Constitution on the Church, *Lumen Gentium*, and in the Decree on the Pastoral Office of Bishops, *Christus Dominus*. In these documents it is clearly stated that there is scope for diversity within the one Church of Christ. A couple of quotations will illustrate this point:

It follows, then, that particular Churches have a legitimate presence in the ecclesial communion, enjoying their own traditions, and leaving intact the primacy of the Chair of Peter in its presidency over the universal assembly of charity; it stands guard over their legitimate differences, and at the same time sees to it that the particularities, far from damaging unity, are a positive service to it (*Lumen Gentium*, 13).

This variety of local Churches, in one accord of thought and feeling, shows forth all the more richly the universality of the undivided Church (*Lumen Gentium*, 23).

This approach has opened up fresh possibilities for local churches to give expression to a certain amount of diversity in both liturgy and discipline, and it is hoped that there will be solid and progressive developments in these areas. Moreover, the Council's stress on the Church as a *communio* of local churches, and on the importance of the local bishop and of episcopal collegiality, has led to a greater emphasis on the need for collaboration at every level in the Church. Greater autonomy is now granted to diocesan bishops and to regional episcopal conferences. The rights and duties of clergy and laity to collaborate with the bishop are being discussed more seriously.

All this is being reflected, to some extent at least, in the revised canonical legislation that has been promulgated since the Council. Canon 81 has already been mentioned as a good example of a highly centralized view of the Church.⁹ This canon forbids local bishops to grant dispensations from the general laws of the Church except in very special circumstances. A clear example of how the Council has modified this approach can be seen in the Decree on the Pastoral Office of Bishops. In chapter one of this decree, the relation of bishops to the supreme authority is discussed, and it is laid down that 'Individual diocesan bishops have the power to dispense from the general law of the Church in a particular case, those faithful over whom they exercise authority according to the rule of law (*ad normam iuris. Christus Dominus*, 8). There remain, of course, matters which are still specially reserved to the supreme authority; but the new law in effect reverses the substance of canon 81 and the legal theory which it upholds. In the canon, the bishop may *not* dispense unless he has been granted express faculties to do so. In the new law of *Christus Dominus*, the bishop has the power to dispense unless there is a special reservation. Here we have a very clear example of how the revised law is taking more account of the renewed ecclesiology.

The doctrine of collegiality has led to a number of structural innovations which are intended to foster collaboration within the Church. The setting-up of the Synod of Bishops, the reform of the Roman Curia so as to include diocesan bishops as members of the Roman Congregations, and development of episcopal conferences, are all practical attempts to put a new ecclesiology into practice. There have also been attempts at diocesan level to encourage co-responsibility, as can be seen in the institution of the senate of priests and the pastoral council.

Recent canonical legislation concerning religious life has permitted greater autonomy within each religious order or congregation. All congregations have been positively directed by papal authority to revise their constitutions in the light of their own particular history and traditions; their own individual charism has to be followed. Superiors general can now exercise greater authority than they could previously. Moreover, all the members of each Institute have been called upon by Church authorities to

participate much more fully in the affairs of their institute; and there has to be more consultation than there was in the past.¹⁰

Many other instances could be put forward to show how the Council's revised approach to the doctrine of the Church is affecting canonical legislation, but enough has been said to indicate the direction in which recent canon law has been moving. How this new approach to ecclesiology has been embodied in the proposed *schemata* for the new Code of Canon Law will be discussed in a subsequent article.

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NOTES

¹ F. Klosterman, 'Structures of the Church of Tomorrow, III', in *Information-Documentation* (IDO-C), Dossier 67/29, p 13.

² For a detailed study of the historical development of this ecclesiology, cf E. Ménard, *L'Ecclesiologie Hier et Aujourd'hui* (Paris, 1966), to which this article is indebted.

³ Y. Congar O.P., *Power and Poverty in the Church* (London, 1964), p 58.

⁴ For a general survey of the investiture struggle, cf *New Catholic Encyclopedia* (NCE) vol 7, pp 601-04.

⁵ R. W. Southern, *Western Society and the Church in the Middle Ages* (London, 1970), pp 37-38.

⁶ There are short notices on James of Viterbo and Giles of Rome in NCE, vol 7, p 813 and vol 6, pp 484-85.

⁷ On *Febronianism* — the theory that many powers claimed by the papacy were not given by Christ or exercised in the Church before the tenth century — cf NCE, vol 5, pp 868-69.

⁸ Cf NCE, vol 7, pp 1118-19.

⁹ Cf *supra*, p 56.

¹⁰ Cf *Ecclesiae Sanctae* II, 1-6, 12, 18; *Supplement to The Way*, 4 (November, 1967) pp 4-10, 12-13, 17-19.