

ABBATIAL GOVERNMENT AND CANON LAW: JUSTICE AND MERCY

I should like to start the discussion by looking at three topics. First, I should like to look at is the relationship between the spirit of St Benedict, as reflected in the Rule, and the spirit of the Church's law. Here I am not thinking so specifically of the role of law in the ministry of the Abbot but rather the role of the law in the life of a Benedictine monastery: an introduction to our theme.

The second topic is the office of abbot as it is envisaged in the law of the Church. Does the Law regard it as part of its function to assist the Abbot in his role within the community? If so, does it do it well or not?

The final topic I should like to look at is a very much more specific issue: the need of Abbots to respond to the Child Abuse crisis within the Church. One of the questions here is how the Church's law can help in our response to the crisis; do the canonical structures add unnecessary complications and impede our ability to respond well to the crisis? And what does this say about mercy and justice – the title of our seminar.

So those are three topics. Of course, you are not limited to these in the discussion at the end of my paper, but I hope this presentation will help us to start our discussion.

Let me start with the relationship between the spirit of St Benedict and the spirit of the Church's law. My opening contention is that St Benedict knew more Roman Law than appears at first sight. I first came to this conclusion when I was doing doctoral work on chapter 58 of the Rule, and it struck me that the structure of the *promissio* and the petition owes a lot to the institutions of the Roman Law of contract – especially the *stipulatio*, the classical form of oral contract.

Profession is, of course, about consecration to the service of God, about sacrifice of oneself, about commitment to the community. If you start by analysing it in terms of rights and duties you are probably going to miss the essential point of it. It is not a contract. But I think St Benedict's training gave him an insight into Roman law, and the concepts and categories of Roman Law is one of the tools he uses to give a practical shape to what Eastern monasticism would probably speak of in sacramental terms.

I want to bring in the vision of the Church as an ordered society. It is interesting to look back to the years immediately following the Second Vatican Council. I think it is fair to say that law was abused in the years prior to the Council. It was too powerful, and had too much influence. The natural reaction, in the years following the Council, was a rejection of the value of law in the Church. But the Second Vatican Council, above all in the dogmatic Constitution on the Church, *Lumen gentium*, gives us a fresh understanding of the theology of the Church, in which the description of the role of the hierarchy is described in terms of its place in the sacramental life of the Church, and the religious life in terms of its charismatic role in promoting the holiness of the Church; and if you look at the thinking of Bl. Pope Paul VI, the Pope in those years, you see an understanding of the Church as an ordered society. I think that for him Church order was much more than a matter of avoiding disputes and administrative chaos. The Church as a visible society must reflect its divine origin and its eschatological goal; and of course the theology of *Lumen gentium* is the foundation on which

modern canon law has built its understanding of the Church. My contention is that it is not too much of an exaggeration to describe modern canon law as applied ecclesiology.

In short, I suppose I am suggesting that St Benedict's use of juridical concepts to buttress the key institutions of the monastic community is in harmony with the modern use of juridical structures to give practical shape to our theology of the Church. Look at St Benedict's description of the roles of different individuals in the monastery: the abbot, the prior, the deans, the cellarer, the novice master, the door keeper, the infirmarian; then there are the offices that rotate, the weekly reader and kitcheners, the annual kitcheners of the guest house. It is remarkable how much of the practical details survive in twenty-first century monasticism. We take it for granted, we are so used to it, but what we have here is an ordered society, and as such a microcosm of the Church.

Let us come more directly to the issue of abbatial government. Does the Law regard it as part of its function to assist the Abbot in his role within the community? If so, does it do it well or not? I have been helped a lot by a thesis done by a monk of my Congregation, in which he argues that the 1983 Code has a very different understanding of the role of a superior to the 1917 Code. He suggests that the 1917 Code of Canon Law did not present the religious superior as a spiritual leader, and preferred to keep the superior as a purely external administrator and invigilator. It might be summed up by saying that the superior was concerned with vigilance over the religious observance of the members and the organisation of the community's apostolate. It was certainly unwilling to see spiritual fatherhood or motherhood as an intrinsic part of the role of the superior. And because the role of the superior was seen in terms of power, it ran into all sorts of difficulties with regard to exercise of power by non-clerical superiors. Women superiors were not much helped by the provisions of the 1917 Code.

When we look at the description of a superior given in *Perfectae caritatis*, we are in a different world. Let me quote n. 14 in full: 'Superiors, as those who are to give an account of the souls entrusted to them (Heb. 13:17), should fulfil their office in a way responsive to God's will. They should exercise their authority out of a spirit of service to the brethren, expressing in this way the love with which God loves their subjects. They should govern these as sons of God, respecting their human dignity. In this way they make it easier for them to subordinate their wills. They should be particularly careful to respect their subjects' liberty in the matters of sacramental confession and the direction of conscience. Subjects should be brought to the point where they will cooperate with an active and responsible obedience in undertaking new tasks and in carrying those already undertaken. And so superiors should gladly listen to their subjects and foster harmony among them for the good of the community and the Church, provided that thereby their own authority to decide and command what has to be done is not harmed.'¹

In the 1983 Code, the role of the superior is described in cans. 618-619 and 630. Usually when abbots look at the Code, they are in a panic because of some ghastly situation they are facing, and they don't read these texts! I won't read them out in full; it is enough to say that I see the same themes as in *Perfectae caritatis*: authority as service; responsibility for souls entrusted to them; individuals are to be treated as children of God; liberty of conscience is to be respected; they are to be listened to. There are other themes here too: building up fraternity; nourishing the religious with the Word of God; the power of example; care for the weak and troubled.

¹PERFECTAE CARITATIS, n. 14

Of course, the fact that something is written in the Code doesn't make it any easier to put it into practice. I should want to say that the fact that the Church's law incorporates these elements is an indication that they are seen in the Church as an integral element of justice. Failure to nourish members with the Word of God is depriving them of something to which they have a right: it is a failure of justice. Failure to care for the sick and troubled is not merely a failure of mercy: it is a failure of justice too.

My third theme is our response to the abuse crisis within the Church. I mentioned earlier on the rejection of the value of law in the Church in the years immediately after the Second Vatican Council – a reaction against the excessive use of law in the life of the Church in the first half of the twentieth century. At that time, the rejection of the Church's penal law was particularly strong; most of us never expected to have to deal with '*de poenis et delictis*' ever again. The received wisdom in my Congregation, at least, was that dismissing a monk was such a complicated procedure that no sane abbot would ever engage on it.

The abuse crisis has, of course, changed that. I don't think that this seminar wants to enter into the details of how we deal with cases of abuse; of course, a lot depends on the provisions of the civil law in the country where the monastery is situated. But let me raise two questions: first, what is the role of canon law in dealing with a situation where civil law provides both sanctions and remedies, and secondly how do mercy and justice relate in the way superiors act?

The first issue might be stated like this. If civil law provides penalties for abusive behaviour, bishops and religious superiors are expected to report abuse to civil authorities, and it is not sufficient for them to take steps to inflict canonical penalties. Similarly, if abuse is being assessed by civil tribunals, is there any place for canonical sanctions? And thirdly, what should canon law do if civil law fails to take appropriate measures?

My view is that the Bishops' Conferences need to issue *decreta generalia* general decrees², confirmed by the Holy See, providing a local canonical procedure which respects and complements civil procedures, and at if necessary adapts the general canon law to the specific situation of the local Church. I have said this a number of times, and I know that this view is not welcomed by the Bishops' Conference in my own country. But I still think it is necessary.

More interesting, in this area of dealing with abuse, is the relationship between justice and mercy. One of the accusations levelled against bishops and religious superiors is that we have been too ready to forgive perpetrators and not ready enough to ensure justice for victims of abuse.

A few minutes ago, I suggested that an abbot who refuses to show mercy to a monk in distress or suffering is failing in his duty as abbot; that the showing of mercy is an essential element if the abbot is to act with justice. Now I am giving the example of a person who has sinned and asked forgiveness, and our society – and indeed the Church – seems to demand that no mercy should be shown to him. Are we being asked by society to show less mercy and more justice?

In a report on the Church's response to Child Abuse which I was involved in preparing, this is what we wrote about perpetrators asking forgiveness: 'pressure is sometimes placed on those who have suffered abuse to forgive those who have abused them. This is unhelpful for several reasons. First

²Cf. can.

the victim may not yet have reached the stage where he or she is able to forgive. Secondly forgiveness given under pressure may do considerably more to perpetuate the harm suffered by the victim. Thirdly, the perpetrator may not be ready to accept the consequences of forgiveness, which must necessarily include acceptance of the wrong that has been done and will often include a readiness to accept treatment and both criminal and canonical penalties.³

This is not talking about the relationship between the abbot and the monk but between a monk and a person whom a monk may have injured. The injured person has a right to justice, and what we were saying was that pressurising injured people to show mercy may be unhelpful. Now look at it from the perspective of the abbot and a guilty monk. The monk can ask his abbot for forgiveness, and the abbot can grant it. But whereas forgiveness normally means that we wipe the slate clean – we treat the sinner as though the sin had never been committed – in this case we cannot: because that would be unjust to the victim and to society as a whole. We are dealing with a situation where an act of mercy on the part of the abbot could cause harm to a third party.

Psalm 84 tells us that ‘mercy and faithfulness have met; justice and peace have embraced’. Justice is not opposed to mercy. Justice and mercy are both attributes of God, and should go hand in hand in the pastoral ministry of the abbot.

³SAFEGUARDING WITH CONFIDENCE, 5.21