

## THE CODE REVISION PROCESS: THE INVOLVEMENT OF THE CANON LAW SOCIETY OF AMERICA

### (A) *Introduction*

The postconciliar period has been a time of significant canonical reform. There has been noteworthy legislative activity at all levels as well as an exceptional renewal of canonical studies.

Such a renewal has been fostered in part in North America by the Canon Law Society of America (hereafter cited as CLSA), a professional association of nearly 2000 members in the United States and elsewhere<sup>1</sup>. Like the canonical faculty of Salamanca the CLSA is a recent jubilarian, having celebrated its fiftieth anniversary during its 1988 annual convention<sup>2</sup>.

If continuing canonical renewal is to be fostered, canonists need to collaborate both nationally and internationally. They need to be familiar with the academic-pastoral work that is taking place in various countries. Such a concern prompts the following reflections on the CLSA.

Since Vatican II the CLSA has been involved in numerous legal-pastoral issues. However, this paper focuses primarily on the code

1 Article II of the Constitution lists the following purposes of the CLSA: promoting the church's pastoral ministry, cooperating in the continuous renewal of the law, encouraging canonical research, responding to practical legal-pastoral needs, facilitating the interchange of ideas and practices among canonists, cooperating with professionals in other sacred sciences and establishing a dialogue with canonists throughout the world.

2 For the papers given at this special convention see the corresponding *Proceedings* (henceforth cited PCLSA and the year of the convention). See also *Reflections on the Occasion of the Fiftieth Anniversary October 1988* (Washington, DC., 1988). The author will refer to two articles in particular: R. Cunningham, 'Reforming the Code and the Society' (15-25) and J. Provost, 'The First Fifty Years: a Chronology' (43-56). For access to CLSA resources contact: Canon Law Society of America, Office of the Executive Coordinator, Catholic University of America, Washington, DC 20064, USA.

revision process and secondarily on continuing efforts to implement the code since 1983.

Obviously the involvement of United States Catholics in the code revision process was far broader than that of the CLSA, which was not formally consulted during that process. The most significant institutional involvement was that of the National Conference of Catholic Bishops (hereafter cited as NCCB). However, during the process a special CLSA Code Revision Task Force regularly advised the NCCB on drafts of the proposed law particularly through its Canonical Affairs Committee<sup>3</sup>. Furthermore occasionally the canon law faculty of Catholic University of America formally responded to the Code Commission's invitation to evaluate a given draft<sup>4</sup>. Usually, however, individual faculty members prepared or collaborated in the preparation of CLSA critiques of Commission schemata. Finally extensive work was done by individual CLSA members during the revision process<sup>5</sup>.

We will examine our topic in two stages. First we will briefly consider the history of CLSA involvement in evaluating various schemata. After some general observations on such evaluations, we will indicate their authors, basic structure and availability for further consultation. After the last schemata were reviewed in 1978, the CLSA prepared a translation and commentary on the code and fostered various continuing canonical education projects. Secondly, after these historical reflections we will highlight certain key concerns characterizing the postconciliar work of the CLSA especially its Task Force.

A reasonably comprehensive overview of CLSA concerns also requires our noting briefly other postconciliar CLSA legal-pastoral activities that influenced its evaluation of the schemata and its continuing implementation of the code. Most of these activities involved the CLSA alone; yet some involved other learned societies, e.g. Catholic Theological Society of America (hereafter cited as CTSA).

3 The author served as chairman of the CLSA Task Force from January 1973 through the end of the code revision process. The following reflections on its activities largely reflect his own perspectives despite his drawing on the insights of numerous other CLSA members to whom he is deeply indebted.

4 For example in the spring of 1975 Rev. John E. Lynch, CSP, then chairman of the department, prepared a 34 page text entitled *Animadversions on the Schema de Sacramentis*, reflecting the insights of various faculty members on the original sacramental law schema. This department evaluation has not been formally published. The Code Commission will hereafter be cited as Commission.

5 One useful listing of various works of CLSA members especially during the revision process was R. Cunningham, *An Annotated Bibliography of the Work of the Canon Law Society of America 1965-1980* (Washington, 1982).

Our primary sources subsequently will be various CLSA documents, especially Task Force critiques of the respective schemata, convention *Proceedings* and other CLSA publications such as interdisciplinary studies.

(B) *The CLSA: A Brief History of Postconciliar Activities*<sup>6</sup>

It is difficult to differentiate precisely various stages of postconciliar CLSA activity especially regarding the revision of the code. However, there were probably three stages: 1) pre-schemata activity from 1960 through 1970, 2) critiques of the schemata from 1970 through 1978, our primary concern, and 3) post-1978 CLSA activities.

1) *Pre-schemata CLSA activity (1960-1970)*

As early as 1960 there was evidence of CLSA interest in the revision of the 1917 code. At its annual convention there was a report on a survey of diocesan officials regarding possible canonical reforms, e. g. simplification of marriage nullity procedures. Nevertheless for several years there was little formal CLSA activity in this regard.

During the early 60's the proper CLSA role in the code revision process was debated. Some members preferred that the CLSA wait for the bishops to ask for the Society's professional advice and judged distinctly CLSA legal initiatives to be inappropriate. Furthermore some felt that the CLSA lacked the resources to analyze the code comprehensively. Other members, however, called for the CLSA to study issues pertinent to canonical reform and make appropriate proposals to church authorities. This latter viewpoint gradually prevailed during the postconciliar period<sup>7</sup>.

Another debated issue was the scope of CLSA canonical concern. Some members felt that the CLSA should continue to address strictly

6 For this part of the article the author acknowledges the insights of Cunningham and Provost cited in note 2. Commission documents will not be formally cited since they are presumably well known; only the various CLSA evaluations will be indicated since they are presumably not so well known.

7 One might note in this connection a related yet non-CLSA initiative taken by Cardinal Francis Spellman of New York in 1963 along with his canonical advisors. He invited the United States bishops to offer suggestions for the revision of the code. Four volumes of such proposals were received, subsequently synthesized and later forwarded to Rome. A report on this enterprise was made at the 1963 CLSA convention.

canonical issues. Yet others called for a broader examination of the role of law in the church especially in light of contemporary theological developments. This latter viewpoint likewise gradually prevailed especially after a noteworthy change in CLSA leadership in 1964.

An especially noteworthy feature of postconciliar CLSA activity has been its interdisciplinary character. This was especially clear in an interdisciplinary symposium on law in the church prior to the 1966 convention<sup>8</sup>. Msgr. Willy Onclin, a co-secretary of the Commission, was present at this session, which was one of the first efforts systematically to address key canonical reform issues such as the interrelationship of various powers in the church, the selection of bishops and the protection of rights. Quite significantly at this convention there was established a seven member committee to coordinate the work of studying and making recommendations for the revision of the code.

As early as the 1968 convention one first notices what will be a continuing CLSA issue: perceived problems in the methodology for the revision of the code, an issue to be addressed later. The circulation of the *textus prior* of the *Lex fundamentalis* clearly influenced the October 1969 convention to establish a formal CLSA structure to coordinate the evaluation of various Commission schemata. Efforts were also made to elicit the cooperation of other canonical societies, particularly in the English-speaking world, and other professional societies such as the CTSA.

In early 1970 Rev. Thomas Lynch of Hartford, Connecticut, the CLSA Executive Coordinator, was named director of the Task Force on the Revision of the Code. Thirteen committees were also established corresponding to the Commission structure itself. Presumably each of these CLSA committees would analyze the schemata issued by the corresponding Commission *coetus*.

Finally one might note that in April 1970 the NCCB accepted the CLSA offer of evaluations of proposed legislation to be forwarded through the NCCB Canonical Affairs Committee. Throughout the postconciliar period the CLSA has sought to be of maximal service to the people of God especially by collaborating with its episcopal leadership. This collaboration proved to be rather productive not simply in evaluating Commission schemata but also in developing the American

<sup>8</sup> For the papers from this noteworthy symposium see J. Biechler, ed., *Law for Liberty: the Role of Law in the Church Today* (Baltimore, 1967).

procedural norms for marriage nullity cases<sup>9</sup> and conflict resolution procedures<sup>10</sup>.

## 2) *Critiques of the schemata (1970-1978)*<sup>11</sup>

During the 1970's the CLSA evaluated fourteen Commission schemata. These evaluations were structured quite differently given the broad discretion afforded the individual authors or committees. Furthermore the schemata themselves differed in terms of their respective length and complexity. For example some such as the *Lex*, the people of God schema and the sacramental law schema raised noteworthy theological as well as canonical issues whereas others such as the penal law schema or the procedural law schema did not pose such profound theological concerns.

In retrospect it might have been wise had a standard set of criteria governed the structuring of all the evaluations. However, generally speaking the schemata were assessed in terms of their fidelity to Vatican II, their responsiveness to contemporary legal-pastoral needs and their reflecting the best insights of our canonical tradition.

The diverse structure of the CLSA evaluations is evident from the following considerations. Relatively few explained in detail the methodology of the committee or the individual author undertaking the evaluation, yet the criteria for such evaluations can usually be discovered after examining the evaluation. Likewise only a few commented on the historical development of the schema being examined, e. g. the evaluations of the *textus prior* of the *Lex* and of the administrative procedure schema. Only a few evaluations outlined the respective schemata before commenting on them, e. g. evaluations of the *textus prior* of the *Lex* and the two evaluations of the people of God schema. The evaluations usually highlighted both positive and negative features of the respective schemata, e. g. administrative procedure, penal law, religious law, general norms, the first evaluation of the people of God schema, the church's teaching office, sacred times and places/divine worship and

<sup>9</sup> See *The Jurist* 30 (1970) 363-68.

<sup>10</sup> See *On Due Process: A Summary of Actions Taken by the National Conference of Catholic Bishops on the Subject of Due Process* (Washington, 1970). This plan received subsequent papal approval. See *The Jurist* 32 (1972) 291-92.

<sup>11</sup> For a somewhat more detailed overview of these points see T. Green, 'The Revision of Canon Law: Theological Implications,' *Theological Studies* 40 (1979) 598-626 (hereafter cited as TS-1979).

patrimonial law. However, at times the evaluations focused primarily on the schema's negative elements, e. g. the two *Lex* schemata, sacramental law, procedural law and the second evaluation of the people of God schema. Normally the evaluations articulated general observations on the main orientations of the schemata while identifying particular canons exemplifying such concerns. At times, however, detailed comments were made on individual canons, e. g. penal law, religious law, general norms, patrimonial law. In retrospect another weakness of the evaluations might have been their general failure to propose alternative formulations of unsatisfactory canons. However, the second evaluation of the people of God schema and the evaluation of the schema on sacred times and places/divine worship proposed such formulations. Finally formal CLSA convention action was taken on only three evaluations, i. e. religious law, sacramental law and procedural law.

The first schema evaluated was the *textus prior* of the *Lex fundamentalis*<sup>12</sup>. After summarizing its development, outlining its key features and highlighting points from the accompanying *Relatio*, the CLSA report examined the notion of a fundamental law for the church. Then the report critically examined the Proemium and the three chapters on the people of God, the church's *munera* and the church's relationship to the human community. The report concluded by calling for a significant reworking of the *Lex* despite its various commendable features.

An expanded CLSA committee<sup>13</sup> reported on the *textus emendatus* of the *Lex* to the NCCB in June 1971 and to the CLSA membership at its October convention<sup>14</sup>. The report judged it inopportune for the *Lex* to be promulgated as a theological-juridical foundation for the new law. However, should the Commission accept the *Lex* as a working document, the committee identified certain substantive and methodological

12 This schema was analyzed during the spring and summer of 1970. See W. LaDue et. al., 'A General Analysis of the Proposed Schema on the *Lex Fundamentalis*', PCLSA (1970) 29-46. Besides the author of this article and the committee chairman Rev. William LaDue of St. Francis Seminary, Milwaukee, Wisconsin, the other committee members were Rev. James Griffin of Cleveland, Ohio, Mr. John Mansfield of Harvard University, Cambridge, Massachusetts and Rev. James Provost of Helena, Montana. See also W. LaDue, 'A Written Constitution for the Church?', *The Jurist* 32 (1972) 1-13.

13 The new committee members were Rev. John Calhoun of Brooklyn, New York, Rev. Robert Stern of New York, Rev. Avery Dulles, SJ of Woodstock College, then located in New York, and Rev. Ladislav Orsy, SJ of Fordham University in New York. The latter two scholars represented the CTSA given the interdisciplinary implications of the *Lex*.

14 See W. LaDue et. al., 'A Critique of the Revised Schema of the *Lex Fundamentalis*', PCLSA (1971) 65-77. Also Idem, 'A Critique of the Revised Schema on the *Lex Fundamentalis*', *American Ecclesiastical Review* 165 (1971) 3-17.

problems. The report concluded by suggesting the appropriateness of a statement of basic rights and principles of church life and government somewhat comparable to the traditional *regulae iuris*.

The organization of the CLSA Task Force changed at this time. After the October 1970 convention a three person committee succeeded Father Lynch in directing the Task Force: Rev. Kevin O'Rourke, O. P. of the Aquinas Institute in Dubuque, Iowa, Rev. Dennis Burns of Boston, Massachusetts and Rev. James Coriden of Catholic University in Washington. However, in December 1971 it was decided that one person could monitor the work of the Task Force more efficiently, and Father O'Rourke assumed this responsibility. There were continuing concerns about the secrecy of the revision process and the relatively brief time for the forwarding of evaluations to the Commission. Furthermore questions were raised about whether the rather cumbersome organization of thirteen Task Force committees was the best way of proceeding especially when relatively few Commission schemata had been issued.

The third Commission document evaluated was the administrative procedure schema. A special CLSA committee chaired by Rev. Adam Maida of Pittsburgh, Pennsylvania initially prepared a 4-page memo clarifying some of its key features. This was forwarded to the NCCB on June 29, 1972 while a more detailed critique was made available on July 26, 1972. This CLSA evaluation gave a short history of the schema, commented briefly on its basic features and offered positive and negative observations<sup>15</sup>.

In September 1972 Cardinal John Krol of Philadelphia hosted a meeting between Cardinal Felici and selected CLSA members regarding various issues pertinent to the revision process, e. g. the methodology of the Commission and the official involvement of the CLSA and other canon law societies. Since no real changes were made in the revision process, there was a further rethinking of the Task Force structure. In early 1973 the elaborate committee structure was dropped, and the author of this article was asked to chair the Task Force and provide for ad hoc evaluations of Commission schemata. This basic Task Force structure continued throughout the remainder of the revision process.

15 See R. Kennedy, 'Administrative Law: New Proposed Roman Norms', *PCLSA* (1972) 98-103. Kennedy, a committee member, discussed the critique at the 1972 CLSA convention. The other committee members were Rev. Alfred Connick of Boston, Rev. Raymond Goedert of Chicago, Illinois, Rev. Bertram Griffin of Portland, Oregon, Rev. Msgr. William Keeler of Harrisburg, Pennsylvania and Rev. W. Jerome Sullivan of Buffalo, New York.

The next Task Force project was an evaluation of the penal law schema sent to the bishops in December 1973. A special committee chaired by the author forwarded an evaluation of the schema to the NCCB at the end of March 1974<sup>16</sup>. After brief introductory observations the report examined the schema in terms of its ecclesiology, its pastoral and juridical implications and its practical ecclesial impact. Subsequently the report commented on selected canons not addressed in the general reflections.

An especially noteworthy Task Force commitment was its evaluation of the sacramental law schema in 1975. The canons on the sacraments other than marriage were evaluated by individual scholars<sup>17</sup>. However, the scope and complexity of the marriage canons seemed to require the establishment of a committee of scholars and practitioners for a properly nuanced evaluation<sup>18</sup>. Rather than examining the canons in detail the committee identified certain key problems. The substantive part of the report pointed out certain areas where the schema did not faithfully reflect conciliar insights, where it seemed to legislate premature answers to disputed theological-canonical questions and where it seemed to be canonically unsatisfactory. The methodological part posed some critical questions regarding the code revision process and suggested a more appropriate way of legislating in the future.

Before forwarding the CLSA evaluations to the NCCB in July 1975, the author synthesized some of the principle observations of the scholars

16 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* (1974) 130-40. Other committee members were Rev. Robert Kress of St. Louis University, Rev. Adam Maida of Pittsburgh, Rev. Frederick McManus of Catholic University in Washington, Rev. Ladislav Orsy, S. J. of Fordham University, Rev. James Provost of Helena, Rev. Thomas Swift, S. J. of St. Louis University and Rev. Cornelius Van der Poel, C. S. Sp. of Detroit.

17 The following scholars evaluated different aspects of the schema: Dr. William Bassett of the University of San Francisco (sacraments in general), Rev. Alcuin Coyle, O. F. M. of Holy Name College, Washington (confirmation), Rev. Paul Golden, C. M. of Kenrick Seminary in St. Louis (anointing), Rev. Richard Hill, S. J. of the Jesuit School of Theology, Berkeley, California (baptism), Rev. John Hotchkin, Bishops' Committee for Ecumenical and Interreligious Affairs (ecumenical issues), Rev. Frederick McManus of Catholic University in Washington (penance and anointing), Rev. Ladislav Orsy, S. J. of Catholic University in Washington (orders and penance) and Rev. Kevin Seasoltz, O.S.B. of Catholic University in Washington (eucharist).

18 See 'Report of a Special Committee of the Task Force of the Canon Law Society of America on the Marriage Canons of the Proposed *Schema Documenti Pontificii quo Disciplina Canonica de Sacramentis Recognoscitur*', *PCLSA* (1975) 205-217. The other committee members were: Rev. John Alesandro of Rockville Centre, NY, Rev. Richard Cunningham of Boston, Rev. Bertram Griffin of Portland, Oregon, Rev. Robert Kennedy of Catholic University in Washington, Rev. Msgr. Ellsworth Kneal of St. Paul-Minneapolis, Minnesota, Rev. William J. LaDue of Milwaukee, and Rev. Cornelius Van der Poel, C. S. Sp. of Detroit.



evaluating the canons other than marriage in terms of the aforementioned substantive concerns<sup>19</sup>. At its October 1975 convention the CLSA endorsed the Task Force evaluations especially the marriage committee report. The CLSA also suggested continuing the postconciliar pattern of *ad experimentum* legislation, broadening the consultation on sacramental law revision and exploring the appropriateness of codification in the life of the church<sup>20</sup>.

While there was no Task Force activity in 1976, the spring of 1977 saw noteworthy evaluative activity in two areas: procedural law and religious law. In early 1977 a special Task Force committee chaired by the author evaluated the procedural law schema particularly in light of its relationship to the American Procedural Norms, which had been operative since July 1970<sup>21</sup>. This committee report was structured somewhat differently from the rest since it emphasized the negative impact of promulgation of the schema on tribunal personnel, priests and other parish leaders and the laity especially the divorced. The report also questioned the schema's view of the marriage nullity process as basically contentious and highlighted certain difficulties in the canons on competence, tribunal organization and the mandatory appeal<sup>22</sup>. The CLSA endorsed this report at its October 1977 convention including its call for the development of new forms of particular procedural law and changes in the code revision process<sup>23</sup>.

The CLSA Religious Affairs Committee<sup>24</sup> evaluated the schema on

19 See 'Reflections on other Parts of the Proposed Draft *De Sacramentis*', *PCLSA* (1975) 205-217.

20 See *PCLSA* (1975) 245-46. Also T. Green, 'Sacramental Law: Reflections on the Proposed Schema', *PCLSA* (1975) 70-83.

21 The other committee members were: Sister Rita Mac Bissonette, R. S. R. of Portland, Maine, Rev. Dennis Burns of Boston, Rev. John Dolciamore of Chicago, Rev. Bertram Griffin of Portland, Oregon, Rev. Anthony McDevitt of Mobile, Alabama and Rev. Lawrence Wrenn of Hartford.

22 See '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 report was not published in the 1977 CLSA convention *Proceedings*; probably because a copy had been sent to all CLSA members given its special importance for tribunal personnel, the largest percentage of the CLSA membership. A copy may possibly be obtained from the office of the CLSA Executive Coordinator mentioned in note 2.

23 See *PCLSA* (1977) 173-74. Also T. Green, 'Procedural Law: Reflections on the Proposed Schema', *Ibid.*, 63-81.

24 The committee members were the following: Rev. Joseph Galante of Philadelphia, Rev. Richard Hill, S. J. of the Jesuit School of Theology, Berkeley, California, Sister Margaret Modde, O. S. F. of Hyattsville, Maryland, Rev. David O'Connor, S. T. of the Washington Theological Union, Rev. Kevin O'Rourke, O. P. of the Aquinas Institute in Dubuque, Rev. Columkille Regan, C. P. of Union City, New Jersey (chairman), Rev. Kevin Seasoltz, O. S. B. of Catholic University in

institutes of consecrated life issued in February 1977. After fairly broad consultation the committee submitted its report in August 1977<sup>25</sup>. Initially the report commented on the principles guiding the *coetus* in the revision process, the style and language of the schema and its key sources. Subsequently the report explored certain general themes, e. g. the schema's general canons, the relationship between universal and particular law, the protection of the rights of members, the concept of authority, etc. Finally specific canons were analyzed in order. The 1977 CLSA convention endorsed the report's conclusions and recommendations<sup>26</sup>.

In 1978 the Commission distributed the last five schemata: general norms, the people of God, the church's teaching office, sacred times and places/divine worship and patrimonial law. Like the *Lex* and the sacramental law schema, the people of God draft raised noteworthy theological as well as canonical issues, hence it warranted a committee evaluation. While the other schemata were also important, individual scholars analyzed them comparable to the law on the sacraments other than marriage.

Two reports were prepared by the people of God committee<sup>27</sup>. The first report dated June 13, 1978<sup>28</sup> offered a general exposition of the schema to assist bishops in evaluating it. The report briefly noted the structure of the schema, indicated certain problems in assessing it and articulated some criteria for critically evaluating it. Subsequently, detailed comments were made on its various parts especially the section on the church's hierarchical constitution. Finally the report indicated both positive features and significant deficiencies in the schema's organization and particular provisions.

In December 1978 the committee published a more detailed critical analysis of the schema including proposed alternative formulations of

Washington, Rev. Edward Stokes of Our Lady of the Lake Seminary, Mundelein, Illinois and Sister Barbara Thomas, S. C. N. of the Leadership Conference of Women Religious.

25 See C. Regan et al., 'The Schema of Canons on Institutes of Life Consecrated by Profession of the Evangelical Counsels', *PCLSA* (1977) 98-111.

26 See *PCLSA* (1977) 172.

27 Besides the author who chaired the committee the other members were: Rev. John Alesandro of Rockville Centre, Rev. John Finnegan of Pope John XXIII Seminary in Boston, Rev. Bertram Griffin of Portland, Oregon, Rev. Richard Hill, S. J. of the Jesuit School of Theology in Berkeley, Rev. Joseph Komonchak of Catholic University in Washington and Rev. James Provost of Helena.

28 This report was entitled *Initial Report of CLSA Task Force Committee on the Schema Canonum Libri II de Populo Dei*. It was published by the USCC Publications Service in Washington.

unsatisfactory canons.<sup>29</sup> This report addressed the following issues: the title and organization of the schema, the fundamental rights and obligations of believers, pope-college of bishop relationships, the intermediary level of church government, various ministerial forms and the revision process.

The other four schemata issued in 1978 were generally reviewed by individual scholars except for the general norms schema. Such reports were submitted to the CLSA membership but were likewise not the subject of formal convention action.<sup>30</sup>

Three scholars evaluated the general norms schema. Rev. Francis Morrissey of St. Paul University, Ottawa enabled the CLSA to use the draft response of the Canadian Conference of Catholic Bishops, prepared by the Canadian Canon Law Society under his direction. After general observations on the notion of jurisdiction, the different types of legal texts and the division of the schema, the response commented on individual canons. Furthermore Rev. Richard Ryan, C. M. of St. Thomas Seminary, Denver, Colorado examined the canons on dispensations (85-93) and Rev. Robert Kennedy of Catholic University in Washington examined canons 96-111 on the power of governance.

Rev. James Coriden of the Washington Theological Union assessed the schema on the church's teaching office, noting its positive and negative features. Rev. Ladislav Orsy, S. J. of Catholic University in Washington did the same for the schema on patrimonial law, examining individual canons and concluding with some general reflections. Finally Rev. Msgr. Frederick McManus of Catholic University in Washington offered general reflections on the schema on sacred times and places/divine worship and proposed alternative formulations of canons where appropriate.

### 3) *Post-schemata pre-code period (1979-1983)*

After 1978 there were no further CLSA schema-evaluation efforts especially since the 1980 schema was forwarded only to the members of

29 This analysis was entitled *Second Report of Canon Law Society of America Task Force Committee on the Schema Canonum Libri II de Populo Dei*. It was never formally published but was available for distribution through the CLSA Executive Coordinator's office. Neither report was formally endorsed by the 1978 CLSA convention, but the author conducted a seminar highlighting some of the committee's key concerns. See T. Green, 'Reflections on the People of God Schema', *PCLSA* (1978) 13-33.

30 The reports in question were also published by the USCC Publications Service mentioned above; perhaps copies are still available through the CLSA Executive Coordinator's office.

the Commission. The CLSA then focused its attention on canonical education of its own members and the larger Catholic community.

At the October 1979 CLSA convention, the author proposed various approaches to education in the revised code especially a commentary designed not only for canonists but for a broad professional audience.<sup>31</sup> This proposal ultimately was realized in the issuing of a translation of the 1983 code<sup>32</sup> and a commentary on it.<sup>33</sup>

The 1980 convention explored in detail various aspects of the 1980 schema. Subsequent conventions have examined different aspects of the revised law of particular interest to tribunal and chancery officials, practitioners of religious law and teachers of canon law.

The 1981 convention stated that the principal CLSA priority was the canonical education of its membership and the people of God at large especially those in leadership positions. The convention also adopted a statement highlighting the importance of canonical education for future church ministers and committing the CLSA to the realization of that objective.<sup>34</sup>

Such a commitment seems evident in part in CLSA-sponsored workshops on the revised code for diocesan administrators in 1982 and for bishops in 1983. It is especially clear in the aforementioned commentary and in a handbook for religious published under the auspices of the CLSA Religious Affairs Committee.<sup>35</sup> Finally such a commitment seems clear in various other post-code activities to be noted subsequently.

### (C) *The CLSA: Some key postconciliar concerns*

At present it is impossible to analyze comprehensively twenty five years of intense CLSA legal-pastoral activity. However, one can identify certain recurring themes in that activity especially regarding the code revision process.

31 See T. Green, 'Proposed Commentary on the New Code', *PCLSA* (1979) 130-36.

32 See *Code of Canon Law Latin-English Edition* Translation Prepared under the Auspices of the Canon Law Society of America. (Washington, 1983).

33 See J. Coriden et al., eds., *The Code of Canon Law: A Text and Commentary* Commissioned by the Canon Law Society of America (New York, 1985). For some information on the concerns underlying the commentary see 'Editors' Preface, xv-xvii.

34 See *PCLSA* (1981) 312-17.

35 See J. Hite et al., eds., *A Handbook on Canons 573-746* published under the auspices of the Canon Law Society of America (Collegeville, MN, 1985).

The author will not examine critically the CLSA critiques of the schemata, compare them with the analyses of other professional societies or try to ascertain the influence of such critiques on the current law. Those complex projects require much more time and historical perspective.

The author will simply try to articulate some substantive and methodological concerns regarding canonical reform and briefly note their implications both in evaluations of various schemata and in selected other CLSA projects.<sup>36</sup> The following substantive concerns seem noteworthy: (1) a growing awareness of the interdisciplinary (especially theological) dimensions of canonical reform, (2) a concern to ensure the active involvement of all believers in the church's mission, (3) a concern to protect the exercise of their substantive and procedural rights, (4) a concern to foster the appropriate exercise of authority at all levels of church government. Finally some methodological observations on the code revision process will conclude this part of the paper.

(1) *Interdisciplinary (especially theological) dimensions of canonical reform*

a) *Non-schemata concerns*

Postconciliar CLSA activity has reflected an increasing awareness of the interdisciplinary dimensions of canonical reform, e. g. interdisciplinary symposia shortly after Vatican II.<sup>37</sup>

Subsequently an historic May 1974 'Think Tank' or gathering of canonists and other scholars clarified significant canonical issues for further research.<sup>38</sup> The following year selected CLSA members met with representatives of various Catholic organizations in the United States to identify common problems pertinent to the church's mission and to

36 In clarifying these concerns the author will be guided by two earlier efforts to identify some key principles of canonical reform: TS-1979 (cited in note 11) and 'The Revised Code of Canon Law: Some Theological Issues', *Theological Studies* 47 (1986) 617-52 (hereafter cited as TS-1986). Limitations of space permit us only to emphasize certain problems in the schemata. However, the CLSA evaluations also praised numerous positive features in the schemata, and certain problems in the original schemata were corrected in their revision.

37 For example see the papers from an October 1967 symposium on the application of constitutional principles to church government in J. Coriden, ed., *We the People of God: a Study of Constitutional Government for the Church* (Huntington, Indiana, 1968). For a report on an August 1971 symposium on clerical celibacy see *The Jurist* 32 (1972) 273-89. Other symposia will be cited in connection with other CLSA concerns.

38 For a report on this significant undertaking see *PCLSA* (1974) 122-129.

determine how the CLSA might best contribute to their resolution.<sup>39</sup> These meetings were especially important in setting the non-specifically Task Force agenda of the CLSA. Subsequently a series of seminars on key theological-canonical themes was directed by Rev. James Provost. The papers from these seminars on *communio*,<sup>40</sup> mission<sup>41</sup> and ministry<sup>42</sup> proved valuable resources not only for canonists but also for other scholars.

The tribunal/chancery involvement of most CLSA members has understandably led to a significant interest in substantive and procedural marriage law. An October 1967 interdisciplinary symposium considered different aspects of the bond of marriage.<sup>43</sup> Several conventions focused attention on marriage issues.<sup>44</sup> The complex issue of pastoral care of the divorced likewise generated significant CLSA concern.<sup>45</sup> Finally the CLSA has commissioned various studies on the canonical and theological implications of marriage.<sup>46</sup>

Such interdisciplinary efforts have not been limited to marriage law research. In 1985 and 1986 the CLSA collaborated in a study of the application of the *imprimatur* to catechisms and related materials in light

39 For a report on this meeting see *PCLSA* (1975) 139-53.

40 See *The Jurist* (1976) 1-245 for the pertinent theological, canonical and historical papers.

41 See *The Jurist* (1979) 1-288 for the pertinent theological and canonical papers.

42 See *The Jurist* (1981) 255-501 for the pertinent theological, biblical, liturgical and canonical papers.

43 See W. Bassett, ed., *The Bond of Marriage: an Ecumenical and Interdisciplinary Study* (Notre Dame, Indiana, 1968). Theologians, scripture scholars, historians, psychologists, sociologists, civil and canon lawyers explored the implications of marital indissolubility.

44 For example see *PCLSA* (1973) *passim* but especially 1-100 and *PCLSA* (1974) 1-44; 71-82.

45 For example in May 1981 a joint symposium on divorce ministry and the tribunal was sponsored by the CLSA and the North American Conference of Separated and Divorced Catholics (hereafter cited as NACSDC). For a report on that symposium see A. Diaceti and M. Place, 'Alternative Possibilities for Pastoral Care of the Remarried', *PCLSA* (1981) 270-84. This work contains helpful bibliographical information on earlier CLSA efforts in this regard. For the papers from the symposium see J. Young, ed., *Divorce Ministry and the Tribunal* (New York, 1982). Subsequently the NACSDC invited the CLSA and other interested groups to participate in a joint study of the implications of remarriage in the church. See S. Preister and J. Young, eds., *Catholic Remarriage: Pastoral Issues and Preparation Models* (New York, 1986).

46 See various interdisciplinary studies edited by Rev. Thomas Doyle, O. P., formerly chairman of the CLSA Marriage Research Committee: *Marriage Studies: Reflections in Canon Law and Theology* 1 (Toledo, 1980); *Marriage Studies: Reflections in Canon Law and Theology* 2 (Washington, 1982); *Marriage Studies: Reflections in Canon Law and Theology* 3 (Washington, 1985). Currently a three person committee is identifying further areas of substantive and procedural research, preparing a detailed bibliography on the theology and canon law of marriage and developing a systematic anthology of recent rotal decisions among other projects. See *PCLSA* (1987) 275-80 and *PCLSA* (1988) 294-98.

of the code and contemporary catechetical practice.<sup>47</sup> In 1988 the CLSA initiated an interdisciplinary study of incardination and other issues affecting clerics.<sup>48</sup> Finally in 1989 the CLSA constituted a joint task force with the CTSA to study the theological-canonical implications of the March 1, 1989 profession of faith and oath of fidelity issued by the Congregation for the Doctrine of the Faith.

b) *Schemata theological concerns*<sup>49</sup>

Certain questions were raised periodically regarding the schemata's use of conciliar sources. At times citations seemed taken out of context; at other times conciliar sources did not seem to be taken seriously enough; occasionally there seemed to be selective reading of the sources. This issue surfaced most forcefully in CLSA critiques of the *Lex*, the people of God schema and the canons on the church's sanctifying office.

At times questions were posed about the adequacy of the theological premises underlying the schemata. This issue was raised despite the Commission's expressed intention not to deal with such theoretical questions in the canons. For example the penal law schema did not seem to articulate an adequate rationale to enhance its credibility in a time of resistance to law in the church.

The sacramental law schema also prompted questions about its underlying theological-liturgical presuppositions. Accordingly the CLSA evaluations stressed that a proper interpretation of the law required constant recourse to sources such as the *Praenotanda* to the revised liturgical books. Similar theological concerns also were raised in connection with the *Lex* and the people of God schema, e. g. an inadequately nuanced view of pope-college of bishops relations, an insufficient recognition of episcopal conferences, unsatisfactory provisions regarding the status of the laity.

The aforementioned concerns occasionally led to suggestions of possible theological preambles preceding the individual schemata, a point which unfortunately was not explored in depth.

47 See 'The Approval of Catechisms and Catechetical Materials', *PCLSA* (1986) 258-84. The project was initiated by the National Conference of Directors of Religious Education and also involved the CTSA and the College Theology Society. At the same time the CLSA collaborated with the Canadian Canon Law Society on a study of the *imprimatur* for the Canadian Conference of Catholic Bishops; however this study has not been formally published. See *PCLSA* (1987) 275.

48 See *PCLSA* (1988) 356.

49 See Green, TS-1979, 669-676. Obviously a detailed analysis of theological concerns in the schemata is precluded, only a few general observations will be made.

Finally it seemed that occasionally the code precluded further discussion on certain issues that were still subject to ongoing theological reflection or pastoral experimentation. This was somewhat true for the *Lex* and the people of God schema but especially for the sacramental law schema.<sup>50</sup>

(2) *Involvement of all believers in church's mission*<sup>51</sup>

A key conciliar motif was the baptismally-grounded equality of all believers prior to ecclesiastical differentiations rooted in sacred orders. Hence the revised code was to avoid any vestiges of an unduly stratified ecclesiology, and the authentic ecclesial role of the laity was to be duly recognized. The vindication of that role was a notable postconciliar CLSA concern.

a) *Non-schemata concerns*

An April 1970 interdisciplinary symposium explored different aspects of co-responsibility in the church.<sup>52</sup> Subsequently the CLSA focused more specifically on the complex issue of the selection of bishops. An initial interdisciplinary study in 1972 indicated that broader ecclesial participation in such a process was theoretically possible.<sup>53</sup> Subsequently a CLSA proposal for broadening such participation was endorsed by the 1972 convention.<sup>54</sup> However, unlike the American Procedural Norms and the Due Process procedure, the selection of bishops proposal did not elicit significant episcopal support.<sup>55</sup>

During the 70's little other specialized CLSA work was done in this area. However two projects in the 80's seem noteworthy. A 1984

50 See Green, TS-1979, 675. Although the CLSA critiques like the schemata themselves rarely dealt with ecumenical issues, concerns about unduly restrictive norms on *communicatio in sacris* seem particularly relevant in this context. See *Ibid.*, 654-55; Green, TS-1986, 644-45.

51 For reflections on the so-called principle of fundamental equality and shared responsibility see Green, TS-1979, 641-48; *Idem*, TS-1986, 633-39.

52 See J. Coriden, ed., *Who Decides for the Church?* (Hartford, Connecticut, 1971). Also *The Jurist* 31 (1971) 1-293.

53 See W. Bassett, ed., *The Choosing of Bishops* (Hartford, 1971).

54 The 1972 convention devoted significant attention to this issue. In the *Proceedings* see the papers of church historian J. Ellis (4-30), scripture scholar R. Dillon (34-53) and canonist R. Goedert (54-61). See *Procedure for the Selection of Bishops in the United States: A Suggested Implementation of Present Papal Norms* (Hartford, 1972). For the convention resolution endorsing the procedure see *PCLSA* (1972) 147-48.

55 For a recent assessment of CLSA efforts regarding the selection of bishops see the report of N. Bolduc which was accepted by the 1988 convention: *PCLSA* (1988) 299-304; 357.



interdisciplinary symposium on diocesan governance examined the experience of the diocesan church in fulfilling its mission in the world. This study evaluated the effectiveness of church structures in fostering a service-oriented exercise of authority entailing broad ecclesial participation.<sup>56</sup>

The 1987 synod on the ecclesial vocation and mission of the laity prompted an interdisciplinary symposium on lay ministry in light of the 1983 code. The symposium explored such issues as the notion, dignity and rights of the laity and their involvement in both church and world.<sup>57</sup>

b) *Schemata concerns*

The issue of the proper relationship between the ordained and the non-ordained in the church's mission surfaced frequently in CLSA evaluations of the schemata. A significant critique of the *Lex* was its tendency to view the exercise of the church's *munera* largely from a hierarchical rather than from a more integral communitarian perspective. The second critique of the people of God schema expressed notable concerns about its overly hierarchical focus, e. g. inadequate provisions for lay involvement in structures such as the synod of bishops and processes such as the selection of bishops. Furthermore the schema less forcefully highlighted diocesan pastoral councils than earlier official sources, and it made no provisions for parish pastoral councils.

At times the sacramental law schema reflected an inadequately communitarian view of sacramental celebration; the faithful seemed viewed more as recipients of the sacraments than as actively involved in their preparation and celebration. Furthermore the schema on the church's teaching office seemed somewhat unsatisfactory in stressing the prophetic role of the whole people of God and emphasizing the proper interaction between the ordained and non-ordained for a credible proclamation of the gospel. Hierarchical control of the church's teaching enterprise at all levels seemed unduly highlighted.

56 For a brief report on this project see C. Torpey, 'CLSA Diocesan Governance Project: a Report', *PCLSA* (1986) 155-62. For the papers from this symposium see J. Mallett, ed., *The Ministry of Governance* (Washington, 1986).

57 For a report on the symposium see *PCLSA* (1987) 283-88. For the symposium papers see *The Jurist* (1987) 1-247. A CLSA committee is currently exploring the issues arising from the symposium.

(3) *Protection of exercise of rights*<sup>58</sup>

Vatican II highlighted the dignity of human persons and recognized that all believers were uniquely gifted by the Spirit. A key postconciliar canonical task has been fostering an environment in which such gifts can be duly utilized for the good of the church. This has prompted continuing CLSA concern to protect the exercise of fundamental substantive and procedural rights.

(a) *Non-schema concerns*

In October 1968 the CLSA sponsored an interdisciplinary symposium on the fundamental rights of believers.<sup>59</sup> This project influenced continuing postconciliar CLSA undertakings in this area such as the Due Process procedures noted earlier.

During the 70's and 80's a special CLSA committee on the status of women sought to facilitate their exercise of various ecclesial ministries, e. g. tribunal and chancery service and parish leadership roles.<sup>60</sup> A particularly significant event in this regard was an October 1976 interdisciplinary symposium on women and church law, which dealt with such issues as Christian anthropology, ecclesial ministry and discriminatory patterns in church law and popular attitudes.<sup>61</sup>

Tensions between theologians and the Magisterium in the early 80's led to the formation of a joint CLSA-CTSA committee to explore the respective rights and duties of bishops and theologians and to design procedures for facilitating cooperation between them and resolving conflicts where necessary. A series of theoretical studies on such rights and duties<sup>62</sup> was followed by a report on the procedural dimensions of

58 For reflections on the so-called pneumatic-charismatic principle see Green, TS-1979, 630-41; Idem, TS-1986, 625-33.

59 For the consensus statement issued after the symposium see 'Towards a Declaration of Christian Freedom', *The Jurist* 29 (1969) 1-9. For the papers given at the symposium see J. Coriden, ed., *The Case for Freedom: Human Rights in the Church* (Washington, 1969).

60 For some noteworthy committee reports see *PCLSA* (1975) 183-92; *PCLSA* (1983) 126-55; *PCLSA* (1988) 327-46 (an appraisal of a proposed NCCB pastoral on women entitled *Partners in the Mystery of Redemption*).

61 For the consensus statement issued at the end of the symposium see *PCLSA* (1976) 183-93 or *The Jurist* 37 (1977) 313-24. For the papers given at the symposium see J. Coriden, ed., *Sexism and Church Law: Equal Rights and Affirmative Action* (New York, 1977).

62 See L. O'Donovan, ed., *Cooperation between Theologians and the Ecclesiastical Magisterium* (Washington, 1982). For a brief overview of committee concerns see Idem, 'Official Church Teaching and Theology in the Church', *PCLSA* (1981) 194-207.

the question.<sup>63</sup> Subsequently the aforementioned materials were submitted to the NCCB, which in June 1989 adopted guidelines for dealing with this complex issue.<sup>64</sup>

During the late 70's questions were raised about the appropriate protection of workers in church institutions, particularly their right to participate in decisions about their wages, employment and working conditions. An initial 1980 CLSA committee report considered certain aspects of the issue.<sup>65</sup> However, the question was examined further particularly in light of the 1983 code and the 1986 NCCB pastoral on the economy.<sup>66</sup> A final report was endorsed by the 1987 CLSA convention.<sup>67</sup>

#### b) *Schemata concerns*

The affirmation and protection of Christian rights was a major focus of CLSA critiques especially of the *Lex* and the people of God schema. Both schemata were praised for articulating basic substantive and procedural rights. Furthermore the penal law schema was viewed positively from this perspective at least in part, e. g. pastoral stress on penalties as a last resort. Likewise certain positive features of the procedural law schema were duly noted, e. g. enhanced options for procedural capacity.

However, the *Lex* and the people of God schema were criticized for various reasons. The formulation of rights seemed overly conditioned, and their limitations appeared to be essential to the rights themselves rather than to their responsible exercise. There seemed to be an undue fear of their abuse and a failure to perceive their sacramental basis.

The procedural law schema raised various problems about the appropriate vindication of rights, e. g. restrictions on the forum of the

63 See 'Doctrinal Responsibilities: Procedures for Promoting Cooperation and Resolving Disputes between Bishops and Theologians', *PCLSA* (1983) 261-84. In this connection one might also mention a special CLSA Task Force to Study Procedures of the Congregation for the Doctrine of the Faith. Its report on current CDF procedures and suggested principles for their possible revision are found in *PCLSA* (1989) 235-237.

64 See NCCB, *Doctrinal Responsibilities: Approaches to Promoting Cooperation and Resolving Misunderstandings between Bishops and Theologians* (Washington, 1989).

65 See *PCLSA* (1981) 199-206.

66 See NCCB, *Economic Justice for All: Catholic Social Teaching and the U. S. Economy*, November 13, 1986 (Washington, 1986).

67 See "Canonical Standards in Labor-Management Relations: A Report," *PCLSA* (1987) 311-35; 373. Also *The Jurist* 47 (1987) 545-75.

petitioner, limitations on the tribunal service of women<sup>68</sup> and the retention of the mandatory appeal.

Despite certain reservation the CLSA Task Force praised the 1972 administrative procedure schema as a positive step forward in expediting the review of administrative discretion. In 1982 shortly before the promulgation of the code, the CLSA encouraged the NCCB to establish administrative tribunals at the regional and national levels.<sup>69</sup>

As regrettable as was the code's failure to provide explicitly for such tribunals, it prompted significant CLSA action in this area in the late 80's.<sup>70</sup> First of all a 1985 interdisciplinary seminar considered pertinent theoretical questions on the promotion and protection of rights.<sup>71</sup> Secondly the CLSA examined the experience of American dioceses with due process procedures since the early 70's.<sup>72</sup> Currently another CLSA committee is devising simplified conciliation and arbitration procedures, structuring a possible approach to administrative recourse and considering possible forms of judicial process complementing the aforementioned procedures.<sup>73</sup>

### (3) *Fostering the appropriate exercise of authority at various levels*<sup>74</sup>

The earliest CLSA examination of episcopal collegiality was a 1969 interdisciplinary symposium on unity and subsidiarity in the church occasioned by the 1969 extraordinary synod on Holy See-episcopal conference relationships.<sup>75</sup>

68 On this issue and on the matter of the legal status of laicized priests and permanent deacons see Green, TS-1979, 634-37.

69 See *PCLSA* (1982) 370-71.

70 The 1983 convention called for the establishment of a task force to investigate possible conflict resolution procedures at various levels. See *PCLSA* (1983) 329-30. The issue of possible NCCB-CLSA collaboration regarding administrative tribunals was raised most recently at the 1988 CLSA convention. See J. Malone, 'The Canon Law Society and the Church in the United States,' *PCLSA* (1988) 30-32; J. Alesandro, 'Response to Bishop Malone's Address,' *Ibid.*, 33-35.

71 For the papers from this seminar see *The Jurist* 46 (1986) 1-344.

72 For the report of this special task force see *Due Process in Dioceses in the United States 1970-1985 Draft Report on a Due Process Survey* (Washington, 1987). After some introductory reflections the report considers the organization and experience of due process in various dioceses, examines due process in religious education offices and religious institutes and makes some recommendations. The 1987 CLSA convention voted to implement such recommendations. See *PCLSA* (1987) 370.

73 See *PCLSA* (1988) 309-10.

74 For observations on the so-called principle of collegiality see Green, TS-1979, 648-51; *Idem*, TS-1986, 639-43. For reflections on the so-called principle of subsidiarity see Green, TS-1979, 656-68; *Idem*, TS-1986, 646-652.

75 For the position paper issued by the symposium see 'Unity and Subsidiarity in the Church:

The CLSA evaluations of the schemata occasionally addressed pope-college of bishops relationships. A major concern was the apparent tendency of the *Lex* and the people of God schema to view the pope somewhat apart from the broad context of the college of bishops. The canons seemed faithful to the conciliar view of the pope but not to its nuanced treatment of the solicitude of the college of bishops for the universal church.

The synod of bishops seemed to be described too much as an aid to the pope in the exercise of his ministry and too little as an institute representing the world episcopate. Furthermore at times the Curia's service of the college of bishops was not emphasized as strongly as in *Christus Dominus* 9.<sup>76</sup>

Generally speaking the CLSA evaluations were quite concerned about appropriately decentralized governmental structures in the church. The critiques welcomed broader decisional options especially for episcopal conferences and diocesan bishops but also for religious communities.<sup>77</sup> However, the following limited observations focus on problems in this regard especially regarding episcopal conferences.

Vatican II stressed the importance of recovering the church's authentic liturgical tradition and enfleshing it in various cultures.<sup>78</sup> Accordingly reservations were expressed about the proposed code's failure to highlight the competency of conferences and other infra-universal authorities to initiate significant liturgical adaptations in dialogue with the Holy See. Questions were also raised about excessively detailed parts of sacramental law that might better be left to conference determination, e. g. the canons on stipends, eucharistic devotion, ordination impediments and irregularities, pre-marriage preparation.

The original schema's provisions for broader episcopal conference discretion regarding the church's teaching ministry were generally well

Rome and the Conference of Bishops,' *The Jurist* 30 (1970) 85-89. For the papers presented at the symposium see J. Coriden, ed., *The Once and Future Church: A Communion of Freedom* (New York, 1971).

76 Unlike the provisions for broad episcopal consultation on the schemata for the code, the absence of extensive episcopal involvement prior to the promulgation of *Pastor bonus* could possibly reinforce such concerns.

77 The CLSA evaluations tended to focus more on Holy See-episcopal conference relationships than on Holy See-diocesan bishop relationships. Such evaluations rarely dealt with episcopal conference-diocesan bishop relationships, a subject of increasing importance during recent discussions on the status of conferences. Furthermore the evaluations addressed only the original schemata and hence did not comment on the increasingly restricted role of conferences during the latter stages of the revision process.

78 See *Sacrosanctum Concilium*, 37-40.

received; this concerned both individual bishops and the conference. However, somewhat greater episcopal discretion still seemed called for regarding ministerial formation and education in light of socio-cultural diversity throughout the church.<sup>79</sup> Similar concerns about overly detailed universal norms prompted sharp criticism of the 1985 Congregation for Catholic Education draft legislation on Catholic universities.<sup>80</sup>

Questions were also raised about broadening the conference role in the selection of bishops. This did not seem unduly innovative given the significant involvement in this process of some secular governments and other ecclesial groups such as chapters of canons.

Throughout the revision process the CLSA sought the appropriate recognition of the diverse legal-pastoral challenges faced by tribunals throughout the world. It was hoped that positive particular law developments such as the American Procedural Norms would significantly influence the shaping of universal law. Furthermore there should be ample provision for particular procedural law as seemed envisioned in principle 5 for the revision of the code. Unfortunately the procedural law schema did not seem to take seriously the aforementioned diversity since decisional options for episcopal conferences and diocesan bishops seemed rather marginal. Hence the CLSA evaluation seriously questioned the adequacy of the schema in balancing the exigencies of universal law and a healthy pluralism.<sup>81</sup>

Occasionally the impact of diverse civil law systems on canonical reform was mentioned in the CLSA critiques. Generally speaking the patrimonial law's provisions for enhanced particular law discretion were praised, yet even broader use might be made of the civil law system at least in the western world. The need to take broader cognizance of civil law variables also surfaced in the critique of the procedural law schema, which was judged to be unduly influenced by a church-state situation involving a concordat between the Holy See and a given country.

In late 1985 the CLSA constituted a committee on civil and canon law to identify canons referring to civil law, clarify the implications of

79 Comparable concerns were also expressed about the need for expanded episcopal discretion to meet changing pastoral needs, e. g. creation of new ministries, broader options for the ecclesial service of women, restructuring of parish leadership roles.

80 See the CLSA Task Force critique of this document in *PCLSA* (1986) 284-98. The Task Force members were Rev. John Alesandro of Rockville Centre, Rev. James Coriden of the Washington Theological Union, Rev. Richard Hill, S. J. of the Jesuit School of Theology, Berkeley and Rev. James Provost of Catholic University in Washington.

81 One example of the CLSA criticism was the schema's failure to provide for broader third instance options besides the Roman Rota and a few national third instance courts.

diverse civil statutes for canonical practice and foster collaboration between canon and civil lawyers.<sup>82</sup>

Despite special CLSA concern for the status of episcopal conferences, at times reservations were also expressed about restrictions on the discretion of diocesan bishops, e. g. inability to delegate legislative authority, reservation of laicization authorization to Holy See, limitations on dispensing power regarding certain ordination and marriage impediments, qualified discretion regarding general absolution options.

Interestingly enough, however, perhaps the most serious postconciliar CLSA examination of the status of the diocesan bishop surfaced after the code revision process. In 1985 there was a publicized apostolic visitation of the archdiocese of Seattle, Washington and a review of the ministry of its archbishop Raymond Hunthausen. Subsequently, an interdisciplinary committee examined the history and recent canonical legislation and practice of such visitations and the corresponding rights of diocesan bishops and their local churches.<sup>83</sup>

(D) *Methodological concerns*<sup>84</sup>

Despite the conscientious labors of the Commission members and staff, CLSA concerns about the revision process were voiced almost from the outset. This was probably due to the legitimate expectation that it would reflect the broad relatively open consultation characterizing Vatican II.

Although the Commission members and consultants were from different parts of the world, reservations were expressed about whether the breadth of legal-pastoral experience in the church, especially its Anglo-American sectors, was duly represented. The relative absence of

82 See *PCLSA* (1986) 237-40; *PCLSA* (1987) 273; *PCLSA* (1988) 292. The most noteworthy result of committee activity thus far has been a thoughtful examination of confidential communications in canon and civil law. See D. Ioppolo et al., *Confidentiality in the United States: A Legal and Canonical Study* (Washington, 1988). The committee is working on a manual for dioceses and religious congregations regarding sensitive personnel issues and personnel files.

83 For the formation of the committee see *PCLSA* 91986) 322-26. For the text of the committee consensus statement and the text of the papers prepared under the auspices of the committee see *The Jurist* 49 (1989) 341-567.

84 See Green, TS-1979, 676-79 and Cunningham, *passim*. For some useful observations on the methodology of the revision process see J. Alesandro, 'The Revision of the Code of Canon Law: A Background Study,' *Studia Canonica* 24 (1990) 91-146. This was a presentation given at the 1989 annual conference of the Canon Law Society of Great Britain and Ireland. The most noteworthy CLSA statement in this area was endorsed at the 1977 convention. See *PCLSA* (1977) 167-71.

women in significant consultative roles and the absence of notable ecumenical consultation were also criticized.

The CLSA critiques periodically questioned whether the revision process was duly collegial in the manner of Vatican II since at times the bishops at large seemed to be somewhat on the periphery of a process directed by the Roman Curia. While the 1967 synod did approve the principles for revision, such an important issue might profitably have been submitted to the whole episcopate. Throughout the process the time allotted for episcopal evaluations of various schemata was considerably shorter than seemed appropriate for such a noteworthy enterprise. While the Commission was somewhat expanded prior to the review of the 1980 schema, this important text should also have been submitted to the whole episcopate for its appraisal. Periodic code revision progress reports were indeed made to the synod of bishops, however it was not empowered to modify the direction of that process. Finally the CLSA urged the submission of the final text of the code to a special session of the synod for its endorsement with due regard for the primary legislative role of the pope. Such an endorsement might have facilitated ecclesial reception of the law.

Another related CLSA concern was the importance of providing for a systematic mechanism for periodically renewing universal law lest it become prematurely obsolete and not serve the church as well as possible. Such provisions for periodic canonical *aggiornamento* are envisioned at least theoretically at other levels of church life, e. g. diocesan synod (cc. 460-68) and particular councils (cc. 439-46).

#### (E) *Concluding remarks*

The preceding observations can hardly begin to do justice to the efforts of countless men and women canonists in the United States to serve the church through the profession of canon law. Whatever may have been the result of those efforts, there has been a continuing concern to express their mind on a wide range of institutional issues affecting the good of the church (c. 212, 3). Throughout the postconciliar period there has been a continuing CLSA effort to serve the needs of diverse members of the people of God through canonical research and practice.

It is to be hoped that the fruitful collaboration with the NCCB will continue as we attempt to implement the 1983 code. Furthermore it seems especially important that United States canonists become more



aware of comparable activities on the part of their peers in various countries. Likewise it is hoped that this brief exposition of selected themes will foster a deeper understanding of CLSA activities throughout the international canonical community. Only through such mutual understanding and collaboration will we be able to serve the church as fully as possible.

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