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The Catholic Faith

LIVING & TEACHING THE CATHOLIC FAITH

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Seldom are the words of law self-explanatory. Even those passages which seem to admit of only one interpretation might be nuanced — even superseded — by other passages in the law of which the reader is unaware, or they might fail to address the exact circumstances in real life which caused resort to the law in the first place. For these and many other reasons, canon law, the legal system of the system of the Catholic Church, has for at least a millennium made extensive use of the work of canonical commentators. It will doubtless continue to do so for another millennium, even though canonical commentaries can take on a life of their own, with distinctly mixed results.

Since the appearance of the 1983 Code of Canon Law some dozen years ago, the field of canonical commentary in the United States has been dominated by one text, the "big red book" commissioned by the Canon Law Society of America (CLSA) and published by the Paulist Press. The only other commentary, a "little red book" published in Canada by Wilson & La Fleur in 1993, is actually an English translation of a French translation of a Spanish language commentary produced by the Navarra faculty. While

a respectable work, it has attracted no following outside of professional canonical circles.

But there is no American diocesan tribunal or chancellor's office without the bulky *CLSA Commentary* within arm's reach. It is used in diocesan educational offices and newspapers, it is found in virtually all parish rectories and Catholic school libraries, and it is stocked by practically all religious bookstores. Since its 1,200 pages appeared prac-

least another interpretation of them. If I had to point to one weakness in the *CLSA Commentary*, it would be its general tendency to assume considerably more latitude in the interpretation of law than I think is warranted. Given that the CLSA's project was completed just after the close of the unnecessarily long period of canonical uncertainty which marked the conciliar and post-conciliar years, perhaps this spirit of many-things-are-possible could not dissipate sufficiently in the face of some-things-are-decided which the promulgation of the 1983 Code at last connoted.

If, like faces on Mt. Rushmore, the law were carved in stone, a single perspective would suffice to tell one pretty much all one needs to know about it. But if law is like just about anything else one might care to compare it with, the advantage, at times the necessity, of examining it from several points of view becomes obvious. That is the fundamental *ratio* of the new commentary produced by the Canon Law Society of Great Britain and Ireland, and why it deserves a place alongside any other pan-textual canonical studies.

In light of the longish prefatory remarks on the *CLSA Commentary* above, and now that I'm ready to address what will doubtless be dubbed the British Commentary (*pace Hibernia*) to which the American will inevitably be compared, one might expect me to announce things like the GB&I Commentary is shorter than the CLSA's (which it

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tically on the heels of the 1983 Code, one might think the CLSA had adapted Gen. Nathan Bedford Forrest's fundamental rule for military engagements: "Get there the firstest with the mostest." A lot of battles have been won that way.

Of course, I use the *CLSA Commentary* everyday in my canonical practice. Its strengths are too numerous to list here, but I have long felt there to be a need for, if not a different interpretation of so many disputed points in canon law, at

is, but only by a little), or that it is bound in some color other than red (which it is not), or, most importantly, that the British must take the position that canon law is settled matter and will be for the next several generations (wrong again). With some trepidation, therefore, I will try to use just two of the 1,752 examples which could be chosen to give some taste for the different approaches utilized in these two great English commentaries.

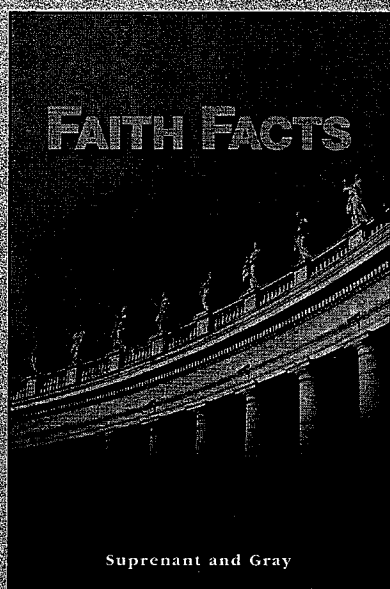
Canon 1404 declares, "The First See is judged by no one." The first thing the GB&I Commentary tells the reader is that this is a "fundamental principle, based on divine law" and that it applies against both civil and ecclesiastical competitors. In some contrast, however, the first thing the CLSA Commentary tells one about Canon 1404 is that it "is not a statement about personal impeccability or inerrancy of the Holy Father" and then speculates about

the authority of a general council to depose a heretical pope. My guess is that the typical questions prompting inquiries into the meaning of Canon 1404 are more likely to be succinctly answered by the first explanation cited above than by the second.

Or again, consider Canon 751 § 3 which states, albeit circularly, "No doctrine is understood to be infallibly defined unless this is manifestly demonstrated." While neither the British nor the American commen-

taries simply admits that this is a poorly written legal text, the GB&I Commentary does explain that "the faithful [do not] have to await a formal, infallible decision before accepting a doctrinal or moral teaching" and, citing Ford & Grisez, adds that the universal ordinary magisterium is the usual expression of the Church infallible. The CLSA Commentary, on the other hand, after circumscribing papal and collegial infallibility within the inerrancy of the People of God, goes on to conclude, "In fact the exercise of the infallible teaching authority is extremely rare." As it stands, of course, such a statement is clearly wrong. The Church has used its infallible teaching authority scores of times, but in the ordinary manner, rather than in the extraordinary manner at issue under the canon.

From examples such as these, one cannot conclude that the British Commentary is "better" than the American, and there are passages in the GB&I work with which one might be unsatisfied (just one example: in hedging on the rights of recourse under Canon 1722, the British Commen-



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tary does not seem to appreciate the travesties which can be committed under its authority). But one can suggest that the differences between these two important works are not merely stylistic or idiosyncratic, and that to the degree one consults both major English commentaries, one can be surer of a fuller understanding of the texts in question.

The GB&I text is not loaded down with references to British ecclesial practices or even to broadly European religious situations. Almost all citations are to accessible Vatican documents, common scholarly studies, and other universally relevant sources. The passage of more than ten years since the promulgation of the 1983 Code has allowed for more legislative history to be published in the Vatican's *Communicationes* than was available to the Americans in the early 1980s, an advantage well utilized by the GB&I commentators. For that matter, the passing of time has made it less necessary to contrast the new Code with the old, and less space is therefore devoted to re-tooling, as it were, those trained under the Pio-Benedictine Code for life under the 1983 Code.

The actual English text of the canons in the commentary represents a further refinement of the already graceful translation offered by GB&I and published separately by Eerdmann's. Too bad the phrase "*publici iuris facere*" found in Canon 514 is still mistranslated as "to make public" instead of "to give public effect to." Oh well, the Americans missed it too. So did the Canadians. (Speaking of Canadians, by the way, nearly half of the contributors to the British Commentary are from north of our own border. Happily, among all contributors, academics and diocesan practitioners are about equally represented.)

The index, in English, is excellent, and the contributors went to considerable efforts to cross-reference other important canons in the footnotes. Page headers such as those used by the Americans would have facilitated finding specific canons, especially given that the canonical texts are set off from the commentary texts only by a none-too-bold boldface. This makes extended reading of the British Commentary physically more tiring than it need be.

Living here in disaster-prone Southern California, my wife and I periodically review which family valuables should be rescued in case of earthquake, fire, mudslide, etc. Angela's interest in spiriting our children to safety dovetails nicely with my interest in preserving good books on canon law. How provident, therefore, was the birth of our second daughter, to whom I can assign responsibility for saving the GB&I Commentary. "Just follow your big sister," I will explain to our littlest one when she can walk, "that's right, Sweetie, follow the girl with the big red book in her hands."

Dr. Peters is Director of the Office of Canonical Affairs for the Diocese of San Diego.

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