

LONERGAN'S ANTHROPOLOGY REVISITED

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EDITED BY GERARD WHELAN, S.J.



THEOLOGY AND CANON LAW IN THE THOUGHT OF LADISLAS ÖRSY

Paolo Gherri
The Pontifical Lateran University

The importance of Bernard Lonergan for Canon Law does not arise so much from his writings on the subject¹ as from the use that one can make of his cognitive theory in the study of Canon Law. This insight is well understood by his Jesuit confrere, Ladislav Örsy, a Hungarian-American colleague of Lonergan at the Pontifical Gregorian University during the early 1960s. Following the publication of *Method in Theology* in 1972, Örsy published the essay “Lonergan’s Cognitive Theory and Foundational Issues in Canon Law”² in 1979. To Örsy, the Law, even Canon Law, is operational: it is in the service of action. The revision of Catholic canon law that occurred between 1965-1989 (the “CIC” revision) provided the opportunity for Örsy to reflect on the foundational factors one needs to consider as one seeks to re-write a code of law. He stresses the importance of method so that one can be clear that being a canon lawyer raises questions about how one thinks about and applies written laws. Next, he recognizes that questions of method require more foundational reflection since no “practice” is ever independent of its “theoretical” and “anthropological” presuppositions.

Örsy takes seriously Lonergan’s statement that “theology mediates between a cultural matrix and the significance and the role of religion in that matrix,”³ and

¹ Perhaps the only paper in which Lonergan deals directly with canon law is in an address to the “Canon Law Society of America,” published as “The Transition from a Classicist World-view to Historical Consciousness,” in *A Second Collection*, 1-9.

² Ladislav Örsy, “Lonergan’s Cognitive Theory and Foundational Issues in Canon Law: Method, Philosophy and Law, Theology and Canon Law,” *Studia canonica*, XIII (1979), 177-243.

³ *Method in Theology*, xi.

seeks to explain how Canon Law contributes to this mediation. He notes that the Canon Law of the Middle Ages performed its task of mediation admirably, but within one particular culture and with a "classicist" mentality. With Lonergan, he suggests that new questions arise today given the complexity of society, law, and the life of the Church and given the call of Vatican II for a multicultural Church.

Örsy seeks to develop a notion of law that relates to Lonergan's historically-conscious analysis of community. He builds on Lonergan's notion of progress in history and notes that law has an important role to play in helping the operational challenges that arise in keeping an authentic community in action. He notes that community is always in a state of change, with intelligent subjects recognizing problems and forming responsible solutions to them. He adds that such decision-making involves an appeal to values and not just fixed behaviours, as the appropriate behaviours of the recent past may not be the authentic solution to problems of the present. All this raises questions for how a legal system can function appropriately in a way that helps structured collaboration within a community, without imposing out-of-date rigidities.

With Lonergan, Örsy seeks to establish epistemological foundations before proceeding to proposals on specifics. He is not satisfied with any conceptualist approach to knowing that ignores the full personalist reality of subjects who are capable of self-transcendence in both knowing and action. Applying this epistemology to canon law suggests that it should make explicit the manner in which its specific pronouncements are based on a notion of intentionality, knowledge, and decision-making both of subjects and the Christian community. He next points to a problem, however. Canon law has traditionally been dependent on a Neo-Scholastic set of philosophical presuppositions that inhibit its optimal functioning.

Örsy points out that the metaphysical assumptions underlying the Code of Canon Law of 1917 are those of Scholastic philosophy: man is a rational animal composed of matter and spirit (body and soul). The soul operates through its faculty, which are the intellect and the will and which are significantly different according to Scholastic philosophy. Because the acts are specified by their objects, the acts of the intellect are distinct from the acts of the will so that the true is distinct from the good. This philosophical theory has a tremendous impact on the canon law of marriage, which does not take account of the person. Örsy, therefore, questions the need to use the doctrine of distinct faculties to judge the problems of knowledge and responsibility within marriage, prefer-

ring to address such issues on the basis of intentional analysis. He suggests that it is not necessary to resort to the theory of distinct faculties, but to enquire into the (unified) intention of the person. He suggests that when a person assumes a moral responsibility, he or she does so through a continuous process and not through discrete acts. He explains the subject as a dynamic unity that is dominated by a single intentional process that guides it through a process of knowing and deciding. The responsibility for the decision must be in proportion to the value judgment that precedes it.

Moving from considering foundations of individual functioning, Örsy next turns to the community. He points out that questions of knowledge and conscience apply not only to the individual but also to the collective of the Christian community. In fact, he notes that the law is always a collective “activity,” not an individual one. This aspect of law explains why it becomes important for canon law to offer guidelines for communal actions such as sacraments and the exercise of authority within the Church. As always, Örsy seeks to clarify the most foundational dimension of this question, before moving to specifics. Many of Örsy’s ideas on canon law can be summarized under the following list of six principles:

- *Community and Subjectivity.* Before any consideration of formulating Christian laws, one needs to recall that Christian community is comprised of intelligent, responsible, and free subjects who have chosen to form an organic unity based on similar experiences, ideas, judgments, and projects.
- *Law and Foundational Judgments.* If the community wants to live, preserve, and develop its unity of mind and heart, its members should follow some common rules of action; they need Laws that are born of three basic judgments: 1) the judgment of fact that identifies a common need, 2) a value judgment concerning how, in principle, one would wish to respond to this need, and 3) a practical judgment concerning what solution would be not only in the interest of the common good but would also be practicable.
- *Authority.* The task of making these judgments belongs to someone who is in a position to represent the constitutive meaning of the community as well as to know the strengths and weaknesses of the community. This person is invested with the power to give directions to the community. Such “authority” has diverse responsibilities with regard to individuals, groups of people or the community as whole.

- *Promulgating a Law.* After a law has been formulated, it must be brought to the knowledge of the subjects of the community: it must be promulgated.
- *Reception.* A norm of action that never comes into an act is contradictory: a law that remains only written on paper and does not affect the life of the community gives a poor meaning to the term "Law." Intelligent and free people can receive the law only if they understand and decide to accept it; to do so, people have to find meaning and the value in the law.
- *Interpretation.* Finding the meaning of the law is not always easy, which is why one needs the work of interpretation, but the more distance that exists between the law's makers and its interpreters, the more difficult the task of interpretation.

Örsy's list of principles that underlie canon law constitutes a serious challenge to the notion of canon law that prevails in the Church today. Central to his approach is a vital role for the Christian community in the exercise of canon law, rather than leaving its application as the prerogative only of the authorities who promulgate it. The fundamental difference with the definition of Saint Thomas lies in the fact that it was born in the theory of intentionality analysis, from a vision of community as a structured unit that undergoes change, with law that is in the service of such community.

Örsy's approach has important consequences for how we consider the relationship between theology and canon law. In particular, he does not support the notion of a "Theology of Canon Law" that emerged at the end of the 1970s, in the so-called School of Monaco (K. Mörsdorf and disciples), and came to be a required course in many faculties of Canon Law. He does not mince his words: "The expression 'Theology of Canon Law' makes no sense!"⁴ To explain this, he sets out to clarify the distinct realms of competence of theology and canon law.

Örsy suggests that the world of theology consists of those mysteries that we see in the dim light, that form the basis of our faith, and the existence of which we proclaim in the form of Christian doctrine. In this way, theology is *fides quaerens*

⁴ Ladislav Örsy, "Lonergan's Cognitive Theory and Foundational Issues in Canon Law: Method, Philosophy and Law, Theology and Canon Law," *Studia canonica*, XIII (1979), 227.

⁵ See, Ladislav ÖRSY, "Moral Theology and Canon Law," in *The Furrow*, XVI (1965), 158.

intellectum and formulates a system of critically tested insights that explain doctrines. By contrast, he suggests that canon law consists of a system of rules of action for the sake of good order in the community: *fides quaerens actionem*. The rules in themselves are the mere framework, it is the application of the science of canon law that transforms them into a fully rendered construction.”⁵

When analysing the two worlds of theology and canon Law, all considerations about their relationship move at a generic level. Only when the relationship between these two worlds is understood should one turn to task of applying canon law to particular problems. Many institutions of the Church belong to the realm of the mysteries, but, at the same time these are the object of various legal guidelines, e.g., baptism, and the hierarchical structure of the Church. It follows that every text dealing with the theological foundations of canon law should have two parts: 1) the foundations of the law in the mystery of the Church, and 2) the single mysteries to which the law gives structure.

In conclusion, I offer a suggestion for further reading. An organic reading of the thought of Ladislav Örsy can be found in Andrea Ponzzone’s *L’approccio epistemologico alla Teologia del Diritto canonico nel pensiero di T. Jiménez Urresti e L. Örsy*, *Corona lateranensis*, (Vatican City: Lateran University Press, 2012).

⁵ See, Ladislav ÖRSY, “Moral Theology and Canon Law,” in *The Furrow*, XVI (1965), 158.