

Fr. McManus Tells How To Change The Church's Law

By W. H. MARSHNER

ST. PAUL — Fr. Frederick McManus, speaking here at the annual convention of the Canon Law Society of America, said that the canon lawyer should see himself both as an interpreter of law and as an advocate of legal "reform," with a central role to play in the ecclesiastical autodestruction which, in Fr. McManus's vocabulary, goes under the name of "renewal."

Fr. McManus is a professor of canon law at the Catholic University of America, but is best known to most Catholics as a key figure in the creation of ICEL, the organization responsible for our present "English" Mass.

As an interpreter, the canonist must state quite honestly what the Church's law now says or purports to say, Fr. McManus explained, but this candor is just a prelude to showing how truly "inapplicable" or "irrelevant" the existing law is. Then as advocate, the canonist should address "specific legisla-

tive needs" so as to be "at the heart of the process of drawing up laws and norms" at the diocesan level, at the national conference level, and for the universal Church.

"These two roles of the canonist are far from distinct. Correct interpretation is only a first step to showing the law's inapplicability, irrelevance, nullity, etc.," McManus said.

The canonist must act as a critic, Fr. McManus went on, of the "lesser decrees and rescripts" now coming out of the Vatican congregations and not treat them "as if they were conciliar decrees or encyclicals. "Many of the new regulations, he said, do not fulfill the "old norms of promulgation," that is, they do not show clearly

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what authority they are to have. Thus there is a dangerous proliferation of "informal" or "secondary forms" of quasi-legislation. Fr. McManus singled out for particular attack in this connection the recent Vatican norms on General Absolution, which were "unsuccessful," he said, "in meeting either the historical evidence or the present pastoral reality." Another object of attack was a recent statement from Rome carefully limiting the power of national episcopal conferences: McManus called it "tendentious."

In this role as critic, McManus admitted, the canon lawyer will often come into "conflict with the preferences of Church authorities." As an example, he cited the fact that canon law, strictly interpreted, does not support the desire of the 1971 Synod of Bishops to get priests out of politics. Another example is the power of local bishops to give dispensations. The real law (Vatican II), he said, gives the bishops a broad power, but curial documents are now trying, once again, to "reserve" many of these dispensations to the Holy See.

Just how "public" a role canon lawyers should play in advocating change, is a matter of "prudent judgment," Fr. McManus hastened to add.

"We have to find ways in which we can honestly say the law is inapplicable," Fr. McManus emphasized in answer to a question, "either because of (American) usage, or because of the spirit of Vatican II, or because of the damage the law would do. . . . It can be a higher virtue not to observe a given norm; but, of course, the danger is that people will take advantage of this."

Another questioner wondered what Fr. McManus would say about the obligation still imposed on non-Catholics in mixed marriages to educate their children in the Catholic Faith. What if the non-Catholic refuses by saying that such an obligation is contrary to the religious "freedom of conscience" proclaimed by Vatican II? McManus replied that there is, indeed, a "conflict here" for which "the Roman documents do not achieve a good settlement." According to McManus, "This problem should be resolved in the local church," and he added, "I'm not saying the couple can't find another solution on their own." (As if the local bishop had a right to dispense from this obligation, or the couple had a right to ignore it!)

Yet another questioner posed this problem: If the curia says that the power to dispense *x* is reserved to the Pope, but I can't find the reservation in a truly Papal document, do I tell the bishop he in fact has the power to act on his

own? (The example given was a reservation stated in *Ministeria Quaedam*, the document which reformed the "minor orders" and excluded women from being acolytes or lectors.) McManus replied, in effect: You are right. The curia can't expect these "informal" reservations to stick.

A final difficulty posed to McManus was the fact that, today, it is very hard for the canon lawyer to find out what is really law and what isn't, since there is such a proliferation of "pastoral" and "informal" guidelines, etc. McManus agreed with a smile: "Well, as these things proliferate — for a good purpose, to aid the life of the Church — the more they will be disobeyed, bringing the law into disrepute."

The smile was enigmatic.

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