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## My Reply to Peters

by Michael Sean Winters

Distinctly Catholic

Edward Peters, the canon lawyer who has suggested that Governor Cuomo be denied communion, responded to my post in which I restated my long-standing position that using Canon 915 to deny politicians communion is horrible theology. Furthermore, I argued that the canons of the Church exist to further the Church's objective of saving souls, that the Church has many instruments and methods to accomplish that goal, and that many of us think that heavy-handed reliance on canonical penalties is actually a great cause of scandal and harms the Church as well as the potential for helping the person who is denied communion. To be clear: Edwards' post is very thoughtful and intelligent and he makes the best case that can be made for his interpretation of how Canon 915 should be applied. But, he avoids addressing the point I made.

For example, he writes, "Whence sprang that pervasive distrust of law that so blindsided my parents' generation and still haunts mine? Who really knows? My hunch is that several pernicious philosophical currents finally came crashing together in two human meat grinders called World Wars One and Two, leaving large segments of Euro-American society deeply disillusioned about the possibility that reason (a constitutive element of human law, per St. Thomas) could be relied on to save us from ourselves. So, naturally, substitutes needed to be sought?science became a major one in the world, and the "spirit" of Vatican II became a major one in the Church. Whatever strengths these substitutes possessed, and whatever weaknesses they suffered from, both were fundamentally immune to law (or at least to lawyers), and many found that a highly attractive trait. Civil authority and lawyers cannot tell chemicals how to react in test tubes, and Church authority and canonists cannot tell Catholics how to live their faith. From there?? Okay, we all have to paint with broad strokes sometimes, and these strokes have some truth in them to be sure.

Although I am aware some people have invoked the "spirit" of Vatican II to justify things far from the

mind of the Council Fathers, I personally have never once in my life invoked the "spirit" of Vatican II in the sneering way Peters suggests. I would also submit that there was a "spirit of Vatican II" and that you can readily discern that spirit in the texts themselves, a distinctively non-legalistic, which is not to say anti-legalistic, approach to the issues the Council Fathers addressed. It is good to recall the words Pope John XXIII spoke at the opening of the Council, "Nowadays however, the Spouse of Christ prefers to make use of the medicine of mercy rather than that of severity. She consider that she meets the needs of the present day by demonstrating the validity of her teaching rather than by condemnations."

Nor am I "deeply disillusioned about the possibility that reason (a constitutive element of human law, per St. Thomas) could be relied on to save us from ourselves." Nor do I think myself "immune to law." My point, indeed, was not that law does not matter, nor that the canons of the Church are inconsequential, but that they are not exclusively important. They express the Church's goals and mission but the canons do not exhaust them. So, Peters can create strawmen well and plunge his canonical dagger into them. There is some skill in that, but it averts the issues rather than engages them.

In fact, when I wrote my original post I did not have in mind any of the intellectual detritus from the "two human meat grinders called World Wars One and Two" when I argued that law must be placed in a human context that involves claims other than legal ones. I was thinking of something the Master said, "The Law is made for man, not man for the Law." Perhaps Peters could consult the Scriptures which he so tellingly fails to cite in his article.

I also had in mind two sentences about the role of science in culture and society. "There is not a chart in the world that explains the role of charts in the world," an observation contained in Leon Wieseltier's memorable takedown of "The Bell Curve," required only the change of a noun to form the sentence I wrote: "There is not a brief in the world that can explain the role of briefs in the world." My point is not that there is no place for briefs or charts. My point is that neither law nor science can dispense with philosophy, or theology, or pastoral judgement, or other human concerns in determining how to apply the law, what moral or spiritual significance we perceive in any given human situation, and that sometimes, an over-reliance on legal understandings can result in a failure to grasp these other important points of view.

The other sentence I had in mind also was taken from an argument about philosophy but which bears on the kind of constricted legalism Peters defends. "To make the same point in different words: philosophy must sift the non-scientific element out of the scientific results with which it is often entangled, thus keeping open our awareness of the totality and of the broader dimensions of the reality of human existence or for science can never show us more than partial aspects of this existence." That sentiment, I think, can be seen to apply to law as well. I should add that the observation was made by then-Cardinal Joseph Ratzinger in a book, part of which included an explicit defense of law, but which displays a more subtle and persuasive understanding of the true significance of law precisely because the future Pope did not try to make the law carry more weight than it can.

Peters does not address the example I gave of how an over-reliance on lawyerly advice can lead pastors to adopt a non-pastoral stance, Cardinal Egan's words about the sex abuse crisis. When moral and pastoral leadership was called for, Egan delivered legalisms. Yes, that was a failure. When Bishop Olmsted turned to the Church's canons to justify his actions towards Sr. Margaret McBride and St. Joseph's Hospital, I pointed out that his exclusive reliance on the canons demonstrated a similar failure of episcopal leadership. Olmsted's initial statements in both situations, for example, failed to mention God or quote the Scriptures, as Peters' reply to me also fails to quote Scripture which is, like the canons of the Church, a guide to pastors, not Bishops find their principal authority in those Scriptures and in the Apostolic Tradition, out of which the canons grow, not the other way round. I see in Bishop Hubbard's declining to

adopt the application of Canon 915 Peters commends the face of the Good Shepherd, off in search of the one lost sheep. One suspects Peters would stick with the ninety-nine sheep who were not lost and feel mighty self-satisfied with his decision. And, pity the poor lost sheep if he decided to wander back on his own!

I believe that applying Canon 915 in the way Peters, and Cardinal Burke, and others, suggest is really bad theology. Perhaps the canon should be changed. Perhaps it needs to be seen, more adequately, as a star to guide us rather than as a purely penal instrument. I do not think the canons of the Church exhaust a bishop's capacity for understanding how to pastor. In the case at hand, that of Governor Cuomo, I do not know and apparently Peters does not know, what steps Cuomo is taking to regularize his marital status. For example, is he in the process of securing an annulment of his first marriage? I read in the newspaper that Cuomo's live-in girlfriend refers to his children from his marriage as her own children, and perhaps the bishop considers that disrupting that relationship, depriving the children of a motherly influence, is reason enough not to denounce the Governor's relationship, especially if he is in the process of regularizing it. These are the kinds of considerations that come to the mind, and from the heart, of a pastor, no? If the Governor is moving in the right direction, does Peters really think it would hasten that movement to bar him from the communion rail?

Peters also neglects the fact that Cuomo is not really a resident of Albany. He votes in Westchester I believe and that city is within the jurisdiction of Archbishop Dolan not Bishop Hubbard. And, Dolan did not make a fuss when Cuomo attended Midnight Mass at St. Patrick's, did he? Nor has Dolan, so far as I can tell, in his capacity as Metropolitan, taken any actions against Bishop Hubbard for gross neglect of the Church's canons. Peters seems to have a beef with Bishop Hubbard: This is the second time in a year he has gone after him, the first on the subject of needle-exchange programs.

My problem with Peters' argument is not so much that he is wrong as that he is only half right. I will stipulate to the fact that the canons of the Church can be understood as he understands them, but I will insist, as I did in my original post, that what the canons have to say does not exhaust the issues a pastor faces. And, yes, the canons exist for the bishop to use as he sees fit in achieving the salvation of souls. The goal is salvation, not canonical scrupulosity. And while I understand that the canons of the Church can and do aid the Church in helping to achieve the salvation of souls, their application must be done by pastors who take into account more than the canons themselves. If this were not the case, the Church would be led by jurists not pastors. Those pastors should abide by the canons, to be sure, but in applying them they must look at the totality of circumstances. In the messiness of actual lived lives, it is rarely a straight shot from canon to conduct. In the desire to free the saint who lives inside every sinner, a variety of means, some of them never imagined by the authors of canon law, might be found desirable. To know what the canons say is to know part of the pastoral equation.

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A final thought. Mr. Peters undoubtedly brings canonical expertise to this discussion, his arguments are logical and precise, and they possess the confidence such expertise imparts to any discussion. But, that confidence is belied by the fact that most bishops in America, and Pope Benedict XVI himself, have declined to enforce Canon 915 in the way he suggests. Perhaps they are all slackers. Perhaps they all have been seized with "destructive antinomianism." I suspect the truth is that those who apply canon law less ferociously are not slackers but pastors, good pastors, pastors who are busy preaching the Gospel through the medicine of mercy rather than condemnation. And I am glad for it.

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