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Editorial Comment

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Editorial Comment

Featured in this issue of *THE CATHOLIC LAWYER* is the final position paper of a Symposium entitled "A Declaration of Christian Freedoms." The Symposium was held at The Catholic University of America in Washington, D. C. on October 5-6, 1968. It was sponsored by the Canon Law Society of America and Catholic University of America as a means of contributing to the renewal of Church law from western legal tradition.

The mandate to renew and update the Church's law was given by Pope John XXIII on January 29, 1959, the same occasion on which he called for the Ecumenical Council. On March 28, 1962, shortly before his death, Pope John named a Pontifical Commission for the Revision of the Code of Canon Law. He instructed this group to receive recommendations from the conciliar commissions, but he said that their work of collation and formulation would not begin in earnest until after the conclusion of the Council. Pope Paul VI added members of the Commission on November 7, 1963, and November 13, 1965, and he appointed more than one hundred consultants to the Commission. In his remarks to the Commission on November 20, 1965, Pope Paul suggested the possibility of "a fundamental and common Code which contains the constitutive law of the Church."

This "fundamental law of the Church" has been widely discussed since that time, and some attempts at formulation have been made. Although no draft of a *ius constitutum ecclesiae* was found acceptable for presentation to the Synod of Bishops which convened on September 29, 1967, the notion of such a general, fundamental law was the subject of much of the bishops' discussions. The summary remarks of Archbishop Pericle Felici, newly appointed chairman of the Commission for Revision, at the end of the Synod's deliberations on Canon Law indicated a favorable attitude toward the idea, and it is certain that further efforts will be made to design and propose a fundamental law for the universal Church.

The Canon Law Society of America has as its stated purpose "to participate in the constant renewal of Canon Law by engaging in, encouraging, and aiding canonical research and studies, and by proposing such revisions of the law as the changing circumstances of time or place may suggest." One attempt to fulfill that purpose, in the line with the aforesaid mandate, was a Seminar sponsored by the Society in Pittsburgh, October 8-10, 1966. The Seminar was on "The Role of Law in the Church" and it included a wide representation of scholars from various disciplines and religious traditions. The proceedings of the Seminar, edited by James E. Biechler, were published by Helicon in 1967 in a book entitled *Law for Liberty*. The conclusions of that study session called for many of the values and structures in the future law of the Church which are identified with western constitutionalism.

Since it had long been a suspicion of many members of the Canon Law Society that the Church could learn from the Anglo-American common law tradition, it was decided that a symposium to study a constitutional government for the Church be undertaken. Entitled "A Constitution for the Church," the Symposium was held in New York City on October 7-9, 1967 and was sponsored by the Canon Law Society of America and Fordham University. The final position paper of this Symposium, "Towards Constitutional Development within the Church" will be published in the Winter, 1969 issue of THE CATHOLIC LAWYER.

The Symposium which was for the position paper featured in this issue had as its announced purpose a study of the basic rights of individuals and groups within the Church. Participants were encouraged to "begin at the bottom" and suggest the basic liberties of those persons in whom the Spirit of God dwells. This consideration took its place alongside a study of the authority and control which the Church as an institution requires to accomplish its task.

Those who took part in the dynamic exchange of the Symposium were in complete agreement on one important point: the critical need for the maximum participation of the whole community in the process of renewing the Church's legal structure. If this can be done effectively they believe that then truly the Church will stand before the world as a "demonstration community" wherein each man's

freedom, dignity, and responsibility are honestly honored and manifestly protected.

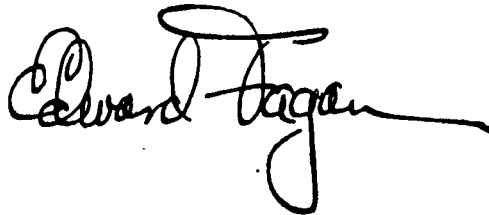
Elsewhere in this issue the subject of habeas corpus and its possible erosion of law and order is analysed and discussed in a study prepared by the Saint Thomas More Institute For Legal Research.

Long referred to as the Great Writ of liberty, habeas corpus has been the center of much controversy in recent years because of several United States Supreme Court rulings. It has been argued by some that the recent attempts to limit the scope of the exhaustion rule represent a federal conspiracy to subvert the habeas corpus remedy into a forum for the automatic retrial and review of state criminal proceedings; it has been imputed that the remedy is being primed to replace the right of appeal to the Supreme Court, a privilege lost to state prisoners in 1916.

Others point with alarm to the dangerous psychological climate that is created when known criminals who have confessed to heinous crimes are released because of a technical defect in police procedure.

Furthermore, the United States Congress, in a proposed, unsuccessful, amendment to the recent Omnibus Crime Control and Safe Streets Act of 1968, sought to abolish the habeas corpus jurisdiction of the federal courts with respect to state criminal convictions.

Such critics will therefore disagree with the conclusion of the study that law and order are in no way threatened by the present trend in law. Readers are invited to judge for themselves whether such disagreement is justified.

A handwritten signature in black ink, reading "Edward Tegen". The signature is written in a cursive style with a long horizontal flourish extending to the right.

EDITOR