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The Doctrine of Reception

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". . . For a law or rule to be an effective guide for the believing community, it must be accepted by the community."

The canonical doctrine of reception, broadly stated, asserts that for a law or rule to be an effective guide for the believing community it must be accepted by that community.

This doctrine is very ancient. It began with John Gratian in the twelfth century. Gratian based his version of the teaching on the writings of Isidore of Seville (seventh century) and Augustine of Hippo (fifth century). The development, varieties and vicissitudes of reception have been explored in recent years in a series of important studies by Luigi DeLuca, Yves Congar, Hubert Müller, Brian Tierney, Geoffrey King, Richard Potz, Peter Leisching, and Werner Krämer. This present work draws upon those historical studies and attempts to formulate the doctrine itself. This is an effort to articulate the theory of canonical reception.

Reception has been described as a spectrum of opinions about the establishment of canonical rules and their acceptance or rejection by their subjects. It has been characterized as no more than a series of explanations for failed laws. But reception is much more than a way of explaining why laws did not work. It is a sound canonical theory about rule-making which has firm footing and long standing.

The theory of reception has taken a variety of forms. One is the philosophical claim that the acceptance of law by the people is an essential part of the law-making process. Another holds that reception is simply a way of acknowledging that some laws are not very well cast and are, in fact, ineffective. Because of the range of canonical viewpoints on reception the "doctrine" sometimes appears obscure or amorphous. This present study attempts to state a clear and coherent doctrine of canonical reception.

The study will proceed in the following stages: (A) a set of presuppositions; (B) the origins of the doctrine; (C) some of the proponents of the doctrine; (D) a summary of the opinions about reception; (E) the action taken by the Inquisition; (F) a statement of the doctrine itself; (G) its theological foundations; (H) some applications of reception.

the power of the lawgiver, the will to make a law, and a legitimate form of promulgation. In that scheme, which prevailed among canonists for a long time, there is no role for acceptance by the users of the law. Rationalists, following Thomas Aquinas, view law as ordered to the common good, as means to an end. The community plays an active role in the attainment of its own common good. Reception is at home here.

3. The theological viewpoint that Church authority resides exclusively in the office-holder, entirely unrelated to the Christian community, was also unfriendly to a doctrine of reception. Before 1900 the opinion that ordained hierarchs received authority directly from above was widespread. The conviction, prevalent since the Second Vatican Council, that prelates are related to and not dominant over communities of believers, provides fertile soil for this teaching about the reception of rules by those communities.

The reception of canonical rules by the communities regulated by them is an ancient and honored part of the Catholic tradition. The users really do confirm their laws by their own practice, as Gratian said. This study has attempted to trace the origins and variations of the doctrine of reception, and to describe its present reality .The doctrine deserves to be restored to a prominent place in canonical teaching and interpretation.

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1. This study focuses exclusively on canon law. Many proponents of reception apply it to secular law as well, but here we simply prescind from that issue. We examine the acceptance of rules within the Church, not in the state.
2. Canon law is law only by analogy. It is far more unlike secular law than it is similar to it. Several reasons demonstrate the dissimilarity of canonical rules.
    a. The Church is a radically different kind of community from the state; it is different in origin, purpose, history, identity, inner dynamic and destiny.
    b. Rules have a different purpose in the Church. They serve to keep good order and protect personal rights, but their ultimate aim is the spiritual good of the members, mutual love among them, and, indeed, their eternal salvation.
    c. The sources of authority in the Church are the power of the Risen Lord and the presence of the Holy Spirit; these are only acknowledged by people with faith.
    d. Canon law is a theological discipline, not a juridical one. Its principles are drawn from divine revelation and the Church's tradition. Canonists are ministers within the church, not lawyers.
    e. The Church is a voluntary association. Membership in it cannot be coerced. It is a community of free commitment. That is the context for its rules.
    f. Rules within the Church have a different kind of reality and effectiveness. They are more like guidelines than laws. Actions which are taken in contravention of canonical rules still very often achieve their basic religious purposes.
3. Canonical rules have both intrinsic and extrinsic elements. Reception pertains to the intrinsic quality of the content of the rules, and their consequent acceptance by their subjects. The extrinsic elements, i.e., the formal authority of those

issuing the rules and the technical conditions of their promulgation, are not in question here.

4. The Spirit of God is present and operative in the community of faith, and in each of its members. God's guidance is given to all, not only to a select leadership group. All of the baptized are to be active participants in the Church and sharers in its mission. All have something to say about its faith and its discipline.

The canonical doctrine of reception originated in the statement of Gratian after canon 3 in Distinction IV of his *Decretum* (circa 1140). He cited Isidore of Seville and Augustine on the establishment of laws, and then wrote:

Laws are instituted when they are promulgated and they are confirmed when they are approved by the practices of those who use them. Just as the contrary practices of the users have abrogated some laws today, so the (conforming) practices of the users confirm laws.

Gratian went on to illustrate the meaning of approval of a law by the practices of its users. He gave the example of a papal law ordering clergy to fast and abstain during Lent. Since the law was never approved by the practices of the users, other clerics could not be accused of a transgression for not obeying it.

The context of Gratian's remark on the acceptance of law was his citation of Isidore's well-known description of the necessary qualities of law:

A law will be moral, just, possible, in accord with nature, in keeping with the custom of the homeland, suitable to the place and time, necessary, useful, clear so that it not mask something unsuitable, not for private benefit, but conceived for the common utility of the citizens.

Gratian was reflecting on the intrinsic characteristics of law rather than its extrinsic qualities, that is, the substantive content of the law rather than the formal authority of the lawgiver and the mode of its promulgation. He then quoted Augustine to the effect that laws are subject to judgment when they are first promulgated, but after they church institutions. It was widely disregarded because it was viewed as completely impractical.

These examples of the non-reception of canonical regulations, of course, stand in sharp contrast to the many hundreds of enactments which have been accepted by their subject communities. In these vastly more numerous instances the rules have been strengthened and made more permanent by the fact of their reception.

The doctrine of reception is concerned with the substantive element of rule-making, as over against the formal elements, i.e., the authority of the rule-giver and the means of promulgation. It goes to the content of the norm, to its intrinsic quality. The community of users of the rule must judge its suitability, in this specific time and place, for assisting them toward their common good.

The medieval canonists often used the term "consonant" to describe the criterion for this judgment. The community of believers judged whether a norm issued for their guidance was consonant with the Scriptures, with their traditions, with truth. If they perceived it to be authentic and in harmony with their Christian lives, they received it and lived by it. They confirmed or ratified the rule by their actions.

The doctrine of reception has not fared well in recent canonical history. It fell from favor for three main reasons. In each instance, the matter is now differently understood.

1. The 1665 condemnation of an exaggerated formulation of the doctrine by the Holy Inquisition cast the teaching into a shadow and made it difficult to espouse. That reproof had little to do with canonical thinking about the establishment of law, and everything to do with the conflict between the Holy See and political Gallicans, as was demonstrated above. Viewing that action in its historical context corrects our understanding of the condemnation and clears the way for a rehabilitation of reception.
2. The dominance of canonical thought by voluntarists militated against the development of reception. Voluntarists, following the influential Francisco Suarez (1548-1612), insist that the only elements necessary for the establishment of laws are

could be licit, was preferred to the decision of the council of Aachen, according to Alanus, "because of the approbation of the Church." Huguccio said it was based on the "general custom of the Church."

A papal Bull entitled In *Coena Domini* contained a list of censures from which only the pope could absolve. It was first issued in the fourteenth century, and with additions, was republished each Holy Thursday until finally revoked by Pius IX. Several authors maintained that it was not effective in France or Germany because it had never been received in those lands.

Juan de Torquemada mentioned that the Oriental Churches did not receive the law concerning the celibacy of priests. "A papal constitution may not be possible. ..on the part of the subjects, as when he might want to establish something which is not in keeping with the practices and customs of the subjects . . . of which we have the example of the statute about continence not being received by the bishops of the Oriental Church."

Vitus Pichler maintained that the law on fasting from cheese and eggs did not oblige in Germany, since it was never received there. Several authors agreed that some of the disciplinary decrees of the Council of Trent were never received in some parts of the world.

Some provisions of the 1917 Code of Canon Law, for example, that provincial councils were to be held every twenty years (c. 283) and diocesan synods convened at least every ten years (c. 356), were not received in many regions of the church. The examples could be multiplied. Some rules, indeed, were initially acted upon and then fell into desuetude, but many were simply never accepted.

Those who can recall the legislative results of the relatively few diocesan synods which were held after the 1917 code can also testify that many of the rules enacted were completely ignored. The same can be said of the Roman synod held in 1960. Many of the 755 norms issued by that synod for the diocese of Rome remain only "on the books."

A prominent example of non-received papal legislation in modern times is the apostolic constitution *Veterum Sapientia*, which prescribed the use of Latin for teaching in seminaries and other are firmly in place, then judgments are made in accordance with them.

John Gratian, celebrated as the founder of the science of canon law, envisioned rule-making as a two-step process. First the law is set forth by a legitimate ecclesiastical authority, e.g., pope, council, bishop, chapter, etc. Then those for whom it is intended (the "users") approve conformity with it. Or they withhold approval. They do not conform their actions to the new rule. They do not confirm it. In that event, others cannot be held to obey it.

In other words, the community to which the law is directed makes a judgment about the law's intrinsic quality, and that in turn has an effect upon its obligatory force. Without the confirming usage of its subjects, the law remains incipient, and can eventually be considered abrogated.

Gratian adhered to an older way of thought, common among the church fathers, which saw law as a norm of conduct rather than the command of a sovereign legislator, and which judged the validity of law according to its objective content, i.e., its conformity with divine revelation and the tradition of the Church.

Many canonists after Gratian propounded some form of a reception doctrine. Some did so in commenting on Gratian's text, others in trying to resolve conflicts of law. For some it was a central teaching, for others it was obiter dicta.

These authors represent diverse schools of thought and wrote in the midst of various controversies. Some were conciliarists, Galicians and Febronians. Some were Jansenists, monarchists and papal absolutists. They were recognized scholars, teachers in universities, bishops, and even cardinals. Their views on reception cannot be dismissed as mere polemics. Their statements are reasoned and thoughtful. Running through them is a strong strain of truth about canonical rules; they must be received to be effective.

Brian Tierney says of the decretists (the earliest commentators on Gratian's Decree) in general:

For the canonists then, reception was an important criterion of the validity of law . . . For the decretists the structure of law actually in

force, the law that guided the life of the Church, was precisely the law that the Church has chosen to "receive."

The decretists developed hierarchies of the sources of laws (e.g., gospels, apostles, four major councils, other councils, decrees and decretial letters, holy fathers Ambrose, Augustine, Jerome, etc.) in order to resolve conflicts among them. But they did not abandon, and in fact reaffirmed

their underlying doctrine that, whatever the legislative source of a pronouncement, the ultimately decisive criteria for determining its validity were its substantive content (its conformity with divine truth) and its reception by the Church.

Canonists throughout the intervening centuries have expressed the theories of reception in many ways. This brief survey of their writings is presented to reveal the flavor of their language and the tenor of their arguments. A selection of individual authors and their positions follows.

In a brief remark, the author of the *Glossa Palatina* (circa 1215) stated that the confirmation of law which is accomplished by the practice of its users is a *de facto* confirmation; law is *de jure* confirmed in its very institution. This *de facto, de jure* distinction was subsequently repeated by many other canonists.

Matthaeus Romanus (circa 1325) thought the strongest form of the reception theory, namely, that acceptance is one of the three requirements for a law to have binding force. "Three things are required for a law to exist; first, that it be instituted, second, that it be promulgated, third, that it be approved by the practices of its users; and if one of these is missing, then the law is not established."

Jean Gerson (1363-1429) thought that the people had a great influence on their laws, either to give or take away their force, especially at the outset, when the law was first issued. If the people did not give their approval by observance, then the law never achieved a firm footing. Gerson strongly asserted the need to adapt law to the time, place and circumstances of its subjects, "because a law which is useful for one time and place, might be impossible or harmful in another time or place or for other people."

Rigid uniformity gives way to legitimate adaptation whenever possible.

5. In the Church, authority must always been seen as service, never as dominance. "Among you. ..let the leader be as servant. . . I am among you as the one who serves" (Lk. 22:26-27; Mt. 20:25-28; Mk. 10:42-45; In. 13:3-16).

Each one of these familiar theological themes, and all taken together strongly supports an active part for the people in the rule-making processes within the Church. Reception is one form of that responsible participation.

Over the centuries canonists have applied the principle of reception to many areas and items in the discipline of the Church. Some examples will both clarify the operational effect of the doctrine and the range of issues addressed.

Gratian's own illustration of the principle concerned letters from two popes, Telephorus and Gregory, which set up regulations for fast and abstinence for clerics at certain times of the liturgical year. Gratian said that the rules were not approved by common usage and therefore those who did not observe them could not be accused as guilty of transgression.

Goffredo da Trani, Pope Innocent IV, and Cardinal Hostiensis all applied the doctrine of reception to the canon of the Third Lateral Council (1179) which ordered a "truce of God" to be observed by warring parties during certain days and seasons of the Church year. Bishops were ordered to punish violators of the truce with excommunication. Apparently the truce was not much observed, and bishops did not try to enforce it. These canonists said that the bishops should not be punished because the decretal had not been approved by the practice of the users.

Canonists sometimes disputed the relative authority of the sources of rules. For example, does the word of a church father take precedence over the decree of a local council? One such debate focused on a matrimonial impediment. Can a rapist later licitly enter marriage with his victim? St. Jerome's view, that such a marriage

acknowledged and obeyed, and that compliance obviously strengthens both the laws and the authority which issued them. On the rare occasions when laws are not received, it is because they do not suit the community. The believing, Spirit-filled subjects discern that the rules are not apt for the attainment of their stated purposes or for the common good. Authority is preserved from the more serious negative reactions to unwise legislation, e.g., alienation of the people. Finally, reception is not a demonstration of popular sovereignty or an outcropping of populist democracy. It is a legitimate participation by the people in their own governance. They actively collaborate with the lawmaking authorities for their communities. They are simply exercising, in a responsible manner, their rightful role in the ruling function of the Church.

The canonical doctrine of reception is firmly based on a whole set of fundamental theological and pastoral convictions. Some are mentioned here by way of brief reminder .

1. There exists a true equality among the members of the Church. All have rights and duties as members. All are to be active in building up the Body of Christ, and to that end, are to give cooperative assistance to their pastors.
2. An active dialogue is to be carried on in the Church. Lay persons are to reveal to their pastors in freedom their needs, desires, and opinions. They are also to take their own initiatives. Aided by the advice and experience of lay-persons, pastors will make better decisions in spiritual and temporal matters.
3. Particular churches are true and authentic churches with autonomy. Out of them is built up the universal Church. They are linked by the unique bonds of communion, and their leaders are joined in a genuine collegiality. The diocesan bishop is the pastor and minister of governance for the local church entrusted to him.
4. Appropriate adaptations are to be made in the life and worship of the Church to the genius and traditions of peoples. Inculturation is an integral part of evangelization.

Nicholas of Cusa (1401-1464) systematically defended the acceptance of law. He wrote that statutes, even those made by a pope, required acceptance and use in order to become binding. Nicholas held that acceptance was necessary for the validity and the efficaciousness of law. He said that innumerable apostolic statutes, after being issued, were not accepted. In such cases the rule is that those who did not observe the law are not to be accused of transgression. They did not disregard or transgress the law because the law was not yet in effect.

Juan de Torquemada (1388-1468) admitted that the views of the bishops in council would outweigh a pope's proposed law if it was a bad one. His example was that if the pope should try to depose all of the bishops of the world, it would be harmful and should not be accepted. His inference was that the intrinsic quality of the law deserves consideration as well as the authority of the lawgiver. It is not that the subjects have a greater authority than their superior, but that they can make a judgment about the bad quality of the law.

Felinus Sandaeus (1444-1503) stated that for a human law to have obligatory force it must be accepted by a majority of the community for which it was promulgated. He also held that a law which was disobeyed or disregarded from the very beginning could more easily and quickly be abrogated by contrary custom than a law which had been received.

John Major (1469-1550) said that approval by the people gives durability and permanence to a law. But a superior should not try to oblige people to obey a law when they have a good reason for not accepting it; it would be an empty obligation.

Joannes Driedo (1480-1535) argued that a law which the community finds unacceptable will be the source of disturbance rather than contributing to the common good. Further, it is the role of community to judge whether a law is in keeping with local custom. A lawgiver who acts against such an expression of popular opinion would not be acting rationally, and rationality is an essential quality of law.

Bartholome Medina (1528-1580) wrote that a legislator who tries to

impose laws on an unwilling populace is acting irrationally, and therefore need not be obeyed.

Gregorio de Valencia (1549-1603) taught that it is not right for people to have laws imposed on them against their will, and that a law which commands something abhorrent to the community is not just. Such a law is dangerous rather than useful, destructive rather than constructive.

Valerius Reginaldus (1543-1623) said that when people are given a law which causes them to be unwilling and rebellious there is a presumption that the law is not suitable for that community. He interpreted Gratian's confirming effect of the approving practices of the law's users to mean that the law receives force to bind its subjects by that acceptance.

Martin Becanus (1563-1642) presumed that the pope, in legislating, always wishes to build up the Church, and to take account of local circumstances and to respect local customs. If a law fails to do so, which becomes apparent when the law is not accepted by a particular community, then it is presumed that the pope does not know the local circumstances and that he would change the law if he knew them. Thus the law does not oblige.

Pierre Dupuy (1582-1651) wrote that two things are necessary for the validity of any law, legitimate promulgation and reception. Once a law or a custom has been received, it cannot easily be abrogated, even by a papal decree to the contrary.

Pierre de Marca (1594-1662) argued that the prince has the power to make laws, but they are not binding until they have been accepted by the judgment of the people. The people are to judge whether the laws are suitable and useful. He based this principle on Roman law, but he applied it to church law. Christ distinguished the authority of church leaders (for service) from that of the rulers of the gentiles (for domination). De Marca cited John Chrysostom: "this is the rule of Christianity, this is the exact definition of it, this is the point eminent above all others; to look after the common good." He added that the purpose of civil rule is for the common good, and sometimes unwilling citizens have to be coerced for the good of others, but the canon 25 states that the community forming the custom must be a "community capable of receiving law." It means that the community must be identifiable, of a certain size and stability. But a community which is capable of receiving a law is also capable of not receiving it. The canon is open to the possibility of the doctrine of reception. The community's non-reception of law has a juridical effect, just as its practices can have the juridical effect of establishing a custom which eventually takes on the force of law.

A canonical analogy to the concept of a law which has been promulgated but not yet accepted is the non-consummated marriage. The canons (cc. 1055-1061, 1141, 1142) clearly state that a ratified marriage, even a sacramental one, may be dissolved if it has not been consummated by the conjugal act. (For centuries such a union was dissolved by religious profession.) Consent makes the marriage, but the bond is not finally established until the union has been physically consummated. Similarly, the legislative act begins a law, but it is only established when put into practice.

3. What Reception Is Not

It might help, by way of contrast, to state what reception is not. It is not the same thing as the abrogation of a law by means of a contrary custom, but it embodies the same principle of response to laws on the part of Church communities. Contrary custom applies only where a law has been fully established and then falls into desuetude. Reception applies where a law has been promulgated but not yet acted upon, not yet complied with.

Non-reception is not the same as rebellious disobedience or disregard for rightful authority Reception and non-reception are exercises of virtue, not vice. Reception calls for the virtue of *epikeia*, the sensitive application of universal rules to specific situations, and of prudence, the selection of appropriate means to achieve an end. Reception requires Christian maturity, and prayerful reflection. The difference between a prudent non- reception and mere disobedience is readily discernible.

Reception is not subversive of legitimate authority. Rather, it supports and enhances it. Promulgated laws are usually

be designed and marketed, but it is not really effective until its "user group" actually makes use of it. Or, like the designs of an architect, they may appear correct and in accord with the canons of the art, but until they are carried out and the results seen, they are only incipient, a good beginning. They are blueprints, not a building.

Reception is a matter of vim and vigor. A freshly promulgated law may be perfectly legitimate, but it does not yet have force or active influence in the life of the community. It does not yet have any real effect on the behavior of the people.

Reception implies more than a de facto accommodation of the law on the part of the community because it has juridical implications as well. The actual force and effect of the law is greatly influenced by its reception or non-reception. It obliges or not depending on its acceptance. It is enforceable only after it has been received. .

Thomas Aquinas conceived the classic definition of law, namely, "an ordination of reason for the common good promulgated by one who has care of the community." Reception is a part of the process. Thomas said that the whole multitude is to direct things toward the common good, or someone acting on behalf of the multitude is to do so. In other words, the users of the law are or pertain to those "who have care of the community." The regulation of the life of the Church community is never entirely outside of that community. Thus the community has a share in its own care, in its own direction toward its common good. One way in which it plays that part is by accepting or rejecting the laws promulgated for its use.

2. Indications in the Code of Canon Law

"Laws are instituted when they are promulgated," the code states (c. 7). The code uses the same Latin verb that Gratian did: *instituo*. It can have a slightly different shade of meaning than *constituo*. *Instituo* means to found, to plant, to set up, even to undertake, to begin, to prepare. *Constituo* means to cause to stand, to fix firmly, to establish, to settle, to confirm. Laws begin with promulgation but they are not fully constituted until they are received.

The code also refers to a community's reception of laws. When setting forth the conditions for a custom to obtain the force of law, aim of rule in the Church is for the salvation of each individual. One lost sheep may have to be sought out while the ninety-nine are left in the wilderness.

Claude Fleury (1640-1723) applied the principle of reception to the decrees of general councils. We are not bound to observe laws which have clearly not been put into practice. The reason he gave is that power in the Church should not be exercised in a despotic way such that nothing but the will of the sovereign is law; it should be a government of charity (citing Lk. 22:25- 7 and 1 Peter 5:3).

Zeger Bernard van Espen (1649-1728) thought that papal laws needed to be published in each diocese by the bishop in order to be valid, because it was for the bishop to judge whether or not the law was suited to local circumstances. The law had to be appropriate to local conditions. A distant legislator cannot always know the local situation with its peculiar customs, laws and privileges, so it is difficult for that person to judge whether the law is in the public interest for that place. Christ wanted Church government to be a parent-child relationship, not master-slave. From earliest times, van Espen said, papal decrees were sent to metropolitans who sent them on to the bishops of the province for local promulgation. It is of the essence of law that it be promulgated within each local community.

Antoine Arnauld (1612-1694) said that reception is necessary for the obligatory force of civil laws and a *fortiori* of ecclesiastical laws. It would be "lording it over them" for rulers in the church to force people to obey laws which they had never accepted and which were repugnant to them. He argued that laws prohibiting the translation of the breviary and the bible into the vernacular were never received or put into practice. "Everyone agrees that a prohibiting law, which is purely human, and which protects something which is protected by neither divine nor natural law, in no way obliges and has not the force of law, if it has never been received or observed."

Johann Nikolas von Hontheim (1701-1790) stated that laws have no force until they are acknowledged and admitted by the Church. The pope proposes laws; it is for the Church to decide whether to accept the proposals. Bishops must judge whether Roman decrees will be useful or will lead to tumult. He quoted Gregory the Great: "I have

not given a command, rather I have taken care to point out what is useful." He also asserted that the great collections of canons, Gratian's Decree and the Decretals of Gregory IX, obtained the force of law by reception and observance.

Gregor Zallwein (1712-1766) argued strongly for the necessity of reception of papal laws by bishops together with the pope as rulers of the Church. They share with him solicitude for the entire Church. Church laws must be adapted to the genius and customs of different peoples. These conditions are met when the local bishop judges whether or not to accept laws. Therefore the pope, from the very institution of Christ, must attach to each law the tacit condition, "if it is accepted by the local bishop." It is of the essence of law to be useful, and how can it be useful unless it is accepted?

Joseph Ponsius (1730-1816) claimed that many laws lacked effect because they had not been properly promulgated or received in certain territories. Such laws were ill-adapted to circumstances of time and place or to the customs of a particular nation or region. Sometimes the laws never took effect because of a contrary custom already in existence.

Remigius Maschat (circa 1854) believed that when a community has a justified complaint against a law, when it seems morally impossible to observe or not be useful to the community, then the law loses its force. He based his reasoning on the need for laws to have the intrinsic qualities listed by Isidore in his description of law. When those qualities are lacking, then the laws do not oblige in certain places.

J. P. Gury (circa 1887) said that the *sanior pars* of a community would not reject a law unless there were good reasons for thinking that the law would produce serious inconvenience, scandal, or disturbance. "The reason is clear, because the *sanior pars* of the people is made up of learned, trustworthy and prudent persons. These people and the many who follow them would not find a law repugnant unless they had reason to fear that grave inconvenience or scandal or disturbance would result from it."

All of these authors, from their various historical and theological formulated, "Is acceptance by the people required for the establishment of a law?" The doctrine of reception responds to that question in the affirmative. For a canonical regulation to be fully and effectively in place, the group for whom it is enacted must accept it.

In this context, who are "the people"? Or, in Gratian's terms, who are "the users" of the law? The people, subjects of the law, a community capable of receiving a law, or "users" of the law can signify a variety of groups within the Church. The bishops of the world are the subjects of many laws. The priests of a diocese and the members of a religious community are subjects of laws. The faithful people of a nation or of a diocese constitute user groups. They are all capable of receiving canonical statutes.

In order for a canonical regulation to have real effect, those for whom it was made must acknowledge it and comply with it. In a very true sense the rule is confirmed by the practice of its users, as Gratian said. It is really obligatory for its subjects only when they have accorded it acceptance.

The law is validly enacted when it is duly promulgated by a person or group which possesses legitimate legislative authority. But it is not yet a part of the life of its subject community. It is incipient. The ship has been launched, but will it sail? The rule-making process is still unfinished. The norm is not yet fully realized, not yet fully binding.

Reception pertains to the existence of the canonical rule. Some authors, like Matthaeus Romanus, have said that three elements are equally necessary to make a law; legitimate authority, suitable promulgation, and acceptance by its users. That is the strongest statement of the doctrine. But it suffices to say, as Nicholas of Cusa did, that without the acceptance a norm is not fully constituted, nor fully in being. It becomes truly operative and obligatory for the community only after it has been received, that is, after they have confirmed it by their actions.

One way of describing the process of establishing a rule is that it is initiated when it is promulgated by legitimate authority, but it is fully in force, fully obligatory when it has been received by its subjects. It has at least two levels of existence. Like a computer program, it may

of reception as such. In reality, it condemned the claim of the French civil authorities to the *placet*, that is to a censorship or veto power over church decrees. This demand and the Holy See's reaction to it arose from the centuries-long Gallican controversy. The condemnation was a product of the ongoing Church-State conflict, and had almost nothing to do with reception as a canonical theory. However, the condemnation of proposition twenty-eight made it difficult for mainstream canonists to espouse the doctrine of reception after that time. It cast a pall over reception which is only now being lifted.

Four final observations about the Inquisition's proposition twenty-eight are in order.

1. The formulation of the condemned proposition was deliberately distorted. The clause "without any reason" makes the statement an obvious exaggeration. It was and is a position defended by no one. The Inquisition chose an exaggerated formulation in order to make clear that its target was the action of the political Gallicans and not the canonical theory of reception.
2. In canon law, restrictive laws must be interpreted strictly. The condemnation of 1665 is clearly a restrictive decree and, as such, must be construed narrowly.
3. The proposition refers only to the sin of the people, not to the establishment or effectiveness of the law. It speaks only of moral guilt, not of canonical obligation.
4. It is applicable only to those who fail to accept a rule "without any reason," not to those who perceive themselves to have good reason for non-acceptance or non-compliance.

The 1665 action of the Inquisition had a serous negative impact on the doctrine of reception. But it is wrong to say that the doctrine was condemned by that action. In fact, the Inquisition's use of an exaggerated formulation of reception theory avoided any denunciation of the legitimate canonical teaching.

1. What is Reception?

In canonical treatises the question about reception was often perspectives, expressed an understanding that the obligatory force of church law is affected by its reception by the community.

Canonical literature, as the foregoing citations testify, reveals a wide spectrum of opinions about the reception of laws by those subject to them. Authors have asserted and observed a wide range of juridical effects. The following propositions, from the strongest to the mildest, illustrate the various strains or variations of the theory.

1. Reception is a necessary or essential element, along with the authority of the lawgiver and promulgation, in the establishment of a law. If the law is not received, it is not valid.
2. The legislator attaches an implicit or tacit condition to laws, to the effect that if they are not accepted, they are not valid.
3. If a law is not received by its subjects, and the lawgiver knows and does nothing, the law is abrogated. The lawmaker has granted a tacit dispensation, or at least *epikeia* applies.
4. When a law is not accepted, it is an indication that the lawgiver has acted irrationally and the law need not be obeyed.
5. If the law is very burdensome and difficult to observe it is really a signal that the legislator did not wish to oblige the community.
6. The non-reception of a law is an indication of the onset of a contrary custom, or it shortens the time in which a contrary custom obtains the force of law, e.g., from thirty years to ten.
7. Reception of law by its subjects signifies a de facto (as over against de lure) confirmation of the law. It lends durability and permanence to the law, and makes it more stable and less subject to abrogation by desuetude.
8. Violators of a law which has not been received may be guilty of a fault, but may not be penalized. The law may not be enforced in the external forum.
9. Laws are not received because they are perceived to be destructive of the church community, rather than building it

up. A rule which is seen to be potentially disruptive of the community, instead of contributing to the common good, cannot be honored in practice.

10. Non-reception lessens the practical binding force of a law. It reduces its influence on the community and its obligation on the members.
11. The non-acceptance of a law justifies an appeal, to a superior authority, and if there is no reply, the law is considered abrogated.
12. Reception and non-reception apply to prior consultation, as when a legislative authority tries out a proposed law on a group of consultors, e.g., a consistory or a council, and is influenced by their reactions.

This range or spectrum of opinions about the effects of the acceptance or non-acceptance of rules by some part of the church community bears witness to the creative efforts of canonists to account for the phenomenon. But there is a common reality beneath the variant views: reception has a decisive influence on the establishment and effectiveness of a rule in the Church.

An action taken on September 24, 1665, by the Holy Roman and Universal Inquisition (the predecessor of the Holy Office and of the present Congregation for the Doctrine of the Faith), and approved by Pope Alexander VII, cast the doctrine of reception into the shadow of disapproval. The Inquisition did not actually condemn reception, but its reproof produced much the same effect.

The Inquisition condemned a series of twenty-eight propositions as "at least scandalous" and prohibited anyone from teaching or defending them. The propositions concerned moral discipline. They were all identified with "laxist" moral teaching, except the last one, which had to do with the reception of law.

Some examples of the condemned propositions will serve to indicate their source and direction: A nobleman may accept a challenge to duel if otherwise he will be judged afraid. A confessor who assigns salacious reading as a penance is not guilty of solicitation. A priest may take two or more stipends for one Mass. A deliberately invalid confession satisfies the obligation to confess. One may kill a false accuser, false witness, or even the judge who is about to pronounce a wicked sentence, if there is no other way to avoid harm to an innocent party. A husband may, on his own authority, kill his adulterous wife. When two litigating parties each have equally probably opinions on their side, a judge may take money to decide in favor of one over the other.

The larger context for the Inquisition's action was the debate raging between laxist moral theologians, Jesuits, Jansenists, and other writers (e.g., Blaise Pascal) in the early and mid-seventeenth century. The theological faculties of Louvain and the Sorbonne, among others, censured such laxist opinions. But the Sorbonne's list of errors contained one which labeled Rome's claims of papal infallibility as "contrary to the liberties of the Gallican church." In reaction, Pope Alexander VII issued a Bull on June 26, 1665, condemning the Sorbonne document. The Bull was greeted with hostility in France and impugned as an implicit approval of the laxist positions. On July 29 the French *Parlement* forbade the printing, reading, or retaining of the papal Bull. This rebuff to papal authority occasioned the Inquisition's action of September 24.

The propositions condemned and prohibited by the Inquisition were taken, sometimes verbatim, from the documents issued by the Louvain and Sorbonne Faculties. They were recognized laxist theses. The Holy See wished to show that it did not approve of these laxist positions despite its action against the Sorbonne document. But the final proposition was not identified with laxism. It was not propounded by any of the laxist authors, nor did it appear on any of the lists of errors censured by the theological faculties. The last proposition, number twenty-eight, was added to the list in response to the Paris *Parlement*, which had tried to prevent the promulgation of the papal Bull by its action in July.

Proposition twenty-eight reads: "The people do not sin even though they, without any reason, do not receive a law promulgated by the prince."

This condemnation was clearly a response to the Gallicans who had defied papal authority. It was not directed at the canonical doctrine