

CURRENT ISSUE

IUS QUIA IUSTUM: HELMUT PREE'S
DOCTORAL LAUDATION

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When a volume is published in honor of an outstanding figure in a scientific field, the book's title should summarize the scientific orientation of the researcher. In 2015, the *Festschrift* was published on Helmuth Pree's sixty-fifth birthday. The title of the publication is *Ius quia iustum*. Helmuth Pree belongs to a generation of canon lawyers who had to confirm the legitimacy of canon law either in the eyes of secular law or in the eyes of the Church.

Helmuth Pree was born in 1950 in Reichenthal, Upper Austria. Although many biographies refer to him as an Austrian canon lawyer, it would be more accurate to say that he is a prominent twentieth-century figure in German-speaking canon law. Indeed, his work, as we shall see, extends beyond the field of German canon law. This is not only because, in addition to his many publications in German, he has also published in other languages but also because he taught and been an expert outside the German world. Most famously, in addition to his academic work, Pope Benedict XVI appointed Professor Pree as an advisor to the Pontifical Council for Legislative Texts on April 15, 2011. Professor Pree is also deeply involved in the Church outside the university. This is evident because he has been a member of Germany's Legal Commission of the Association of Dioceses since 1997. In 2004, Pree was appointed Vice President of the *Consociato Internationalis Studio Iuris Canonici Promovendo*, the five-decade-old worldwide association of scholars of canon lawyers based in Rome.

The aforementioned *Festschrift* lists Professor Pree's work in more than twenty pages. It includes monographs, co-authored works, articles, laudations, reviews, legal commentaries, handbooks, and significant lectures. Helmuth Pree's research focuses on the theological, legal-philosophical, and legal-theoretical questions, concepts,

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principles, and methodology of canon law. An important area of his work is the relationship between Church and State. Due to the importance of his research topics, numerous analytical and review works have been published on his monographs and books.

Professor Pree has had a significant influence on secular legal philosophers and writers. This is also because he has deliberately chosen areas of research that can be found in both secular and ecclesiastical law. Professor Pree first studied law at the Johannes Kepler University in Linz, then canon law at the Pontifical Lateran University in Rome, and Catholic theology at the Catholic Theological University of Linz. He habilitated in Linz with a thesis on canon law. In 1983, Pree was appointed full professor of law in Linz, and in 1988, he moved to the Department of Canon Law at the University of Passau. It is therefore understandable that Professor Pree was able to research canon law in a quality that requires not only theological but also legal knowledge.

This specific and complex vision is also evident in his writings, which focus on the internal law of the Catholic Church (to mention just a few examples, the territoriality and personal principle, the role of the laity, and the ecclesiastical offices). His writings are all worthy of analysis, but I will mention only those, by title on which I have based my presentation of Helmuth Pree's work.

Given the time frame, I would like to highlight three important areas of Professor Pree's research.

- 1) The first and perhaps best known to both secular and canon lawyers is Professor Pree's writings on legal theory.
- 2) His second utmost essential and widely known work focuses on the relationship between church and state. There are also many practical areas of this, such as property law or tax law, in which the Professor has published monographs. These works have had a significant influence not only on the German concept of the church-state, but after the fall of the Iron Curtain also countries on the Eastern European, which were looking for the right model for the relationship between Church and State.
- 3) Finally, it should be mentioned that Professor Pree was an eminent author of internal law of both the Latin and the Eastern Churches. Particularly noteworthy is the constitutional law of the Church, or the theology of canon law and general norms. It should be noted that Professor Pree has dealt with so many areas of internal ecclesiastical law that a detailed presentation of them is beyond the scope of this laudation.

Allow me to point out a few key aspects of Professor Pree's work

Professor Pree is well aware of the sacramental nature of canon law. This is evident in his analysis of certain questions of internal law (especially in his works on liturgical law, the ecclesiastical hierarchy, or the functions of certain offices such as the parish priest, parishes without pastors, or the various actors in ecclesiastical process law). It is remarkable how consciously he incorporates the concepts of the Second Vatican Council into his juridical works (one may think of the role of the laity, the ecclesiastical hierarchy, but also the law of property, the relationship between the internal and the external forum, etc.).

In the light of the texts and philosophy of the Second Vatican Council, Pree develops a classical but innovative aspect of canon law. His vision provides a good balance between the legal and theological realities of the Catholic Church. He emphasizes that it is a misinterpretation of the law and alien to Catholic legal thinking to focus only on the orders for the functioning of the Church. He also expressly rejects the idea that the new Code should be a mere rule of faith and morals rather than a legally binding code. The social dimension of the Church requires the legal character of the ecclesiastical documents, especially of the Code of Canon Law. Professor Pree's legal thinking is dominated by the classical Catholic hierarchy of law, as interpreted by St Thomas Aquinas and Francesco Suarez, in which divine and natural law play a prominent role. At the same time, the approach of Hans Kelsen is occasionally evoked, at least concerning the precise nature of the law, the task of the legislator, the regulative role of law, and its binding character. He points out that to ignore the legal nature of the Church is to completely misinterpret the conciliar texts. At a time when many prominent representatives of the Church were claiming that the law was contrary to the nature of the Church, Helmut Pree consistently proved, based on both theology and canon law, that the law of the Church is not incompatible with the nature of the Catholic Church or with its pastoral mission. This is well explained in Professor Pree's summary, *Profile and Challenges of Canon Law at the Beginning of the Third Millennium. (Profil und Herausforderungen der Kanonistik am Beginn des dritten Jahrtausends)*

He was well acquainted with legal theorists who subordinated canon law to realizing pastoral goals and considered canon law to be of purely pragmatic importance. He was equally balanced in his attitude toward those who tended to overemphasize the theological aspects. It should be noted here that Professor Pree worked for many years (since 2004) at the Institute of Canon Law of the Ludwig Maximilian University in Munich. Nevertheless, his opinion on the nature of canon law is unique, and it is not just a reflection of the Munich School's understanding of law and theology or the nature of canon law. This is well illustrated by the fact that, while he writes with great respect for the founder of the Munich School, Klaus Mörsdorf, he also offers a solid critique of Mörsdorf's position. According to Pree, Mörsdorf gives too much attention to the theological aspect of canon law at the expense of its legal aspect. He points out that this overly sacramental approach to law leads to a lack of clarity in Mörsdorf's concept.

Professor Pree has also thoroughly analyzed the relationship between the Church and the State in depth. To mention only the most important: *Österreichisches Staatskirchenrecht, Gibt es ein dogmatisches Prinzip des österreichischen Staatskirchenrechts? Kirche und Staat am Beginn des 3. Jahrtausends, Der Grundlagenvertrag zwischen dem Heiligen Stuhl und dem Staat Israel (1993) im Kontext der neueren Konkordate*. In these works (to mention only one or two: *Rechnisse – ein sterbendes Rechtsinstitut?*, *Esercizio della potestà e diritti dei fedeli*) Professor Pree had the opportunity to show how the law of the Catholic Church differs from and at the same time is identical to the law of the State.

In the German-speaking world, especially in contemporary Austria, the former Austro-Hungarian Monarchy, there were prominent figures of state theory. It is enough to think of Georg Jellinek and his son Walter Jellinek, Hans Kelsen, Max Weber, etc., whose categories are still the essential elements of the definition of the State.

Where the theories of the state are so well developed, it is obvious that the church can only position itself properly if it has a theoretical perspective. Although, in many cases, the relationship between church and state is practical, it can never be without a theoretical foundation. Helmuth Pree followed the Austrian school in this regard. Like Hans Klecatsky, Hans Weiler, Hugo Schwendleinwein, Inge Gampl he published a monograph on the relationship between church and state in 1984. *Österreichisches Staatskirchenrecht*, a work on the relationship between the Austrian state and the church. Austrian secular law has also accepted that a specific term (*Staatskirchenrecht*) is applied to the relationship between the state and the church - this is public ecclesiastical law. Pree is thus one of the few academics to deal with questions of canon law that explicitly presuppose legal knowledge of secular law and legal theory. He is known to us primarily for his publications in canon law, but he has also done a considerable amount of work in civil law. I would like to emphasize his work on Austrian public law, *Einführung in die Rechtswissenschaft II Österreichisches Verfassungs- und Verwaltungsrecht*, which is also a landmark work for canon law thinking, since one of the significant themes of the legal philosophy of the twentieth century is fundamental rights, public administration, and especially administrative justice. The Church owes the development of guarantee elements, especially administrative justice, to the modern state and administration, as is evident from Pree's work. The author has taken on the great challenge of presenting the material regulating the relationship between Church and State since it is fragmented, comes from different historical periods, and in many cases, there are terminological difficulties.

And allow me to give a Hungarian perspective here. Both Austria and Hungary are successors of the Austro-Hungarian Monarchy. However, due to historical features, the relationship between church and state has developed differently in the two countries. In the context of the Austrian state-church relationship, we can identify several historical institutions that have ceased to exist in Hungary and have thus fallen outside the interest of canon law. The work of Helmuth Pree is also interesting in this regard. Pree's work deals with some legal issues that are historical for us, but current in Austria.

Professor Pree raises not only the classic questions of Church-State relations. He raises new questions about of the rule of law and democracy in canon law: *Die Synoden im Recht der katholischen orientalischen Kirchen*. Issues of general interest to modern state legal systems and with implications for canon law, such as data protection, data reservation, and the right to report, are also mentioned. Pree also highlights the importance of making Church-State relations more transparent to citizens. This, he says, is essential to the mission of the Church. Professor Pree is one of the most influential canon lawyers who has worked on the temporal goods of the Church. He has written a monograph and numerous studies on ecclesiastical property law, which was treated with restraint after the Council. When analyzing the works of Helmuth Pree, canon lawyers often mention, as did Dietrich Pirson, that his works on the relationship between the Austrian State and the Church can be used in the context of the German Federal Republic since similar areas that Pree elaborated on are also relevant for Germany.

His work is also essential for Hungarian canon lawyers regarding the relationship between Church and State. This is true not only from a historical point of view but

also from the point of view of current law, since Hungary began to follow the German-Austrian cooperative model of cooperation between Church and State after the regime change. Pree's work can help us avoid many problems that the Austrian and German churches have failed to solve in this relationship.

The strength of Pree's state-church analysis is that it is not only a general work. It also deals with questions of the internal law of the Church, which it thematically integrates into the system of church-state relations. In this perspective, the clarity and sincerity with which Pree has addressed specific legal issues must be emphasized. In 1993, the work of Professor Pree's work on *Independenter a Civili Potestate* (c. 1254 § 1 CIC) *Zur Legitimität staatlich sanktionierter Kirchenfinanzierungssystem* (The legitimacy of state-sanctioned church financing systems) was published in which he illustrates clearly the problems in the field of ecclesiastical property law in Western societies. He describes processes such as the changing relationship between church and state and the steady shrinking of the Catholic Church, which have now reached the countries of Eastern Europe. Religion is increasingly marginalized and relegated to the private sphere. As far as this aspect of property law is concerned, the church's financial management system in many countries needs to be reorganized and reconsidered, Pree argued in 1993. Finding a more relevant observation of the Church in society is difficult. In this context, he points to the impact of the European Union on Church-state relations, especially on Church funding. In his view, a new form of church subsidy cannot be ruled out at this level. His works illustrate the relationship between secular and canonical expression and the underlying legal content. For example, the concepts of common law taxation and their impact on canon law. Nevertheless, Professor Pree rightly points out that the mission of the Church is threatened as much by an impoverished Church as by a clergy and Church living in great luxury and privilege.

In addition to his commitment to emphasizing the distinctive theological aspect of canon law, Professor Pree considered it essential that canon law should retain its legal character. He emphasized this in his essay in honor of Inge Gampl. Canon law, he argues, can only maintain its comparability with secular legal systems if it retains its legal integrity. Moreover, Pree naturally follows the theology of the Council, noting that neither the Code nor any other legislation can be expected to reproduce the Council's theological texts in their entirety. This would overburden the legal texts. In this comparison, Professor Pree makes the criterion of justice the basis for the comparability of legal systems. (As I mentioned earlier, it is no coincidence that the volume published in his honor has a subtitle that refers to justice). Justice must be present in all legal systems and is, therefore, the criterion of comparison. In this light, the author raises questions of legal theory such as legal certainty, effective protection of fundamental rights and, in particular, equality before the law. (*Zum Stellenwert und zum Verbindlichkeitsanspruch des Rechts in Staat und Kirche*)

In this constellation, Professor Pree points out that justice (*iustitia*) is the material standard of all positive law. Since justice is not specifically Christian but universal, Professor Pree says, it is a bridge between legal systems. He highlights the importance of the executability of canon law. The authority of the Church guarantees the enforceability of the law. This executability distinguishes between moral and legal rules in secular and canon law. At the center of Pree's legal thought, however, are not

legal structures and hierarchy but the Christian faithful. Nor can legality (positivity) and effectiveness (efficiency) be neglected in canon law. In this constellation, Professor Pree points out that *iustitia*, justice, is the material indicator of all beneficial laws.

The third and final element is Professor Pree's work on the internal law of the Church. His work touched on all the books of the Code, and even dealt with legal material outside the Codex. Thus, a summary can be made.

In all his works, there is a balance between law and morality, which is a characteristic of the Church's own internal law. While dealing with the positivist aspects of law, he affirms that the Church's concept of law cannot be derived from theology alone. The law's definition must first be clarified and then placed in the life of the Church.

Helmuth Pree spent sixty-six semesters as a full professor of canon law at three universities. He covered almost all areas of canon law. Helmut Pree's career as a canon lawyer unfolded when legal thinking was no longer focused on canon law but rather on the state and public law in particular. Helmut Pree's work has demonstrated that canon law is still worthy of study and relevant to the Church in modern society.

We thank him for his dedicated work in canon law and secular law.

We wish you God's blessing, strength, health, and many more years on the occasion of your honorary doctorate.