

The 1983 Code of Canon Law

The promulgation of the new Code of Canon Law by John Paul II in January 25, 1983, was a truly historic event and a vibrant manifestation of the renewal initiated by Vatican II. This new Code is the first revision of the Code of Canon Law which has governed the social activities of the Church and regulated the religious practices of its members since 1918.

In early 1959, John XXIII called for the revision of Church laws at the same time that he announced his intention to summon an ecumenical council. The announcement of the projected revision of the Code of Canon Law, though less dramatic than the convocation of an ecumenical council, set quickly in motion the liberalizing forces which would lead to a reappraisal of the law in the Church, and eventually to a reorientation of canonical thought. The actual work of revision, however, did not start till 1965 and was only completed after seventeen years in the making.

The 1917 Code, though not the perfect Code one could have dreamed of, by and large, it was a technically sound codification of laws, the clearest symbol of unity within the Church. Moreover, it contained built-in provisions for future changes in the legal system, such as the abrogation of laws and their replacement with new, socially relevant ones; the adoption of new

decrees and norms; the acknowledgement of the legal force of customary usage...

* * *

The revision of the 1917 Code was called for not so much due to its own flaws and imperfections, but rather by the deep ideological and sociological changes that had taken place in the Church and in the world at large for over forty years.

The years that preceded the start of the actual revision in 1965 were years of contestation and dissent. Indeed, those were turbulent times when many a "freedom-loving" person could stand in defiance of the duly constituted authority and invoke liberty against any law whatever appealing even to the Gospel in support of his stance. Such revolutionary attitude created an atmosphere of confusion and disorder in the Church that left its legal system in disarray. Ever since, the Code of Canon Law was no longer taken seriously enough.

To meet the challenge of the times and the needs of its members the Church had issued volumes of legal enactments that were already in force and needed to be embodied in the official Code. Moreover, Church law had to be attuned to the pastoral thrust mandated in conciliar decrees.

Thus by the end of Vatican II in 1965, a new codification of the Church laws was a matter of both necessity and of urgency.

The criteria applied in the formulation of the new legislation has been approved by the First Synod of Bishops in 1967. They can be summarized as follows:

i. Since the new Code had to determine, protect and enforce the rights and duties of the faithful, its texts and norms needed to be juridical in nature. This means that the Code was not supposed to be a textbook of theology, spirituality or biblical exegesis.

ii. Church institutions and norms were to service the religious life of the community and to foster pastoral care; therefore, the new legislation was to be imbued with charity, human understanding and prudent equity.

iii. Faculties heretofore granted to bishops and religious superiors by way of privilege, had to be embodied into the new text.

iv. Centralization of power at the highest level was to be minimized, decision-making being thus allowed at the most appropriate level through the application of the principle of subsidiarity.

v. The rights of persons had to be clearly defined and effectively protected to avoid arbitrariness in the use of power. For this purpose, a system of recourse to higher authorities or administrative tribunals had to be devised.

vi. The principle of territorial jurisdiction in the Church had to be maintained, allowing in special cases, the establishment of personal, national... jurisdictions.

vii. Penal legislation was to be completely revised by reducing where possible automatic penalties.

* * *

The main thrust in the new codification is the end-result of the doctrinal and pastoral reforms brought about by Vatican II. The vision of the Church as the "people of God", the "community of believers" with a mission to live and to proclaim the Gospel, replaced the old concept of the Church as a "perfect society" hierarchically structured. Administrative and legislative functions remain the concern of the hierarchy, but just as a service to the religious life of the community.

The making of the Code took approximately seventeen years and, as statistics will show, nearly two hundred members of the hierarchy were directly involved in the project with over one thousand consultants from all nations assisting them in the task of a revision which took some six thousand three hundred seventy five hours of study work at the committee level. The work took that long because of the procedure adopted which called for as much consultation as possible.

The Code as approved can be rightly said to reflect the thinking of the universal Church. Indeed, the various drafts of

the law were made available to all bishops, religious superiors, faculties, universities, institutes of canon law... and were scrutinized and, at times, even subjected to a rigid criticism by theologians, canonists and lay experts. As a result of this world-wide consultation significant changes were introduced in the final text improving it considerably.

* * *

The new Code is divided into seven books instead of the previous five, and consists of 1,725 canons or articles against the 2,414 in the old Code.

Book I deals with General Norms or Sources of Law, and provides general notions, principles of interpretation and the various means whereby laws are promulgated or may be dispensed. The status of physical persons as well as the organization and management of juridic persons winds up the first part of the Code.

Book II deals with the People of God and starts by enumerating the rights and duties of the faithful and by providing general principles on the hierarchy of the Church. Then, it goes on to deal with the local churches, priests, religious and lay people.

The next two books refer to the teaching and sanctifying functions of the Church. Thus, Book III covers the Church's Magisterium establishing the right and duty of the Church to preach and to organize and maintain teaching institutions. The rules regarding the sacraments and worship are found in Book IV.

Book V is concerned with the temporal goods or patrimony of the Church. Book VI deals with Penal Law, while the final section Book VII, treats the protection of rights in the Church through the tribunals and administrative procedures.

* * *

Though the new Code brings no sweeping changes in Church doctrine and discipline, many fresh and positive features can be found in the new legal system. In general, the new law is more liberal in spirit, far more pastoral in tone, and definitely more

ecumenical than the former. The universality of Church law is maintained, but its applications remain open to the various options as demanded by particular needs of local churches and regions. In synthesis some of the salient features of the new law are the following:

— *Decision making is decentralized.* Many matters that used to be referred to Rome are now left to the decision of the episcopal conference of the nation or region. Councils of bishops may determine, for instance, the age for a licit marriage; the number of holidays at which attendance at Mass is obligatory; the penitential days and practices in the country; the rules governing mixed marriages and many others.

— *Wider powers are given to local churches and bishops.* Local bishops can now dispense from a general law of the Church unless the Pope has specifically reserved to himself such power. They are to establish, among others, the valid reason for a priest or nun to join political parties or unions in exceptional cases. Local churches will have to draft a code of particular laws as a supplement to the universal law of the Church.

— *Lay people will be more involved in Church affairs.* The government of the Church shall no longer be the prerogative of the clergy. Lay persons can sit in the various governing bodies and councils at all levels. They can serve at marriage tribunals; perform various liturgical functions such as reading at Mass, distributing Communion... In special cases, and with permission from the local bishop, they can preside at weddings and funerals. They are to be properly informed about the use and management of offerings made by them to the Church.

— *The role of women in the Church affairs is vastly expanded.* With the exception of sacred orders from which they are still excluded, women are put on an even footing with men. They, too, can serve in marriage tribunals, Church functions, diocesan and parochial boards or councils and many others.

— *Ecclesiastical penalties are greatly reduced.* The new Code is definitely more pastoral and less punitive. Persuasion rather than fear is the rule of the game. Grave offenses warranting

automatic excommunication — the Church supreme penalty — are reduced from thirty-seven to seven, namely, renouncing one's faith through heresy and causing schism; desecration of the Eucharist; abortion; physical violence against the Pope; the priest's violation of the seal of confession; the consecration of a bishop without papal mandate; and the abuse by a priest of the power of absolution.

Catholics who become members or assume a position of leadership in anti-church organizations, like masonry and communism, no longer face automatic excommunication, though they may still be subjected to other penalties. The ban on cremation is dropped though preference is still given to burial.

— *New concepts on marriage are now incorporated into the new law.* Marriage is now defined as a "community of love and life" for the procreation of children and the perfection of the spouses. Remarriage after civil divorce is still prohibited. All prohibiting impediments are dropped in the new Code. The impediment of consanguinity extends only to the first cousins. The impediment of affinity is limited to the direct line, the widower given a chance to marry the sister-in-law and vice versa. Priests and deacons can be given general delegation to assist at marriages.

— *Procedures for the declaration of marriage annulments are updated.* The Code embodies practices already in use and puts an end to all experimental programs on the matter. It is possible in certain cases to have a tribunal of only one instead of three judges. Lay persons can serve in the tribunals.

The old grounds for declaration of nullity are neither watered down nor substantially altered, but immaturity and psychological impairments or disorders are now recognized and widely used by Church courts as bases for declaration.

— *The traditional practice of individual confession is retained.* General absolution, however, is permitted in danger of death and in cases of grave necessity when the lack or scarcity of confessors will deprive the penitents from the reception of the sacraments without their fault. The obligation to confess all grievous sins afterwards is maintained.

Priests approved by their bishop or superior to hear confessions can do so worldwide unless their faculties have been revoked. The faithful, consciously guilty of mortal sin, must make their confession at least once a year.

* * *

The foregoing remarks present some of the expected advantages of the new law over the 1917. Yet, questions such as the following will remain unanswered for some time: does the new revision go far enough? Is it really in tune with the times? Will it influence contemporary Church life so as to bring about stability and security?

Ecclesiastical laws are not ends in themselves. They are means by which the blessings God entrusts to the Church may actually reach the faithful in a regular, orderly manner. Consequently, it should not be expected of the new Code to provide a final answer to today's problems. In a world characterized by abrupt changes it would not be surprising to suffer from some lack of stability. The law will be as good as the people who receive it and live it. It will remain a dead letter if not applied by persons of integrity, honesty and zeal.

In fine, the new Code may not be as perfect as one would have dreamed of, but in many respects it is better than what one dared hope for. And Catholics will do well in taking the new law in all earnest and with a sense of responsibility, while keeping the heart open to every genuine action of the Holy Spirit. For it is the Spirit alone who gives life, the letter by itself does not.

FLORENCIO TESTERA, O.P.
University of Santo Tomas
Manila