

The Code of Canon Law

Twenty-Five Years Later

John A. Alesandro

The 1983 revised Code of Canon Law has made a difference in the life of the church. Yet challenges remain amid the rapid changes the church is still experiencing in a globalized world.

The current Code of Canon Law for the Latin Church was promulgated on January 25, 1983, and went into effect on the First Sunday of Advent that same year. During this quarter of a century, the Code has substantially achieved its principal aim: to translate the pastoral movement of Vatican II into stable structures and effective juridical forms within the context of the church's canonical tradition. Some problems have led to changes in the Code; others have required serious interpretations. Yet, on the whole, the Code has proven quite serviceable, day to day in the life of the church at every level, from the Apostolic See right down to parish structure and activity.

Vatican II and the 1983 Code

The pastoral nature of Vatican II's documents is the context within which the revision of the Code and its relative success and difficulties must be viewed. On January 24, 2003, in an address to participants in a day of a study organized

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by the Pontifical Council for Legislative Texts for the twentieth anniversary of the Code, Pope John Paul II stressed “the close bond between the Council and the new Code,” recalling the fact that Pope John XXIII had announced his intention to launch a reform of canonical discipline along with his decision to call the Second Vatican Council. The Constitution promulgating the Code (*Sacrae disciplinae leges*) identified the overall goal of the council and of the Code as “renewing Christian life. From such an intention, in fact, the entire work of the Council drew its norm and direction” (AAS, 75, 1983, II, p. viii).

This is not to suggest that there is not a two-thousand-year “canonical tradition” leading up to the revision of the Code and buttressing its attempt to help in the reform and renewal of the church. In fact, ecclesiastical law has been a tool of the church

long before there was a Code or even a systematic collection of norms. There have been many historic moments when the church looked to change things on a grand scale, all of which were significant periods for canon law (e.g., the Carolingian Reform of the ninth century; the Gregorian Reform of the eleventh century; the Tridentine Reform of the sixteenth century, to name just a few). The first *codification* of the church’s laws, however, did not occur until well after Vatican I, mirroring the legal methodology of the Napoleonic codes of the nineteenth-century European states.

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Still, the common ground for proper interpretation and application is found not so much in the canons’ juridic character as in their intimate connection with church teaching and practice. As John Paul II put it in his 2003 address, “This *realistic conception of law* establishes a genuine

interdisciplinary relationship involving canonical scholarship and the other sacred sciences. A truly profitable dialogue must start with the common reality that is the very life of the Church.” This is why the Code Commission relied on ten principles of revision that emerged from the Synod of Bishops in 1967 to reform the law in accordance with the pastoral teaching and guidance of Vatican II.

Twenty-five Years of Change

This was quite a challenge: Not only was the Code required to remain faithful to, interpret properly, and apply the documents of Vatican II, it was also to be equipped with sufficient flexibility to keep up with the times, at least for a good number of decades. The first Code lasted forty-two years before the need to reform

it was announced. The current Code has already weathered twenty-five years, and not just *any* twenty-five years. Consider the following data:

- In 1981 there were 58,065 priests in the United States (35,513 diocesan and 22,572 religious). In 2006 there were only 42,307 (28,462 diocesan and 13,845 religious), a 27 percent reduction.
- There has been a contrasting increase in lay ecclesial ministers and deacons. For example, there were 4,471 deacons in 1981; now there are 15,868, 3½ times the number twenty-five years ago; in addition there are today over 30,000 lay ecclesial ministers working at least twenty hours a week in two-thirds of the U.S. parishes.
- Dioceses are experiencing an accelerated pace of change as demographic shifts occur, leading to combinations of parishes, mergers, and closings. Over the last twenty-five years there has been a 3 percent decrease in the number of parishes in the United States, and a 208 percent increase in the number of parishes without a resident pastor.
- In 1981 there were 121,370 religious women in the U.S.; today only 64,877, a 47 percent decline.
- In 1981 there were 353,375 weddings; in 2006 there were 199,805 (a 43 percent decline). In the same period, however, the number of infant baptisms had only a negligible drop: 982,586 in 1981, as compared with 953,688 in 2006.
- These two and a half decades saw the need for greater accountability in finances and a new way of funding the church. One of the biggest crises this demographic shift portends is how the church will maintain its many institutions and apostolates along with all the buildings that those entities own and operate.

How has the Code kept up with these changing circumstances? Here are a few areas for consideration:

A. The Parish

Following the codified style of law, the Code is rather general in its articulation, allowing for a certain amount of pastoral flexibility and adaptation. The 1917 Code referred to a parish, almost in passing in Section II of Book II (“*De Clericis in Specie*”), simply as a territorial part of a diocese, describing it mainly in terms of its pastor. The 1983 Code altered this approach by defining a parish as “a certain community of the Christian faithful stably constituted in a particular church,” and then going on to say that the pastoral care of that community is committed to a proper pastor (c. 515 §1). Accordingly, the Code allowed for various ways of serving a parish community when an individual pastor could not be

assigned full time. Canon 517 §2, e.g., has supported an enormous development in the pastoral care and leadership of parishes by deacons, laypeople, and groups of persons serving as “Parish Life Coordinators.”

B. Lay Persons

The Code exhibits a certain hesitancy about the role of lay persons in the church, reflecting a fundamental, unresolved question: the participation of lay persons in governance. The canons that touch on it (e.g., cc. 129, 274, 1421) are products of the ecclesiological debate. Yet, despite this hesitancy, the Code has done much to further the role of lay persons, especially women, not only “in the world” but in the interior life of the church as well. The 1917 Code had only forty-three canons on the laity and all but two were about associations of the faithful. The 1983 Code, following on Vatican II, contains, in addition to a title on the obligations and rights of all the Christian faithful, a second title on the obligations and rights of lay persons. One of the canons in that title, canon 225, views their work in the world as a mission of evangelization, downplaying any dichotomy between lay and cleric: “like all the Christian faithful, lay persons are designated by God for the apostolate through baptism and confirmation.” And the Code contains many other canons clarifying the role of lay persons internally in the church:

- To hold ecclesiastical offices (e.g., in the tribunal)
- To carry out administrative roles in the chancery
- To serve as officially deputed missionaries and catechists
- To teach in every level of ecclesiastical academic institutions, including those of higher education with a canonical *mandatum*
- To participate in diocesan synods
- To preach under certain circumstances
- To baptize and officiate at marriages with appropriate authorization
- To conduct benedictions and funeral rites

The Code’s restriction to men of the formally installed ministries of lector and acolyte has had little impact because the Code also wisely included two additional paragraphs in canon 230 that provided for a wide-ranging “temporary deputation” of lay persons in many kinds of ministry, leading to a widespread involvement of lay persons in liturgical and pastoral activity.

There continues to be a divergence of opinion about whether lay persons “participate” in church governance or simply “collaborate” with the hierarchy. It has been suggested that lay ecclesial ministers may be developing into a “*tertium*

quid,” a third branch of status in the church (as religious once were viewed). If so, perhaps the conciliar developments that were implemented in the Code laid the groundwork for ecclesial practice, as it often does, to alter the law in the future. Canonical development often occurs that way.

C. Institutes of Consecrated Life and Societies of Apostolic Life

Vatican II called for a renewal of religious life. *Perfectae Caritatis* and the many postconciliar documents that followed set off a tremendous reform among religious women and men. The canons of the Code have sustained that renewal in a spirit of subsidiarity. Replacing a fixed universalist view of religious life, the Code has relied on the “proper law” of the individual institute as the way of capturing and putting into practice its charism. The clarification of the general categories of religious institutes and secular institutes (both institutes of consecrated life), and societies of apostolic life has helped communities appreciate their special identity and to update their constitutions and directories in a democratic manner that serves as a model of communal discernment and accountability.

The decline in the number of religious mentioned above is staggering. Yet, numbers are not always an accurate sign of development. This is an area in which faithful members of the church are relying on the Holy Spirit to guide them through troubled waters to a renewed vision of consecrated and apostolic life, accepting the Spirit’s guidance. The 1983 Code has not only permitted but has fostered such renewal as an expression of the church’s trust in those who commit themselves to consecrated and apostolic vocations.

D. Balance of Power

In the United States, citizens are accustomed to see power balanced *horizontally*. The federal government uses three branches to control each other (although some opine that the judiciary is more powerful than the other branches in “having the last word”). States’ rights temper federal preemption. Even in a courtroom, power is balanced through strategies of “fairness” and “equal access.” The church, however, is hierarchical. Its techniques of balancing of power tend to be *vertical*.

1. Individual Rights

A fundamental balance is attained when individual rights are articulated and protected. The Code has done a good job of declaring the rights of the Christian faithful, providing excellent statements, mainly from the abandoned draft of the

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Lex Fundamentalis. It also specifies the rights of lay persons, clerics, and religious. Unfortunately, it does not provide an easy and effective way of redressing such rights. The Code Commission recommended that administrative tribunals, though not mandatory, be authorized as an option. This institute, which could have provided a way of protecting rights, was not promulgated. Individuals are left with hierarchical recourse, which certainly offers a vertical protection of rights, but can become very cumbersome, especially when it turns transatlantic, ending up in a dicastery of the Apostolic See.

This arrangement also places a heavy burden on bishops to make certain that all rights are respected. They must render, in Pope John Paul II's words, a "special and irreplaceable service . . . for the recognition and protection of the rights of individuals and communities in the Church." Their exercise of the *munus regendi* (which *Lumen Gentium* 18 preferred to call "*pascendi*") must be a different kind of power, that of a servant: "All the usual instruments by which the power of governance is exercised—laws, administrative acts, processes, canonical sanction—acquire in that way their real meaning: genuine *pastoral service* in favor of the persons and communities that belong to the Church."

2. *Diocesan Bishop*

The enhanced vision of the office of the diocesan bishop is, from the viewpoint of juridical structure, a form of subsidiarity, a vertical device for balancing power, highlighted as the fifth principle of revision. The church exists and acts at various levels. The strengthening of the role of the diocesan bishop, a key part of Vatican II, is well represented in the Code. The bishop is not a delegate of the pope; he is the head of a particular church. Without weakening the pope's immediate and universal jurisdiction, this recognition empowers the diocesan bishop to carry out the threefold office of teaching, sanctifying, and shepherding while, at the same time, heightening his accountability.

3. *Conference of Bishops*

The affirmation of the conference of bishops as a form of regional collaboration is another method of fostering subsidiarity. The Code's treatment of the conference of bishops has been a tremendous addition to church life. Certainly, there have been plenty of disagreements even in regard to the nature and proper activity of the conference, including debate over affective and effective collegiality. Yet, much of the pastoral work of the conference over these twenty-five years has been legal and binding in nature, implementing through legislation many canons of the Code: for example, term pastorates (c. 522), feasts of precepts (c. 1246), abstinence on Friday (cc. 1252–1253), lay judges on a collegiate court (c. 1421 §2), the support of retired pastors (c. 538), lay witnesses for marriage (c. 1112), preaching by lay persons (c. 766), *The Program for Priestly Formation* (c. 242), to name just a few. Despite resistance to extraordinary legislative activity by the conference, one could

hardly question the fact that the conference has been and remains a very significant policy-forming and law-making institution within the church—established less than half a century after the American predecessor of this type of regional body was considered suspect!

4. Consultation

In a hierarchical structure, it is not merely the interplay of levels of authority that balances power, but the requirement of consultation at each of the levels, a hallmark of the 1983 Code. Of course, a person's legal mindset and experience can strongly influence one's appreciation of this factor in decision making. Even though the "right to be heard" is a mainstay of due process in the United States, Americans seem to dismiss out of hand any interchange that is "consultative only." "Advice is fine, but let me know when my consent is needed. Then I'll sit up and take notice!" There are, in fact, situations in which the Code calls for consent on the part of consultative groups (e.g., in financial matters of various kinds), but devaluing the role of hearing and conversing does a disservice to an extremely important and effective way of sustaining and building the *communio* that lies at the very heart of the church as the people of God.

The Code is replete with structures of consultation: the Synod of Bishops; diocesan synods; diocesan and parochial finance councils; presbyteral councils and colleges of consultors; diocesan and parochial pastoral councils; priest personnel advisors. These groups have been much more prevalent and influential in the life of the church during the past twenty-five years than were the consultative bodies of the 1917 Code, many of which fell into disuse. In fact, the importance of consultation in today's world has led to the development of additional consultative groups such as commissions and advisory boards, including, most recently, the diocesan review board.

E. Stewardship

Finance is an area in which the Code has had a good effect, although not without some difficulties. Actually, the 1917 Code had enacted certain structures and requirements for consultation on finances, but their observance seemed to be the exception rather than the rule. After a while, the attitude among some church leaders seemed to be: "Why bother with canon law? The civil law really governs finances and is much tougher. Aren't corporations and business and finances really just a matter of secular law?" Yes—and no! Sometimes everything that

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canon law requires is similarly required by civil law, and often much more. But not always. One can never forget that ecclesiastical entities are *first* canonical. The civil law is followed concomitantly and as closely as possible to mirror canon law, not vice versa; civil law is used to implement what the church requires in its structures and its transactions.

The revised Code has provided an updated approach to financial accountability with regional adaptations. In the area of business and finance, it is more important than ever for church leaders to observe scrupulously those canonical requirements. A case in point can be seen in the troubles that arose from involuntary alienations of ecclesiastical property in the form of universities and hospitals by well-meaning religious and diocesan authorities. They observed meticulously the civil rules for not-for-profit institutions but failed to appreciate the rules of canonical stewardship. Civil attorneys were consulted about every detail, but few if any canonical opinions were sought, even to sort out what juridic person was acting and what was necessary for the canonical validity of the transaction.

As time goes on, the need for financial accountability will grow, especially as parish and diocesan administrators are more and more a mixture of priests, religious, deacons, and lay persons. Today, unlike the post-1917 Code era, bishops and diocesan leaders are better at observing the revised finance structures, but more is needed, especially in restoring the primacy of canonical structures and regulations over their handmaiden, civil law. This is an area in which canonical “routine-ization” is a virtue devoutly to be wished.

F. Canon 1395

Canon 1395 §2 states that if a cleric commits an offense against the sixth commandment with a minor under sixteen years of age, he is subject to the imposition of an expiatory penalty, including, if warranted, dismissal from the clerical state. This canon and the process for its application has been, over a relatively short period of time, the subject of one of the most convoluted and fascinating developments in canon law. Within ten years of the Code’s promulgation, the bishops of the United States found the judicial process required by the canon to be unwieldy, dilatory, and, in some cases frustratingly inapplicable. Their attempts to craft a canonical method of protecting children and teenagers is a fifteen-year saga of regional and universal negotiations, derogations, and innovations, with limited success, resulting in a special form of particular and universal legislation. The sequence of events illustrates what happens with any law—and specifically, with church law—when circumstances outpace its remedial provisions:

1. The 1983 revision did not contain any provision for *ex officio* laicization of a priest in extreme circumstances; it required that a *judicial* process be used in every case.

2. In 1992, the Canonical Affairs Committee of the Conference of Bishops proposed a radical change: *administrative* removal of a priest from the clerical state, not as an expiatory penalty to restore justice for past acts, but as a way of removing him from a position in which he would represent a danger to children.
3. Resisting this approach, the Vatican set up a small joint commission to streamline the *judicial* process. On April 25, 1994, the Holy Father approved for the United States certain derogations of the law developed by the commission regarding the age of the minor (under eighteen) and the extent of the period for prescription (canonical statute of limitations).
4. In 2001, the *motu proprio, Sacramentorum sanctitatis tutela*, promulgating norms on delicts reserved to the CDF, made several of the American derogations universal law, but still required the CDF to handle such cases in a *judicial*, not administrative, process.
5. A little over a year later the conference of bishops passed *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*, implementing “zero tolerance.”
6. The next year, papal derogations (2/7/03) approved nonjudicial *involuntary* penal dismissal from the clerical state for egregious cases, with limited due process protections. For “normal” cases, however, the *judicial* process must still be used, and the CDF must now be involved in both initiating and bringing closure to such cases.

The zero tolerance approach of the U.S. charter and norms skews the law and pastoral practice. Its aim is to protect children, yet it does so by “zeroing” in on punishment of an impure act of the past rather than on present danger. The efforts of the U.S. bishops brought some relief, but the church would be well advised to adopt a rational process that has as its only criterion the protection of children with varying remedies or punishments (as civil law tries to do). That requires a future-oriented, administrative approach with due process protections, something the Apostolic See seems unwilling to allow at this time. Nonetheless, progress has been made, and it is within that legal system that bishops, canon lawyers, and all pastoral ministers must do everything they can to protect children, expiate wrongs, and prevent miscarriages of justice for all concerned.

G. Marriage

An area of the Code that directly affects most Catholics is the canon law on marriage. One of the problems in the marriage canons arises from the technique of juxtaposing Vatican II with canonical tradition, in this case, mixing the conciliar term “covenant” in canon 1055 §1 with the traditional “contract” in §2. This semantic squabble veils a deeper question, one that comes from doctrine and theology

rather than law: the identification in §2 of the valid contract of two validly baptized persons with the sacrament of matrimony. This traditional wording skirts the question of the *impact of faith* on marital consent, or, more precisely, the effect that the *lack of faith* of validly baptized nonbelievers has on sacramentality and on validity. The Code Commission took the position that it had no competence to resolve such theological questions—and rightly so. Yet, it is clear from the International Theological Commission’s “Propositions on the Doctrine of Christian Marriage” and Pope John Paul II’s *Familiaris Consortio* (no. 68) that this remains a very fundamental theological and canonical problem. The only conclusion at the moment, which does not sit well with the doctrine of the natural right to marry, is that such marriages are invalid if, in accordance with canon 1099, the radical nonbelief of one of the parties affects the will to act.

This does not mean that the revised Code avoided the problem completely. By explicitly calling for the personal preparation of the spouses to dispose them to the “holiness and duties of their new state” (c. 1063 2°) and by including “notorious rejection of the Catholic faith” as a situation requiring referral to the local ordinary (c. 1071 §1, 4°), the Code provides a practical way of addressing the lack of faith in the individual case without actually giving an answer to the deeper doctrinal question. But the question will not go away.

“Procedural law should be uniform throughout the universal Church but can be given a more general and universal form, leaving to regional authorities the faculty to enact rules to be observed in their respective tribunals” (principle of revision no. 5). In contrast to the practical reality that tribunals of first instance adjudicate almost exclusively matrimonial cases, the revised Code failed to alter the categorization of the matrimonial case as a species of the ordinary contentious process. In the real world, marriage cases are not contentious cases. The parties may be contentious, but the real joinder of issues is about the church’s teaching on the indissolubility and sacramentality of marriage and the concrete status of the marriage under study, whatever the claims of the spouses about the marriage’s validity might be.

Many of the technical norms of the Code and the complementary instruction *Dignitas Connubii* (1/25/05), however, have proven helpful in tribunal ministry. A few examples are the expansion of the fora in which a matrimonial action can be brought; the insistence that tribunal officials possess at least the licentiate in canon law; and the adjudication of matrimonial cases by a single judge (although limiting the role to a priest or deacon seems an unnecessary restriction).

The appellate review of a favorable decision replaced what was simply a paper formality (administrative dispensation from the obligation to appeal at the level of the conference of bishops) with a judicial opportunity to keep procedure and jurisprudence in line and yet, in most cases, provide an expeditious completion of a case by a decree of confirmation. Nonetheless, the retention of the right of direct appeal to the Roman Rota has caused some difficulties since, at least in countries

where the tribunal action has no civil effects, appeals to the Rota are often just a legal device for one party to get back at the other. The Rota has been an extremely valuable source of theological and canonical development in the area of marriage. Its resources would be put to better use if matrimonial cases were brought before it not because one party or the other insisted on that forum but because there were differing sentences in the lower tribunals, raising deep-seated theological and canonical issues.

Conclusion

The Code of Canon Law, with 1,752 canons, is not very extensive in comparison to most secular compilations of laws. Nonetheless, its succinct style allows it to deal with almost every aspect of church life. The beneficial developments found in the 1983 Code have enabled it to weather the first twenty-five years without too many storms. Certainly, there have been disappointments and failures, relegating some norms to the dustbin and requiring derogation of others, but on the whole the day-to-day pastoral life of the church has been served well by the Code. The next twenty-five years will certainly challenge law and theology to meet changing times in an authentic manner and will, more than likely, require “revision” of the “revised” Code, if it is going to fulfill adequately and appropriately its mandate to be an instrument of pastoral service for all the people of God.