

THEOLOGICAL TRENDS

Canon Law and Ecclesiology II

The Ecclesiological Implications of the 1983 Code of Canon Law

Introduction

IN A PREVIOUS article, published in *The Way*, January 1982, I gave an outline of the highly centralized and clerical view of the Church that was common in the nineteenth and early twentieth centuries. This was the view of the Church that was expounded in most seminary text-books on the subject. It was this notion of the Church, too, that was reflected in the 1917 Code of Canon Law, and I indicated a number of examples of this centralized approach from the 1917 Code: local customs as such were considered undesirable (C.5); bishops were forbidden to grant dispensations from the general law of the Church, unless the faculty to do so had been expressly granted them by the Pope, or the case was particularly urgent. I also indicated that this same theological outlook was evident in the whole structure and content of Book II of the 1917 Code.

I went on then to show how the second Vatican Council put forward a doctrine of the Church which puts greater emphasis on the importance of the local Church. The universal Church is now seen not primarily as a society of individuals, but as a body with different organs, each having its own proper characteristics, a communion of churches, together making up the Catholic Church. In this second article, I shall consider how this conciliar teaching has influenced the structure and contents of the new Code of Canon Law, promulgated by Pope John Paul II on 25 January of this year, 1983.

In March 1963, Pope John XXIII set up a Pontifical Commission for the revision of the Code of Canon Law. This was composed of cardinals and was assisted by a large number of consulters, clerical, religious and lay, from all parts of the Church. Eighteen years later a complete draft of the new code was submitted for examination by the Commission of Cardinals. In October 1981, a plenary session of the Commission was held in the Vatican, at the end of which it was decided that the preparatory work for the new code should be brought to a conclusion and a final draft be presented to the pope for promulgation.

Pope John Paul received the draft schema and subjected it to a lengthy personal examination. He also appointed a small commission to assist him in this task. A year later, in November 1982, in an address to the cardinals in Rome, the pope mentioned the revision of canon law. He noted that the basis of the revision had been to ensure the essentially pastoral orientation of the new law.

It was for this reason that he had entrusted the draft schema to a small study group. This, he said, was directed solely to ensure that the new code would effectively meet the pastoral needs of the present day.

During the course of the revision of canon law it was repeatedly asserted that the new law ought to reflect the conciliar teaching on ecclesiology. This is clear from the principles laid down for the revision by the Synod of Bishops in 1967. Among these, for example, it was stated that there should be less centralization of authority, and more independence given to local bishops, and that there should be wider application of the principle of subsidiarity. The unity and equality of all Christ's faithful should also be clearly indicated in the new law.

Pope Paul VI reiterated these directives on a number of occasions and Pope John Paul II has stressed the connection between the revised law and the Second Vatican Council. Indeed he chose 25 January as the date of promulgation to underline this connection, because it had been on 25 January 1959, that Pope John XXIII had announced that there would be a general council and a revision of the Church's law. He makes this same point in the Apostolic Constitution, *Sacrae Disciplinae Leges*, with which he promulgated the new code. The code can, he states, in a certain sense be understood as an attempt to translate into canonical language the conciliar ecclesiology. The pope stressed in this connection the importance of *Lumen Gentium* and *Gaudium et Spes*. In fact, it is this new ecclesiology that can be said to constitute the novelty of the revised law. The pope went on to single out the following elements: the doctrine according to which the Church is presented as the People of God; and according to which all members of the People of God, each in his or her own way, actively participate in the triple office of Christ, Prophet, Priest and King, and have rights and duties which must be respected. The pope also mentioned the doctrine according to which the Church is seen as a communion of Churches. This doctrine will determine the relationship between particular Churches among themselves and between particular Churches and the universal Church. These are some of the new elements that the Council has drawn from the Church's tradition and which should be clearly reflected in the new code.

The 1983 code has made a serious attempt to reflect this conciliar ecclesiology. This can be seen in the structure and the spirit of the new code, and in the numerous *verbatim* quotations from Council documents in the new canons. I shall try to illustrate this by considering the following three points:

- (a) The new systematic arrangement of the code in general.
- (b) The structure and contents of Book II in particular.
- (c) The genuine attempt noticeable all through the code to get away from the old clerical approach, and to provide clear recognition of the role of the laity in the Church's mission.

The systematic arrangement

The systematic arrangement of the code is more than simply a means of logical order. The very systematization expresses the theology that lies behind the law. I have already indicated how the structure of the 1917 Code gave expression to a highly centralized and very clericalist view of the Church. It was, therefore, suggested that a completely new arrangement should be worked out for the revised code, with the sacraments as the directing principle. This was considered by the Commission of Cardinals, but it was finally decided that the new code should retain the 1917 system where this was still thought to be satisfactory, but that changes should be made where necessary. It was, therefore, agreed to retain the general arrangement of Book I (on general norms), of Book IV (on procedures), and of Book V (on penal legislation). The whole structure of Book II (on persons), however, and Book III would have to be radically revised. This has resulted in the following systematic arrangement for the 1983 Code:

- Book 1: General Principles of Law, cc. 1-203.
- Book 2: The People of God, cc. 204-746.
- Book 3: The Teaching Role of the Church, cc. 747-833.
- Book 4: The Sanctifying Role of the Church, cc. 834-1253.
- Book 5: The Temporal Goods of the Church, cc. 1254-1310.
- Book 6: Sanctions in the Church, cc. 1311-1399.
- Book 7: Judicial Processes, cc. 1400-1752.

It can be seen at a glance that this re-arrangement expresses quite different theological principles from those that lay behind the previous codification. The new structure in fact implies a renewed vision of the Church as a whole. Book II of the 1917 Code was entitled 'Concerning Persons', and it dealt with the constitutional structure in the Church in terms of the rights and obligations that went with official clerical posts in the Church. The central emphasis was on the Church as a hierarchically organized institution in which only clerics could hold office. In the new code the second book is entitled 'The People of God'. This introduces into the very structure of the revised legislation a key concept from the Vatican Council's teaching on the nature of the Church. The new nomenclature, together with the arrangement of Book II brings out clearly that the basic structure of the Church must be determined by the whole People of God as a communion of Christ's faithful.

The division of the third book of the 1917 Code into three new books also reflects the conciliar teaching on the Church. The new Book III is entitled 'The Church's Teaching Role' and it deals with the mission to guard the word of God and announce it to all people. So it deals with preaching the word of God and catechetical instruction; with missionary activity and catholic education; with the media of communication in general. Book IV

has the heading, 'The Sanctifying Role of the Church' and it presents the sacraments as the actions of Christ and of the Church. Each of the sacraments is introduced by a canon which describes the sacrament and provides a theological aid to the interpretation of the Law governing the administration of the sacraments.

In these three central books, therefore, the new code has tried to present juridically the *tria munera* theme of the Council's Dogmatic Constitution on the Church, *Lumen Gentium*, with its central emphasis on the Church's triple role as ruler, teacher and sanctifier. This is ecclesologically much more satisfactory than the previous division into 'persons' and 'things'.

The structure and contents of Book II

It is probably in the structure and contents of Book II that the ecclesiological implications of the revised canon law can most clearly be seen. The first draft of this part of the code was sent out to the bishops of the Church for comment in 1977. This draft was severely criticized, first of all, for continuing the weakness of the 1917 Code in which an individualistic approach to the law of persons determined the whole structure, and secondly, for retaining the old order of clergy, religious, and laity. A revised version was, therefore, presented to the Commission in October 1981, and, as a result of further criticism made at that meeting, the following arrangement was finally adopted and approved by the Pope:

Book II

The People of God

- Part I. On Christ's Faithful.
 1. On the Obligations and Rights of all the Faithful.
 2. On the Obligations and Rights of the Laity.
 3. Concerning Sacred Ministers or Clerics.
 4. Concerning Personal Prelatures.
 5. On Associations of the Faithful.
- Part II. On the Hierarchical Constitution of the Church.
 1. The Supreme Authority in the Church.
(The Pope and the College of Bishops).
 2. Particular Churches and Their Groupings.
 - (a) Particular Churches and Bishops.
 - (b) Groupings of Particular Churches.
 - (c) On the Internal Organization of the Diocese.
- Part III. Institutes of Consecrated Life & Societies of Apostolic Life.
 1. Institutes of Consecrated Life.
 2. Societies of Apostolic Life.

It can be seen from this outline that the new code has moved away from an individualistic and clericalist outlook to a community perspective. This represents a shift away from considering individual clerics, who have power over their 'subjects', in the diocese or in the parish, to looking at the Church as a collection of communities in which everybody has a share in the Church's mission, though, of course, there are a variety of functions within each community.

The decision to deal with Christ's faithful in part I of Book II is itself significant. This puts the community of all the believers in Christ in the first place and only secondly does the code go on to consider the hierarchical constitution and religious life. Part I will be dealt with later in this article and so I shall go on immediately to discuss part II. This section of the code deals with the Church's hierarchical constitution and the power of pope and bishops. Here again an attempt has been made to reflect the ecclesiology of *communio* both in the law on the supreme authority and in the legislation concerning particular Churches. It clarifies the relationship that should exist between different portions of the People of God both with the central authority and with each other. At each level the code begins by describing the specific corporate body and then the apostolic mission that has been entrusted to each. Consider, for example, Book II, part II, section II: on particular Churches and on bishops. These canons which describe the particular Church and the diocese reflect a central feature of Vatican II's ecclesiology, namely, that the universal Church is a communion of communities each of which is the Church:

A diocese is a portion of the People of God, which is entrusted to a bishop to be nurtured by him, with the co-operation of the *presbyterium*, in such a way that, remaining close to its pastor and gathered by him through the gospel and the eucharist in the Holy Spirit, it constitutes a particular Church. In this Church the one holy, catholic and apostolic Church of Christ truly exists and functions (Canon 369).

This means that we have to consider the universal Church not simply as a federation of Churches that have voluntarily come together, nor as a single super-diocese, with the pope as the universal bishop. On the contrary, each particular Church is now seen as a constitutive element in the Church's structure. It makes present the Church as such as long as it remains in communion with all the other particular Churches and with Rome.

In general, it can be said that the new code leaves many more matters to be decided at the local level than was the case with the 1917 Code.

This has very interesting, and significant, implications. It means that over the coming years each local Church — diocese, region,

country — will have to turn its mind as to how best it can implement the new code and apply its general directives to the local circumstances. This will involve much hard work, and a great attention to detail. But it will be a shared work: a constant theme through the code is its provision for consultation with as many as possible of the faithful, clergy and laity, before decisions are taken.¹

Concerning power to dispense, the new code incorporates legislation that was in fact brought in shortly after the end of the Council, namely, that the diocesan bishop has the power to dispense from general disciplinary laws of the Church unless, in particular cases, there is a special papal reservation.

Whenever he judges that it contributes to the spiritual welfare, the diocesan bishop can dispense the faithful from disciplinary laws, both universal laws and particular laws made by the supreme ecclesiastical authority for his territory or his subjects. He cannot dispense from procedural laws or from penal laws, nor from those whose dispensation is specially reserved to the Apostolic See or to some other authority (Canon 87).

Part III of Book II deals with consecrated life in the Church. Here there is not a great deal that is new because the code has simply incorporated the revised legislation on religious life that had already been promulgated in the period following the Council. A successful attempt has been made to ensure that the law of the code is in harmony with the conciliar teaching that the variety of forms of consecrated life within the Church are charismatic developments. Each institute, therefore, should be enabled to live and develop according to the inspiration of the Spirit that led to its foundation in the first place.

A glance at one or two of the actual canons will illustrate this point: 'Life consecrated through profession of the evangelical counsels is a stable form of living, in which the faithful follow Christ more closely under the guidance of the Holy Spirit and are totally dedicated to God, whom they love above all . . . ' (Canon 573). Or again: 'The whole patrimony of an institute must be faithfully preserved by all. This patrimony is comprised of the intentions of the founders, of all that the competent ecclesiastical authority has approved concerning the nature, purpose, spirit and character of the institute, and of its sound traditions' (Canon 578). Or again: 'The approval of new forms of consecrated life is reserved to the Apostolic See. Diocesan bishops, however, are to endeavour to discern new

¹ *The New Code of Canon Law*, Canon Law Society (CTS, 1983), p 9.

gifts of consecrated life which the Holy Spirit entrusts to the Church . . . ' (Canon 605).

It is now clearly recognized in law that each institute has its own identity, its own manner of life and its own mission which should be protected by the Church's laws. It is for this reason that there is specific legislation in the new code the purpose of which is to protect the internal autonomy of each institute: 'A true autonomy of life, especially of governance, is recognized for each institute. This autonomy means that each institute has its own discipline in the Church and can preserve whole and entire the patrimony described in Canon 578' (Canon 586). Moreover, much more is now left to be determined by each institute than was formerly the case. So the rigid uniformity that resulted from the 1917 Code and the 1922 general norm has now been formally abandoned.

And finally, the new code provides clear recognition of the fact that religious institutes form an important part of each local Church, and it tries to foster collaboration both of the institutes among themselves and between these institutes and the other members of the local Church of which they form a part.

From this brief survey of Book II it is evident that the concept of *communio* has had a strong influence on the revision of the law. Greater autonomy is granted both to dioceses and to religious orders, and the importance of the local Church has been fairly recognized. In other words, the conciliar ecclesiology of communion has had a decisive influence on the revision of the law. This conclusion gains further support from the final point of our enquiry, the role of the laity, to which we can now turn.

The laity in the new Code

As has already been said, the 1917 Code reflected a clericalist mentality. Most of Book II, *De personis*, was concerned with clerics; only clerics could hold office in the Church and there was no clear recognition in the law of the laity. In fact, the last section of Book II, which deals with the laity, contains only two canons which deal directly with the laity: Canon 682, which states the laity's right to receive spiritual help from the clergy, and Canon 683 which prohibits the laity from wearing clerical dress!

The 1983 Code adopts a completely different approach, and in fact does much to promote a more active participation by the laity in the Church's mission. There is, of course, a clear distinction between clergy and laity, but both are seen to have the right and obligation to take part in the mission of the Church. The Council, in its Decree on the Lay Apostolate, states clearly the doctrinal principle that lies behind the new approach:

In the Church there is diversity of service but unity of purpose. Christ conferred on the Apostles and their successors the duty of teaching, sanctifying, and ruling in His name and power. But the

laity, too, share in the priestly, prophetic, and royal office of Christ, and, therefore, have their own role to play in the mission of the whole People of God in the church and in the world (Article 2).

The new code has tried to express this juridically in a variety of ways. First of all, it discusses the rights and obligations of all the faithful who are in full communion with Rome — whether they are lay or clerical. 'Flowing from their re-birth in Christ, there is a genuine equality in dignity and action among all of Christ's faithful. Because of this equality they all contribute, each according to his or her own condition and office, to the building up of the Body of Christ' (Canon 208). There follow fifteen canons listing obligations and rights that belong to all the faithful.

No previous canonical collection has ever been so explicit in listing the rights of Christ's faithful. As Fr Örsy writes:

The new code goes further than any earlier canonical document in stating and defining the fundamental rights of all who belong to the Church. They have a right to participate in the work of evangelization and a right to speak their mind even if that means offering advice to ecclesiastical superiors. They have a right to participate in the liturgical life of the church and to receive the sacraments. They have a right to education, to privacy, and to a good reputation. If they are scholars, they have a right to pursue the truth by all scientific means. All, without exception, have the right to vindicate their rights. Such a declaration comes close to a Bill of Rights for all Christians.²

Immediately after dealing with the rights of all Christ's faithful the code goes on to list the following rights and obligations of the laity:

1. The right and duty to proclaim the message of salvation everywhere (C 225).
2. The married laity have the duty to work for the building up of the People of God through their own marriage and family, and it is the right and duty of parents to see to the education of their children (C 226).
3. Catholics have the same civic rights as other citizens (C 227).
4. The laity may undertake certain offices and functions in the Church (C 228).
5. The laity have the right to study the sacred sciences and are eligible to receive a mission to teach these (C 229).

² Örsy, L.: 'Assessing the New Laws', in *The Tablet*, 14 May 1983, p 446.

6. Lay *men* can be instituted as lectors and acolytes. Lay men and lay women may receive temporary commissions to read during the liturgy and undertake other liturgical and sacramental duties. It is not at all clear why women are excluded from the ministries of lector and acolyte and yet at the same time they may be commissioned temporarily to undertake these duties (C 230).
7. Lay persons who work for the Church have the right to a just remuneration for their services (C 231).

It is worth noting that almost all these rights are taken *verbatim* from the documents of the Second Vatican Council. This whole section, as well as the preceding one on Christ's faithful, provides a clear indication that the Church is no longer viewed primarily as a concern of the clergy. It is centred on the notion of Christ's faithful. A serious attempt has been made here to reflect the conciliar teaching on the nature of the Church.

The new code has, however, gone much further than a mere listing of rights and duties. Throughout the code it is clearly evident that the laity have the right and the duty to participate actively in the Church's threefold mission of governing, teaching and sanctifying.

They have the responsibility to be actively involved in the sacramental ministry; and the new code puts particular emphasis on the importance of preparation for the sacraments within the family and within the parish community as a whole.

Concerning the Church's mission to teach, the new code recognizes five main ways in which the word of God is taught: preaching, catechetical instruction, missionary work, education at all levels and the mass media. In all of these areas the laity are called upon to exercise specific responsibilities. They are excluded from none, though the homily at mass is restricted to priests and deacons.

Lastly, the laity can now be given a real share in the government of the Church, particularly at the judicial and executive level. Offices previously reserved to clerics are now open to all the faithful, both men and women. Indeed, it is clear from the revised legislation that the laity are expected to take an active part in the general running of the Church both at diocesan and at parochial levels.

It can, therefore, be said that the new code is a serious effort to recognize and support the function of the laity in the Church in accordance with the teaching of the second Vatican Council. While it remains true that final decision-making for the most part remains in the hands of the clergy, it is also true that the new law envisages that most decisions will be taken only after serious consultation with the faithful involved, and that includes the laity. The whole approach provides an opportunity and a challenge for both diocese and parish.

Conclusion

To those who have kept up with canonical legislation over the past twenty years the 1983 Code contains much that is already familiar. One of its aims was, after all, to codify the revised legislation that had been promulgated as a result of the Second Vatican Council. There are, of course, also a number of interesting innovations introduced by the new code which cannot be listed in an article of this nature. The most striking aspect of the new code, however, is the fresh vision it gives of the Church as a whole, and the fundamental equality of all members of the Church which it presumes. The 1983 Code has restored clarity and certainty about the current state of the Church's law. Its promulgation cannot but provide a healthy stimulus to both the study and of the development of canon law. It may also help to foster renewal within the Church.

Clarence Gallagher S.J.