

**LONGER CANON LAW INTRODUCTION PAGE FOR DOWNLOADING** (material taken from the CLSA commissioned The Code of Canon Law, A Text and Commentary, edited by James Coriden, Thomas Green and Donald Heintschel (Paulist Press, New York: 1985), pp. 1-22).

I. The Historical Development of Law in the Church.

There are basically 5 historical periods in the history of the development of law in the Church. These are as follows:

1. The Early Christian Community (1-8 centuries).

The early Christian Church, at least in Jewish sectors, incorporated the laws of the Old Testament into its life and practices. In the Old Testament, there were laws, which focused on the worship of the Jewish people, laws concerned with dietary regulations, and moral laws given by God for his people. In the earliest writings of the New Testament, laws appear. St. Paul, the first writer of the New Testament, presents lists of moral and disciplinary directives to be observed by all believers. He speaks at some length on marriage, the giving of directives for the moral life, and on amending the Jewish ritual practices of the early Christians, so that Christianity would not simply remain a Jewish sect.

The early Church councils made determinations that were fairly specific and localized. They sought to offer specific solutions to specific problems now being faced by the growing Church. Many early canonical decisions and legislation was made from local, regional and provincial councils, such as the Synod of Elvira (in about the year 300).

After the Edict of Constantine (313), the Church began another stage of development, since it was now free to grow and expand beyond the borders of the Roman Empire, without fear of persecution. It quickly developed structures that required law for their regulation and coordination. Many new converts entered the Church, bringing with them their own laws and customs, and there was a need for established norms to protect and foster Church unity. As such, the Church's first Ecumenical Council, the Council of Nicea, was convoked (325) to meet such concerns. This council treated such issues as the doctrinal articulation of the creed, procedures for the election of bishops, the organization of dioceses into provinces, norms on clergy, and regulations concerning the sacraments and other liturgical matters. Some of the decrees of the council were called "canons" – the Greek word meaning "rule, measuring stick." "Kanon" was the word used for the carpenter's measure – the measure used as the standard. These canons then preserved and upheld the discipline that had developed thus far in the Church's history, and eventually the Church's law became known as "canon law."

Other sources of law during this first period of the Church included the responses of regional councils to questions of local concern; the various writings and rulings of the Church fathers (such as St. Ambrose, St. Augustine and St. Basil); and, by the end of the fourth century, the decretals or papal responses to questions posed by various bishops. These decretals were then collected and saved and accepted as normative for the entire Church.

Finally, we must note that during this period canon law often became intermingled with Roman civil law, especially after 313 A.D. Many Roman laws dealt with ecclesiastical matters and many times the bishops were called upon to help resolve civil disputes. Also, both Roman and Church legislation addressed topics such as marriage.

2. The Carolingian Reform (9-10 centuries).

During this period there was a vast migration of tribes from the north and east that crossed the borders of the Roman Empire. These tribes, with their foreign languages, customs and laws, planted the seeds of the European nations and helped to bring about the decline of the Roman Empire. These new practices began years of social fragmentation. There was no longer a single Roman culture or legal system. The Church, who converted many of these immigrants, adapted itself to include some of their customs and laws. During this time, many documents from the

earlier age were lost, others were preserved in monasteries, and some were forgotten. During this period, feudalism was the norm, and with it came a reliance on local legal determinations. The earlier search for unity was lost.

Apart from the laws developed by local councils and bishops, there arose (especially during the ninth century) a concentrated effort to renew society and centralize Western civilization. This movement is often entitled “the Carolingian Reform,” named after its initiator, Charlemagne. Charlemagne was crowned Roman Emperor in the year 800. The purpose of this reform was to stabilize the structures of the Church, and to do this came a reliance on existent Church law. It was the authority of the earlier texts, which were used to bring about the desired unity and reform. Unfortunately, some of these texts were lost, others scattered. To re-capture the ancient discipline of these texts, a group of scholars (probably in France), drafted documents between 847 and 852 that became known as the “Pseudo-Isidorian” or “False” decretals, since these texts were put forth as being the decretals of the early popes. These documents helped to fill in the gaps left by the lost texts of the earlier period. The fact that they were not the actual texts, but false, was not discovered for about 7 centuries. In the meantime, however, they did prove quite useful to the Church in helping to re-establish the spirit of the ancient laws.

## 2. The Medieval (or Gregorian) Reform (11-15 centuries).

During this period, Western civilization experienced a great intellectual revival. Scholars began to re-discover lost texts, formulate collections, and give some order to the Church’s legal system. Hincmar of Rheims and Burchard of Worms were such collectors, but their collections lacked any real systematization. Discrepancies, variant readings and seeming contradictions were all part of these early collections of law. Ivo of Chartres was one early collector who was keenly aware of the need for a developed order and system in such collections of law and tried to provide such by adding a preface (to resolve discrepancies) to his collection. However, this was only the beginning of a search for order within a very complicated tradition of laws.

It was Pope Gregory VII (1073-1085) who took on this challenge. He had all the known archives of Italy searched for lost texts, especially on the issues of papal supremacy, the freedom of the Church, and clerical celibacy. Once the texts were found, there was still the need to put them into some kind of order. Anselm of Lucca attempted to fulfill this task, but without much success. It was not accomplished until the next century with a scholar named Gratian.

Gratian was a Camaldolese monk who taught at the University of Bologna. In 1141, he produced his work entitled, *Concordia Discordantium Canonum* or *The Harmony of Discordant Canons*. This work represented the first successful treatise to provide a synthesis of the Church’s laws. He employed the dialectical method, used also during this same period to resolve theological questions (by such scholars as Peter Lombard and Thomas Aquinas). Gratian did not only list texts, but he also analyzed them and offered solutions to their sometimes seeming discrepancies. With his *Decree*, as it became known, canon law became a separate science, in the classical sense, from theology.

Following Gratian’s work, conciliar legislation continued to grow, as there were councils held at the Lateran in 1179 and 1215. New decretals were also issued from the Pontiffs, and within a century of Gratian, there was a clearly identified need to organize a new collection. Gregory IX then commissioned a Dominican by the name of Raymond of Penafort to undertake this task. His work, finished in 1234 was entitled *Liber extra* or the “*Book outside of*” Gratian’s *Decree*. It contained over 2,000 papal and conciliar decrees, which were systematically ordered into 5 general categories. This order provided the foundation for the much later Code of Canon Law, whose material was also divided into 5 Books.

The work of Raymond of Penafort was then followed by other collections, including: the *Liber Sextus* of Boniface VIII (published in 1298 and also known as the “*Sixth Book*” after Raymond’s five); the *Constitutiones Clementinae* of John XXII (published in 1317); and the *Corpus Iuris Canonici* of John Chappuis (published in 1500). This *Corpus* was a magnificent work and formed the foundation of the body of canon law until the promulgation of the 1917 Code of Canon Law.

## 4. The Period of the Tridentine Reform (16-19<sup>th</sup> centuries).

The Council of Trent (1545-1563) was known as the Church's doctrinal response to the Protestant Reformation and was often referred to as the "council of the counter-reformation." This council clarified many dogmatic concerns; it issued many practical disciplinary norms; it defined many of the Church's positions on various issues; and it brought about a revision of law, which affected many aspects of the Church's life.

The Congregation of the Council was established in 1564 to offer authoritative interpretations of the Tridentine decrees, precisely to avoid the problem of multiple commentaries and opinions on the legislation of the council. The decrees of the council of Trent remained the guiding juridic force in the Church for the next 300 years.

Following the council, however, legislation continued to be issued, and there developed a very complex system of central government. Such a system of government included the formation of many of the Roman dicasteries (administrative and judicial) – Congregations, Tribunals, and Councils – whose decisions and decrees helped the Pontiff in the governance of the universal Church.

#### 5. The Period of Codification (20<sup>th</sup> century).

Vatican Council I (1869-1870), convoked by Pope Pius IX, approved constitutions on faith and revelation and on papal infallibility. On the agenda was also the reform of canon law, but this issue never came to the attention of the council fathers since the council itself was interrupted by the entrance of Vittorio Emmanuele into Rome.

Pope Pius X was the next person to undertake this task of needed reform in the Church's legal texts. On March 19, 1904 he announced the establishment of a commission of cardinals who would gather all of the current laws of the Latin Church into a single, authoritative collection. This was a monumental task and one that took years to complete. Pietro Gasparri, the general secretary of the commission, did much of the work. Nevertheless, the process involved both scientific research and pastoral consultation with bishops and religious superiors throughout the world. On Pentecost Sunday, May 27, 1917, Pope Benedict XV (the successor of Pope Pius X) promulgated the resulting *Codex Iuris Canonici*, the first Code of Canon Law for the Latin Church. This Code went into effect one year later, on May 19, 1918.

The Code of Canon Law abrogated all other extant universal canonical legislation for the Latin Church. It contained 2,414 canons and represented the most radical revision of Church law ever. This Code was well rooted in the Church's long and complex history, as it contained over 25,000 citations of earlier texts. The canons were divided into 5 distinct books, ordered by material:

I. General Norms	canons 1-86
II. Persons	canons 87-725
III. Things	canons 726-1551
IV. Processes	canons 1552-2194
V. Crimes and Penalties	canons 2195-2414

Pope Benedict XV also sought to preserve the clarity of the new Code by establishing the Pontifical Commission for the Interpretation of the Code of Canon Law. This permanent commission would authentically interpret any questions pertaining to the correct interpretation of the Code, since the Pontiff knew that such questions would inevitably arise. But it did not take long before the interpretations clarifying (and sometimes modifying) the canons became a printed volume larger than the Code itself. Additional legislation was also being promulgated, such as *Provida mater Ecclesia*, from the Congregation for the Sacraments. The continued need for renewal and reform was seen, especially by Pope John XXIII.

When Pope John XXIII announced his intention to convoke the Second Vatican Council, he also announced his intention to establish a Pontifical Commission to revise the Code of Canon Law. He waited to appoint the first members of the Pontifical Commission to revise the Code of Canon Law until March 28, 1963, well after the completion of the Council's first session. He did this to ensure that the newly revised Code of Canon Law would be a direct result of the Council. Pope John XXIII died in June of 1963 and his successor, Pope Paul VI took up the challenge of both the Council and the new Code. The Pontifical Commission to revise the Code first met in November of 1963 and determined that they would suspend activity until the completion of the Council. The President of the Commission was Cardinal Pietro Ciriaci (1963-1966), and 70 consultors were appointed to assist the

Cardinals of the Commission in April of 1964. It was not until November 20, 1965, a few days before the conclusion of Vatican Council II that the actual work of the Commission began.

At this opening session of the Commission, Pope Paul VI set the tone for the revision process by noting the close relationship of the Council to the new Code. He noted, “Now, however, with changing conditions – for life seems to evolve more rapidly – canon law must be prudently reformed; specifically, it must be accommodated to a new way of thinking proper to the Second Ecumenical Council of the Vatican, in which pastoral care and new needs of the people of God are met.”

In many ways, Pope Paul VI is seen as the “father” of the revision (although it was his predecessor who called for the revision and it was his successor who promulgated the new Code), and it was he who was the “major architect” of the new law. During his 15 year Pontificate, Pope Paul guided the revision process and gave it his own keen insights. He spoke at length on several occasions about the inter-relationship of Church law and the life of faith; between Church discipline and the role of the magisterium. He often linked the revision of Church law to the teachings of the Council, by noting that the new law must “formulate in concrete terms the deliberations of Vatican Council II” (1964); “accommodate canon law to the new way of thinking of Vatican Council II” (1965, 1973); and “express more clearly the doctrinal and disciplinary thrust of the Council” (1970). This same thrust was continued by Pope John Paul II, as he noted that the new law should: “form an instrument to implement the directives of the Council and to realize the fruits desired by it” (1979); and “bring the Church’s legislation into harmony with the broadened understanding of the Church as found in the Vatican Council” (1981).

In January 1966, the consultors of the Commission had been organized into 10 different study groups to work on different sections of the law, and in the same year the second President of the Commission was appointed, Cardinal Pericle Felici (1966-1982). In April 1967, the Commission developed 10 principles, which would guide the entire revision process. These principles were then approved by the 1967 Synod of Bishops meeting in Rome. These 10 guiding principles were as follows:

1. The code was to retain its juridic identity.
2. The code was to maintain but harmonize the relationship between the external and the internal fora, reducing conflict between them to a minimum.
3. The code should focus on pastoral care and laws should be characterized by a spirit of charity, temperance, humanness and moderation. Norms should not be too rigid, and they should allow a reasonable amount of discretionary authority for the Church’s pastoral leaders.
4. The code should present the office of bishop in accord with the norms given in the conciliar decree “*Christus Dominus*, 8. Bishops should have the faculty of dispensing from the general laws of the Church except when specific things are reserved to the Holy See.
5. The code should be guided by the principle of modified subsidiarity, balancing the need for a unified system of law for the universal Church while also allowing greater weight to be given to particular legislation so that the unique characteristics of particular Churches will be apparent.
6. The code should acknowledge and protect the rights of all the Christian faithful so that the use of power in the Church does not become arbitrary. All in the Church possess the same fundamental rights by reason of their baptism in Christ, by which all share a common and equal identity. Both rights and duties should be clarified by this new code.
7. The code should also provide the means to protect, safeguard and foster the rights of the People of God by legal recourses that exist to remedy the violation of such rights. This goal should be pursued especially in the area of administrative recourse by establishing administrative tribunals and by clarifying the rules of administrative procedures.
8. The code should retain the basic principle of territorial jurisdiction. Nevertheless, serious circumstances may justify non-territorial jurisdictional determinants, especially by reason of liturgical rite or ethnic origin.
9. The code should reduce the number of ecclesiastical penalties, and their remission should occur in the external forum. Also, *latae sententiae* or automatic penalties should be reduced to a minimum and restricted to only the most serious matters.
10. The code should have a completely new structure, order and arrangement of material. This order should be based on the mind and spirit of the conciliar decrees.

The different study groups of the consultors, consisting of bishops, priests, religious and laity, prepared drafts for their respective areas of the new law and circulated these drafts (or schemata) for input to bishops conferences throughout the world, the Union of Superiors General of religious and secular institutes, agencies of the Roman Curia, and pontifical universities and faculties. These groups offered their critiques and suggestions to the Commission, who in turn, studied these comments and revised their drafts as needed. By the end of 1978, all of the results were gathered by the Commission. The amended second drafts were then coordinated, the canons placed in numerical order and a one-volume draft was produced by June of 1980. New members were added to the Commission (to provide additional input) bringing the total number to 74. Members from the United States included: Cardinal John Krol, Cardinal John Cody, and Archbishop Joseph Bernardin.

On July 16, 1981, a *Relatio* or written report of the Commission was formulated. The 1980 draft of the new code plus the proposals of the *Relatio* formed the basis for the last full session of the Commission. Included in this *Relatio* were 38 canons, taken from the latest draft of the *Lex Ecclesiae Fundamentalis* (1980), which was meant to provide the “fundamental law” (a type of “constitution”), for the entire Church, and the document that was meant to link together both East and West. In May of 1981, the draft of this *Lex Ecclesiae Fundamentalis* was submitted to the Pope for his consideration. However, by July 1981, it became clear that this document would not be promulgated as a distinct and separate document linking East and West, but that its material (especially that concerning the rights and obligations of the Christian Faithful) would be incorporated into the code itself.

The Commission for the Revision of the Code of Canon Law met for the last time in full session in Rome, from October 20-28, 1981. Cardinal Felici presided at these meetings, one of which was attended personally by Pope John Paul II. Forty-one different agenda items were discussed at this plenary session of the Commission and at the end of the session, the Commission members voted unanimously to present an amended version of the canons to the Pontiff for consideration and promulgation. The formal presentation of the final draft of the new code was made to Pope John Paul II on October 29, 1981. For one year, the Pontiff personally studied the proposed code with his canonists, stating that he wanted to know the law that he would be promulgating. During this year, Cardinal Felici died and was succeeded by Archbishop Rosalio Castillo Lara. The Pontiff made several changes (some say as many as 200 or more) in the proposed new law before promulgating it on the feast of the conversion of St. Paul, January 25, 1983 – 24 years to the day that Pope John XXIII had announced that the revision process would begin. The new code was given a *vacatio legis*, a “vacation” period of 10 months, during which time the obligation to observe the new law was suspended to allow adequate time to study and come to know the new law. On November 27, 1983, the first Sunday of Advent, the new Code of Canon Law went into effect, and the first Code of Canon Law, promulgated 66 years earlier, was abrogated (ceased to be binding).

## II. The Structure of the New Code of Canon Law

The current Code differs quite clearly from the 1917 Code in its structure and ecclesiological perspective upon which its structure is based. The 1917 Code was a clear juridic expression of Vatican Council I, which had preceded its drafting, and the 1983 Code is likewise a clear juridic expression of Vatican Council II, the Council which had immediately preceded it. In Pope Paul the VI’s terminology, the new Code reflects the “new way of thinking” (the *novus habitus mentis*) of the Council. The canons of the new Code are organized into 7 distinct Books as follows:

I. General Norms	canons 1-200
II. The People of God	canons 201-746
III. The Teaching Office of the Church	canons 747-833
IV. The Office of Sanctifying in the Church	canons 834-1253
V. The Temporal Goods of the Church	canons 1254-1310
VI. Sanctions in the Church	canons 1311-1399
VII. Processes	canons 1400-1752

The main contents and highlights of each of these Books are as follows:

### Book I – *De Normis Generalibus*.

This Book treats of basic juridic principles common to all the canons of the Code, and it gives definitions and general norms applicable throughout the law. This Book defines the limits of the Code, defines and discusses

Ecclesiastical Laws, the role and limit of Custom, General Decrees and Instructions, Individual Administrative Acts, Statutes and Rules of Order, Physical and Juridic Persons, Juridic Acts, the Power of Governance, Ecclesiastical Offices, Prescription, and the Computation of Time.

Book II – *De Populo Dei*.

This is the longest Book of the current Code and takes its title from Chapter 2 of the conciliar document, *Lumen Gentium*. It is divided into 3 major Parts: (1) the Christian Faithful (canons 204-329) – concerned with the role of all the baptized in the Church. It contains the rights and obligations common to all members of the Church as well as those, which pertain to the laity and clergy specifically. It also looks at Personal Prelatures and Associations of the Christian Faithful. (2) The Hierarchical Constitution of the Church (canons 330-572) – concerned with the identification and role of authority within the Church. This section treats the Supreme Authority in the Church (the Roman Pontiff, the College of Bishops, the Synod of Bishops, the Cardinals of the Church, the Roman Curia, and Legates of the Roman Pontiff), as well as Particular Churches and their Groupings (Dioceses, Ecclesiastical Provinces and Regions, Diocesan Consultative Bodies and Diocesan Personnel). (3) Institutes of Consecrated Life and Societies of Apostolic Life (canons 573-746) – concerned with norms governing the various ways of living out a public consecration of life (as a member of a Religious Institute, a Secular Institute, a member of a Society of Apostolic Life, a Hermit, or a member of the Order of Virgins).

Book III – *De Ecclesiae Munera Docendi*.

This Book examines the Church's teaching mission, especially as accomplished in the Ministry of the Divine Word (preaching and catechesis), the Missionary Activity of the Church, in Catholic Education, through use of the Instruments of Social Communication (especially, books), and by the Profession of Faith.

Book IV – *De Ecclesiae Munere Sanctificandi*.

This Book first examines each of the 7 Sacraments of the Church, beginning with the 3 Sacraments of Initiation and ending with the 2 vocational Sacraments, Holy Orders and Marriage. The Book then treats Other Acts of Divine Worship (Sacramentals, the Liturgy of the Hours, Funeral Rites and the Veneration of the Saints, Sacred Images and Relics), as well as Sacred Times and Places (Churches, oratories, chapels, shrines, altars, cemeteries, and days of feast and penance).

Book V – *De Bonis Ecclesiae Temporalibus*.

This is the shortest Book of the new Code and it examines primarily the Acquisition of Ecclesiastical Goods, the Administration of those Goods, Contracts and Acts of Alienation, and Pious Wills and Foundations.

Book VI – *De Sanctionibus in Ecclesia*.

This Book first treats Offenses and Penalties in General, Those who are subject to Penal Actions, Specific Penalties and other Punishments (including censures, expiatory penalties, penal remedies and penances), the Application of Penalties, and the Cessation of Penalties.

Book VII – *De Processibus*.

This Book treats of Trials in General (including discussion of the Competent Forum, Various Grades and Kinds of Tribunals, the Discipline to be observed in Tribunals, the Parties in a Case, Actions and Exceptions), the Contentious Trial, Certain Special Procedures (including Matrimonial Procedures, Cases for Declaring Nullity of Sacred Ordination, and Methods of Avoiding a Trial), Penal Procedure, and the Process to be used in Administrative Recourse and in the Removal and Transfer of Pastors.

Certainly, within this structure we can clearly see the influence of the Second Vatican Council upon the new Code. The conciliar principle of *communio* is highlighted in this structure by changing the title of Book II from “Persons” (a treatment of individuals) to “The People of God” (a community of persons). The conciliar emphasis on the common right and duty of all the members of the Church to fulfill the *triplex munus Christi*, namely the 3-fold office of Christ (the priestly, prophetic and kingly office), finds its place in this new structure by the titles of Books III, IV, and V – the teaching office, the sanctifying office, and the governing office.

The renewed ecclesiology of Vatican Council II, juridically reflected in the new Code of Canon Law, must also provide the basis for a renewed means of interpretation for the law. As Pope Paul VI noted to the officials of the Roman Rota on February 4, 1977, “The revision of the new Code of Canon Law cannot consist solely in the correction of the former one, by arranging the contents in proper order, by adding what it seems appropriate to add, and omitting whatever no longer applies. Rather, after the celebration of the Second Vatican Council, the new Code must prove to be an instrument most finely adapted to the life of the Church.”

### III. A Summary of the Important Characteristics of the New Code.

The revised Code serves to reflect, in juridic terms, the current theological understanding of the Church and it seeks to provide order and balance both within the ecclesial community as well as in the relationship of the Church to the world. Some of the most important developments contained in the current Code include:

1. The clear understanding and presentation of the Church as a *communio*, “The People of God.” All members of the Church are called to live out their baptismal identity and to carry out the mission of Christ as priest, prophet and king. All share a common and equal identity, dignity and mission.
2. The clear listing of the common rights and obligations that all members of the Church share by reason of their common baptism and confirmation.
3. The new and expanded role of the laity (and particularly of women) in the Church.
4. The clear emphasis now placed on the role of service that persons in authority fulfill in the Church. Positions of authority are positions of service.
5. The emphasis which now is apparent on the Particular Church as a “portion of the people of God” and the importance of the role of the diocesan bishop and particular law in the community.
6. The promotion of the value of subsidiarity within a hierarchical communion.
7. The importance of consultation within the new Code and the emphasis placed on the structures of consultation, especially within the Particular Church and the Parish.
8. The emphasis on responsible stewardship and accountability with regard to temporalities.
9. The centrality of the Sacraments and sacramental life in the Church.
10. The limited and restrained use of penalties in the Church, most of which are medicinal in nature.

This Code is a contribution to the present day Church, which is likely to require on-going reform and evolution. Eventually, this Code will be reformed and revised and abrogated like its predecessor. However, for the present, this Code accomplishes a very important task in the Church. It cannot provide innovation, nor can it resolve all of the Church’s ills. Nevertheless, the Church’s current Code does provide the limits and the context within which we, as a People, are called to “put on Christ.” It reflects, at least for this moment in history, the Church’s own image of itself.