

REVISION OF CANON LAW

Edited by

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and Enrico Galavotti

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Editorial

Canon Law at the Crossroads

Canon law is a practical legal instrument to serve the life of the people of God. It does this by providing an order that lays down rights, duties and procedures, so that life in the community of faith can take place in communion, and in the spirit of the gospel and according to the demands of justice. But we should not forget that the community of the faithful is a pilgrim people on the move, with a dynamic faith that seeks to deepen the understanding of the Word of God and put it into practice. The theological, pastoral and spiritual challenges thrown up by Vatican II became, obviously, a challenge to the formulation of laws for the life of the Church. The new Code of Canon Law promulgated in 1983 was followed by the Code of Canons of the Eastern Churches in 1990. We need to acknowledge the enormous amount of work done by the respective commissions over several years to bring out these Codes; it involved a lot of discussions, debates, harmonization and even compromises between opposing positions.

More than three decades have elapsed since the Code of 1983 was promulgated, and during this period confronting the actual life-experience of the people of God has also brought to light several critical questions, demanding significant revision, abrogation and amendments that would correspond more closely to the teachings of the Council and to the signs of the times. They have become necessary for a more attentive dispensation of justice and exercise of freedom. The great programme of *aggiornamento*, set in motion by Pope John XXIII on the eve of the Second Vatican Council, applies to every field in the life of the Church, including the laws that govern its life. It is the spirit of *aggiornamento* and sensitivity to the needs of our changing times that prompted *Concilium* to prepare an issue dedicated to the question of law in the Church. The main articles of this issue are divided into three parts – the first considering history and principles; the second highlighting some areas requiring urgent reforms; and the third dealing with the issues of application.

The first contribution by Wim Decock, written from a historical perspective, acknowledges the momentous contribution canon law has made in the past to the good of the Church and highlights as well its influence on the development of civil law. The Brazilian canonist Jesus Hortal examines critically to what extent the Code of Canon Law of 1983 resonates with the ecclesiology of Vatican II. Rik Torfs, for his part, looks at the present Code from the formal perspective of law and highlights some lacunae in the Code which could compromise its function as a legal instrument. Felix Wilfred sees theology and canon law as partners accompanying the people of God on their journey; this calls for continuous dialogue among these two disciplines with their distinct methodologies. He shows with examples how theology could be of assistance to canon law in reading the signs of the times and in formulating and re-formulating laws. Of fundamental importance would be a dialogue between theology and canon law on the distinction of *ius divinum* and ecclesiastical law, given the not so infrequent fluidity of borders between the two as evidenced by ecclesial history. In order to take forward the agenda of ecumenism, inspired by the rich heritage of Oriental Churches, George Nedungatt calls for greater clarification on the role of the Bishop of Rome and his exercise of supreme power. Closer ecumenical relations would require also a critical review of priestly celibacy, and the place of women in the Church.

Part Two starts with the contribution of Peter G. Kirchschräger who argues from theological and ethical points of view why human rights need to be integrated with laws in the Church, and indeed should form the point of reference for the latter. Since human rights have strong biblical and theological foundations, this integration and reference should not be difficult. If we take seriously the ecclesiology of the people of God of Vatican II, the laity cannot be excluded from the office of governance in the Church as the present Code does. This is the point Sabine Demel argues in her contribution. The power of governance of the laity needs to be affirmed as it is based on the constitutional principles of the Church itself as envisaged by the Council. The author has formulated new canons on the laity, by way of proposals, which vibrate with the spirit of the ecclesiology of Vatican II. Hildegard Warnink examines the *motu proprio* 'Mitis Iudex Dominus Iesus' promulgated by Pope Francis in 2015. While it largely does away with a second instance in declaring nullity of marriage, and has

made a shorter procedure with the diocesan bishop as principal agent, it has also many pitfalls and is not devoid of ambiguities.

In Part Three, which relates to application, Vincenzo Mosca tells us what inculturation of canon law means and also indicates some of the ecclesial agents, institutions and structures of today which could facilitate this process by formulating laws responding to the needs of the local churches. Burkhard J. Berkmann in his article critically questions the double standard of expecting subsidiarity in the social teaching and the reluctance, if not refusal, to accept the same in the governance in the Church. According to him, besides its theological significance, the principle of subsidiarity could also provide an anthropological foundation to canon law. Reflecting from the perspective of application, Al. Andang L. Binawan critically questions the present canons relating to inter-religious marriage. The present provisions not only do not reflect the spirit of inter-religious dialogue, but also prove almost impossible to practise in an Islamic country like Indonesia. Robert Kamangala Kamba, on his part, examines from an African perspective the lacunae in the present Code, and reflects on how a reformed Code might look when it incorporates the concerns of Africa.

These contributions seem to imply the need for a new Code. The projected new Code of Canon Law will not be simply a window-dressing and some modifications and changes here and there, but a radical one. For the deeper question with canon law is the conception of power in the Church. As a religious institution the way the Church understands the power from God and the agents and structures connected with it need to undergo a radical transformation. At a time when a particular political theory claimed that the king derived his power directly from God (divine right of kings) to support monarchical absolutism, theologians like Francis Suarez challenged such a position by arguing that the power of God resides in the people. Are we to assume that God acts differently with God's people making up the community of the Church? All the ministers without exception are servants ministering the people whom God has empowered and has endowed with gifts that could be channelled for common good through appropriate means and structures reflecting the spirit of the gospel. Monarchical and feudal models of power are not what Jesus meant for his disciples, many of whom were simple fishermen of Galilee. We need to start to reflect on power from other premises than the

prevailing ones in the Church. If we start from the relationship of God to God's people in terms of power, we could hope for a radically transformed Code. Is not then canon law really at an intersection, at the crossroads, having to decide whether it wants to stick to conventional understanding of power in the Church, or see it closely in relationship to the divinely empowered community of God's people? Here is also a common task for the future, both for canon law and theology.

The Theological Forum of this issue features a brief article by Johann Baptist Metz, one of the founders of our journal. In his contribution, Metz asks us to reconsider our thinking about the relation between God and time. While the biblical narratives were never intended to be *timeless* – they always dealt with concrete experiences *in time*: oppression, injustice, struggles for liberation. Metz finds mainstream theology most of the time talking about eternity, eternal values, and the eternal God. And he asks: Does this kind of theology truly grasp something of the biblical God who is, above all, *God in time*? Is Christian thinking, then, doing mythology rather than theology? Nobody can understand Christ *theoretically*, in terms of timeless categories. Christ can only be understood by following his footsteps, diving into the real struggles of the world we live in. So Metz challenges us not to pretend that we already live in the realm of eternity, but to live and think as *temporal* beings in a world that has its beginning and ending in God. In doing so, Metz points to a future for theology that does not claim to 'know all' about life, but to be 'all solidarity' with all of humankind – that is, to be truly Christian.

The issue ends with a tribute by Carlos Mendoza-Alvarez to Virgilio Elizondo, a highly esteemed former member of the *Concilium* editorial board who has made a significant contribution to liberation theology, into which he brought the issue of *mestizo* – hybridity.

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