

# philippine studies

Ateneo de Manila University • Loyola Heights, Quezon City • 1108 Philippines

---

## **Canan Law Today - Revision Renewal, or Reform?**

Samuel R. Wiley, S.J.

*Philippine Studies* vol. 20, no. 3 (1972): 379–398

Copyright © Ateneo de Manila University

---

Philippine Studies is published by the Ateneo de Manila University. Contents may not be copied or sent via email or other means to multiple sites and posted to a listserv without the copyright holder's written permission. Users may download and print articles for individual, noncommercial use only. However, unless prior permission has been obtained, you may not download an entire issue of a journal, or download multiple copies of articles.

Please contact the publisher for any further use of this work at [philstudies@admu.edu.ph](mailto:philstudies@admu.edu.ph).

<http://www.philippinestudies.net>  
Fri June 30 13:30:20 2008

# Canon Law Today—Revision, Renewal or Reform?

---

SAMUEL R. WILEY, S.J.

A superficial view of what is actually occurring in many areas of the Catholic Church today might easily lead to the conclusion that there is no longer any place at all for canon law in the Post-Vatican II Church. Such an inference might well be drawn from a type of statement made before canonists by a scripture scholar who opined that "There are reasons for doubting that the principle of law has a meaningful function in the Christian life."<sup>1</sup> However a closer look at the situation might reveal that the opposite is the case—that within the community of the faithful law still has its role to play but it will certainly not be the same as its role in the recent past. Consequently it is apropos to raise the question, "Where is Canon Law going? Is there to be a simple revision of the Code of 1917 or a radical renewal based on different principles?" Some answers to these questions may emerge from what is actually occurring in the life of the Church as it confronts a rapidly changing modern society whose values have undoubtedly had a profound effect on its own members.

It must be recalled that Canon Law is preeminently a practical science. As a practical science it evolves from the actual life of the Church. It is not something which preexists or predetermines that life *a priori*. Therefore Canon Law if

---

<sup>1</sup>Cf. John L. McKenzie, S.J., "Law in the New Testament," *The Jurist*, vol. 26 (1966), p. 178.

it is to be at all vital, must be consequent upon the theological understanding of the Church at a given period of history coupled with its institutional necessities. The law then represents a structured effort to bridge these two elements— theological reflection and Christian life in a communal setting. Thus in the Middle Ages the theology of the scholastics furnished the basic principles of the system which in turn was concerned with the development of resources both personal and material to meet two needs,—the maintaining both of a corporate witness and of a personal apostolate. The legal instrument chosen by the medieval church to bridge these two polarities was the Roman Law as it was then being rediscovered and developed particularly in the University of Bologna.<sup>2</sup> A cursory consideration of the Code of Canon Law of 1917 will reveal that the same fundamental forces were at work. The theology which had peaked in the Church at the time was the theology formulated by the Councils of Trent and Vatican I. The two taken together revealed a Church that was strongly defensive in its theological posture and highly centralized as a result of its definition of papal infallibility. This theological stance chose as its juridical instrument a new legal system, that of the code law of the modern national states. The clear, crisp and unequivocal laws of the modern code system provided a legal structure that was remarkably suited to the centralist tendencies of the Church of that era. Moreover it was the first thorough overhaul of the Church's juridical apparatus since the Decree of Gratian in the twelfth century. Cardinal Gasparri, faithful to his charge to provide the Church with a codification of existing law, for the most part did just that. There emerged the neat five-book Code which appeared to cover every aspect of the Church's life. Unfortunately it incorporated in its canons much that was already obsolete and hardly relevant to the changed social condition of the times. The result was that there emerged in 1917 a Code of Canon Law that was admirable in format and clarity but which often failed in the most basic quality of law; it was impossible of

---

<sup>2</sup> Cf. Robert E. Rodes, Jr., "The Canon Law as a Legal System—Function, Obligation, and Sanction," in the *Natural Law Forum*, vol. 9, pp. 45-94.

practical application in large sections of Christendom. There is little difficulty in proving this assertion today, although it would have been unacceptable at the time of its promulgation. One proof of the inadequacy of the Code to fulfill its function is to be found in the fact that it failed to provide for the missionary needs of the Church. Consequently an entirely independent source of law grew up parallel to the Code and often at variance with it in order to meet the missionary situation in Africa and the Far East. These norms were largely embodied in the activities of the Sacred Congregation for the Propagation of the Faith, under whose exclusive competence the Church of the missions evolved its own norms.<sup>3</sup> The second area of inadequacy was that vast region which was formerly the territories of the Spanish and Portuguese "*conquista*," all of Latin America and the Philippines. Officially and possibly for certain reasons of prestige or vested interests, dioceses of these regions were under the common law of the Code. But their realistic pastoral situation was more often than not that of a missionary region. Despite four hundred years of Christianity, these areas were not self-sufficient in clergy or in material resources. Special plenary Councils were held to try to meet their needs, but even these extraordinary measures failed to provide for the situation.<sup>4</sup> An example of the type of problem presented by these areas of the Church could be seen in the problem of setting up a diocese. The Code of Canon Law called for certain requisites in a new diocese. Ideally speaking, a diocese or local church to be capable of being such, should have had the basic potential to meet its own needs

---

<sup>3</sup> Among others treating of mission law explicitly is George Vromant, *Jus Missionarium*, 5 volumes, Desclée de Brower, Paris.

<sup>4</sup> Cf. "Missions" in *Sacramentum Mundi*, vol. 2 (Taiwan edition), p. 61 which states: "... Basically it (Latin America) was to remain, as is now recognized, in need of missionary support." Special Plenary Councils were held to try to supply for the special needs of these regions. Among these were the Plenary Council for Latin America, Rome, 1899; First Provincial Council of Manila, 1907, First Plenary Council of the Philippines, which terminated its sessions in 1953 but was only promulgated in 1956. It is negatively instructive in its almost word for word repetition of the Code and its failure to come to grips with any suggestion for radical reform.

for personnel, curial staff, seminaries, marriage courts, etc. The erection of a new diocese often placed a burden on the local Christian populace which it was unable to bear. Thus in a sparsely staffed territory, where one parish priest ministered to a scattered group of baptized Catholics which averaged 25,000 souls, and often went as high as forty or sixty thousand, the need of forming a curia immediately subtracted several competent priests from the direct pastoral ministry. Since it was a full diocese, a minor and major seminary was demanded by the Code itself.<sup>5</sup> Thus a heavy financial burden was placed on a poor church. And even had the finances been available, there were not enough trained clergy to administer and teach in most diocesan seminaries. The same situation prevailed in the case of the matrimonial tribunals. These demanded not only a sufficient number of priests, but specially trained priests and there were very few dioceses who could muster the needed qualified clergy for this specialized task. The result was evident. Marriage cases either were not processed at all, or took years to achieve a solution, not necessarily because of the ill-will of those involved, but because more pressing matters absorbed most of their concern. The particular needs of a nullity case, which was both detailed and time-consuming, simply fell far down the scale of practical priorities. Emergency measures were taken by the Roman authorities to try to solve the problem. Thus in the Philippines, matrimonial courts were set up in the metropolitan sees, but with one or two exceptions, this legislation was not implemented in most ecclesiastical provinces.<sup>6</sup> So again the law itself was unrealistic and failed to provide for the practical realities. It seemed that no one either in the local episcopate or in the Vatican bureaucracy was willing to face the situation realistically and admit that the legal system of the Code was functionally inadequate for many areas of the Church. One could conclude quite fairly that the Codification of Canon Law in 1917 was a superb legal accomplishment in the abstract. But it was a case of too little,

---

<sup>5</sup> Cf. Can. 1354, 1 and 2, on the requisite for seminaries; canons 363 ff. on the diocesan curia, etc.

<sup>6</sup> Also the Decree of the S. Cong. of the Sacraments erecting special matrimonial tribunals in the Philippines, *AAS*, 39, p. 163.

too late. The failure of the Church to have organized its legal system much earlier had resulted in the production of a set of norms which could not cope with an industrialized society, the rapid population growth and the human disasters accumulated as the result of two world wars. It was in response to these patent needs and above all to the need of a more relevant manner of proclaiming the gospel that Pope John summoned a general council of the Church. At almost the same time, he also manifested his intention of updating the Code of Canon Law. In this he proved himself to be both theologian and historian. The Council itself resisted all attempts to make it a legalistic exercise and in all major documents pointedly avoided juridical terminology and resolutely refused to be diverted from its pastoral objectives.

There is sufficient evidence of a climate of antijuridicism which was present in the Council itself and which continues to haunt the post-conciliar Church. The reasons for this attitude are to be found in the nineteenth century ecclesiology which revolved around the juridical idea of the "perfect society" desired by Christ which in turn called for a juridical ordering similar to that of the secular State.<sup>7</sup> Thus it came about that theological elements were compressed into a theoretical and practical idea of the Church which was essentially socio-juridical. This provoked strong criticism among Orthodox and Protestant Christians who described it as a naturalized and secularized Church, a criticism which was certainly taken into account in the rejection of the first draft of the Constitution on the Church and which played an important part in the content of *Lumen Gentium*. As a result there is much rethinking being done on the theological basis of Canon Law. Nor is there any doubt that within the Catholic community itself today, there are at least three different attitudes toward the use of law.

The first attitude is that of the older clergy (both bishops and priests) and some of the laity. It is the traditional Ro-

---

<sup>7</sup> Cf. Paul Winninger, "A Pastoral Canon Law;" *Concilium*, vol. 8, n. 5 (1969), pp. 28-34.

man curial outlook still strongly entrenched in Vatican circles. Brought up on the simple clarity of the Code, and deeply imbued with the theological positions of Vatican I, this group has resisted very strongly the implementation of many of the principles of Vatican II. Its adherents are especially fearful of a watering down of papal authority and have not really conceded the principle of subsidiarity embodied in so many documents of the last council. Hence they would want to see a revision of the present Code, imposed from the top and sufficiently detailed so that the task of the lesser administrators is simply to carry it out. It was such a mentality which fathered the ill-conceived *Lex Fundamentalis* and it still represents a large grouping, perhaps even a majority grouping in the body Catholic.

The second attitude is that shared by many of the younger clergy and progressive canonists who look for a more responsive law—a Church order which comprises only the most general of principles on the universal level and leaves to the local regions and dioceses the future spelling out of details as they become necessary.<sup>8</sup> This group would prefer to work out the life situation of the Church on the basis of the conciliar documents and as experience is gained, gradually to frame a series of laws which would arise out of successful experimentation. Representatives of the opinion would comprise prelates like Cardinal Suenens, the majority of the Dutch hierarchy, not a few members of the Latin American hierarchy, canonists of the Concilium series like Huizing and of the Bologna Institute, like Alberigo and members of the American Canon Law Society. This group well understands that there is a need for law but that it is too early to freeze such emerging structures as the Synod of Bishops, the Priests' Synodes and Pastoral Councils. More time must be given them to develop the characteristics that would truly respond to the actual needs of the church. Just as the Constitution on the Church has broken out of the state image of the "Church-entity" and has emphasiz-

---

<sup>8</sup> An example of such an attitude can be found in "Towards Constitutional Development within the Church," *The Jurist*, vol. 28 (1968), pp. 5-9.

ed the dynamic nature of the Church as a People of God on pilgrimage, so too would this group point out the need of a canon law which is ever dynamic and reformable and constantly responding to the changing society in which the Christian people find themselves. Its failure to do this in the past has brought odium on the role of Canon Law because it has been and in some cases still is an obstacle to renewal in the Church.

This brings into the limelight a third attitude which has developed more recently among Catholics. Not so discernable in the mission churches or in the homogeneous traditional Catholic communities, it is nonetheless a growing band elsewhere, particularly in the permissive and open societies of the industrialized world. It is especially evident in the university world even in such traditionally Catholic areas as the Philippines. This group is composed of Catholics who in frustration with the slowness of the institutional Church, have, while still considering themselves Catholics, nevertheless opted out of the formal structures of the Church. They could be termed the Marcuseans of the Catholic Church after the Marxist philosopher, Herbert Marcuse, who in the wider context of the military-industrial complex, has urged all alienated groups to join in what he terms "The Great Refusal" to cooperate in a dehumanizing system. The way to bring down the oppressive structures of modern society is to 'opt out' of the existing structures. The majority of young Catholics have probably never heard of Marcuse or read his works, but an entire age group, roughly from 15 to 35 years of age, is moving out of the structured Church and has simply ceased to care about the matter. Neither of the solutions proposed above seem attractive to them because they have lost faith in the system itself. Some undoubtedly have simply lost the faith, but this is not the problem of the majority for they still wish to be Catholics and to be known as such.

The importance of the phenomenon merits a brief digression for it is intimately connected with a growing attitude toward all use of law within the Church. The so-called Marcusean Catholic is mainly although not wholly represented among the younger members of the Church. But the fact



that they are young is not a reason to consider their opinion as negligible; for our young people hold the prospect of the future—something which older Catholics, both cleric and lay, tend to forget when they insist on heightening polarizations. What is the thinking of this type of Catholic? For most of them the uniformed clergy, the pectoral cross, even the parochial school are all empty symbols of a world that is past—a world which they simplistically classify as feudal.<sup>9</sup> They concede that it was a world good for its time, but the times have rendered it obsolete. When conservative clergy and elders refuse to consider any prospect of change, they no longer argue the matter; they simply adopt the philosophy of Marcuse and opt out. Perhaps after considerable pondering on the values of the gospel, they feel that they can no longer reconcile its demands with the traditional structures. Gradually they realize that they are unable to affect change in the power centers of the Church, the episcopate and the Vatican, and so they choose the simpler yet more devastating path of dropping out. And if one asks why is it that so many children of traditional Catholic homes react in this way, Theodore Roszak declares in his popular study, "The Making of a Counter-Culture", that it is because they are part of a society wherein they recognize that "...authoritarianism in our society operates overtly or subtly at every level of life, from comic strip imagery to Christian theology, from the college classroom to the privacy of the bedroom—and they are prepared to discard the culture

---

<sup>9</sup> An interesting illustration of this polarization is seen in the recent directive of Bishop Vincent S. Waters of Raleigh, N.C. requiring his priests to wear the clerical garb under penalty of suspension. In response to the threat, the North Carolina Priests Association stated: "Church attendance and uniform dress are not criteria for Christian virtue...." The statement then drew attention to the grave problems facing this community,—racial injustice, poverty, etc. on which it felt much more could be said and done profitably, thereby implying that concern over clerical garb was a luxurious distraction that the church of North Carolina could ill afford. The Priests' Association's statement also referred with alarm to the polarization process taking place among Catholics. Cf. *The Catholic Mind* (March, 1972), pp. 4-7.

that relied on such sleazy coercion, root and branch."<sup>10</sup> The obvious reluctance of so many members of the hierarchy to act openly only serves to confirm them in their conviction.

One other effect of this development has been what is termed in American circles as "the underground Church". One may first of all question whether a local Catholic community which has an address and can be reached by a public advertisement in the paper, can rightly be termed "underground". Thus a family moving from the east coast of the United States to the middle west, sought the whereabouts of a small, intimate Catholic community with which it could join in the liturgy celebrated in homes outside the traditional parish structure. Compilations of these communities are available. Roch Caporale lectured on the characteristics and estimated numbers of such communities in a pastoral symposium held in Boston two years ago. They usually comprise a number of families in the same locality who are linked by common interest in the renewal of the Church, by an urgent local social need to which the traditional parish is not responding, and usually they share the benefits of a higher education, often being themselves the best products of the Catholic educational system. They come together to celebrate the liturgy in the home of one of the group. The celebrant may at times be a priest who is no longer officially in good standing as a cleric because he has contracted marriage. Yet the participants in these liturgies, both priest and people, do not feel any sense of guilt for violating church law. For them, the law has become irrelevant. Bishops and pastors may rant and rage, but these little communities go right ahead. Despite recent Roman restrictions on home Masses, these continue to be celebrated, again without any feeling that a legitimate command is being broken. What must be emphasized and seriously pondered by the canonist and the hierarchy is the fact that a not insignificant portion of the Catholic people,—indeed many of the best educated of the flock, no longer consider laws emanating from church authori-

---

<sup>10</sup> Cf. Theodore Roszak, "The Making of a Counter-Culture," (Doubleday and Co., 1969), p. 45.

ties as either obligatory or relevant. The situation is not one which will be remedied by the application of more laws. This might well result in eroding to a greater extent the diminishing authority of the Holy See among a fair percentage of Catholics. The wiser reaction would be to recognize that what the Church is really dealing with is a problem of pastoral theology to which our past and present system of law no longer offers a solution. It is also a problem of credibility. When a better educated Catholic laity which is perfectly competent to read and understand the basic principles of Vatican II, realizes that many in the hierarchy do not themselves understand or accept these principles and will not carry them out, then they come to look upon the lawmakers as opponents of the Gospel, and the canon law as an instrument of oppression instead of a sign of God's justice among them.<sup>11</sup>

#### A NEW FUNDAMENTAL LAW

If one were to look for proof that there is a wide gap still to be bridged between attitudes toward law in the Church today, there would be no need to look beyond the recently proposed Schema for a new Fundamental Church Law (*Lex Ecclesiae Fundamentalis*). The Bishops of the Catholic world saw the proposed text when it was sent out for their approval in February, 1971. Their vote was to be sent in to Rome by August of the same year so that it would be possible to present the Schema to the Synod of Bishops which was to meet in October, 1971. The saga of the *Lex Fundamentalis* is of some interest as it illustrates the split-level approach to conciliar principles currently operating in ecclesiastical circles. The newly proposed legislation was first suggested to the special commission for the revision of the Code as early as November, 1965 by Pope Paul VI. By 1967, several preliminary drafts had been prepared and modified. Then a special sub-committee of thirteen consultants headed by Cardinal Felici, took over the project for the Commission. The Synod of

---

<sup>11</sup> "The legal system of the Church cannot be a totalitarian regime, a regime concerned about its investment in tradition and in power," rightly says Denis O'Callaghan, in "Theology 12: Whatever Has Happened to Canon Law?" *The Furrow* (January, 1972), p. 22.

Bishops which met in October, 1967 was informed of the project and their assistance was requested. Two years later, in May, 1969, a revised version was sent to certain Cardinals and to the consultors of the Congregation of the Faith and the international theological commission. This version which was sent to the aforesaid persons under secrecy, was somehow released and an English translation of it appeared in the *National Catholic Reporter* in April, 1970. This was the first hint that the Catholic people had of the proposed new legislation. A year later, a slightly amended text was sent to all residential bishops.

Not a few bishops were quite surprised to read the 95 canons of this newly proposed legislation. If adopted it would intimately affect the life of the entire Church. Yet it had been prepared so secretly by a small circle of relatively conservative Roman canonists without consulting the wider body of the Church that its revelation provoked a strong reaction in not a few quarters. Criticism was strong and incisive.<sup>12</sup> Cardinal Suenens with his usual candor classified the document as authoritarian and excessively centralist, a negation of the principle of collegiality, a setback to the ecumenical movement—indeed a grave misrepresentation of the very nature of the Church. Certain critics have chosen to see in the secretive procedure surrounding this proposed legislation an effort to silence under the cloak of legality, theologians and bishops who would in any way disagree with the curial interpretations of the principles of collegiality enunciated in the central constitutions of Vatican II.<sup>13</sup>

---

<sup>12</sup> The actual voting of the bishops who replied to the two questions was as follows: to the first question on the 'idea' of a fundamental law in general, 593 voted *placet*, 462 voted *placet juxta modum* (i.e. approval of the idea but with strong reservations) and 251 voted *non placet*, or a flat negative. To the second question which concerned acceptance of the proposed draft, only 61 voted affirmatively, while 798 had strong reservations attached to their affirmative vote and 432 considered that no amount of amending could rescue this draft.

<sup>13</sup> On 3 November 1971, the recent Synod of Bishops took up the matter and queried Cardinal Felici and some of his committee. When Fr. van Asten, the Superior General of the White Fathers asked why

Apart from the agitated question of secrecy in its formation, more fundamental criticism has been levelled at the very attempt itself by certain theologians. Thus Karl Rahner among others would contend that the juridical sciences are incapable of formulating the constitutive nucleus of the Church which is ever evolving in response to the spirit of Christ within its members and cannot be contained by juridical definition. Others are opposed to the Schema because of its inopportune-ness. At a time when differing ecclesiologies are current among theologians, and when new practical structures are just beginning to be formed, it was felt that the acceptance of the proposed Schema would harden existing structures at levels which would limit their true potential. The points under dispute in the proposed Fundamental Law are the notions of communion, community and society, the meaning of collegiality, the participation of the laity in the task of ruling and teaching in the Church and the relationship of the Church to the State and to the society of nations. The debate over the proposed Fundamental Law may well be a blessing in disguise. It has highlighted the right of clergy and people for accurate information on basic Church policies. It is also instructive as an illustration that authoritarianism and paternalism did not die with the proclamation of the conciliar constitutions and decrees.<sup>14</sup> To have expected such a change in so short a time would be to fail to understand the human psychology that exists just as certainly in churchmen as in the rest of human kind. The hope for more responsive and collegial structures in the Church rests on a constant effort to overcome the traditional resistance to change that permeates all bureaucracy. The Catholic Church is not exempt from this weakness.

---

a document which will affect the whole Church be kept secret. Monsignor Onclin replied: "...since the document was a draft law, it could not be the concern of all the faithful; it had to be the concern of those who were competent." That should indicate sufficiently the curial attitude toward 'the whole church.' Cf. the article "The LEF is Alive and Well," *The Month* (February, 1972), pp. 35-36.

<sup>14</sup> *Ibid.*, especially the quote from Denis O'Grady.

## EMERGING STRUCTURES

Despite the polarizations manifested in the incident of the *Lex Ecclesiae Fundamental*, nevertheless evidence is plentiful enough that the seeds planted by Vatican II are beginning to fructify in the appearance of new collegial structures. Law confirms and clarifies structures that a given society deems necessary for its continuation. When older structures are questioned, then the laws that explicated them are looked upon as "oppressive," to use a current phrase. And in a certain sense, without any fault of the law itself, they are. Moreover, in a period of transition, especially in such a vast institution as the Catholic Church, change comes gradually and often not very smoothly. New collegial structures that have emerged since the Council exist on all levels of the church today and are struggling to find the cohesion and balance that are needed if they are to be truly functional.

During the second session of the Council on the occasion of the historic confrontation of Cardinal Frings and Cardinal Ottaviani, Cardinal Camara of Rio de Janeiro had suggested that some action be taken to set up a senate of bishops in Rome. This suggestion did not pass unnoticed and two years after the close of the last session of Vatican II, in the fall of 1967 the first international Synod of Bishops was held. Since then a similar meeting has taken place every two years. The last meeting of this type occurred in October, 1971 and took up two questions for study, the priesthood and world justice. The Synod of Bishops is a representative international assembly called by the Pope to advise him on matters of church policy.<sup>15</sup> Its members are drawn from the national or regional bishops' conferences in an elective process based on the number of territorial bishops that a given region may contain. Provision has also been made for a representation of the religious orders. The precise procedures for calling this body together, its nature, whether advisory or legislative, its right to set up its own pro-

---

<sup>15</sup> The definitive decree constituting the Synod of Bishops was given in a *motu proprio* of Pope Paul VI, "*Apostolica Sollicitudo*," signed on 15 September 1965. Cf. AAS 57 (1965), pp. 775-80.

gram—all these are points that are still under debate. But despite its obvious restrictions and the doubts regarding its power, nonetheless it is becoming a regular feature of ecclesiastical government which performs something of the function of an ongoing council itself, and exercises a moderating influence on the previously monolithic structure of the Roman Curia. There is still much room for development and undoubtedly as time goes on, clarification will take place. But the very fact that such a body exists and meets regularly provides the collegial forum wherein Paul can speak to Peter.

In its basic constitution on the Church, the Council gave official recognition to the existing episcopal conferences, which until then had been purely unofficial and yet necessary groupings of local hierarchies.<sup>16</sup> A strong push for their extension into all areas was provided by the Decree on the Pastoral Office of Bishops, which delineated the limits of this interdiocesan collegial body. Further norms for the composition of the episcopal conferences were given in the *Motu Proprio*, *Ecclesiae Sanctae*, which went a step further and directed that if such conferences could not be established in a single nation, the bishops of such a region should align themselves with some other episcopal conference. The development of the episcopal conferences in the Latin Church has arisen from the practical necessity of coordinated episcopal action on certain issues. Its usefulness was further proven in the working of the council itself. This particular collegial entity is a rather interesting example of how the life of the Church precedes its formulation in juridical terms. The Latin Church has thus out of sheer necessity given birth to episcopal groupings that in some ways parallel the patriarchates of the Oriental Churches. In almost every large nation or region, the actions of these bodies are indicative of the progress of a particular group of churches and the statements of many of them such as the Medellin Conference of the Latin American Hierarchy, have given a definite impetus to post-conciliar theology and ecclesial action.

---

<sup>16</sup> Cf. Decree on the Pastoral Office of Bishops (*Christus Dominus*) n. 38; the *motu proprio*, *Ecclesiae Sanctae*, 41 ff. gives the detailed norms.

On the diocesan level, the legislation of the Code did not reject collegial effort and responsibility. The diocesan synod, the cathedral chapter or its substitute, the diocesan consultors together with the vicars forane represented juridical elements that at one time were alive and functioning. But the excessive centralist tendencies of the post-Tridentine church muted their effectivity. Canon 356 had directed that a diocesan synod was to be called every ten years. Yet it imposed no obligation on the bishop who could legislate either in or out of synod. Many dioceses failed to hold synods and when they did so, often did not come to grips with the real situation. The medieval cathedral chapters also assumed collegial significance in advising the bishop. But outside of Europe their place was taken by the system of diocesan consultors, who more often than not became nothing more than rubber stamps for the episcopal will. Being appointed by the bishop they were not representative of the clergy in a true sense and instead often insulated the bishop from any ideas but his own. Thus while elements of collegiality were not lacking in the Code, they failed to meet the growing desire for more democratic ways and a surer method of sharing responsibility for the diocese with both clergy and people. Aware of this lack, Vatican II suggested the initiation of two new collegial bodies on the diocesan level. These were the Senate or Council of Priests and the Pastoral Council.

The proposed Senate of Priests and the Pastoral Council are presented as suggested means of achieving a greater shared responsibility in pastoral action on the diocesan level. Both the decree on the Pastoral Office of Bishops and that on the Office of the Priesthood mention explicitly the formation of a Senate of Priests.<sup>17</sup> These basic documents were subsequently implemented in greater detail by the *motu proprio*, *Ecclesiae Sanctae*, promulgated six months after the council. The two new diocesan bodies are presented rather vaguely in the basic documents. There are in fact few specifics. In this the Council acted wisely for it is clear that new structures need a period

---

<sup>17</sup> *Ibid.*, n. 21, b, c; also *Presbyterorum Ordinis*, n. 7 and *Christus Dominus*, n. 27.



of experimentation to test their effectiveness. Further clarification of the role of the Priests' Senate was issued in a letter from the Congregation of the Clergy on 11 April 1970 over the signature of Cardinal Wright. The circular letter emphasizes the consultative role of the Priest's Senate and then in rather curious fashion goes on to say that "questions of major significance pertaining to the sanctification of the faithful, doctrinal teaching, and diocesan government are considered by the council, *if the bishop proposes them or at least allows their consideration.*"<sup>18</sup> Once again the weakness of the new structure is apparent. Juridically speaking the bishop is not obliged to bring any particular matter before the Priests' Senate and if the terms of this circular letter were taken literally, he could inhibit the body from even discussing it. In only one instance is the Bishop clearly told that he must listen to the advice of his senate, namely, in the establishment or suppression of parishes.<sup>19</sup>

To sum up, in almost every diocese there is now a Priests' Senate or Presbyteral Council as it is also called. Despite the timidity revealed in official documents, many bishops who are conscious of the new spirit in the Church have in fact given considerable importance and even a share in legislative function to their Senate of Priests. Where conflict has arisen between the newly created Priests' Senate and the older body of diocesan consultors, it has been eliminated by the simple expedient of making the new Priests' Senate the actual Board of Consultors. There is nothing either in the Code or recent documents which forbid this solution and there is much to commend it. It will take time to re-educate both dioceses and bishops to work toward a system of greater shared responsibility.

---

<sup>18</sup> Circular Letter of the Sacred Congregation of the Clergy to the Presidents of the Episcopal Conferences on Presbyteral Councils according to the Decisions of the Plenary Congregation held on 10 October 1969, n. 8. Said letter was issued over the signature of Cardinal Wright on 11 April 1970.

<sup>19</sup> Namely in *Ecclesiae Sanctae*, n. 21. It is interesting to note the contradiction between this directive of the *Motu Proprio* and the Circular Letter which omits all reference even to this one prescribed matter of consultation.

The second instrument for collegial action on the diocesan level is the Diocesan Pastoral Council. On a certain occasion Cardinal Suenens made the dramatic statement that the greatest day in the life of the pope is not the day of his coronation but the day of his baptism. He said this not to lessen the dignity of the papal office, but rather to emphasize the rediscovery of a fundamental principle of ecclesiology which the Council had declared in its basic Constitution on the Church. It is the presentation of the Church as the People of God who form a single reality in which faith and baptism is the unifying bond. More fundamental than any distinction between hierarchy and laity is that which is common to them all—faith and baptism. All Christians are first and foremost believers, or “the faithful.” The terms layman and faithful were confused in the Code. A pope or bishop is not a layman, but he is one of the faithful by the fact of baptism. All have a mutual responsibility for the Church and pastoral efforts to bring this responsibility into practise at the diocesan level is the aim of another collegiate assembly, known as the diocesan pastoral council. Its purpose is to offer the bishop a very necessary opportunity to listen to the Spirit in the fulfillment of his office in a structure wherein priests, religious and laity may exercise their proper prophetic role. *Ecclesiae Sanctae* declares that the function of the pastoral council is to investigate everything that pertains to pastoral activities, weigh them carefully and then set forth the practical conclusions for the life and action of the people of God.<sup>20</sup>

To achieve this aim, the pastoral council must have a balanced membership, the majority of whom would be elected on a proportionate basis by clergy, religious and laity. Certain diocesan officials would be members ex-officio while some provision would have to be made for the appointment of a certain percentage by the bishop to provide the needed technical or professional opinion that might be required. A term of office should be set for both members and officers. This body might also act in the capacity of a fiscalizing group to whom an account of diocesan finances could be given.

---

<sup>20</sup> *Ibid.*, n. 16.

Pastoral councils are not limited to dioceses although they should certainly begin there. The entire Catholic Church of the Netherlands held such a council in 1967 after two years of exhaustive preparation. The general assembly comprised 150 members including all the bishops, a central committee and representatives of both clergy, religious of both sexes and laity of all the dioceses involved. Delegates of other Christian churches were invited as members without vote. While not a perfect effort in every respect, it cannot be denied that it succeeded in gaining opinions from below in such wise that a much more democratic model of administration was attained.

A less ambitious but fairly successful effort of similar scope took place last year in Mindanao, the second largest island of the Philippine archipelago. Mindanao has a population of more than 9 million people of whom almost 7 million are Catholics. Planning for this conference began a year in advance with statistical and sociological studies being made of personnel, institutions and needs. Position papers were prepared and given to all delegates well in advance. Clergy, religious and laity from all the dioceses and prelatures were present. The laity were encouraged to speak out and they did. The simplicity and openness of the bishops was immediately sensed by all present and this itself provided the atmosphere which ensured real dialogue. Again, no one would proclaim this to have been a perfect effort but all present felt that it had achieved a notable success. The most important result perhaps was the simple impact that coming together had on everyone. All were made aware of how limited their own inter-communication had been in the past despite the similarity of their problems. Sincere efforts were made to view their needs regionally. On the final morning after the general sessions, the bishops and their advisers met to assess the results. It was decided to set up a permanent regional committee with a secretary. Each diocese and each religious congregation involved pledged a sum of 500 pesos for the first year's operation of the secretariate. Since then local seminars have been meeting in all the dioceses concerned to react to the priorities voted on by the pastoral council. Again one sees how true Christian awareness will issue in a concrete

response, which in turn will seek the appropriate structures for action. Law and Spirit can meet in fruitful union; indeed they must do so if the Christian people are to perform their mission in our world.

This brief survey has by no means covered the full scope of canonical change and activity. Entire sections of the present Code have already undergone extensive revision. Mixed marriages, ecumenism, penitential discipline, the matrimonial courts have seen significant changes. The Commission for the Revision of the Code now publishes these activities in its review, *Communicationes*. But the scope of this article has been to show that amid tensions and polarizations, the Church under the impulse of the Spirit is responding to the challenge of the Council and new structures are emerging which will hopefully meet the expectations of the Christian people and respond to the aspirations of our times.