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Roman Catholic Church

Law as an enabling principle in the Catholic Church

INTRODUCTION

The Catholic Church is an ancient institution, which at the present moment has a membership of well over 1,2 billion people or three quarters of all Christians on the globe. It is well known that the Church is presided over by the bishop of Rome, who is elected by the college of cardinals, and who is currently Pope Benedict XVI. He is not only the head of the Church, he is also the legislator for the Church.

Although in some ways he is an absolute monarch, in many ways he cannot and does not rule alone. He is the head of the college of bishops, some 4 500 of them, who head dioceses throughout the world. Collectively they are the successors of the twelve apostles and together they also have legislative power. Thus, over its 2000 year history the Church has held many regional councils and twenty ecumenical councils, which acted as policy making bodies and enacted laws valid either for the region under the council's jurisdiction or for the universal Church, in the case of the ecumenical councils.

It is clear that a body of people, constitutive of the universal Church and comprised of every nation on earth, is extremely diverse and needs a strong centralised authority to ensure that good order is maintained within the Body of Christ. At the same time, it is necessary to devolve authority to the local level, so that universal norms may be particularised and made relevant to the ordinary Christian at the parish level.

WHAT IS LAW?

A Church with a 2000 year history has a whole library of decisions made for general and particular situations. However, laws do not exist for their own sake. Just as theology can be described as *faith seeking understanding*, so can canon law be described as *faith seeking action*. In other words, theology is the theoretical foundation upon which canon law must build to propose a practical course of action.¹

After 1900 years of history, and a vast body of rules and regulations enacted over 19 centuries, Pope Pius X decided that the laws should be codified within the covers of one book.² It took Cardinal Gasparri and his team of jurists only four years to do this, and the very first Code of Canon Law for the Catholic Church was promulgated in 1917 and coming into effect in 1918. This Code was based on Roman law, and it was divided in five sections: General Norms, Regarding persons, Regarding things, Penalties and Procedures.

In the mind of the Pope, this was the end of the matter, and the Church was well served with

¹ For a succinct exposition of the role of law in the Church and the relationship between theology and canon law, see LM ÖRSY, "Theology and Canon Law", in BEAL, JP, JA CORIDEN & TJ GREEN (eds), *New Commentary on the Code of Canon Law*, New York, Paulist Press, 2000, 1-8.

² See JA ALESANDRO, "General Introduction", in JA CORIDEN *et al* (eds), *The Code of Canon Law: A Text and Commentary*, 1982, New York, Paulist Press, for a short history of the development of canon law (pp 1-4), the revision of the 1917 Code (pp 5-14) and a short overview of the 1983 Code (pp 14-22).

a book which was cast in concrete for all time. This, of course, did not happen, and barely 40 years later Pope John XXIII realised that the Code was hopelessly outdated and was not able to address the problems of the modern world. So in 1959 he decreed that the Code should be thoroughly revised to make it more relevant and user-friendly. At the same time he called together an ecumenical council with the express purpose of effecting a renewal in church life. During the theological debates at the council it soon became apparent that, since theology is the foundation of law, the revision of the Code would have to be postponed until the council had completed its work.

The council changed the way the Church saw itself, its perception changing from the Church as a perfect society to the Church as a pilgrim people of God, a community of believers, helping each other on their pilgrim way to God. Thus the under-lying principle for the revision of the Code that followed the decisions of the council was that the Code should be an instrument helping believers achieve union with God.

THE PURPOSE OF LAW

Pope Paul VI, the successor of John XXIII, was an incomparable jurist and he personally guided the revision of the Code.³ He kept on insisting that canon law is derived from the essence of the Church and not from any civil system of legislation. As such it could not just continue using the definitions and categories of Roman law. Among his many *dictae*, he also said “the law of the Church must express and foster the life of the Spirit and be an instrument of grace and a bond of unity [...] to limit the law to the rigid order of injunctions would be to violate the Spirit who guides us towards perfect charity in the unity of the Church.”⁴ For the Pope, the Church had to develop an entirely new mentality with regard to the law and its interpretation.

In the light of this, in 1967 the newly established synod of bishops adopted ten principles for the revision of the Code,⁵ the most important of which are the fact that the Code should be both *juridical and pastoral*, and therefore just, equitable, humane, temperate and moderate. In this way it would allow for maximum discretion and freedom of action on the local level, and keep a balance between prescribed duties and their application according to local circumstances. The Code should also determine the *authority of the bishops* and yet allow for subsidiarity, the principle by which decisions are taken at the most appropriate level. Since every-body is equal before the law, the Code should protect *individual rights* and streamline *procedures*, making recourse possible where rights have been violated. And the Code should be *integrally restructured* to reflect the ecclesiology of the Vatican Council.

The revision of the Code lasted 16 years, largely due to the process of extensive consultation which was followed. By 1977 all the first drafts of the various parts of the Code had been

3 For a short history of the revision of the 1917 Code of Canon Law, see JA ALESANDRO, “The Revision of the *Code of Canon Law*: A Background Study”, in *Studia Canonica* 24(1990), 91-146. Also the Preface to E CAPARROS, M THERIAULT & J THORN (eds) *Code of Canon Law Annotated*, Montréal, Wilson & Lafleur, 1993, 59-79.

4 PAUL VI, 17.09.1973, Allocation to the Second International Congress of Canon Law, “Shaping Canon Law”, in *Origins* 3(1973-1974), 272, emphasis added.

5 The ten principles underlying the revision of the Code have been discussed in many journals. For a discussion underlying their establishment, see FX MURPHY & G MacEOIN, *Synod '67: A New Sound in Rome*, Milwaukee, Bruce, 1968, 52-72. For more information on the principles themselves, see, among others, *Communicationes* 1(1969), 77-85, the two articles by JA Alesandro mentioned *supra* and RC CUNNINGHAM, “The Principles Guiding the Revision of the Code of Canon Law”, in *The Jurist* 30(1970), 447-455.

submitted for scrutiny by experts in every part of the world. Their comments were incorporated into a further draft, published in 1980, which elicited new comments incorporated into the 1982 draft. This was personally scrutinised canon by canon by Pope John Paul II, the successor of Paul VI, because he wanted to ensure that the Code should contain nothing repugnant to other Christians, especially the Orthodox, which might adversely affect reunification with them.⁶

As supreme legislator, in 1983 Pope John Paul II promulgated the new Code of Canon Law, which he called “a great effort to translate the conciliar ecclesiological teaching into canonical terms,” which meant that “the Code must always be related to that image as its primary pattern.”⁷ Besides thus establishing the most important principle for the interpretation of the Code, he also summed up the role of the Code of Canon Law in the life of the Church as follows:

Since the Church is established in the form of a social and visible unit, it needs rules, so that its *hierarchical and organic structure* may be visible; that its exercise of the function divinely entrusted to it, particularly of *sacred power* and of the *administration of the sacraments*, is properly ordered; that the *mutual relationships* of Christ’s faithful are reconciled in justice based on charity, with the *rights of each* safeguarded and defined; and lastly, that the *common initiatives* which are under-taken so that Christian life may be ever more perfectly carried out, are supported, strengthened and promoted by canonical laws.⁸

LAW AS AN ENABLING PRINCIPLE IN THE CHURCH

The 1983 Code of Canon Law is thus not a product of the Pope alone, but the fruit of a massive ecclesiological effort, involving all bishops dispersed throughout the world and their canonical advisors. True to the last principle for the revision, the Code reflects the nature of the Church and its mission in the world as defined by Vatican II. It is an instrument geared to the establishment and maintenance of good order within the Church; it defines what is constitutive of various institutions and offices in the Church, and clearly delineates the parameters of authority at various levels. Since its purpose is the eternal salvation of its members, it should not and cannot be misused by anyone endowed with a conscience.⁹

The Code is divided into seven books. Book I deals with what are called *General Norms*.¹⁰ It which explains the meaning of various terms and establishes some very important principles, viz. the nature of laws themselves; the manner of interpreting them; the need for and the manner of seeking advice or consent; the way to conduct elections; the difference between

6 The Catholic Church is not a monolithic body: There is the so-called Western or Latin Church, which comprises about 95% of Catholicism, and the Oriental Churches, which make up the remaining 5%. The 1983 *Code of Canon Law* (CIC), which is the subject of this paper, applies only to the Latin Church. A later *Code of Canons for the Eastern Churches* (CICO) was promulgated in October 1990. For an overview of CICO, see JD FARIS, “An Overview of the Code of Canons of the Eastern Churches”, in BEAL, JP, JA CORIDEN & TJ GREEN (eds), *New Commentary on the Code of Canon Law*, New York, Paulist Press, 2000, 27-44.

7 JOHN PAUL II, Apostolic Constitution: *Sacrae disciplinae leges*, in *The Code of Canon Law*, New Revised English Translation, London, HarperCollins, 1997, xiv.

8 *Ibid.*, xv, emphasis added.

9 The final canon of the Code deliberately demands “[the] observing [of] canonical equity and [the] keeping in mind [of] the salvation of souls, which in the Church must always be the supreme law.”

10 Book I on *General Norms* contains 203 canons and needs to be thoroughly understood if the rest of the Code is not to be misinterpreted.

legislative, executive and judicial power; those who can exercise these powers; those who can obtain ecclesiastical offices and the manner by which these can be conferred, etc.

Book II deals with *The People of God*.¹¹ Since it describes the nature of the Church and the way it functions, this book can almost be called the constitution of the Catholic Church. It describes who are the members, the *christifideles*, and contains a Charter of the obligations and rights of all Christians. It lays down the manner of formation for the clergy, the way they become clerics, their obligations and rights, and the way they can lose the clerical state.

Then this book deals with the constitution of both the universal church and the local churches, and circumscribes the authority of those who exercise leadership in the Church. It deals with the person of the Roman pontiff and the college of bishops. It then indicates how dioceses are erected, how they are grouped together into provinces, how bishops are created and which procedure must be followed in the event of a vacancy in a diocese. It indicates the various institutes and officers that must exist within a diocese, and how the diocese is to be subdivided into parishes. It determines how a parish is constituted and how its personnel is to be appointed or elected.

This book finally deals with Institutes of Consecrated Life (the various kinds of religious life) and every aspect of the way they are constituted and governed, how and where they may establish themselves and the manner in which people can become members. It indicates the kind of apostolic work they can engage in and also deals with the way individuals can either leave the convent or monastery voluntarily or what offenses will make them lose membership statutorily.

Having dealt with the nature and constitution of the Church at all levels, Book III deals with the work that the Church accomplishes, namely *The Teaching Office of the Church*.¹² It identifies the proclamation of the Word of God as the most important function of the Church. There are two main ways in which the Church fulfils its prophetic function: by preaching and by catechising, and the Code identifies the people responsible for this. It emphasises the missionary nature of the church and indicates how it should fulfil its evangelising function. It deals with Catholic education at all levels, and identifies how the Church should use the means of social communication in the pursuit of its mission.

Book IV describes *The Sanctifying Office of the Church*,¹³ the second most important function of the Church, and deals with liturgy, i.e. public worship, in all its aspects, especially the celebration of the sacraments: baptism, confirmation, Eucharist, penance, the anointing of the sick, ordination, and marriage. It lays down rules as to who should officiate in the name of the Church, the role of all the participants, and establishes the faithful's rights and obligations in this regard. It also determines the minimum requirements for the valid celebration of the sacraments and calls for the proper registration of those sacraments that cannot be repeated. It lays down rules regarding other acts of divine worship, including funerals, and the minimum requirements in the establishment of places of worship

11 Book II on *The People of God* is by far the longest and the most important part of the Code. It contains 543 canons and, since it deals with the nature of the Church and its constitution, it can be called the heart of the Code.

12 Book III on *The Teaching Office of the Church* contains 87 canons. Its main characteristic is that it emphasises that all the faithful share the responsibility for evangelising.

13 Book IV on *The Sanctifying Office of the Church* contains 420 canons and regulates all matters pertaining to divine worship. Here, too, the emphasis lies in the participation of the laity.

Book V deals with *The Temporal Goods of the Church*.¹⁴ It details the purposes for which the Church can acquire temporal goods, determines who is responsible for the stewardship of these goods, and lays down the requirements for transparency and accountability. It deals with the patrimony of the Church, and establishes rules for the acquisition, the administration, the retention and the alienation of goods, as well as the rules applicable to pious foundations or Trusts which can be set up to safeguard this patrimony.

The sixth book deals with *Penalties*,¹⁵ and the way they are to be applied to those who offend against the community of the Church. This is meant to avoid arbitrariness in the application of sanctions. And the seventh book deals with *Procedures*¹⁶ which are to be applied to deal with contentious issues in the Church, as a means of protecting both the rights of the community and those of the individual. This represents the judicial arm of the Church, which has its own system of Tribunals and the rules which govern them. One of the strongest principles in this book is the right of defence, which may never be disregarded or harmed in any way.

DIFFERENT KINDS OF LAWS

It will readily be seen that there must be many different kind of laws in the Code of Canon Law if all those matters are to be adequately dealt with. There are seven different kinds of canons: *statements of belief*, which are basic tenets of faith and are interpreted on the theological rather than the juridical level; *theological statements*, which are historically conditioned and therefore subject to change; *issues of morality*, which should be interpreted within the larger field of moral theology; *exhortations*, which express the wish of the legislator and are not strictly imposed as an obligation; *metaphysical statements*, which use philosophy to solve canonical problems; *scientific statements* which should be interpreted according to the latest scientific insights and *right-and-duty canons*, which are the only truly legislative texts.¹⁷

Besides these distinctions, the Code includes canons which are of divine origin and others which are human norms. It also has a built-in system of dispensations, which should promote the spiritual well-being of the applicant and are possible only in particular cases. Norms of divine origin are not subject to dispensations.

SOME SPECIAL PRINCIPLES IN THE APPLICATION OF THE LAW

It is clear that in a universal Church, it is quite impossible to foresee every kind of situation which can arise. For this reason there are three principles which are often called upon in the

14 Book V on *The Temporal Goods of the Church* contains only 57 canons and regulates all matters financial, once again empowering the laity to contribute to this aspect of the Church's life according to their own competence. Books two to five are the most practical and touch on every aspect of the life of the average church member.

15 Book VI on *Penalties* contains 89 canons and is mostly meant for those in authority, enabling them to maintain church order without fear or favour. It stresses that penalties should be limited to as few people as possible and be applied with moderation.

16 Book VII on *Procedures* contains 353 canons and is intended for those with executive and/or judicial authority, enabling them to remain objective in the exercise of their office.

17 For this and the section that follows I am indebted to LM ÓRSY's commentary on the first part of Book I of the Code, in JA CORIDEN *et al* (eds), *The Code of Canon Law: A Text and Commentary*, 1982, New York, Paulist Press, 41-44.

application of the law, or to supply for any vacuum that might exist in the law.

- The first of these is *epieikeia*: this is an act of justice to be applied when, in a particular case, the application of the law would result in imperfect justice or no justice at all. It is an *ad hoc* corrective, originating in the same source as the law itself, i.e. the virtue of justice. Justice for all can often only be achieved through the subtle interaction of imposing the law in most cases and letting *epieikeia* prevail in some cases. Thus legalism or pharisaism, which places greater value on the observation of formalities than on the granting of true justice, is avoided.
- The second is *equity*: this is applied when the law is unable to uphold a value important for the community, forcing it to turn to another, non-legal, system of ideas to justify a departure from the legal system. It leaves the value intact and brings the law into the service of that value. The person who must see to it that justice is done invokes a higher principle of morality and suspends the operation of the law itself.
- The third is called *oikonomia*: this principle is frequently used in the Eastern Church but not so often in the Latin Church. It is a principle which can only be applied by a sacramentally ordained bishop, since it is rooted in the power of the Risen Christ. It allows the bishop first to determine how Christ would heal a wound, heal an injustice or bring peace when it is needed and then to act likewise. The rationale behind this principle is that laws can never adequately define Christ's power, and only a successor of the apostles can bring Christ's healing to those who need it.

SOME SPECIFIC EXAMPLES OF EMPOWERMENT THROUGH THE LAW

We will recall that Pope John Paul II said that the law should have rules to explain its hierarchical structure, and to regulate the exercise of authority, the celebration of the sacraments, the mutual relationships between the faithful and the common initiatives undertaken by them. In other words, the Code is meant to give a clear job description to all the faithful, and the various institutions and functionaries in the Church.¹⁸ Now is the time to see how the law can empower, or enable the various members of the Church to pursue their Christian vocation in a proper and harmonious manner, by taking random examples from the Code with regard to various individuals and institutions.

The Christian faithful

Ordinary members of the Church may well wonder what their function is within the body of the Church.¹⁹ In the Code the answer is loud and clear: members of the Church enjoy a radical 18 It is my considered opinion that most of the problems encountered within the Church are caused by an ignorance of the law, which leads to a misunderstanding of the parameters within which each member of the Church is meant to operate. This easily leads to an abuse of power and, if not checked, the perpetration of injustices within the Christian community. Thus the reason for a Code of law given in the Apostolic Constitution *Sacrae disciplinae leges* establishing it, is well justified: “that the *mutual relationships* of Christ's faithful are reconciled in justice based on charity, with the *rights of each* safeguarded and defined” – see footnote 8. If only those in authority and indeed every member of the Church would familiarise themselves with the dispositions of the Code of Canon Law, many unfortunate situations could be avoided and many hurts prevented.

19 The beginning of Book two contains what many have come to call the Church's “Bill of Rights”, in that it makes various lists of the responsibilities of various categories of the faithful. However, the Code never speaks of rights per se. It rather speaks of the obligations and rights: of all the faithful (cc 208-223) the

equality before God and the community. All are obliged to maintain the bonds of communion among themselves, to pursue a holy way of life, and to share in the evangelising mission of the Church. To achieve this they are obliged to make known their needs to those in authority and have the right to spiritual assistance from their pastors. They have the right of association, enabling them to follow their own form of spiritual life and to engage in apostolic action.

Besides this generic list of obligations and rights common to all the faithful, *the laity* are specifically entitled to take an active part in civil affairs and in the evangelising of their economic and political environment. They are also empowered to become involved in ecclesiastical affairs, especially where their expertise is most needed, viz. the social and financial aspects of the life of the Christian community. Conversely, pastors are obliged to make use of the expertise of the faithful. The Church can thus never again be thought to be the sole preserve of ecclesiastics.

The bishops

Bishops, who are the successors of the apostles, have a major role to play in the life of the Christian community.²⁰ The Code is very specific that the bishop takes possession of the office that he holds, not the diocese for which he is responsible. He can never again consider the diocese as a personal fief in the medieval manner. On the contrary, the diocesan bishop is enjoined to be concerned with all the faithful in the diocese, the active members, the lapsed and the marginalised. He is to show specific concern for the priests, who are described as his helpers and counsellors, see to it that they fulfil their duties responsibly, and that all their needs, spiritual and material, are catered for. His teaching and sanctifying functions are clearly delineated, as are his obligation to maintain the purity of faith and ecclesiastical discipline. He is also told to make use of the skills of the clergy, the religious and the laity as he promotes the Christian life within the diocese.

In fact, the Code of Canon Law can almost be described as the *vade mecum* of the bishop, since his role as leader of the local Church must be visible at all levels. He is the moderator of the ministry of the Word in the diocese, the moderator of the liturgy and the celebration of the sacraments, and he is the person legally responsible for the patrimony of the Church within the diocese.²¹

In his person the diocesan bishop combines the three different kinds of power: legislative, executive and judicial, but he may not go beyond the parameters assigned to him.²² He is

laity (cc 224-231), and the clerics (cc 273-289). However, these lists are not exhaustive and many more obligations and rights can be found dispersed among the various sections of the Code.

The reason for placing responsibilities ahead of rights is theological: believers begin their life of faith with an obligation to answer the call of Christ. This leads to other obligations with regard to the kind of life to be led. However, most of the obligations have a concomitant right, without which the faithful would not be able to fulfil them. Indeed, very often the right of one member of the Church (e.g. a lay person) becomes the obligation of another (a cleric).

What follows is a very short indication of what is contained in the obligations and rights of the laity.

20 Bishops are members of the clergy. Thus their obligations and rights are to be found, first of all among those of all the faithful and then of the clerics in general. However, what follows is a very short summary of the list of obligations that every diocesan bishop needs to fulfil as found in cc 381-398. This is not an exhaustive list, and should be supplemented by the many references to the obligations of diocesan bishops found *passim* in the Code.

21 See cc 763, 771, 775, 777,

22 See cc 134-135, 492-494; 1419-1421.

told that he may not share his legislative power with anyone, although he does in fact have to consult a wide variety of people before enacting laws applicable to the diocese; moreover, these laws may never be contrary to the universal laws of the Church. In the executive area he must appoint a vicar general, responsible with him for the entire diocese, and other episcopal vicars, responsible for one or other aspect of pastoral endeavour or of the diocesan administration. In the judicial arena he must appoint a judicial vicar who acts as a judge whenever a matter is taken to the ecclesiastical Tribunal. Most of such cases deal with the declaration of nullity of marriages.

With regard to the temporal goods of the Church, the bishop is obliged to appoint a finance committee, comprised of lay people, experts in the legal and financial field, and he cannot alienate Church property without their consent. Should he disregard this, he could personally be held responsible to make good the loss to the community.²³ The law thus both empowers the bishop to fulfil the expectations of his office, but at the same time it restricts the arbitrary exercise of his authority. Indeed, on a number of occasions those who felt their rights violated by the bishop appealed to the Supreme Tribunal in Rome and were vindicated.²⁴

The clergy, specifically parish priests

Since the abuse of spiritual power can be utterly devastating to the victim, the clergy also have a clear job description and the limits of their authority are equally clearly spelt out. Parish priests especially, who are the only functionaries most of the faithful ever come into contact with, cannot claim not to know the parameters within which they are to function.²⁵ Thus, as helpers of the bishop and under his authority, they are placed in charge of a specific community. Like bishops for the diocese, they also are teachers of the faith and dispenser of the sacraments. Moreover, they are obliged to involve the laity in both the pastoral endeavours and the administration of the parish. Like the bishop, they are the moderators of the ministry of the word and the dispensers of the sacraments, which must be celebrated together with the faithful at a time suitable to them. The faithful may not be denied funerals, except under the most stringent conditions. Parish priests are obliged to appoint both a parish pastoral council with which they are to work closely, and a parish finance committee to ensure that they exercise proper, transparent and accountable stewardship of the goods of the community.

REDRESSING GRIEVANCES ACCORDING TO THE LAW

Although one wished it were not so, every society suffers from people who abuse their authority, and the Church is no exception. To use a glaring example: we have all heard of the paedophilia scandals in the Church that caught world-wide head-lines. Such things should not happen, and when they do they diminish not only the perpetrators but all those who are linked to them in people's minds. Initially the Church authorities neither understood the

23 See cc 475-476, 1261-1266, 1274-1284, 1290-1296.

24 On a number of occasions I was asked to intervene in an unhappy situation where the local bishop had gone beyond the parameters of his competence. In every instance, when the case was appealed to Rome, he was told to rescind his previous decision in favour of the appellant.

25 Every student for the priesthood is taught the obligations and rights of parish priests, which, besides the general obligations and rights of all the faithful and those of clerics, can also be found in cc 526-537.

This list is not exhaustive, and many other obligations are to be found in Books III-V, *passim*. However, many parish priests, who may have their own agenda and are therefore not concerned with the good of the people, choose to ignore these injunctions to the detriment of their parishioners. The Church is truly made up of both saints and sinners!

true nature nor the extent of the problem, nor did they know how to handle the situation, especially with regards to the care that should be given to the victims.²⁶ Much has since been learnt about paedophilia, especially via the human sciences, which have demonstrated conclusively that one deals here with a deep psychosis, since it often happens that the abused later become abusers.

The Church has tried to learn from its mistakes and is stringently applying screening methods for future candidates for the priesthood.²⁷ It has also developed a zero tolerance policy towards perpetrators without, however, losing sight of their fallibility as human beings who also need pastoral care wherever possible. In the process it was discovered that the Penal section of the Code of Canon Law, which was promulgated before the first whispers of this scandal reached the legislator, was inadequate to deal thoroughly with the issues involved, the adequate protection of possible victims, and the proportionate punishment of the perpetrators. At this moment, a new version of the Penal Code has reached every episcopal conference around the world, waiting for comments.²⁸ Rome is thus once again engaging in a worldwide consultation to try and promulgate adequate measures to meet the crisis.

Of course, this is not the only example where human weakness or human malice undermines the sanctity of the Church community. The Code identifies ways and means by which our rights can be vindicated, both on the administrative and on the judicial level. Under the principle of subsidiarity, problems should first be solved on the local level but, where this is not possible, one may always resort to hierarchical recourse. The only person from whose decision there is no recourse is the pope himself.

THE NEED FOR CONSTANT REVISION

The Penal section is not the only part of the Code that needs revision. We live in a time where societal change is accelerating at an alarming rate, and the electronic revolution is no exception. The Code, which has a section on how to use the social means of communication in its evangelising mission, is hopelessly outdated with regard to the electronic means of communication.²⁹ The internet did not yet exist when it was promulgated. Now one has to deal with the world-wide-web, with face book and twitter and many other such applications. How does one use these in the service of the gospel? How does one respect people's right to privacy when so many cheerfully abdicate this right for the privilege of becoming 'notorious'? Even civil lawmakers cannot keep up with these developments, nor have they answers to these questions.

26 The earliest canonical studies of the problem date from the mid-1980s, and these increased steadily over the next decades. But many bishops were not aware of these scholarly works and tried to deal with the matter on a purely pastoral level, with disastrous consequences.

27 Since 1999 the Southern African Catholic Bishops' Conference has been engaged in creating and refining a policy to deal with clerics and other church personnel accused of sexual crimes or mis-demeanours. It dovetails with civil law requirements to report even the suspicion of an offence.

28 *Schema recognitionis libri VI Codis Iuris Canonici (reservatum)*, 2011 3-40p.

29 Book III, contains Title IV on *The Means of Social Communication and Books in Particular*, cc 822-832, eleven canons which seem positively medieval by comparison to the IT explosion, and urgently need revision and expansion to encompass and confront the whole gamut of new instant means of communication and the influence they exert over the mindset of today's youth and young adults who see the internet as the new and infallible source of knowledge.

APPLYING THE CODE OF CANON LAW TO CIVIL SOCIETY

I believe that many aspects of canon law could profitably be adopted by civil law in favour of our country's citizens. I would like to see a built-in system of dispensation, especially in civil litigation, allowing magistrates a greater discretion when applying the law, giving individuals a respite where their personal circumstances can be better served by leniency.³⁰ This would also be of great help in coping with the backlog of more serious cases which currently cannot be heard in the courts within a reasonable time. The old adage still holds true: justice delayed is justice denied. Perhaps it could be administered in the same way as the small claims courts, provided that arbitrariness and/or corruption are avoided.

Applying the principles of *epieikeia* and equity would also be of great help, tempering the severity of the law with the quality of mercy. Within the Church it represents the goodness of God and his Christ, who came to effect reconciliation between God and man, and between people themselves. Did Christ not say that he came not for the just but to call sinners to repentance? In the civil forum it could represent the benevolence of the lawmaker, for whom the good of the community needs to be weighed up against the good of the individual.

CONCLUSION

We live in an era of human rights, but in many societies these are often served in their proclamation rather than in their observance. A system of law, whether in the Church or in civil society, must promote human rights for all; however, this must be done out of conviction, not convenience.

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³⁰ In canon law the concept of 'dispensation' is an important corrective: it strives to ensure justice for a particular individual or for several people in a particular instance when the written law would not promote this. It is used where the law as it stands would not achieve justice for the individual due to the peculiar circumstances of the case. In essence it means that a competent person ignores or sets aside the law in order to achieve a greater good in a particular situation. Dispensations can only be used in favour of individual persons or cases, and only if they will bring about the greater spiritual good of the people concerned, see cc 85-93. This gives considerable latitude of discretion to those who must administer the law and leads to a quicker administration of justice, according to the adage: justice delayed is justice denied.

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