

THE INSPIRATION OF VATICAN II FOR THE REVISION OF THE EASTERN CANON LAW

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Sunny Kokkaravalayil deals with: 1. The Conciliar Reform Leading to the Revision of the CICO; 2. The CCEO: A Code Inspired by Vatican II; 2.1. Salient Features of the CCEO Inspired by the Council; 2.1.1. The Church's New Self-Understanding; 2.1.2. Principle of Subsidiarity; 2.1.3. Pastoral Code; 2.1.4. Ecumenism; 2.1.5. Legitimate Diversity within the Church; 2.2. Christian Faithful: Conciliar Understanding; 2.2.1. The Faithful in General; 2.2.2. Lay Faithful; 2.2.3. Christian Faithful Leading Consecrated Life; 2.2.4. Priests and Priestly Formation; 2.2.5. Bishops, and 2.2.6. Patriarchs.

Introduction

"The Second Vatican Council lives, and we are bound to sustain it. The council lives because the impulse of the Spirit that 'caused' the council continues in the community at large."¹ The Second Vatican Council was a great event in the history of the Catholic Church, but

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¹ Ladislav Örsy, "A Time to Harvest," *America* 207/9 (8 Oct. 2012), 13-16, at p. 13. The main abbreviations used in this article: CICO - *Codex Iuris Canonici Orientalis*, PCCICOR - *Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo*, PIO - *Pontificio Istituto Orientale*, Rome. Vatican II documents: AA - *Apostolicam Actuositatem*, CD - *Christus Dominus*, DV - *Dei Verbum*, GS - *Gaudium et Spes*, LG - *Lumen Gentium*, OE - *Orientalium Ecclesiarum*, OT - *Optatam Totius*, PC - *Perfectae Caritatis*, PO - *Presbyterorum Ordinis*, UR - *Unitatis Redintegratio*. I am grateful to Prof. Norman Tanner SJ for having read the draft of this article and given me his valuable suggestions to improve it.

its effects are not limited to history. Rather the Church continues to live its teaching. In 2012 the Church celebrates the 50th anniversary of the opening of that council. The celebration is an appropriate occasion to reflect on the revision of the Code of Canon Law of the Eastern Catholic Churches (CICO) inspired by the council.

In the meeting of the antepreparatory commission on the 30 June 1959, the pope said that the intention of the council would be to draw new strength for carrying out the divine mission of the Church.² The opening speech of the pope (*Gaudet Mater Ecclesia* of 11 Oct. 1962) explains in other terms the same intention of the council, "The greatest concern of the Ecumenical Council is this: that the sacred deposit of Christian doctrine should be guarded and taught more efficaciously."³ This primary intention lies behind every effort of the council: its teaching, decisions and guidelines. The word *efficaciously* means here that the act of teaching Church doctrine should be carried out in such a way that modern man understand it and be inspired to live it. Since the council was attentive in taking steps to present the doctrine *efficaciously* it is called a predominantly pastoral council.⁴

We know that to talk about the newness of the council can be misleading, as if we can list a few of its teachings as new and others as old. The council is only taking a fresh look at the Church and the world. Concerning the blend of ancient and modern in the council it is said, "No substantial novelties emerged [from the council], but an effort was made (even if not always satisfactory) to restate the ancient faith in language intelligible to contemporary humanity and freed of the more or less parasitical encrustations that had hardened in place over the centuries."⁵ John XXIII insisted that the Church continue to lean on the perennial principles which Jesus entrusted to

² *Acta et documenta concilio oecumenico vaticano II apparando*, series I, vol. 1, Vatican City, Typis Polyglottis Vaticanis, 1960, 41.

³ This translation is from Walter M. Abbott, ed. and Joseph Gallagher, tr., *The Documents of Vatican II*, London, Geoffrey Chapman, 1966, 6th printing 1972, 713.

⁴ See the opening speech of the pope in Walter M. Abbott, ed. and Joseph Gallagher, tr., *The Documents of Vatican II*, 6th printing 1972, 715-7.

⁵ Giuseppe Alberigo, ed., *History of Vatican II*, English ed. by Joseph A. Komonchak, 5 vols., Maryknoll, Orbis / Leuven, Peeters, 1995-2006, vol. 5, 593.

it, but should find new ways of living those principles.⁶ The council threw new light on the problems faced by the Church and the world. Thus the novelty of the council is reflected in the new understanding of the nature and mission of the Church, of revelation, of the contemporary world and the Church's relation to it, of the position of the Eastern Churches in the Catholic communion, of the Church's duty to promote Christian unity, etc.

After the council, it was necessary to infuse its general spirit and teaching into the codes, translating it into legal terms. John XXIII wished that Vatican II should lead also to the revision and renewal of canon law.⁷ Obviously, canon law could not remain aloof from a general reform launched in the Church by the council. Therefore, already during the council the commission for the revision of the code of Latin canon law was instituted. The guidelines for the revision of the Eastern code acknowledge that one of the means of *aggiornamento* of the Church, desired and decreed by Vatican II, was the revision of the Eastern canon law.⁸

Those who did not properly assimilate the spirit of the council formulated and repeated slogans such as "the letter kills and it is the Spirit who gives life," "Church of law is to be abandoned and Church of love is to be maintained", "no hierarchy, but only ministry in the Church", "Christ, yes! Church, no!", etc.⁹ The Church had to give a clear indication that it was not intending to accept and be guided by such slogans. This response of the Church also necessitated a reaffirmation of canon law, updated in the spirit of the council but in continuity with the perennial tradition of the Church.

1. The Conciliar Reform Leading to the Revision of the CICO

The late medieval maxim *ecclesia semper reformanda est* (the Church is always in need of reform) was adopted by Vatican II and expressed in other terms, namely, the Church is called to continual reformation of which it always has need (UR 6). Card. Joseph Ratzinger in an

⁶ *Acta et documenta concilio oecumenico vaticano II apparando*, series I, vol. 1, 41.

⁷ See the plan to convoke a council in the announcement of John XXIII on 25 Jan. 1959 in *Acta et documenta concilio oecumenico vaticano II apparando*, series I, vol. 1, 5.

⁸ *Nuntia* 3 (1976), 3-10.

⁹ Giuseppe Alberigo, ed., *History of Vatican II*, vol. 5, 367.

interview with Vittorio Messori, confirmed, "... in her human structures the Church is *semper reformanda*."¹⁰ Much of the institutional structure of the Church is human, especially in its elaborate elements. At the same time the council teaching contains the truth *Ecclesia semper eadem* (the Church is always the same). These, as principles, go together in the life of the Church. One without the other cannot fully express the nature and mission of the Church.¹¹ The Church has aspects which are immutable and mutable. While the Church is obliged to retain the former without changing, with the same sense of obligation it has to change the latter: because it is faithful not only to the tradition, but also to the people of the present.¹²

The Second Vatican Council was known principally as a council of reform: but reform of what? The council intended a reform of the way in which the Church doctrine is taught, of Church institutions and of the Church's customs and law in order to help the faithful to lead a life true to their call, to re-discover the sources of their faith and to renew their commitment to that faith.

Although the term *aggiornamento* does not occur in the conciliar documents, in various texts the intention of the council for *aggiornamento* is made explicit: "Through the power of the gospel he [Holy Spirit] rejuvenates the church, continually renewing it" (LG 4);¹³ "As the church journeys through temptations and tribulations, it is strengthened by the power of the grace of God that was promised

¹⁰ Joseph Ratzinger and Vittorio Messori, *The Ratzinger Report: an Exclusive Interview on the State of the Church*, tr. from German Salvator Attanasio and Graham Harrison, San Francisco, Ignatius Press, 1985, 50.

¹¹ Giovanni Tangorra, "Riforma," in Gianfranco Calabrese, Philip Goyret and Orazio Francesco Piazza, eds., *Dizionario di ecclesiologia*, Roma, Città Nuova, 1990, 1202-8, a p. 1208.

¹² Angel Antón, "Postconciliar Ecclesiology: Expectations, Results and Prospects for the Future," in René Latourelle, ed., *Vatican II Assessment and Perspectives: Twenty-Five Years After (1962-1987)*, vol. 1, New York/Mahwah, Paulist Press, 1988, 407-438, at p. 420-1. Even in the synod of bishops held in Rome in October 2012, renewal of the Church was brought out as an immediate need: see *L'Osservatore Romano* (18 Oct. 2012), 10.

¹³ Translation of the documents of Vatican II is taken, unless otherwise indicated, from Norman P. Tanner, ed., *Decrees of the Ecumenical Councils*, 2 vols., London, Sheed & Ward / Washington DC, Georgetown University Press, 1990.

it by the Lord, so that ... under the action of the Holy Spirit, it does not cease from renewing itself ..." (LG 9); "... all are led to examine their own faithfulness to Christ's will for the church and accordingly to undertake with vigour the task of renewal and reform" (UR 4). The council acknowledged: "Every renewal of the church essentially consists in an increase of fidelity to the church's own calling. ... In its pilgrimage on earth Christ summons the church to continual reformation, of which it is always in need, in so far as it is an institution of human beings here on earth. Thus if, in various times and circumstances, there have been deficiencies in moral conduct or in church discipline, or even in the way that church teaching has been formulated - to be carefully distinguished from the deposit of faith itself - these should be set right in the proper way at the opportune moment" (UR 6). These are only some of the instances where the council speaks explicitly of the need of reform or renewal in the Church. "To look in isolation at those passages of the decrees that are devoted to *aggiornamento* would do injury to the global meaning of the Council's teaching. The mind of Vatican II was that the *aggiornamento* should permeate the entire life of the Church."¹⁴

A thorough analysis of the teachings of John XXIII and of the council makes us understand the word *aggiornamento* in relation to Vatican II as "a summary pointer in the direction in which the Council was to open the way for the Church - neither disciplinary reforms nor doctrinal modifications, but a complete immersion in tradition for the purpose of rejuvenating Christian life and the Church."¹⁵

As mentioned above, John XXIII together with the announcing of the council made public his wish to revise the code of canon law. He wished that the reform introduced by the council should be reflected in the law of the Church, thus anticipating that the revision of the code would be necessary.¹⁶ Although his idea regarded the CIC, his intention was not limited to that. The fact that he denied signing the fifth *motu proprio* (which, if signed, would become part of the CICO, together with the already promulgated four *motu proprio*) in view of

¹⁴ Giuseppe Alberigo, ed., *History of Vatican II*, vol. 5, 578-9.

¹⁵ Giuseppe Alberigo, ed., *History of Vatican II*, vol. 5, 578.

¹⁶ See his speech announcing the council in AAS 51 (1959), 65-9, at p. 68-9.

the council,¹⁷ confirms this conclusion. “When the Second Vatican Council was called by John XXIII, since it was foreseen that the canonical discipline of the whole Church must be revised according to the conclusions and principles of the Council, the redaction of the Code of Eastern Canon Law was, properly speaking interrupted...”¹⁸ However, it was Paul VI who formally instituted the commission for the revision of the Eastern code.

Paul VI, addressing the members and consultors of the commission for the revision of the CIC on 20 November 1965, exhorted, “Canon law is to be revised, with due prudence, namely, it should be adapted to the new mentality (*novo mentis habitui*) of the Second Vatican Council, which gives a notable importance to pastoral care and the new needs of the People of God.”¹⁹ In a certain way, the commission for the revision of the CICO also was bound to follow this basic guideline.²⁰

Thus we can affirm that Vatican II largely determined the content of the Eastern code. The post-Vatican II codes had to be based on the general teaching of Vatican II, and more particularly, on the understanding of the nature and mission of the Church which it re-discovered.²¹

¹⁷ After the promulgation of the *motu proprio* “*Cleri sanctitati*” in 1957, the canons on sacraments were prepared to be promulgated as a *motu proprio*. When the president of the Commission for the Redaction of the Code of Eastern Canon Law, Card. Agagianian, presented the text of these canons on 12 December 1958 to the pope, he refused to sign it saying that the entire Eastern code would be published after the Second Vatican Council: Daniele Falin, “L’unità della Chiesa e la legislazione canonica delle Chiese orientali,” *Unitas* (Italian edition) 27 (1972), 161-188, at p. 176.

¹⁸ Preface to the CCEO, translation from *Code of Canons of the Eastern Churches: Latin-English Edition, New English Translation*, Washington DC, Canon Law Society of America, 2001, xxxvi. In this study, translation of the CCEO texts is taken from this edition.

¹⁹ *Communicationes* 1 (1969), 38-42, at p. 41. Translation is mine.

²⁰ See the inauguration speech of Paul VI in *Nuntia* 1 (1975), 4-8.

²¹ Brian Edwin Ferme, “Il Codice di Diritto Canonico del 1983 in prospettiva storica,” in Pontificio Consiglio per i Testi Legislativi, *Vent’anni di esperienza canonica 1983-2003, atti della giornata accademica tenutasi nel XX anniversario della promulgazione del Codice di Diritto Canonico, Aula del Sinodo*

The council provided not only the foundation for legislation, but also criteria for interpretation and application of law. Interpretation of law is the clarification of the meaning of law.²² Taking into account the spirit of the law is necessary in its application. In the first place, the pastoral nature of the council provides the criterion for interpretation of the present canon law. Pastoral concern has to do with respecting the needs of today's Church community. Any non-pastoral approach in the interpretation and application of law in the Church is unwarranted. The council's attempts to draw deeply from the original Christian sources and charism have become a model in the process of the interpretation and application of law in the Church. The emphasis which the council gave to unity among the Churches is an important criterion of the interpretation and application of law. "Promotion of peace in the whole world" was a declared aim of the council.²³ The Church has also a responsibility towards the world outside its visible structure. That responsibility requires it to be sensitive to the characteristics and needs of that society. This sensitivity is another criterion of the interpretation and application of Church law. Thus the teachings and intentions of the council are not merely sources of inspiration in the process of legislation. Rather, they are the aims towards which the observance of law has to lead us. In short, the post-Vatican II law of the Church had to be made, interpreted and applied in the light of and in harmony with the theology taught by the council.

2. The CCEO: A Code Inspired by Vatican II

The teaching of the council necessarily had to have its effect in the field of Church law, both Latin and Eastern. Thus the main principles contained in Vatican II have also found expression in the new Eastern code. In this section we will take certain concrete topics and canons which were influenced directly or indirectly by the conciliar teachings, and certain conciliar texts which required a

in Vaticano 24 gennaio 2003, Vatican City, Libreria Editrice Vaticana, 2003, 43-55, at p. 43.

²² Ladislav Örsy, *Theology and Canon Law: New Horizons for Legislation and Interpretation*, Collegeville, The Liturgical Press, 1992, 35.

²³ See the Ap. Constitution *Humanae salutis reparator* of John XXIII of 25 Dec. 1961 in *Acta et documenta concilio oecumenico vaticano II apparando*, series II, vol. 1, Typis Polyglottis Vaticanis, 1964, 135, 141. The text of the Ap. Constitution: Latin original pp. 132-9, Italian translation pp. 139-43. See also Norman Tanner, ed., *Decrees of the Ecumenical Councils*, vol. 2, 817.

revision of certain canons. First we will consider how certain features of the code are rooted in the council, and then we will see how the conciliar teaching regarding different categories of faithful has found expression in the code. We have no intention of making a survey of the CCEO canons which have their direct sources in Vatican II.²⁴

2.1. Salient Features of the CCEO Inspired by the Council

Many of the characteristic features of the new Eastern code are rooted in conciliar teaching. In this section we will consider a few of them.

2.1.1. The Church's New Self-Understanding

In Vatican II, the Church displayed a renewed understanding of its nature and mission. In it, the Church understood itself as a mystery, as the People of God and as the body of Christ. Diversity of liturgical rites and discipline within the Catholic Church is a fundamental principle accepted and acknowledged in the council. The council's call to holiness is not limited to the clergy and the religious, but extended to the entire Church. All these are characteristics of the council's teaching on the Church.

Vatican II depicts the Church as a mystery and the sacrament of salvation. The conception of the Church as mystery prevents us from conceiving it only as a perfect society. This imagery emphasises the Church's internal life and spirit, and its instrumentality in obtaining salvation for the faithful.

In the council, the Church rediscovered itself as the People of God, a community of the faithful, and not merely an institution. All the faithful (laity, religious and clergy) are part of this people (LG 9-17). The mission of each one of the faithful, including the hierarchy, is conceived within the framework of the People of God. This self-understanding expresses primarily the Church's belonging to God, and then the communion among the faithful within the Church.

Adopting the Pauline imagery of the Church, the Church recognises itself to be the body of Christ, namely, an organic unity of members with different forms and functions (LG 7). This image evokes unity of the body and diversity of its members in their charisms. Thus any

²⁴ The relevant information on the sources can be gained from Pontificium Consilium de Legum Textibus Interpretandis, *Codex Canonum Ecclesiarum Orientalium, Auctoritate Ioannis Pauli PP. II, Promulgatus, Fontium Annotatione Auctus*, Vatican City, Libreria Editrice Vaticana, 1995.

office and function in the Church becomes a means to build up the whole body.

The council's vision of communion ecclesiology is not limited to hierarchical communion or communion among the faithful, but is extended to the communion of various Churches in the Catholic Church (LG 23, OE 2). The various Churches *sui iuris*, including the Latin Church, are in communion with one another. Communion ecclesiology enhances the Catholicity of the Church (OE 2, LG 23, UR 4). The council's ecclesiological vision is at the base of the code when it makes room for various Churches *sui iuris'* existence and functioning.

The explicit recognition of the council that the Churches of the East and of the West are of equal rank, and none of them superior to the other because of its rite (OE 3) reminds us implicitly of the contrary teaching that the Latin rite is to be preferred because of its superiority.²⁵ The council abandoned any such claim and recognised the equal dignity, rights and duties of all the Churches. Thus the ecclesiological vision of the council does not support the view that the Latin Church is the universal Church, and other Churches are mere rites in the Catholic Church. From their equal dignity derive their equal rights and obligations. One of their rights and duties is to govern themselves according to their own discipline, which seems to be better suited for the good of the souls of their faithful (OE 5).

For the council the Church's nature and its mission are inseparably related. The council wished that the Eastern Catholic Churches flourish and fulfil with new apostolic strength the task entrusted to them (OE 1). In other words, the Eastern Churches should have the strength to carry out their mission effectively. It was with this intention that the council gave guidelines and prescriptions to the Eastern Churches (OE 1).

The renewed understanding of the nature and mission of the Church has its consequences in Church law. It was obvious that the code had to imbibe the new ecclesiological vision and operate within this framework. The council distinguishes between Church and rite (see

²⁵ See the letters of Benedict XIV, *Etsi pastoralis* of 1742, §2 n. 13 and *Allatae sunt* of 1755, § 20. See Ivan □u□ek, "Incidenza del *Codex Canonum Ecclesiarum Orientalium* nella storia moderna della Chiesa universale," in id., *Understanding the Eastern Code* (Kanonika 8), Roma, PIO, 1997, 266-327, at p. 285.

OE 3), although it uses also the term *rite* in OE (e.g., 2, 10, etc.) to denote Eastern Churches. The term *Church* for the Eastern Churches is fixed without any alternative like *rite* for the first time consistently in the CCEO. The inspiration for this measure in the code comes directly from the council. This is not a question of a change of name, but has ecclesiological implications.

2.1.2. Principle of Subsidiarity

The council was deeply conscious of the fundamental unity of the Church. "It would be easy to pass from legitimate emphasis on this unity to the imposition of uniformity and centralisation as necessary accompaniments of unity, when in reality it is only an avoidable consequence of this prerogative of ecclesiology."²⁶ The council took care to avoid the risk of centralisation and uniformity, especially vis-à-vis the Eastern Churches.

A principle which the council applied in order to avoid the danger of over-centralisation was the principle of subsidiarity. This principle is reflected in collegiality and in some other institutions. There are organs which help the pastors at the diocesan and parish levels in the government of the Church. Some of them demonstrate the union between the diocesan bishops and their presbyters. The council rediscovered the significance of episcopal collegiality and its relation to the primacy of the pope. The collegiate authority of bishops is exercised in the Church in their own name (LG 22). Collegiality was not anything new in the Eastern Churches which had their synodal system of government. However, the rediscovery of collegiality in the council was an encouragement for the Eastern Churches to re-apply it, in harmony with their age-old synodal system.

In admitting legitimate pluralism in the field of liturgy, theology and discipline, the council applies the principle of subsidiarity. The council recognises that the diocesan bishops have proper, ordinary and immediate power in their dioceses, that "the permanent and daily care of their sheep is entrusted to them fully," and that they are not to be "regarded as vicars of the Roman Pontiff; for they exercise a power which they possess in their own right and are most truly said to be at the head of the people whom they govern" (LG 27). In addition, it declares that the bishops have the power in particular

²⁶ Angel Antón, "Postconciliar Ecclesiology: Expectations, Results and Prospects for the Future," in René Latourelle, ed., *Vatican II Assessment and Perspectives: Twenty-Five Years After (1962-1987)*, vol. 1, 425.

cases to dispense their subjects from the general law of the Church for their spiritual good (CD 8b). The council recognises the right and duty of the lay people to participate in the apostolate of the Church (AA3); the right and duty of the Western and Eastern Churches to govern themselves according to their own discipline (OE 5); the right of the patriarchs together with the synods to be the highest authority in their Church's proper territory including the right to set up dioceses and to appoint bishops (OE 9); etc. These are only some examples of conciliar application of the principle of subsidiarity. All these declarations have found legal expression in the CCEO, either as principles or as prescriptions. The most explicit example of the wide application of this principle is the ample margin left for particular law in the code. Some other cases of its application are found in c. 178 (the nature of the power of eparchial bishops), c. 1538 §1 (an eparchial bishop can give dispensation from common and particular law), cc. 1013 §§1 and 2, 1022 §1, 1036-1037 (freedom in the administration of temporal goods), etc. The provision for certain institutions in the CCEO testifies to the application of the principle of subsidiarity: eparchial financial council (cc. 262-3), the presbyteral council and the college of the eparchial consultors (cc. 264-71), the pastoral council (cc. 272-75), protopresbyter (276-78), the patriarchal assembly (cc. 140-45), the eparchial assembly (cc. 235-42), the assembly of the hierarchs of different *Churches sui iuris* (c. 322), etc. are examples. The ample power of the patriarch and the synod of bishops within the territorial boundaries of the patriarchal Churches is another testimony to the application of the principle of subsidiarity.

2.1.3. Pastoral Code

Fidelity to the Lord obliges the Church to care for the current world. This sense of obligation is characteristic of the conciliar teaching; and that spirit is passed on to the post-conciliar law of the Church.

The council was eminently pastoral. "From a very early date, it was understood that the Pope [John XXIII] wished the Second Vatican Council to be primarily 'pastoral' in nature."²⁷ The pope wished to "emphasise the urgency of commitment to a renewal of the Church's spirit and forms of witness and of its evangelical presence in history."²⁸ Everything in the Church should have a primarily

²⁷ Giuseppe Alberigo, ed., *History of Vatican II*, vol. 1, 179.

²⁸ Giuseppe Alberigo, ed., *History of Vatican II*, vol. 1, 37.

pastoral dimension, that is to say, should be orientated towards the good of the faithful. The council recognised and reaffirmed this need.

A passage from the opening speech of Pope John XXIII, delivered on 11 Oct. 1962, highlights the need for comprehension and explaining intelligibly Church teaching to the world.

Our duty is not only to guard this precious treasure, as if we were concerned only with antiquity, but to dedicate ourselves with an earnest will and without fear to that work which our era demands of us, pursuing thus the path which the Church has followed for twenty centuries.

The salient point of this Council is not, therefore, a discussion of one article or another of the fundamental doctrine of the Church which has repeatedly been taught by the Fathers and by ancient and modern theologians, and which is presumed to be well known and familiar to all.

For this a Council was not necessary. But from the renewed, serene, and tranquil adherence to all the teaching of the Church in its entirety and preciseness, as it still shines forth in the Acts of the Council of Trent and First Vatican Council, the Christian, Catholic, and apostolic spirit of the whole world expects a step forward toward a doctrinal penetration and a formation of consciousness in faithful and perfect conformity to the authentic doctrine, which, however, should be studied and expounded through the methods of research and through the literary forms of modern thought. The substance of the ancient doctrine of the deposit of faith is one thing, and the way in which it is presented is another. And it is the latter that must be taken into great consideration with patience if necessary, everything being measured in the forms and proportions of a magisterium which is predominantly pastoral in character.²⁹

The pastoral character of the council reflects the same character of the Church. In essence, to be pastoral is to communicate the salvific nature of the Church for which it was founded.³⁰ The council in

²⁹ Translation from Walter M. Abbott, ed., *The Documents of Vatican II*, 1966 edition, 715.

³⁰ Angelo Scola, "Dagli albori all'apertura del Concilio, Note per una lettura del Vaticano II," paper presented at the international convention

being pastoral made efforts to deepen the already existing teaching of the Church, and sought ways of living that teaching in the present world responding to the signs and needs of the times.

The pastoral character of the council had to be reflected in the post-Vatican II law of the Church. Thus this character also made necessary the revision of Church law. This is the opinion of John Erickson, a well-known Orthodox canonist, on the conciliar inspiration of the code: "It could be argued that, on the whole, the CCEO is more successful than the CIC at translating the essentially pastoral vision of Vatican II into juridical terms."³¹

2.1.4. Ecumenism

Probably it is in the field of ecumenism that the influence of the council is most explicitly reflected. The commitment of the Catholic Church to the cause of Christian unity changed drastically with the council. Wide-ranging changes came about in the outlook of the Church in the case of Christian unity. The readiness of the Catholic Church to dialogue with other Christian Churches and other religions became more evident. The opening sentence of UR states, "The restoration of unity among all Christians is one of the principal concerns of the Second Vatican Council." The earlier reserve toward the ecumenical movement is now overcome.³²

"Not only did *Unitatis redintegratio* introduce the problem of unity into Catholicism, while sweeping away the problem of the 'return' of 'heretics' and 'schismatics' to the Church of Rome, but it also gave explicit form to a true and proper Catholic ecumenism."³³ This

Il Concilio Vaticano II alla luce degli archivi dei Padri Conciliari nel 50° anniversario dell'apertura del Concilio Vaticano II (1962-1965), held in Vatican City, 3-5 October 2012, provisional and unpublished version distributed to the participants, 9.

³¹ John H. Erickson, "The Code of Canons of the Oriental Churches (1990): A Development Favouring Relations between the Churches?," in Hervé Legrand, Julio Manzanares and Antonio García y García, *La recepción y la comunión entre las Iglesias: Actas del coloquio internacional de Salamanca, 8-14 Abril 1996*, Salamanca: Departamento de publicaciones de la Universidad Pontificia, 1997, 357-381, at p. 364.

³² Giuseppe Alberigo, ed., *History of Vatican II*, vol. 5, 485.

³³ In the original text here there is a footnote, and its number is 33. It reads, "A few years earlier the encyclical letter *Humani generis* of Pius XII had excluded any and every contamination of Catholicism by the

represented a real reversal, which initially left more than a few council fathers incredulous and dismayed..."³⁴ The fact that the council recognised the communion, although imperfect, which existed between the Catholic Church and the non-Catholics who believed in Christ (UR 3), made significant change in the level of trust of non-Catholic Churches in the Catholic Church. This was an implicit recognition that the non-Catholic Churches were also part of the Church of Christ. Such declarations helped to create a climate of friendliness between the Catholic Church and the non-Catholic Churches and ecclesial communities.

The council gave a special mandate to the Eastern Churches, calling for new types of relationships with other Churches. UR 16 noted that in the Churches of the East the ancient discipline had been faithfully observed. Such observance, according to the council, was a necessary condition to re-establish unity among Christian Churches (see also OE 24). OE 24 gives a "bridge-building" mission to the Eastern Catholic Churches in reconciling the Orthodox Churches with the Catholic Church. This mission pervades the whole Eastern code, that is to say, the code does not contain any norm which would hinder this mission, rather it promotes and contributes to the unity between the Orthodox Churches and the Catholic Church. The observation of John Paul II on the occasion of the presentation of the CCEO to the synod of bishops on 25 Oct. 1990 confirms this fact. He said, "There is no norm in the Code that does not promote the path of unity among all Christians."³⁵ The ecumenical movement of the council did not only inspire many canons; the whole outlook of the code is pro-ecumenical.

The unity between the Catholic Church and the Eastern non-Catholic Churches, although partial, is expressed in the permission for participation in various sacraments (UR 8 and 15), which permission is codified in the CCEO cc. 670 and 671.

ecumenical movement. The misfortunes of Yves Congar suffice to document ecclesiastical hostility toward any ecumenical initiative; Roncalli himself experienced that hostility the hard way. For Congar's dramatic ups and downs during the decade 1946-1956, see Y. Congar, *Journal d'un théologien 1946-1956*, ed., É. Fouilloux (Paris, 2000)."

³⁴ Giuseppe Alberigo, ed., *History of Vatican II*, vol. 5, 587-8.

³⁵ Translation from George Nedungatt, ed., *A Guide to the Eastern Code* (Kanonika 10), Rome, PIO, 2002, 29. Original Latin is in *Nuntia* 31 (1990), 15, Italian translation on p. 22.

The recognition of UR 16 that the Churches of the East have the power to govern themselves according to their own discipline has juridical consequences. This statement is made about the Eastern non-Catholic Churches. One of the consequences is the recognition of the power of governance of their bishops, their law, their sacraments, the theological expression of their faith, etc. The Eastern code recognises all these, although some of them indirectly, eg., the power of governance of their bishops and theology. The first canon declares that the law contained in the CCEO is applicable only for Eastern Catholics. This is an indirect way of saying that the Orthodox Churches are not bound by this law. The sacraments and the rite of their administration of the Orthodox Churches are recognised as valid by the Catholic Church.

The CCEO has two sections which deal with ecumenism: 1) canons on the baptised non-Catholics coming into full communion with the Catholic Church (cc. 896-901), and 2) canons dealing with the ecumenical involvement of the Eastern Catholics (cc. 902-908). Apart from these two sections there are many other canons which have ecumenical implications: e.g., c. 192 §2 - an eparchial bishop has to see that the faithful in his eparchy promote Christian unity; cc. 350 §4 and 352 §3 - in seminaries ecumenism should be taught; c. 593 §2 - the priests working in mission territories have to collaborate with non-Catholic Christian missionaries. The code is also sensitive to using the language of the council to denote the Orthodox Churches, avoiding terms like *heretics*, *schismatics*, *dissidents*, etc. when referring to them.

UR 4 encourages the Catholics to take part actively in the ecumenical movement, participating in prayers and other legitimate activities for unity. In addition, the Church wants its faithful to understand the belief and doctrine of the non-Catholic Christians, by entering into sincere dialogue with them, and praying together with them. The position of the Church expressed in the CIC 1917 c. 1325 §3 was quite contrary. Then the Church nearly prohibited the Catholic faithful to relate with non-Catholics. Thus we can consider the teaching of the Church on ecumenism, found in Vatican II, is new. And the revised Eastern code incorporates that new spirit.

2.1.5. Legitimate Diversity within the Church

The Ap. Letter of Leo XIII, *Orientalium dignitas* of 30 Nov. 1894 encouraged the observance of Eastern liturgy and discipline because

he considered that they highlighted the catholicity of the Church.³⁶ A careful reading of this Apostolic Letter and OE would reveal that the former influenced the latter. Vatican II confirmed the idea of Leo XIII, and with that the Eastern Catholic Churches felt encouraged to retain their legitimate disciplinary diversity remaining within the Catholic communion. Having a separate code for the Easterners containing laws different from those of the Latin Church in many areas is one of the most conspicuous testimonies of the principle of unity in diversity within the Catholic Church.

The council taught on legitimate diversity: “While preserving unity in essentials, let all in the church, according to the office entrusted to them, preserve a proper freedom in the various forms of spiritual life and discipline, in the variety of liturgical rites, and even in the theological elaborating of revealed truth. In all things let charity prevail. If they are true to this course of action, they will be giving ever richer expression to the authentic catholicity and apostolicity of the church” (UR 4). It is noticeable that such an explicit teaching on the legitimacy of diversity in the Church came from an ecumenical council. Here the council clearly expresses itself in favour of legitimate variety in discipline and in many other areas, and positively recognises that such a variety will enrich the catholicity and apostolicity of the Church.

More concretely, on disciplinary diversity in various Churches the council taught:

From the earliest times the churches of the east followed their own disciplines, sanctioned by the holy Fathers, by synods, and even by ecumenical councils. Far from being an obstacle to the church’s unity, such diversity of customs and observances only adds to the beauty of the church and contributes greatly to carrying out her mission, as has already been stated. To remove all shadow of doubt, then this holy synod solemnly declares that the churches of the east, while keeping in mind the necessary unity of the whole church, have the power to govern themselves according to their own disciplines, since these are better suited to the character of their faithful and better adapted to foster the good of souls. The perfect observance of this traditional principle – which

³⁶ *Acta Sanctae Sedis* 27 (1894-1895), 257-264.

however has not always been observed – is a prerequisite for any restoration of union (UR 16).

Likewise the council in its dogmatic constitution also teaches: “... different churches set up in various places by the apostles and their successors joined together in a multiplicity of organically united groups which, while safeguarding the unity of the faith and the unique divine structure of the universal church, have their own discipline, enjoy their own liturgical usage and inherit a theological and spiritual patrimony. ... The multiplicity of local Churches, unified in a common effort, shows all the more resplendently the catholicity of the undivided church” (LG 23). From these repeated teachings of the council on the legitimate disciplinary variety in the Church we can find that the council not only appreciates, but wants to continue retaining that variety. A code for the Eastern Catholics in the post-Vatican II era had to provide a legal rendering of this explicit teaching, paving the way for legitimate diversity of discipline. The council encouraged the Eastern Churches to observe their own discipline, although diverse, and not to consider their existence in the Catholic Church as something anomalous. This recognition of legitimate variety, especially in the field of discipline, influenced the revision of Eastern canon law. We can say that at Vatican II the Church learned to admit diversity more formally (see especially LG, OE and UR).

Dialogue with other religions was an important concern of the council. It did not condemn the faithful of other religions; rather it sought to have dialogue with them. The openness of the council towards other religions bears witness to the Church’s recognition of legitimate diversity outside the Church in the case of different beliefs. The position of the council regarding the relation of the Church to the non-Christian religions (declaration NA) had its effect in the revision of canon law. Post-Vatican II canon law emphasises the building up of a climate of dialogue with the non-Christian religions. Dialogue with them demands learning their values and cultural expressions. This vision of the council is contained in the canons on the formation of seminarians, especially of missionaries (CCEO cc. 352 §2, 592 §2).

2.2. Christian Faithful: Conciliar Understanding

The council demonstrates a new understanding of the Christian faithful and their role in the Church in carrying out its mission.

2.2.1. The Faithful in General

The explicit conciliar teaching on the fundamental equality of all the members of the People of God (LG 9, 32) was something new in the history of the Church, especially after the patristic era. The placement of the People of God, who include all the faithful (clergy, religious and laity) in the second chapter of LG, before it deals with the hierarchy, provides us with a key to interpreting the document and the mystery of the Church itself. It implicitly states that the hierarchy exists for the entire Church, not the Church for the hierarchy.³⁷ This positioning emphasises the basic equality and dignity of all the faithful in the Church.

We can say the People of God occupy a central position in the code, thanks to the orientation given by the council. After the preliminary canons, the code begins to deal with the Christian faithful. This priority of the community of the faithful draws inspiration directly from the council.³⁸ The rights and duties of the faithful reflect the conciliar teaching on the mystery of the Church, especially the communion of the faithful.³⁹ The fundamental rights of the faithful recognised in the code are an adapted form of many of their rights contained in Vatican II documents. Ecclesial communion of the faithful is the criterion for recognition of these rights and duties.⁴⁰ In other words, the basic intention of these rights and duties is to favour and promote communion among the faithful.

Respect for every human person was a main teaching of Vatican II (GS 26 §2, 29 §2, 41 §3, etc.). Drawing inspiration from this conciliar teaching, post conciliar law prohibits using force to convert someone to Catholic faith (CCEO cc. 586, 681 §1 n. 2°, §5, 682 §1), and to lead

³⁷ Angel Antón, "Postconciliar Ecclesiology: Expectations, Results and Prospects for the Future," in René Latourelle, ed., *Vatican II Assessment and Perspectives: Twenty-Five Years After (1962-1987)*, vol. 1, 428.

³⁸ See this question discussed in the meeting of the PCCICOR *Coetus de Laicis...* on 9 May 1977 in *Communicationes* 44 (2012), 273.

³⁹ John Paul II, Address to the participants of the convention on the occasion of the 20th anniversary of the promulgation of CIC, in Pontificio Consiglio per i Testi Legislativi, *Vent'anni di esperienza canonica 1983-2003, atti della giornata accademica tenutasi nel XX anniversario della promulgazione del Codice di Diritto Canonico*, 13-15, at p. 14.

⁴⁰ Jean B. Beyer, *Dal concilio al codice: il nuovo codice e le istanze del Concilio Vaticano II*, Bologna, Edizioni Dehoniane, 1984, 42.

someone to a different Church *sui iuris* (CCEO c. 31). It is forbidden to impose penal sanction without trial, sentence or decree (CCEO cc. 1402 §1, 1408). The code takes a medicinal approach to penalty (c. 1401), obliges a warning before the imposition of penalty (CCEO c. 1407), etc. These steps are the canonical consequence of the recognition of the fundamental rights of human beings.

The council recognised the right of the faithful (all members of the Church) to be apostles because of their union with Christ (AA 3). This right involves also the right to be evangelisers. In other words, the council does not perceive the faithful, especially the laity, as passive subjects who should engage in the apostolate of the Church only when the pastors require them. "The decree [on the missionary activity of the Church] initiated and promoted new thinking about the mission of the Church."⁴¹ This vision of the council is codified as one of the fundamental rights and obligations of the faithful (CCEO c. 14).

2.2.2. Lay Faithful

In the council, there was a re-discovery and a re-affirmation of the position of the laity in the Church (see especially LG and AA). The ecclesiological vision of the council urged a constructive theology of the laity in the Church. They are not any more seen merely negatively as the non-ordained faithful. They are part of the People of God, and their special characteristic is secularity. By their baptism they share in the priestly, prophetic and kingly office of Christ (LG 31). All the faithful have true equality with regard to human dignity (LG 32). They have a right to be involved in the apostolate of the Church, which right derives from their union with Christ (AA 3). The council instructs explicitly that its teaching on the status and mission of lay people should serve as norms in the revision of canon law (AA 1).

In comparison to the pre-conciliar position of the laity in the Church, the teaching of Vatican II is a breakthrough. The council, especially in its documents LG (30-38), AA and GS (43, 62, etc.), describes the position of the lay faithful in the mission of the Church. They have an active role in the Church. They are not mere subjects of the hierarchs. The laity's charismatic gifts should be recognised by the pastors (LG 30). Secularity is the characteristic feature of the laity (LG 31, AA 2). Pastors in the Church have to respect the rightful

⁴¹ Giuseppe Alberigo, ed., *History of Vatican II*, vol. 5, 447.

freedom of the laity and their role in the mission of the Church (PO 9 “Presbyteros”). They have a vocation to the apostolate, and they should be nurtured by their daily meditation on the word of God (AA 2-4). Laity’s vocation is “to seek the Kingdom of God by engaging in temporal affairs and ordering these in accordance with the will of God” (LG 31). The priesthood of the lay faithful permits them to be collaborators of the hierarchy in the sanctification of the world.⁴² The whole Church is called to holiness, thus the view that only clergy and religious are called to holiness is no longer held (LG ch. 5). Lay people have the right to express their opinion (LG 37). It is not a question of a single right of the laity, but conveys the whole vision of the council on the status of the laity in the Church. Everything that is said by the council about the People of God in general is applicable to the laity also (LG 30).

The Eastern code had to acknowledge this new teaching on the laity and contain laws based on that teaching, which task it did especially in its canons 399-409. It may be interesting to note that almost all the sources of canons on the laity in the CCEO Title 11 are from the Vatican II documents.

The conciliar teaching on the laity is incorporated in the CCEO’s Title 1 (the duties and rights of the Christian faithful in general), Title 11 (on the laity) and Title 13 (the associations of the faithful). Outside these titles there are certain other canons which leave room for bishops to call a lay person to hold an ecclesiastical office. “Besides those ecclesiastical functions to which lay persons are by common law admitted, they may be admitted by a competent authority to other functions, except those that require sacred orders or that are expressly forbidden to lay persons by the particular law of their own *Church sui iuris*” (c. 408 §2). Lay people can be admitted to carry out certain functions of the sacred ministers (c. 403 §2). Although lay people do not have power of governance, they can collaborate in the exercise of that power (c. 979 §2). The eparchial finance officer can be a lay person (c. 262 §1). In the eparchial curia, the notary can be a lay person, except in case where the reputation of a cleric is involved (c. 253). The bishop has to ensure that a certain number of lay faithful participate in the eparchial assembly (c. 258 §1, n. 10). If necessary, lay people can be asked to preach in churches (c. 610 §4). Lay people have a quite broad freedom to found and direct associations in keeping with the mission of the Church (c. 18), to promote and

⁴² Giuseppe Alberigo, ed., *History of Vatican II*, vol. 3, 100.

support apostolic activities on their own initiative (c. 19). There are many more canons in the CCEO which provide explicitly or implicitly for admitting lay faithful to various functions and apostolates of the Church, including an active role in evangelisation (c. 585 §§1 and 4).

2.2.3. Christian Faithful Leading Consecrated Life

There are 163 canons in the CCEO's Title 12 dealing with the institutes of consecrated life. Only twenty-three times are Vatican II documents referred to as sources of canons of this Title.⁴³ In other words, the conciliar documents are rarely used as sources of this Title in comparison with other Titles of the code. This fact also partly explains the rarity of novelty in this Title.

Indeed there is some novelty in this Title. The provision for secular institutes, societies of apostolic life, etc. (cc. 563-72) is new in the code for the Eastern Churches and is mainly inspired by the council. The inspiration of the council is visible in the tripartition of the Christian faithful in the CCEO (LG 31, c. 399). Unlike CIC c. 207, the CCEO, respecting the Eastern tradition, considers the religious a category of the faithful different from the laity. However, the council is not consistent in this regard. The decree on the renewal of religious life (PC) seems to follow the classical Latin division of the faithful into clerics and laity, and ascribes lay status to non-clerical religious.⁴⁴ The exhortation of OE (n. 6) to return to the Eastern disciplinary sources is satisfactorily applied in the CCEO Title 12. In the Eastern code, much emphasis is given to monks, even though in no Eastern Church does monastic life exist in the form that is conceived in that code. OE does not say anything about the Eastern Catholic religious

⁴³ Vatican II sources of the CCEO Title 12: cc. 410, 411 (introduction), 412 §2, 415 §§ 1, 3 (dependence on ecclesiastical authorities), 421 (superior's duty), 424 (temporal goods), 426 (observance of vows), 433 §1 (monastery), 471 §1 (formation), 473 §§1, 2 nn. 1, 2, (divine praises in monasteries), 474 §2 (freedom to choose confessor), 476 (habit), 477 §1 (cloister), 512 §1 (composition of general synaxis), 534 n. 3 (general synaxis can oblige a member to renounce his patrimony), 540 (habit), 541 (cloister), 563 §1 (secular institutes), 570, 571 (new forms of consecrated life).

⁴⁴ "Religious congregations of laymen and laywomen are in themselves a wholly adequate expression of commitment to the gospel counsels. ... This synod rules that there is no impediment to the ordination of some few members of a congregation of brothers, provided always that the congregation itself remains clearly lay" (PC 10).

life in general or renewal of religious life in particular. However, the same decree wishes to adapt the way of life of the Eastern Churches to the various needs of time and place (OE 2). This wish is not sufficiently taken into account in the CCEO as regards the renewal of the religious life. Its general teaching on the observance of the Eastern discipline (OE 6) is relevant in the case of religious life also.

The emphasis on updating of the institutes of consecrated life, found in the council, especially in PC, seems to be absent in the Eastern code. The decree speaks of adapting the way of life of the religious to the culture of the place where they live, exhorting: "The style of life, prayer and work of the modern religious should reflect contemporary ideas and living standards. It must, too, as far as the character of each institute allows, respond to the demands of the apostolate, cultural patterns, and the prevailing social and economic climate, particularly in missionary territories" (PC 3).

There are almost no canons on the apostolate of members of the institutes of consecrated life. A fundamental teaching of LG about the religious life is "[The religious] have the duty, in accordance with their capacities and in keeping with their particular vocation, whether it be by prayer or by active labour as well, to work for the implanting and development of the kingdom of Christ in souls and for spreading it to all parts of the world" (LG 44 "Cum vero..."). This is a duty of all Catholic religious, both Eastern and Western. Had it been codified, this would have become a guideline for choosing the apostolate of the institutes of consecrated life.

On adapting religious life to missionary contexts, the council teaches, "In young churches particular attention should be paid to the promotion and cultivation of forms of religious life which take into account the character and way of life of the inhabitants, and the local customs and conditions" (PC 19). This has not been codified in the CCEO, except in c. 592 §1 which, in the context of the evangelisation of peoples, says, "... institutes of consecrated life are to be promoted, taking into account the particular qualities and character of the different peoples..."

The council prescribes that according to its teaching and taking into account the needs of our time "constitutions, directories, books of customs, of prayers, of ceremonies and such like should be suitably revised, obsolete prescriptions being suppressed, and should be brought into line with this synod's documents" (PC 3). This demand is not explicitly contained in the CCEO. However, since the conciliar

teaching is binding on the whole Catholic Church, the institutes of Eastern Churches can follow the teaching contained in the decree PC and renew their constitutions. The code, after giving general norms on the religious, prescribes only that the life of the members should be in keeping with the constitution of the respective institute.

2.2.4. Priests and Priestly Formation

The council entrusts the duty of fostering vocations to the priesthood to the whole Church, especially those who hold a teaching function in family and in society, such as parents, teachers and clerics. In addition, the council highlighted the need of giving due importance to the missionary dimension of the Church in the clerical formation (OT 2, PO 11). These prescriptions of the council are “canonised” in the CCEO cc. 329 §1, 380, etc. Similarly, many other instructions of the council on the training of the clergy were to be codified. They include the council’s insistence on the central role of the Sacred Scripture in the seminary curriculum, pastoral formation, formation in secular sciences, ecumenism, inter-religious relationship, communication media and inclusion of other topics which would make the clergy effective ministers in the contemporary world (CCEO cc. 347-52). It is worth taking note of the importance which the CCEO gives to inculturation, by demanding that the seminary students be trained to “deeply penetrate Catholic doctrine drawn from divine revelation and express it in their own culture” (c. 350 §1). The conciliar source of this canon is OT 16 where the term “culture” does not appear. However, the addition of that word in the canon is coherent with the conciliar teaching in general and with OT 16 in particular. In order that his preaching be effective the preacher should know to express the Christian doctrine in ways adapted to the cultural situation of the audience.

The council perceives the commitment to Christian unity as a mission of the whole Church (UR and OE 24). In accordance with this conciliar vision, the CCEO prescribes “As long as the unity that Christ wished for His Church has not been fully realised, ecumenism is to be one of the necessary dimensions [of] every theological discipline” (c. 350 §4).

Seminary formation is to be in one’s own rite. The CCEO prescribes “Students, even if admitted into a seminary of another *Church sui iuris* or into a common seminary for several Churches *sui iuris*, are to be formed in their own rite; any contrary custom being reprobated”

(c. 343). Although no source from a conciliar document is indicated, this canon is consonant with the teaching of OE 4.

The council presents as the first task of priests the preaching of the Word of God (PO 4). Unlike the *motu proprio* “*Cleri Sanctitati*” c. 53 which presents the first canon of the privilege of priests as the right of jurisdiction, the CCEO c. 367 presents the first duty of priests as preaching the Kingdom of God. This CCEO canon presents the priesthood in the context of service of the community of the faithful for its building up. This shift in the emphasis is due to the council.

The CCEO c. 384 §1 brings back powerfully the reconciliatory role of priest. This role probably overtakes the role of a mere judge. The inspiration for the re-discovery of this role could be traced in the council (GS 92 “*Quod*”, PO 6 “*Munus*”). Genuine dialogue, which is a duty of the Church, “requires us first of all to promote mutual esteem, respect and harmony, with the recognition of all legitimate diversity, in the church itself, in order to establish ever more fruitful exchanges among all who make up the one people of God, both pastors and the rest of the faithful. For what unites the faithful is stronger than what divides them: there should be unity in essentials, freedom in doubtful matters, and charity in everything” (GS 92).

The council exhorts priests to be willing to go to any part of the world for ministry especially where there is a shortage of clergy. This admonition is codified in c. 393.

One of the major contributions of the CCEO is the equal honour given to the priests who have chosen celibate life and those who have chosen married life. Clerical celibacy and the status of married clergy are equally held in honour (CCEO c. 373), unlike the CS c. 68 in which the married clergy was only tolerated. This difference is thanks to the esteem of the council for the disciplinary tradition of the Eastern Churches (OE *passim*).

The CCEO prescribes “It is necessary that Sacred Scripture be like the soul of all of theology, and must influence all sacred disciplines; therefore in addition to exegesis, an accurate methodology, the principal chapters of the economy of salvation as well as the principal themes of biblical theology are to be taught” (c. 350 §2). Similarly, the code lays down that the ministry of the Word of God including preaching, catechesis, liturgical homily, etc. “is to be beneficially nourished by Sacred Scripture” (cc. 607, 614 §1, 616 §1, etc.). These norms draw their inspiration from the council, especially from the Constitution on Divine Revelation (DV 24-25).

The council promotes the institution of permanent diaconate and instructs its restoration where it has fallen into disuse (LG 17). LG 29 enumerates the general duties of permanent deacons. Various canons of the CCEO contain the duties of deacons: for example, cc. 608, 610 §3, 611, 612 §2, 699 §2, and 709 §1. As for the duties of deacons, the CCEO does not make a distinction between permanent deacons and the deacons intending to receive priestly ordination. Although LG 29 includes “assisting and blessing marriage” among the tasks of deacon, the CCEO has not accepted it. According to the CCEO only a priest or a bishop can validly assist and bless marriage (c. 828 §1).

2.2.5. Bishops

“There is a page-after-page reminder of the bishops’ responsibilities and duties, almost nothing of prerogative and rights. ... The new blueprint [in *Christus Dominus*] has been drawn to secure for bishops not power or prestige, but that people might hear in them the words of Christ, ‘I came not to be ministered to, but to minister.’”⁴⁵ In the council’s perception, bishops are not mere administrators of dioceses and Church institutions; they are pastors. Their academic degrees, talents and expertise in various areas such as diplomacy help them to become more effective pastors. The council’s perception of the power of diocesan bishops is concisely expressed as follows:

The bishops govern the churches entrusted to them as vicars and legates of Christ, by counsel, persuasion and example and indeed also by authority and sacred power which they make use of only to build up their flock in truth and holiness, remembering that the greater must become as the younger and the leader as one who serves (see Lk. 22, 26-27). This power which they exercise personally in the name of Christ is proper, ordinary and immediate, although its exercise is ultimately controlled by the supreme authority of the church and can be circumscribed within certain limits for the good of the church or the faithful. By virtue of this power, bishops have the sacred right and duty before the Lord of making laws for their subjects, of passing judgement on them and of directing everything that concerns the ordering of worship and the apostolate. The pastoral office, that is to say the

⁴⁵ Walter M. Abbott, ed. and Joseph Gallagher, tr., *The Documents of Vatican II*, 6th printing, 1972, 391.

habitual and daily care of their sheep, is completely entrusted to the bishops and they are not to be considered vicars of the Roman pontiffs, because they exercise a power that is proper to themselves and most truly are said to be presidents of the peoples they govern. Therefore their power is not destroyed by the supreme and universal power, but on the contrary it is affirmed, strengthened and vindicated by it, since the holy Spirit unfailingly preserves the form of government established in his church by Christ the Lord (LG 27).

This perception is at the base of all the norms (both in the council and in the CCEO) given to guide the exercise of the pastoral office of diocesan bishops. The code recognises that an eparchy is entrusted to a bishop to shepherd it in his own name and to govern it as the vicar and legate of Christ, and that “the power which he exercises personally in the name of Christ, is proper, ordinary, and immediate” (c. 178). The consequences of this recognition pervades throughout the code wherever it deals with the exercise of the power of diocesan bishops.

The council highlights the pastoral role of the diocesan bishop. His role as pastor of the diocese is necessarily seen in relation to the faithful, being placed in that office for their good. One of the pertinent conciliar teachings is: “In exercising their paternal and pastoral function, bishops should be in the midst of their flock as those who serve,⁴⁶ good shepherds who know their own sheep and whose sheep know them. They should be true fathers who manifest a spirit of love and care for all and to whose God-given authority all submit themselves with good will” (n. 16). The code imbibes this spirit of the council and presents the diocesan bishop as the pastor and father of the diocese. For example, the CCEO c. 192 prescribes how the diocesan bishop should take interest in the various kinds of faithful entrusted to his care.

The council establishes that bishops should take care of the non-Catholics of their territory (CD 11). This duty of the bishop is something new in the Catholic Church’s history, and it demonstrates the turn taken in the teaching of the Church regarding the non-Catholics including the non-Christians.

Eparchial bishops can dispense from any norm of ecclesiastical common law and particular law, except when this power is reserved

⁴⁶ In the original it is fn 12. It reads, “See Lk. 22, 26-27.”

to a higher authority, when the good of the faithful requires it (c. 1538 §1). Under the dominion of the previous codes the diocesan bishops did not have this power. This power gives the diocesan bishops the possibility to discern with responsibility and to intervene to dispense someone from the observance of a specific law. This norm has much pastoral relevance.

The bishops, because of collegiality, have a role in the governance of the entire Church, in collaborating with the pope (CD 4-7, LG 18). This role is more formally carried out in an ecumenical council or, when asked by the pope even while remaining in their diocese (CD 4). The conception of the foundation of the Church on Peter and the apostles strengthened the idea of collegiality of bishops (including the pope) of the Church (LG 19).⁴⁷ Post-conciliar Catholic law establishes a few institutions such as the synod of bishops which reflect in a concrete way the idea of collegiality among the bishops.

2.2.6. Patriarchs

Vatican II earnestly exhorts and prescribes that the Eastern Catholic Churches observe their own rite, which includes their theological, liturgical, spiritual and disciplinary heritage (OE passim). In addition, the council teaches that each Eastern Catholic patriarch governs his own Church as its father and head. Therefore their rights and privileges should “be restored in accordance with the ancient traditions of each church and the decrees of ecumenical synods. Indeed, these rights and privileges are those which were in force at the time of the union between east and west, although they may have to be to some extent adapted to modern conditions” (OE 9). In the context of the preceding legislation on the patriarchs, the significance of this solemn declaration can be better grasped. The Fourth Lateran Council allowed limited power to the Eastern patriarchs (c. 5), namely, to confer pallium on their own suffragans, to receive from their suffragans the canonical profession and the promise of obedience to the pope, to carry the cross before them anywhere except in Rome or where the pope or his delegate wearing the insignia of the apostolic dignity was present, and to receive appeals from anywhere within their jurisdiction.

In comparison with the power which the patriarchs had in the pre-CCEO period of the second millennium, we can see that the CCEO has made great progress in reinstating the role, rights and privileges

⁴⁷ Giuseppe Alberigo, ed., *History of Vatican II*, vol. 3, 65.

of the Eastern Catholic patriarchs. The CCEO cc. 78-101 deal mainly with the power of the patriarchs within the territory of their Church.

The teaching of Vatican II is rather well applied in the Eastern code. However, it seems that the code is not as open as the council in restoring the competence of the patriarchs as it was in the age of communion. Restoration of the rights and privileges of the patriarchs to the situation of the first millennium would also imply the restoration of the power of the Roman Ap. See over the Eastern faithful exercised in the same period.

Conclusion

The Church has never been a mere onlooker in the world. Throughout history it has recognised the enormous resources of the world, enriched it and made attempts to help it resolve its problems. When the Church recognised its methods as being outdated and ineffective, it searched for effective ways to involve in the world. As the Church began to spread in the area of Greek culture, it felt the need to reformulate its teaching in tune with the categories and symbols of the Greek thought. The Church Fathers successfully adapted their language to the needs and style of their audience. A modern example for the dynamic nature of the Church is the celebration of the Second Vatican Council and its consequences in the Church life. The council helped the Church widen its horizons in understanding the world's needs and bring the gospel into dialogue with the world's present situation.

The post-conciliar law of the Church derives its inspiration directly from the council. "In fact, Vatican II was the basis for many canons of the current Code, but more significantly was the basis for a new approach to understanding the canon law, which [understanding] would have significant consequences for the new Code."⁴⁸ This observation on the relationship between the council and the CIC is exactly true also of the CCEO. It is obvious that many CCEO canons have their direct source in conciliar teaching. However, it was the approach set by the council which counts more. In the second millennium, almost until Vatican II the general trend in the Eastern

⁴⁸ Brian Edwin Ferme, "Il Codice di Diritto Canonico del 1983 in prospettiva storica," in Pontificio Consiglio per i Testi Legislativi, *Vent'anni di esperienza canonica 1983-2003, atti della giornata accademica tenutasi nel XX anniversario della promulgazione del Codice di Diritto Canonico*, 52. Translation from original Italian is mine.

Churches was to make their law progressively resemble the Latin law. This trend is visible also in the laws contained in the CICO. This approach changed to a great extent thanks to the outlook shaped by the council. The council not only appreciated the ancient law of the Eastern Churches, but prescribed that modern Eastern legislation be based on that ancient law, and solemnly declared that these Churches have the right and duty to govern themselves according to their own law (OE 5-6).

In the Ap. Constitution *Sacri Canones*, promulgating the CCEO, John Paul II said: "The *Code of Canons of the Eastern Churches* should be considered as a new complement to the teaching proposed by the Second Vatican Council. By the publication of this Code, the canonical ordering of the whole Church is thus at length completed..."

The mandate of the PCCICOR was to revise the code in the light of Vatican II, and the same was repeated in the speech of Paul VI formally inaugurating the work of the same commission.⁴⁹ Already from the beginning of the existence of the PCCICOR it paid special attention to base the revision of the code along the lines of Vatican II teachings. The Guidelines for the revision of the Eastern code testify to this fact.⁵⁰

The council was the basis not only of the new legislation, but was the guideline for the comprehension, interpretation and application of the new law. The pontifical commissions for the revision of the CIC 1917 and the CICO had to take into account the general and principal intention of the council to incorporate laws suitable to promote renewal in the Church in keeping with the council's desire. In conclusion we can affirm that the CCEO has succeeded, on the whole, in incorporating the conciliar teaching.

⁴⁹ See *Nuntia* 1 (1975), 4-8, 11.

⁵⁰ *Nuntia* 3 (1976), 3-10.