

LIFE AND LAW

Canon Law and Its Life Enhancing Dimensions

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1. Introduction

Jesus Christ had initiated a charismatic community, which finally evolved into the Church. It is not, however, a spiritual and heavenly reality alone. It has got a visible human face and an organizational structure. It is not a stagnant but a dynamic one, comprising of independent and free human beings. This independence is, however, not absolute, nor a license to do anything without limit or regard for fellow human beings. Just as different parts or organs of a human being are endowed with different duties, and as they function according to an ordered structure for the organic growth, different individuals and juridical institutions in the Church community also have certain specific tasks to fulfil, which are aimed at the good of the individuals as well as the society. These individuals and juridical institutions must have sufficient freedom and ambience conducive to discharge the tasks they are assigned with.

Without a good order this will not be possible. In this article we try to see how laws can be of assistance in providing this necessary atmosphere. A good ruler or legislator will find rules and regulations as a special means of facilitating the social as well as individual life in bringing about common good through the establishment of good order. In our search after the life enhancing dimension of the Canon Law we shall analyse some of the guiding principles accepted in the revision process of the Latin and the Eastern Codes¹ as our point of departure. First of all, we shall briefly discuss the life-giving dimension of law in the Bible.

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¹*Codex Iuris Canonici*, Auctoritate Ioannis Pauli PP. II promulgatus, AAS 75 (1983), Pars II, 1-317 (For the English version used in this article, see The Canon Law Society of Great Britain and Ireland, *The Code of Canon Law*, Bangalore: Theological Publications in India, 1983). *Codex Canonum Ecclesiarum Orientalium*, Auctoritate Ioannis Pauli PP. II promulgatus, AAS 82 (1990), 1033-1353 (For the English version see, Canon Law Society of America, *Code of Canons of the Eastern*

2. Jesus and the Life-giving Dimension of Law

Jesus says: “I came that they may have life and have it abundantly” (Jn. 10:10). This is no legal prescription but the soul of the gospel message. Jesus, through various parables and episodes, reaffirms the fact that the function of law is to impart, ensure, and foster life, and not to hinder or destroy it. Law is life centred both in its social and individual dimensions and in the spiritual and material aspects.

In Mt. 12:1-14 we read Jesus’ confrontation with the Pharisees with regard to the Law of Sabbath. When Jesus and the disciples were passing through the grain field, the hungry disciples plucked grain and ate. It was, according to the Pharisees, against the law of Sabbath and, therefore, they questioned Jesus: “Look, your disciples are doing what is not lawful to do on the Sabbath” (v.3). It is interesting to note that the Pharisees were not complaining against an act of theft or encroachment into others’ property or wealth, but pointing to the non-observance of a law. Jesus, with reference to the Old Testament and David who “entered the house of God and ate the bread of the Presence, which it was not lawful for him to eat nor for those who were with him, but only for priests” (v.4), told them: “I desire mercy and not sacrifice” (v.7). Then, he cured the man with withered hand. As Jesus healed the man, Pharisees accused him of doing unlawful things on Sabbath. Mark and Luke insert here a question addressed by Jesus to the accusing Pharisees: “I ask you, is it lawful on the Sabbath to do good or to do harm, to save life or to destroy it?” (Mk. 3:4; Lk. 6:9). Jesus himself answers it telling them that “... it is lawful to do good on the Sabbath” (v.12). Then, he by healing the sick man established that the law should aim at giving or enhancing life and eliminating or, at least, diminishing human suffering respecting the dignity of human being who is created in the image and likeness of God (Gen. 1:26). “The Sabbath was made for man, not man for the Sabbath; the Son of man is Lord even of the Sabbath” (Mk. 2:28).

Jesus points out that literal observance of law neglecting its spirit is detrimental to life; in other words, an exclusive insistence upon the literal sense of the law is far from being life enhancing. Another example to show Jesus’ attitude towards Pharisaic legalism would be parable of the woman caught in adultery (Jn. 8:1-11). The Pharisees and Scribes brought a woman caught in adultery and wanted to stone her to death, according to the law of Moses. Now Jesus does not pronounce a judgment either in

favour or against her. But somehow brings out the fact that law is not to destroy a life but to save and redeem even the fallen ones. He said: “Let him who is without sin among you be the first to throw a stone at her.” If he were to grant permission to follow the law of Moses to the literal sense, then that would have caused her spiritual as well as physical death. Thus, Jesus revealed to them the fact that the purpose of law is not to cause death to a person, neither physical nor spiritual but to enhance both. Jesus was not defying the law of Moses but perfecting it by applying that which we now call the “principle of equity,” that is meting out justice with the sweetness of mercy. “Think not that I have come to abolish the law and the prophets; I have come not to abolish them but to fulfill them” (Mt. 5:17).

St. Paul also in many of his letters attacked Jewish legalists who placed observance of the law before the practice of religion in spirit: “A person is not justified by works of the law but through faith in Jesus Christ” (Gal. 2:16). At the same time, however, he acknowledged a clear role for law: to assist the local churches he had visited to live lives in harmony with the message of Jesus. Thus, “law functions best when it upholds and fosters the dignity of the individual and assures through its directives respect for the dignity of each person.”² Ultimately, therefore, the Bible and the message of Jesus constitute the main source of Canon Law.

3. The Idea of Two Codes

The very idea of having two codes in the Catholic Church – one for the Latin Church and another for the 21 Oriental Churches – points to the life-enhancing dimension of laws in the Church. Referring to the importance of the two codes in the life of the Universal Church, that is, Eastern and Western, Pope John Paul II declared: “The Church gathered by the one Spirit breaths, as it were, with the two lungs of East and West, and burns with the love of Christ, having one heart, as it were, with two ventricles.”³ Separate codes for the West and the East enable the Latin Church and the 21 Eastern Churches to be free from the clutches of unnecessary centralization in government and to live the rich identity and patrimony of each Church in its fullness.

²Kevin E. McKenna: *A Concise Guide to Canon Law*, Notre Dame: Ave Maria Press, 1999, 13.

³John Paul II, Ap. Const. *Sacri Canones*, in Canon Law Society of America, *Code of Canons of the Eastern Churches*, Latin English Edition, New Translation, xxiii-xxiv.

The committees constituted for the revision of both the codes were given 10 guidelines each to be followed in the revision process.⁴ The first guideline of the Eastern Code stipulated that all the oriental churches must have a single code equally applicable to all of them. There is sufficient reason for unity among the various oriental churches which prompts the codification of a single code for all of them. There is, however, provision for the formulation of particular laws, and this is praiseworthy. It helps to accommodate the divergences and differences that arose in the course of the historical, cultural and socio-political development of each church into the body of laws. Thus, the provision for particular laws takes care of the life of the 21 individual churches *sui iuris* and their salient features which are unique to each one of them. It facilitates to better guide and shape the life of each individual church. We know for certain that for the growth, development, and expansion of any society or organization, a certain amount of freedom and independence is inevitable. The Church by providing two codes shows its openness to other traditions and cultures, the development and safeguarding of which contribute to the beauty and organic growth of the whole. It is, indeed, the thrust of the Vatican document on the Eastern Churches (OE).

4. Principle of Subsidiarity

Another factor which discloses the positive thinking and life enhancing dimension of the new codes is the principle of subsidiarity, one of the guidelines for the revision. It means the higher authorities do not reserve that which the lower bodies or units can perform on their own. It, thus, recognizes the competence and efficiency of the subordinates. Certain things could be best executed or implemented when they are left to the lower bodies. Thus, this principle also helps indirectly to strengthen “the bond between those exercising authority and those subject to authority.”⁵ While maintaining the general and universal laws that are applicable to the entire church, the principle of subsidiarity prescribes that “greater weight should be given to particular legislation, even at the national and regional levels, so that the unique characteristics of individual churches will

⁴*Communicationes* 1 (1969), 77-85: The principles for the revision of the Latin Code were approved by the Synod of Bishops of 1967; *Nuntia* 3 (1976), 10, 14-24: The guidelines for the Revision of the Oriental Code were approved at the first Plenary Assembly of the Commission of the March 18-23, 1974.

⁵James A. Coriden, ed., *The Code of Canon Law: A Text and Commentary*, Bangalore: Theological Publications in India, 1995, 6.

become apparent.”⁶ According to this principle, the lower or subordinate bodies or authorities are empowered to enact rules to be observed within their jurisdictions. A higher ecclesiastical authority grants to a lower one increased autonomy in executive as well as legislative powers. It is in view of better catering to the needs of the churches *sui iuris*. The Oriental Churches have adhered to the principle of subsidiarity all through the ages. It leaves “to the competent authorities of these churches the power to regulate by particular law all other matters not reserved to the holy see.” Similarly, the individual bishops should not reserve to themselves what the parish priests and others under him could perform. The parish priests, in turn, should leave to those under them the competence and power to perform those which they can.⁷

CCEO c.1493 §2 stipulates what a particular law is: “Under the name particular law come all laws ... which are neither common to the entire church nor to all the Eastern Churches.” Ivan Žužek holds that the concept of this principle “covers every type of *ius particulare*, ranging from the law of the eparchy to that of an individual religious community or of an association or to the legitimate internal rules of a seminary, a faculty of higher studies and so on.”⁸

As a result of the application of this principle we see that several canons, especially in the Oriental Code, will have a provision for the individual churches to make particular laws on particular points. For example, CCEO c.1013 §1 stipulates that “the eparchial bishop has the right within the limits established by particular law of his own church *sui iuris*, to determine the fees for the various acts of the power of governance and to determine the offerings on the occasion of the Divine Liturgy, sacraments...” Several things that the previous Oriental and Latin Codes reserved to the Holy See either for legislation or for execution have now been left to the diocesan bishops or Synod of Bishops to decide upon. This enriches the life of various individual church communities because these lower authorities can better make laws taking into account the special needs and circumstances of particular communities.

⁶Coriden, ed., *The Code of Canon Law A Text and Commentary*, 6.

⁷*Nuntia* 3 (1976), 20-21.

⁸Ivan Žužek, “Particular Law in the Code of Canons of the Eastern churches,” in Jose Chiramel et al., eds., *The Code of Canons of the Eastern Churches: A Study and Interpretation*, Alwaye, India: STAR Publications, 1992, 44.

5. Material and Spiritual Welfare

While speaking about the lay people employed in the service of the Church, the code states: “They have the right to a just remuneration suited to their condition by which they can, with due regard for the prescripts of civil law, provide decently for their own needs and those of their family. They likewise have the right for suitable insurance, social security and health care to be provided for themselves and their family” (CCEO c.409 §2; see also CIC c.213 §2). The codes have also legislated about the need of establishing an institute whereby the clerics could be suitably provided with necessary material support. “Insofar as necessary, each eparchy is to establish, in a manner determined by the particular law of its own Church *sui iuris*, a common fund through which eparchial bishops can satisfy obligations towards other persons who serve the Church and meet the various needs of the eparchy and through which the richer eparchies can also assist the poorer ones” (CCEO c.1021 §3; see also CIC c.1274). CIC c.281 §3 and CCEO c.390 speak about the material security of permanent deacons and the married clergy, respectively. The remuneration they receive should be adequate to support themselves and their family members. “The immediate purpose of the Decalogue was the security in life, marriage, property and good name of the men of the community.”⁹

Luke 10:29-37 deals with the parable of the Good Samaritan. The introductory discourse is initiated with a preamble on law (vv.25-28). An expert in law asks Jesus: “What must I do to inherit eternal life?” The response of Jesus also has a reference to law: “What is written in the law? What do you read there?” The lawyer, quoting from the book of Dt. 6:5, says: “You shall love the Lord your God with all your heart, and with all your soul, and with all your might.” So, spiritual perfection is sought in the observance of law. Codes establish that the lay faithful have the legitimate right to seek spiritual nurturing from the pastors (CCEO c.16; CIC c.213). Moreover, the last canon of CIC stipulates that salvation of souls is the supreme law in the Church (c.1752). We can say, therefore, that the laws in the Church aim at the material as well as spiritual welfare of the faithful.

6. Freedom Enhanced by Law and Order

There is a common misconception that rules and regulations in the Church are means of repression, which curtail one’s freedom and, thus, make life of the faithful a miserable one. In the hands of a tyrant or a dictator laws

⁹George Nedungatt, Unpublished class notes on *Law in OT*, 8.

may become instruments of oppression. So also in the hands of a 'legalist' the rules and regulations might lose their spirit and people would be suffocated under the *heaviness* of laws. With "such selfish authorities who consider their subjects as slaves or as their possessions law puts on an inhuman face and becomes an instrument of oppression rather than of salvation and liberation."¹⁰ The Canon Law Society of America, through the following concrete example, discloses the fact that it is not an "instrument of repression" rather of creating freedom that ensures maximum common good. It is not a means of restricting freedom, though apparently it might seem to be such for those who do not grasp the significance of law and consider law as absolute license to do anything.

In most modern cities, it will take at least an hour to reach the airport by car. If there were no traffic regulations of any kind, it were a "free for all," it would almost certainly take twice or more that length of time to get there. The point about any traffic regulations is that they are designed to provide the greatest degree of freedom possible for everyone, consistent with the maximum degree of safety that is practically achievable. It is taken for granted that each road user has an equal right to the same freedom. It is the same with all good law. Its purpose is the positive one of creating the circumstances in which true freedom is possible and true human goals attainable. The opposite of law is not freedom, but chaos, which has been well described as "a much more restrictive tyranny."¹¹

The definition of law, which will be discussed in the sequel, tells us that laws are enacted for the common good. According to Vatican II, common good is "the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfilment more fully and more easily" (GS 26). In this sense the traffic rules only facilitate the best use of the road transportation serving the common good by protecting everybody's freedom.

Since there is fundamental equality among all the faithful by virtue of baptism irrespective of any hierarchy of order or status of life, and since

¹⁰Jose Porunnedom, "Laws: Medicinal or Punitive? Canons on Penal Sanctions in the Code of Canon Law (CIC) and Code of Canons of the Oriental Churches (CCEO)," *Jeevadhara* 32, 190 (2002), 263-64.

¹¹Canon Law Society of Great Britain and Ireland, "The New Code of Canon Law: An Invitation and a Challenge," *Readings, Cases, Materials in Canon Law A Text book for Ministerial Students*, ed. Jorden Hite, Collegeville, MN: The Liturgical Press, 1990, 103.

there is functional diversity among the faithful, one of the guiding principles of both the codes prescribes to clearly define the rights and duties of all the faithful. CCEO c.17 and CIC c.214 speak of the right of the faithful to follow their own form of spiritual life in accordance with the norms of the Church. Thus, the code protects the fundamental rights of the faithful to freedom. However, it is not an absolute license to do anything and everything according to one's whims and fancies. It restricts the exercise of this freedom lest it would adversely affect the common good of the Church. The codes of canon law strike a balance between freedom, duty, and obligation that together enhance the integral life and organic growth of the community. Thus, canon 21 of CCEO makes the right to inquiry and expression constitutional: "Those who are engaged in the sacred sciences have a just freedom of inquiry and of expressing their opinion prudently on matters in which they possess expertise, while observing the submission due to the magisterium of the church." The revision committee was of the opinion that the code should provide sufficient liberty of action to the faithful and should recognize and safeguard their rights:

The code must also protect the right of lay people to information and to the expression of personal opinions, provided this is done in accordance with the principles laid down in LG 37: "They [i.e., lay people] are, by reason of the knowledge, competence or outstanding ability which they may enjoy, permitted and sometimes even obliged to express their opinion on those things which concern the good of the church."¹²

7. Purpose and Function of Laws in the Church

In order to arrive at the point of our discussion, i.e., the life enhancing orientation of canon law, it is better to see the purpose of law in any society and in the church, in particular, which is a spiritual as well as visible, earthly as well as a heavenly reality composed of weak, imperfect human beings. If we look back to the history of the ecclesial society as well as the civil society, we can note that the reasons behind the emergence of most of the complex rules, regulations and other restrictive measures that govern the society are the anomalies or chaotic circumstances that arose in the society in the course of human history. Whenever such things happened they needed to be controlled, checked and

¹²*Nuntia* 10 (1976), 23.

set aright so that there emerged an atmosphere conducive to the life and smooth functioning of the society as well as the individuals. Therefore, the persons who are having the care of the community enact certain laws that would restore and ensure the tranquillity and peace in a given society. Thus, laws help to create an order which, in turn, facilitate the smooth functioning of society and provide security in life.

For example, recently in the wake of the September 11, 2001 attack on the World Trade Centre in the USA, almost all nations, especially the developed countries, have established very strict and stringent security measures for the screening of the passengers and their flights. One may think that it has made life very miserable and that it curtails one's freedom to travel anywhere freely. But, in fact, such restrictions are introduced to ensure and protect the lives of hundreds and thousands who travel by flights.

There was the protestant argument that Church is a spiritual and invisible reality and, therefore, there is no need or relevance for laws in the Church. But the Catholic position sees Church as a visible and invisible reality and affirms the role of law as a facilitator. It is against this background that Pope John Paul II, promulgating the Latin Code, stated: "The purpose of the Code is not to substitute for faith, grace, charisms, and especially charity in the life of the Church or of the Christian faithful. On the contrary, its very purpose is to create an order in the ecclesial society so that, while giving priority to love, grace and charism, their ordered development is facilitated in the life of the ecclesial society as well as in the lives of the individuals who belong to it."¹³ He continued to speak of the necessity of laws thus: "Since the Church is established in the form of a social and visible unit, it needs rules, so that ... the mutual relationships of Christ's faithful are reconciled in justice based on charity, with the rights of each safeguarded and defined; and ... that the common initiatives which are undertaken so that Christian life may be ever more perfectly carried out, are supported, strengthened and promoted by canonical laws."

As the traffic rules protect and safeguard the rights of every user of the road transportation and at the same time avoids confusion and chaos which might endanger the lives of many in accidents, canon law helps the society as well as the individual members to live a harmonious life where everyone can enjoy the fruits of love, grace, charity and such values. One of the guiding principles given to the revision committees of both the

¹³John Paul II, Ap. Const. *Sacri Disciplinae leges*.

codes was to define the rights and obligations of each individual and to prescribe ways and means to protect them. In short, the scope of the norms and regulations is to enhance the life both at the individual and societal levels. This is also evident from the definition of law in general and that of canon law in particular.

Law is “rule made by authority for the proper regulation of a community or society or for correct conduct in life.”¹⁴ As man is a social being, there need to be some kind of order so that the societal life functions in a harmonious way. There should be someone or some legal body who is competent to guide and govern every society. The general definition of law cited above contains the element of authority. It also spells out the purpose of law, i.e., to properly regulate the life in the society or to properly direct the behaviour of the members of a society.

Thomas Aquinas’ classical definition on canon law runs as follows: “Law is an ordinance of reason for the common good, made by that person who has care for the community, and promulgated.”¹⁵ This definition of canon law contains the following elements: It is a set of norms created by reason; it intends to bring order into the life of the ecclesial community; it is articulated and promulgated by those who are entrusted with the care of the community and its purpose is to serve the common good. An officially promulgated Code of Canon Law imposes obligations, that is, it establishes legal bonds from which rights and duties flow. Legislator or authority is not one who suppresses his subjects with the load of rules. Rather, he is one who has care for the community and, therefore, prescribes certain ways and means which would enhance the good of the individual as well as the society as the mother cares for the child and controls him with her prescriptions aiming at his well being.

8. Laws Serve Common Good

Vatican document on Church in the Modern World describes what common good is. It is “the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfilment more fully and more easily” (GS 26). The same document says that human

¹⁴*Oxford Advanced Learner’s Dictionary of Current English*, Third Edition (1974), s.v. *Law*.

¹⁵St. Thomas Aquinas, *Sum. Theol.* I -II q. 90, a. 4: *Leges quae nihil est aliud quam quaedam rationis ordinatio ad bonum comune, ab eo qui curam comunitatis habet promulgata.*

person is having “sublime dignity” and that “his rights and duties are universal and inviolable.” Respect for the person as such is one of the elements presupposed by common good. Similarly, it also requires the social well-being and development of the group itself as it concerns the life of all. “The Social order and its development must constantly yield to the good of the person, since the order of things must be subordinate to the order of persons and not the other way round as the Lord suggested when he said that the Sabbath was made for man and not man for the Sabbath” (GS 26). Charles Rice holds that “in the name of the common good, public authorities are bound to respect the fundamental and inalienable rights of the human person. Society should permit each of its members to fulfil his vocation.”¹⁶

Thus, authority and rules are not instruments that oppress or suppress the subjects; instead their duty is to serve them and “... make accessible to each what is needed to lead a truly human life: food, clothing, health, work, education and culture, suitable information, the right to establish a family, and so on.”¹⁷ The theological and ecclesiological vision of Vatican II has been translated into legal texts in the Codes of Canon Law. These laws function as a special means for the better guiding and shaping of the life of the individuals as well as the society having always in mind the common good. CCEO c.15 §3 and CIC c.212 §3 remind the Christian faithful of their right and duty to take account of the common good. CCEO c.26 §1 reads: “In exercising their rights, the Christian faithful, both as individuals and gathered in associations, must take account of the common good of the Church, as well as the rights of others and their own duties to others.” Thus, we see that the common good and the exercise of the rights and duties of the individuals are interrelated. Therefore, the second paragraph of the same canon prescribes that “Ecclesiastical authority has the competence to regulate, in view of the common good, the exercise of the rights which are proper to the Christian faithful.”¹⁸

Various important functions that canonical rules fulfill in the church community illustrate the life enhancing dimension of canon law. According to James A. Coriden, law has at least four functions in any

¹⁶Charles Rice “*50 Questions on the Natural Law*,” San Francisco: Ignatius Press, 1999, 72.

¹⁷*Catechism of the Catholic Church*, n. 1908.

¹⁸See also CIC c. 223.

society. In the Church community canon law fulfills these functions.¹⁹ First of all, law is to *aid* a society in the achievement of its *goals*. Laws in the church facilitate the members of the church to be what it ought to be. Moreover, in the church, which is a community distinct from civil society, “the salvation of souls is the supreme law” (CIC c.1752). Secondly, by providing “good order, reliable procedures and predictable outcomes” laws effect stability in the society. “The church needs the tranquility of order in its life... The community of faith has a right to expect reasonable, appropriate and predictable ways of doing these everyday things. The canons govern these functions, which are vital as well as stabilizing.” *The Catechism of the Catholic Church* also teaches the same: “... The common good requires peace, that is, the stability and security of a just order. It presupposes that authority should ensure by morally acceptable means the security of society and its members. It is the basis of the right to legitimate personal and collective defense.”²⁰ Thirdly, “law is to *protect personal rights*, provide avenues of recourse and redress of grievances, and means for the resolution of conflicts.”²¹ Church is a community of relationships. Hence, there must be a juridic order, involving rights and obligations. For the smooth functioning of the community, all its members should accept and recognize each other and their rights and obligations with justice and fairness. It is the function of Canon Law, therefore, “to articulate the rights and duties of the faithful, and to provide means for their protection.” Finally, “law is to *assist in the education of the community* by reminding everyone of its values and standards. Canon law spells out the expectations of members, the qualifications for office-holders, and the ideals of religious life. The church’s discipline is concerned to lead people to a virtuous life, not simply an external compliance with rules...”²² Thus, by creating an order in the church community, its laws enhance the life of the individuals as well as that of the society.

9. Law, Justice and Mercy

On the occasion of the 10th anniversary of the promulgation of the Code of Canon Law of the Oriental Churches (CCEO), a symposium was

¹⁹James A. Coriden, *An Introduction to Canon Law*, New York: Paulist Press, 1991, 5-6.

²⁰*Catechism of the Catholic Church*, n. 1909.

²¹Coriden, *An Introduction to Canon Law*, 5-6.

²²Coriden, *An Introduction to Canon Law*, 5-6.

organized in Rome.²³ It was entitled “*Ius Ecclesiarum-Vehiculum Caritatis*.” In his inaugural address to the participants, the Cardinal Prefect of the Congregation for the Oriental Churches, Ignace Moussa I Daoud said that if the Oriental Catholic Churches remained throughout their history a vehicle of connection (*collegamento*) and bond between the Bishop of Rome and the Oriental Churches not in full communion with Rome, it is also true that this vehicle had the vocation of being a *Vehicle of Charity*.²⁴ With reference to the collection and codification of the norms which unified various juridical traditions of the ancient Churches bearing witness to the apostolic tradition, he said that these norms cannot but be addressed as the “*Vehicle of charity*.” After having enumerated 1751 canonical prescriptions, the last canon declares that “salvation of souls is the supreme law” in the Church (CIC c.1752). Indeed, the body of laws in the church is a vehicle of charity that ultimately aims at the salvation of all. Charity includes love, kindness, mercy, etc., which together enhance the life of the deserving persons.

Both codes of canon law have taken due effort to ventilate the pastoral thrust of Pope John XXIII and that of the Vatican Council II (*Christus Domus*). Consequently, one of the guiding principles for the revision of both codes was the pastoral concern. “Pastoral care is to be fostered above all, and to that end both the legislation and its application are to be characterized by charity, moderation, humanity and equity as well as justice. Exhortation and persuasion are to be preferred to an insistence of rights.”²⁵ It means that the pastors should be given due discretionary powers in dealing with particular situations and individuals. Pastoral care must be the hallmark of the code. A spirit of charity, temperance, humaneness and moderation should mark laws. For example, CCEO c.209 §3 speaks of the pastoral charity that a pastor should extend to the sick and poor. Further, CCEO c.503 §2, c.553, and c.562 §3

²³Simposio “*Ius Ecclesiarum-Vehiculum Caritatis*,” occasione del decennale dell’entrata in vigore del *Codex Canonum Ecclesiarum Orientalium* (Città del vaticano, 19-23 novembre 2001).

²⁴Ignace Moussa I Daoud, “Prolusione al Simposio: ‘*Ius Ecclesiarum: Vehiculum Caritatis*,’” occasione del decennale dell’entrata in vigore del *Codex Canonum Ecclesiarum Orientalium*, Citta del Vaticano, 19-23 novembre 2001, 2: “*E se le Chiese Orientale Cattoliche sono state per tutta la loro storia veicolo di collegamento e legame fra il Vescovo di Roma e la Cristianità orientale non in piena comunione con Roma, e anche vero che questo veicolo aveva vocazione di essere veicolo di carità.*”

²⁵The text is taken from Coridan, *An Introduction to Canon Law*, 36.

prescribe that a religious institute should preserve equitable and evangelical charity toward a member who is being separated from it. The director of novices should be a person outstanding in charity (CCEO c.420 §2; CIC c.628 §3). Canons 8, 620, and 1047 §1 recognize the right of the Christian faithful to found associations and movements and pious associations in order to serve charitable purposes.

In the official report of the proceedings of the revision committee of the Oriental Code we see the following criterion:

Special care must be taken in the drawing up of laws so that the new code reflect a concern not only for justice but also for that wise equity which is the fruit of understanding and charity: indeed the code must be such as to encourage pastors to practise these virtues with discretion and intelligence. The canonical norms, therefore, should not impose obligations when instructions, exhortations, suggestions and similar acts by which communion among the faithful is fostered [*sic*], are sufficient for the better attainment of the church's purpose... Bishops and others entrusted with the care of souls must be allowed reasonable discretionary power, enabling them to establish guidelines for the faithful and suit these to individual cases. Thus, the good of the church as a whole would seem to require that the norms of the future code be not over-rigid. The concession of a somewhat greater liberty to bishops will manifest yet more clearly the pastoral character of the code.²⁶

Laws in the Church have always to deal with justice. Pastoral concern, however, requires that "... norms to be observed in the strict sense will not be imposed unless for the common good and general ecclesiastical discipline,"²⁷ as the application of law in the strictest sense would sometimes forfeit the spirit of the teachings of the supreme law giver, Jesus Christ who prefers mercy to sacrifice, and life of man to observance of the Sabbath.

10. Penal Sanctions in CCEO

The pastoral concerns and the charitable aspect of the Church laws are more explicit in the section dealing with penal sanctions in the Church. Since Church is a community of imperfect and erring human beings,

²⁶*Nuntia* 3 (1976), 20-21.

²⁷Canon Law Society of America, *Code of Canons of the Eastern churches* Latin English Edition, Kottayam (1990), xxxi.

penalties are sometimes necessary; moreover, a human being is a mixture of good and evil and is prone to evil or, at least, to deviate from what is good. Therefore, to motivate him and sometimes to prompt and bind him to do good and to respect the right of others Church also resorts to some sanctions as a last resort. The ninth Guiding Principle for the revision of the Latin code states that ecclesiastical penalties should be kept to a minimum and their remission limited to the external forum. In general, most penalties should be *ferendae sententiae*, i.e., requiring an authoritative decision for imposition. Automatic penalties (*latae sententiae*) should be reduced to the smallest possible number and restricted to the most serious of matters.²⁸ While the guidelines for the revision of CIC contained the prescription to reduce the number of *latae sententiae* to the minimum, in the case of CCEO it was a total abolition or elimination of the same.

In the Oriental Code all the “*poenae latae sententiae*” should be abolished, because they do not correspond to the genuine oriental tradition, are unknown to Orthodox Churches, and do not seem necessary for the purpose of the [adaptation] of the Oriental Code to the present day requirements of the discipline of the Oriental Catholic Churches. Greater weight must be given to the ‘*monitio canonica*’ before proceeding to inflict a penalty, according to the ancient oriental canons.²⁹

The pastoral concern reflected in the codes and the medicinal character of the ecclesiastical sanctions in the church, which exhorts to apply the principle of equity, are the two important factors which indicate the life enhancing dimension of Canon Law. CCEO c.1401 stipulates:

Since God employs every means to bring back the erring sheep, those who have received from Him the power to loose and to bind are to apply suitable medicine to the sickness of those who have committed delicts, reproving, imploring and rebuking them with the greatest patience and teaching. Indeed, they are even to impose penalties in order to heal the wounds caused by the delict, so that those who commit delicts are not driven to the depth of despair nor

²⁸Com. 2 (1969) 84-85; text is from Coriden, ed., *The Code of Canon Law*, 7.

²⁹*Nuntia* 3 (1976), 24. See also Victor J. Pospishil, *Eastern Catholic Church Law*, Revised and Augmented Edition, New York: At. Maron Publications, 1996, 71.

are restraints relaxed unto a dissoluteness of life and contempt of the law.

In the formulation of the canons on penal sanction, the commission has followed the general directives of Vatican II to refer back to the tradition and ancient sources of eastern churches and to take into consideration the mind of the Council. The first canon in this section is a theological introduction to the whole portion. Nicea (325) c.12 and the Trullan Council's (690-91) c.102 are considered as the source for the present canon "as it is particularly important to comprehend the spirit of penal sanctions in the church." These canons speak about the role of spiritual director and confessor as minister of divine justice and mercy. They are cited as sources because "in penal matters as well, an ecclesiastical judge is a minister of divine justice and mercy."³⁰ These ancient canons are based on the biblical mandate to bind and loose (Mt. 16:19; 18:15-18). It is an indication that "the power of establishing and applying some penal sanctions in the Church springs from its very divine institution."³¹ Jesus empowered the church authorities to inflict punishment for grave sins or offences. Ecclesiastical penalties are aimed at searching after and bringing back the lost sheep (Mt. 18:12-14; Lk. 15:4-7). The code encourages to trying all the means possible such as exhortation, persuasion, etc., to bring back the wounded persons and then only as a last resort to impose penalties. Every delict is a communal as well as individual offence. This canon, therefore, spells out clearly what the most important aim of punishments in the church is: to enhance life. It also indicates the way to be followed in imposing punishments on delicts.³²

There are two ways of imposing punishment according to CCEO cc. 1468-1486: by following a penal trial and by an extra-judicial decree of the competent authority. The second mode does not involve a formal process and, hence, it is in this sense simpler. "However, because of its diminished formality it could become a cause for injustice toward the offender. This is the reason why the canons expressly exclude the use of extra-judicial decree if it could result in a deprivation of office, title, insignia or suspension from official duties for more than one year, demotion to a

³⁰Dimitri Salachas, "The 'Sacred Canons' on Administration of Justice Received or Adapted in the Eastern Code," trans. Paul Pallath, *Eastern Legal Thought* 2 (2003), 21.

³¹Salachas, "The 'Sacred Canons' on Administration of Justice," 21.

³²Carl G. Fürst, "Penal Sanctions in the Church, cc. 1201-1467," *A Guide to the Eastern Code*, ed. George Nedungatt, 780.

lower grade, deposition or major excommunication, when only a formal trial will do (c.1402).³³ According to c.1401, penal sanction in the Church is having medicinal character and it is applied with a view to healing the wound caused by the crime. Porunnedom speaks about the curative and preventive aspects of penal sanction in the Church and stresses the importance of bringing about fresh life in the delict. "As medication is not to be used to kill people but to give them life, penal laws are to give fresh life to those to whom they are applied."³⁴

The offender is seen as a spiritually sick person and the crime as a spiritual illness. Therefore, the minister of ecclesiastical justice is considered as a spiritual doctor who must examine the gravity of the illness, that is the gravity of the offence and the disposition of the offender for conversion, and only then he is to order the appropriate spiritual remedy. In the fear that by exaggeration in the one or other direction, the spiritual health of the sick is not obtained at all, but only the worsening of the illness and the wound.³⁵

CCEO c.1486 §1 stipulates that for the validity of decree by which a penalty is imposed, it is required that "the accused be notified of the accusation as well as the proofs and be given the opportunity of fully exercising the right of self-defence, unless the accused neglected to appear after being cited in accord with the norm of law." The canon takes into consideration the delict and the person is given opportunity to defend oneself. C.1404 §1 prescribes that in the matter of penalties, the more benign interpretation is to be made. It is to be noted that it is not a concession coming from the good will and good nature of the superior, but it is the legitimate right given to the offender by the law.³⁶ The medicinal penalties (censures, i.e., excommunication, interdict, and suspension) of which CIC c.1312 §1n.1 speaks are "designed to bring about the correction of an offender's behaviour and his or her reintegration into the full life of the church community."³⁷

³³Pospishil, *Eastern Catholic Church Law*, 748-751.

³⁴Porunnedom, "Laws: Medicinal or Punitive?" 269.

³⁵Salachas, "The 'Sacred Canons' on Administration of Justice," 21-22.

³⁶See Pospishil, *Eastern Catholic Church Law*, 748, 751.

³⁷The Canon Law Society of Great Britain and Ireland, *The Canon Law Letter and Spirit*, Geoffrey Chapman (1999), 750.

11. Conclusion

The laws in the Church are based on the teachings of Jesus Christ and the gospel message, as any other ecclesiastical discipline is. Jesus has not come to abolish law but to fulfil it. Laws and even sacrifices have relevance and significance only if they are life centered and life oriented. Therefore, Jesus has perfected the laws by stressing the spirit and neglecting the mere literal and external observance of them. Likewise, the aim of laws in the Church is the material as well as spiritual welfare of the faithful. By promulgating two codes for the one Catholic Church the legislator expresses his ardent desire and will to do justice to the Latin and the Eastern Church communities and to the individuals who belong to them. It helps to protect and safeguard the freedom, rich patrimony and identity of the individual Churches. This, in turn, helps to better cater to the material as well as spiritual life and needs of the individual faithful.

Several guidelines like the principle of subsidiarity, provision for particular laws, principle of equity, which were given to the Revision Committees of both the Codes of Canon Law, indicate the life-enhancing dimension of Canon Law. Laws function as a special instrument that creates order in the Church community where all recognize and accept mutually the rights of others to facilitate the life and smooth functioning of the community. Penal laws in the Church, especially in the Oriental Code, constitute an important section that explicitly tells about the life-enhancing dimension of laws.

Laws have always to do with justice in any society. As the Church is a community distinct from the civil society in its origin, history, inner dynamism, and goals, the laws of the Church have got their own characteristic features. Penal sanctions in the Church are designed to impart justice but with the sweetness of mercy. Where the strictest application of law might cause spiritual as well as physical death of the individuals, as it could be found in the case of the adulterous woman in the Bible, the Church encourages applying law as a medicine to heal the wound and to give fresh life. Justice is here superseded with charity and mercy intending to enhance life in its totality.