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A Suggestion for the Renewal of the Canon Law

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A SUGGESTION FOR THE RENEWAL OF THE CANON LAW

AMONG the recommendations adopted by the Canon Law Society of America at its last annual meeting was one for bringing the insights of legal traditions besides the Roman to bear on the canonical system. The following suggestions are derived from the insights of my tradition, the common law tradition. That aspect of the common law tradition that I believe has most to contribute to the development of the canon law is concerned not so much with the particular rules of law as with the basic techniques of legal analysis. The common law tradition of legal analysis, as it has been understood by jurists of all persuasions in this country for a generation and more, calls for an approach to law in terms of what it is attempting to accomplish in the society which it governs, and what actual effect its operations have in that society and its members.

Looked at steadfastly in these terms, the canon law shows forth a special character of its own, a character that the traditional Roman law format has tended to conceal. The task of ordering the corporate life of the people of God is very different from the task of ordering the external relations of a secular society. The canonists attest this difference by blending moral teaching with their legislation in a manner that no secular system, however ethically oriented, would admit. The medieval canon law furnishes more examples than the modern, but such canons as canons 124 and 1018 of the present Code show that the same spirit is still at work. By the same token, commentators on canon law and commentators on moral theology seem to shift freely from one discipline to the other. Thus, a current commentary on the Code announces happily that it "settles authoritatively in a few words many important questions of moral theology about which experts have disputed for centuries." And a recent definitive history of a certain moral question not only devotes several chapters to the canonical authorities on the ques-

tion, but ends with recommendations which seem to envisage dealing with the question as a matter of legislative policy.

This blurring of the distinction between law and morality cannot, it seems to me, be really avoided either in canon law or in Catholic moral theology. To confine the canon law rigorously within an orientation to external order such as we expect of secular law would be to belie its whole history. By the same token, to insist that the authoritative pronouncement of moral doctrine is limited to infallible pronouncements, the rest being mere opinion, is greatly to oversimplify the traditional place of authority in the Church. As I put it in another place, addressing the medieval situation, where the true character of the canons was closer to the surface, though still submerged by the overlay of Roman law:

> The canons present themselves to the individual Christian as the corporate witness of the Church to the principles governing her interior life, and to the shepherds of the Christian people as the collected experience of the Fathers in bringing those principles home to their flocks. The obligation imposed by the canons, then, is less juridical than pedagogical: it is the obligation of a wise man to allow himself to be governed by the counsels and experience of those wiser and more experienced than himself. The peculiarities we discern in the enforcement of the canons are explained by noticing that the obligation is to be guided—neither to follow unthinkingly nor to innovate rashly. "Therefore every scribe instructed in the kingdom of God is like to a householder who brings forth from his treasure new things and old." [1]

In applying this analysis to the medieval canon law, I criticized it at the same time for its failure to make adequate provision for the external order of the Church, for the marshalling of the available personnel and resources to perform the essential work and ministry of the Church in the society to which it belonged. On this score, we have much less to complain of in the

[1] Cf. "The Canon Law as a Legal System—Function, Obligation and Sanction," *Natural Law Forum* 45(1964)79.

modern Code. There are particular difficulties, but it seems that on the whole the effective distribution of personnel and resources is provided for through suitable legal and administrative devices. Today, the criticism is all the other way. Modern critics of the canon law complain of "legalism," by which they mean a commitment to external order so coercive as to stifle the interior life of the Church.

But if we look at the actual operation of the canon law, rather than at the Roman law-oriented commentaries of the canonists or the self-descriptive portions of the canons themselves (e.g., certain of the *Normae Generales* of the Code), it will be apparent that this complaint of legalism does not go to the essence of the system. The canons, as they have been developed and observed in the history of the Church, are marked by great flexibility in the character of the guidance they offer or the obligation they impose. Broad pastoral norms for the guidance of the faithful or the exercise of the ministry have always existed side by side with narrowly juridical (in the sense of secular law) regulations of the external order of the Church. In modern legislation, such as the Constitution on the Sacred Liturgy of the Second Vatican Council, the same is true today. The canon law system is, and always has been, capable of mingling pastoral and juridical elements in precisely that combination best suited to the exigencies of the Church in the particular case. It is truest to its essential nature when it does just that.

The canon law, then, unlike a secular legal system, aims at both an interior and an external order. In addition to organizing personnel and resources for the common good of the Church, it harmonizes the freedom of the sons of God with the corporate participation of the Church in the life of her Divine Spouse. In addition to ordering a variety of particular interests in the light of a common good, it orders a variety of particular spiritual experiences in the light of a common interior life, a variety of particular voices in the light of a common proclamation of the Word of God.

The breadth and mystery of these ultimate objectives are re-

flected not only in the freedom with which the system juxtaposes pastoral and juridical elements, but also, on a more technical level, in the complexity and subtlety of its operational effects. By "operational effect" I mean the immediate significance of a legal norm for the person to whom it applies, its consequences for his conduct or his affairs.

Of course, insofar as the canon law embodies pastoral norms for the guidance of the faithful, its chief operational effect lies in the willingness of the faithful to be guided. But in certain areas it has been felt that the pastoral or administrative necessities of the Church called for more precise standards; and in the whole system the bent of the canonists themselves has been toward measuring up to the precision of secular legal systems. Accordingly, there has been—has probably always been—a tendency to formulate both the system in general and its particular dispositions in terms of specific operational effects. Let us, then, in the light of the current state of moral philosophy and legal analysis, consider the operational effects that have been thus formulated, and what they mean in fact. The main categories seem to be the following:

1. Physical effect

These elements of the canon law which deal with offices and benefices, and the like—that is, with the distribution of personnel and resources—seem to have about the operational effect they purport to have. The personnel and resources are by and large in fact distributed in the manner envisaged. Indeed, even in countries where the secular arm is not generally available to enforce the mandates of the Church, the secular authorities will intervene in many cases to ensure that property devoted to ecclesiastical purposes is used according to ecclesiastical law, or to prevent persons from holding themselves out to the public as occupying ecclesiastical positions to which they are not entitled.

Aside from rules governing personnel and resources, the most important externally measurable effect of the canon law is pre-

sented by the rules governing the ministrations of the Church. These are not only an important body of rules in their own right; they also constitute the major sanction for many other moral and canonical rules. Their operational effect is somewhat spotty. They depend, of course, on the willingness of the clergy and the hierarchy to carry them out, and that willingness seems to vary from one time and place to another. In contemporary American practice, at least, I think we can say that one canonically ineligible for ordination will probably not be ordained, a canonically impeded marriage will probably not take place in church, and a person canonically deprived of Christian burial will probably not receive it.

On the other hand, when it comes to excommunication—that is, the deprivation of the day-to-day offices of the Church—traditionally the most potent of ecclesiastical sanctions, the effect appears to depend almost entirely on the willingness of the person excommunicated to refrain from seeking the forbidden ministrations. It is simply not customary to turn people out of the church, or even away from the communion rail, because they are excommunicated. And even if it were, most such persons would have no difficulty in finding a church where they were not known.

2. Educative and vituperative effect

The canon law contains a series of forms of varying intensity and force whereby the norms to which the Church adheres may be applied to particular circumstances and dramatically brought home to the faithful. It is in this series that excommunication and other such censures seem to me to have their proper place in the system. From solemn excommunication with candles dashed to the ground, the available denunciations range all the way to a simple announcement by a diocesan chancery that a certain prominent Catholic has not acted in accordance with the teachings of the Church in some matter that has appeared in the press.

The automatic censures attached to a number of general norms have also a certain effect in this regard. When a prominent Catholic marries a divorced person, for instance, it is possible

to say not simply that he has sinned grievously, but that he has incurred an automatic sentence of excommunication. This has no doubt a certain effect of fixing in the public mind the recognition that he has gone counter to the teaching of the Church.

We may suppose also that these censures, both general and specific, have an effect on the sinner himself as well as on the public. The moral principles that he has violated, presumably already present to his conscience, may confront him with a new urgency when they take the shape of an ecclesiastical censure.

3. Moral effect—"on pain of sin"

The moral theologians do not seem generally to distinguish between canon and civil law in the moral obligations they impose under the Fourth Commandment. These are supposed to depend on the importance of the subject-matter and the intent of the legislator—both dubious guides when we come to a canon with a long history behind it. When it comes to particular dispositions of the canon law, the moralists tend to deal with violations in terms of the particular virtue a given disposition is supposed to implement, rather than in terms of obedience to authority. This is in accord with ancient canonical tradition, and with the ambivalence, to which I have already alluded, between law and morality in the canons.

There are, to be sure, certain canonical norms supported by a fairly solid theological opinion that it is sinful to violate them even once. For instance, it is generally taught and accepted, at least in this country, that missing Mass even once on a Sunday or holy day of obligation without a good excuse is a sin. However, it does not appear to be taught or accepted anywhere that this force attaches to all canons as such, or even that principles intrinsic to the canonical system will furnish a basis for deciding whether a given canon is one of those it is sinful to violate. All that can be said of the canons generally in this regard is that habitually to ignore them—to violate the obligation to be guided by them—would seem to be a sin against the Fourth Commandment.

Still more difficult than the question of whether general canonical norms bind under pain of sin is the question of whether particular censures bind under pain of sin. Here the canonists address themselves to the point, but when we follow through on what they say we cannot be sure of its significance. Thus, the article on Excommunication in the *Dictionnaire de Droit Canonique* is quite clear that an excommunicated person sins grievously if he receives the sacraments. On the other hand, it appears that nothing can be ground for excommunication if it is not mortally sinful, and that a person in a state of mortal sin sins grievously if he receives the sacraments. Thus, it is difficult to see what the excommunication adds.

4. Validity of sacraments

The validity—as distinguished from the licitness—of the sacraments is affected by the canon law only in the cases of matrimony, penance, and perhaps confirmation when that sacrament is administered by a priest rather than a bishop. Except in the case of matrimony, it is difficult to proceed from the fact of invalidity to any further operational effect. Thus, if it should appear that an uncanonical confirmation by a priest is invalid, the operational effect of the invalidity would depend on the theological significance of not being confirmed—which, though real, is somewhat difficult to pin down.

The situation is somewhat comparable with the canonical rules relating to the validity of the sacrament of penance— to jurisdiction in the internal forum. It does not seem to be the teaching of theologians that God will not forgive my sins unless I confess them sacramentally. All that can be said is that I am under a canonical obligation to receive the sacrament of penance once a year, and that if I am conscious of mortal sin I am under another canonical obligation to receive the sacrament of penance before I receive the Eucharist. Presumably, I do not fulfill these canonical obligations unless I receive the sacrament of penance validly. The operational effect of invalidity, then, depends on the moral force of these canonical obligations.

When it comes to matrimony, the situation is a little clearer. Those who are invalidly married because of some canonical impediment undispensed, or because of some failure to follow the canonical form, are living in a state of concubinage, sin grievously, and are barred from receiving the sacraments. Furthermore, either of the parties to such a union is permitted to abandon the other and contract a valid union with someone else.

But even here there are difficulties. It is doubtful that a modern theologian, accustomed to look at the total orientation of the personality toward God, would regard an invalid marriage as simply a series of isolated acts of fornication. Indeed, the canons themselves recognize that consent to be invalidly married is not simply consent to live in a state of concubinage. Canon 1083 provides that knowledge or belief that a marriage will be invalid does not necessarily exclude matrimonial consent. Other canons make it clear that consent to be invalidly married can provide the basis for a valid marriage if the grounds of invalidity cease or are dispensed.

To resolve all these questions of the operational significance of an invalid sacrament would require a formulation of the operational effect of a valid sacrament, which, in turn, would require the opening up of new frontiers in sacramental theology. Clearly, it is not appropriate for the canon law to attempt to deal with these matters. Rather, its formulations should be such as to avoid taking sides on any question at present debated among theologians, and to avoid inhibiting future theological development. There are specific situations in which the canon law will have to attach consequences to the invalidity of a sacrament, but, as a general matter, the best approach would seem to be to regard such invalidity as *sui generis* among the operational effects of the canon law, leaving any further elaboration to the theologians.

5. *Other spiritual effects*

The canons provide in one place or another for a variety of spiritual effects besides the invalidity of sacraments. The loss of

the suffrages of the Church by excommunicates, the invalidity of sacramentals, the establishment or non-establishment of sponsorship at baptism or confirmation, the gain or loss of indulgences or of special blessings attached to objects, the consecration or desecration of churches, are all examples. Here too it must be left in most cases to the theologians to draw the operational consequences. In a few cases, however, the spiritual effect has liturgical consequences that appear in the canon law. Thus, a priest who becomes irregular is forbidden to say Mass, and a church that becomes polluted must be reconciled before services can be held there. Also, there is the special case of religious profession. Where it is invalidly made, it does not bind, and the supposed religious may return to the secular life.

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The canon law, then, in its immediate operational effects, just as in its ultimate objectives, presents a variety and subtlety that set it apart from any secular legal system. For this reason, it seems to me, the attempt to confine the canons within an analytical framework borrowed from secular law will unavoidably obscure the real character of the canon law and impair its usefulness as an instrument for governing the Church. Thus, I think that a renewal of the canon law must start with the very structure of the Code.

To show how this is the case, let us consider the existing structure a little more specifically. It is broken down into five books, corresponding roughly to an analytical framework that has been current in Roman secular law since before Justinian's time. These books are:

I *Normae Generales,* consisting of general statements about when laws take effect, whom they oblige, and the like.

II *De Personis,* dealing with clergy and religious, with the authority of the different grades of the hierarchy, and with lay associations.

III *De Rebus,* dealing with sacraments (including matri-

mony), divine worship, the teaching office of the Church, offices and benefices and the temporal goods of the Church.

IV *De Processibus,* dealing with formal judicial procedures.

V *De Delictis et Poenis,* dealing with various misdeeds and the external punishments to which they are subject.

Each of these divisions raises structural problems of its own.

First, the *Normae Generales,* with their precise definitions of who is and is not bound by a law, and when and where it is in effect, seem inconsistent with the role of pastoral guidance that plays so large a part in the original conception of the canons, and with the canonical tradition of drawing freely on the collective experience of the Church in other times and places. There are certainly areas in which the necessities of the Church require a precise understanding of what is and what is not the law, but they constitute a relatively narrow part of the whole scope of the canon law. Thus, the placing of these technical rules at the beginning of the Code sets a tone for the whole document that is not in accord with the true nature of the system.

Turning next to the second book of the Code, *De Personis,* we find that it combines uneasily canons governing the various states of the Christian life (with the notable exception of the married state, which is dealt with among the sacraments in the third book, *De Rebus*) and canons governing the institutional functions of the various grades of the hierarchy. In the resulting mixture, the mysteries of Christian vocation and the personal pastorate are obscured by the technicalities of institutional form, while the just and orderly functioning of the Church's institutions is obscured by the mystery of her hierarchial order.

The third book, *De Rebus,* is divided into six parts. The first three deal with the sacraments and other matters of liturgy and worship, the fourth with the magisterium of the Church, and the last two with benefices and other material resources. If we once accept the breakdown between persons and things as a necessary one, it is reasonable enough, I suppose, to treat these matters under things rather than persons. But the combination thrusts severely into the background the place of the sacraments and the

liturgy in the personal life of Christians and the place of material resources in the institutional life of the Church. Baptism, marriage, indulgences, oratories, benefices, and patronage rights are all dealt with the same way—what each "thing" is, how it may be established, how it may be acquired, on what terms it is to be kept, and how, if at all, it may be lost.

The treatment of benefices in this fashion reflects a long-standing canonical conception that has led many generations of the clergy to think of themselves more as possessing rights than as discharging functions. In modern times, however, the development of administrative controls on the offices to which most benefices are attached has greatly eroded the traditional viewpoint—no thanks to the Code provisions dealing with benefices.

From a contemporary standpoint, the most serious criticism of the arrangement of *De Rebus* is in its treatment of the sacraments. Consider in this regard a canon that probably affects the lives of ordinary Christians as seriously as any in the Code, canon 1014, creating a presumption in favor of the validity of marriage. The presumption is in certain respects anomalous. As applied to one who wishes to contract a new marriage, it runs counter to the general principle of resolving doubts in favor of liberty. As applied to a marriage that has in fact been broken up, it runs counter to a general principle of not disturbing an existing state of affairs in case of doubt. It seems to rest on an idea of the marriage as having an existence independent of the parties. One author tells us that an action for a declaration of nullity is an accusatory action in which the marriage enjoys the benefit of the doubt because it stands accused. Actually, the rule was evidently developed originally for the protection of persons involved in a subsisting marriage, a situation in which it makes perfect sense. It is the conceptual structure of the canonists that applies it to marriages long broken up.

The part of *De Rebus* dealing with the magisterium of the Church does not seem to be open to the same criticism as the others. That part is divided basically in accordance with the different media through which the magisterium is exercised, and

is articulated in terms of the duties of ordinaries, pastors, and the like. Structurally, it seems unexceptionable, although somewhat incongrous in its position sandwiched between the other parts of *De Rebus* as I have described them.

The fourth book of the Code, *De Processibus,* is organized rather like a secular code of procedure, beginning with matters of court organization, jurisdiction and venue, continuing with general matters of procedure, and finally taking up rules peculiar to particular proceedings. Structurally, the main trouble with it is its failure to indicate what part formal judicial proceedings actually play in the life of the Church. In fact, most of the institutional necessities of the Church are dealt with administratively. Even matrimonial cases, which form the bulk of the business of the judicial tribunals, are customarily handled with much less formality than these canons suggest. The Code should be so structured as to deal with judicial processes in context among the other institutional resources of the Church, and to indicate the circumstances in which these processes are meant to be invoked.

The objection to the organization of the fifth book, *De Delictis et Poenis,* should be apparent from what was said above concerning operational effect. Basically, the matters treated in this book involve three things, the solemn denunciation of certain types of offenders as a form of witness against what they have done, the control of access to the sacraments and ministrations of the Church, and the administrative control of the ecclesiastical organization. These matters should be dealt with in their several contexts.

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Against this background let me sketch in my own suggestions for the proper structure of a Code of Canon Law. They are grouped around what seem to me to be the four focal points of the system. The first of these, the one that has always been in some way primary, is the *Witness of the Church* to the Revelation of Jesus Christ, and to her own experience of the living out

of that revelation through time. It is the tension between that corporate experience and the personal communication and reception of it that constitutes the basic dynamic of the canon law. Those canons, then, that deal with how and by whom the corporate experience is proclaimed, and in what way it informs the personal witness of Christian pastors and faithful, belong in the forefront of the Code.

The second focus is the *Life and Conversation of Christians.* A number of canons deal with the different manifestations of the Christian life, and how each can be given its proper scope in harmony with the corporate life of the whole Church. These canons present in varying combinations ancient traditions of the Church, authoritative interpretations of divine revelation, and prudential judgments as to the needs of the Christian community. They show a good deal of variety also in the moral force with which they present themselves to the consciences of the faithful, and the consequences of departing from the standards they impose. What they have in common is that they set patterns for the guidance of Christians in living their lives. As I have said, this element of guidance seems to me primary in the canons. For this reason, I think these canonical guidelines belong together, rather than in separate categories dictated by an attempt at conventional legal analysis.

The third focus is the *Sacramental and Liturgical Life of the Church.* Canons dealing with sacraments and liturgy, as I have indicated, are in great part *sui generis* in their operational effects. They seem to me also pretty much *sui generis* in their relation to the personal lives of Christians. Participation in the Church's sacramental and liturgical life plays a central role in the Christian life, but the regulation of the Church's sacramental and liturgical life is operationally and morally quite distinct from the regulation of the Christian life as such. Thus, to be as open as possible to the true significance of the canons governing the sacramental and liturgical life, we should allow them a distinct place of their own.

The fourth focus is the *Institutional Life of the Church.* The

canons which establish or regulate the institutions through which the Church exercises authority or distributes personnel and resources look more like law in its familiar secular sense than do other canons. But the analogous secular law is public or administrative law, not the law contained in the civil codes. The canons in this area, then, have a common secular analogue, and, by the same token, a common operational effect. Placing them together in a single category responds to these common elements, and also emphasizes the ancillary position of these institutional matters in the interior spiritual life of the Church.

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With these four focal points providing the basic topical breakdown, the "books" of a revised Code could be developed, I suggest, that would express more clearly what the canon law is about and what part it plays in the life of the People of God. Into the framework thus established should be introduced not only the canons of the existing Code in their new order, but also major canonical documents that have come down since the Code (for example, that regulating secular institutes), additional treatment of administrative practices that have grown up in recent years (such as the dissolution of marriages under the *privilegium fidei*), specific adjustments that experience or new consideration has made seem appropriate (such as provision for the defense of authors or teachers accused of doctrinal error), and, finally, such conciliar documents as seem to offer guidance for the excercise of the Christian ministry, the conduct of Christian worship, or the leading of the Christian life.

What follows in an outline of a Code set up according to the foregoing suggestions. Under the various titles I have put brief explanations of what I have in mind.

Book I—The Witness of the Church

I have explained already why I think that the role of witness is in some way the central one of the canon law. For this reason, I would put most of the canon law's account of itself in this Book.

Here also belong the canons dealing directly with the exercise of the magisterium, those dealing with the personal—as distinguished from the institutional—aspects of the pastorate, and those dealing with ecclesiastical censures whose basic function is to show forth the Church's condemnation of the conduct to which the censure applies.

Under the head of witness belong also, it seems to me, the canons dealing with relations with non-Catholic Christians, or with the secular world. Over and over, contemporary formulations on the subject of these relations use the term "dialogue"—a form of speech, or a form of love, in either case a form of witness.

This understanding of the content of the Church's witness determines the three Parts into which I have divided this Book.

Part I—The Witness of the Church before the World. Here I would include missions, dialogue with non-Christians, and work for the establishment of peace and justice in secular society. Related to the last of these, but institutionally distinct, are the various activities carried out under ecclesiastical auspices for the relief of sickness and want. These activities, to be sure, are often carried out in connection with missions, but it seems wise to keep them juridically separate. Otherwise, we risk having the Gospel message diluted into temporal benevolence, and the relief of suffering tainted by the accusation of an ulterior motive.

I suggest, then, the following titles for this Part:

1. *The Proclamation of the Word of God,* dealing with missions and the like.
2. *The Proclamation of the Moral Order in Society,* dealing with Catholic action, with moral teaching on secular affairs, and with cooperation with the agencies of civil society.
3. *Dialogic and Pastoral Relations with non-Christians.* Here would come new canons, based on conciliar documents, expressing the sincere concern of the Church with all men and their problems, and the responsibility of Catholic bishops and pastors (indeed, of all Catholics) to concern

themselves with whatever will serve for the spiritual and moral enrichment of those with whom they come in contact.

4. *Institutions of Social Service.*

Part II—The Witness of the Church before Other Christians. This Part would have to be constructed virtually from the ground up. The existing Code has a handful of canons on relations with non-Catholic Christians, but they seem to have no relevance whatever to existing practice. It is clear that these irrelevant and truculent canons should be laid to rest, but how far it would be wise to go in setting up new ones on the subject is open to question. Arguably, the introduction of any formal norms into this developing area might inhibit desirable patterns of growth. On the other hand, given the close connection Catholicism has always maintained between the Church as a spiritual or mysterious entity and the Church as a juridical institution, it may well be that a truly imaginative institutionalization of our relations with other Christians would contribute greatly to our regard for them as brothers in Christ. Be that as it may, I should think that a set of judiciously constructed canons could consolidate the progress that has thus far been made in our relations with other Christians, without inhibiting further progress. Needless to say, such canons should concentrate as much as possible on what Catholics are now permitted or encouraged to do, rather than what is forbidden them.

Given this limited objective in the formulation of canons in this area, I suggest the following titles, which should be for the most part self-explanatory:

1. *Prayers for Unity.*
2. *Ecumenical Dialogue.*
3. *Recognition of Sacraments and Worship.*
4. *Pastoral Care and Conversion.* This is one area in which we meet with problems of some subtlety—the tactful affirmance of the traditional pastoral responsibility of Catholic bishops and pastors for all Christians in their territory;

the extent to which pastoral solicitude is to be exercised in encouraging non-Catholics to make the most of their present religious affiliations, rather than becoming Catholics; the manner of receiving converts consistently with due ecumenical regard for their former connections.

5. *Mixed Marriage.* Most of the canonical treatment of this subject will have to be put among the canons on matrimony. But there should be here some guidelines for the use of couples who wish to grow in the spiritual unity of Christian marriage while remaining faithful to their separate denominations. The new rules on participation by non-Catholic ministers in the marriage service should go here, as should any canons that can be developed on family prayers and the like.
6. *Collaboration with other Christians for Social Action and Christian Witness.*

Part III—The Witness of the Church before Catholics. Here, as should be apparent from what has gone before, I have in mind both a broad general treatment of the various means the Church employs for the instruction of the faithful and a more detailed treatment of the institutions specifically directed to that work. By instruction, of course, I mean something more than education; I mean the whole process of forcefully confronting the faithful with the tenets and demands of their religion. For dealing with the separate aspects of instruction thus broadly considered, I have the following titles to suggest:

1. *The Teaching Office of the Church.* Here I would like to see a set of theological guidelines for the role of ecclesiastical authority in guarding and setting forth the truths of divine revelation, and for the manner in which the teaching of authority is to be accepted by the faithful. Here also, it seems to me, should be put the canons dealing with institutional controls on the content of Catholic doctrine—the procedural rights of those accused of doctrinal error, and whatever is to survive of the controls on reading and publication of books. There are cogent arguments for

putting this material under other titles, but what I find persuasive is the necessity of orienting it toward the maintenance of the Church's collective doctrinal commitments —rather than the suppression of doctrinal error as a kind of personal moral fault.

2. *Preaching*. There are now a number of canons on this subject forming one of the titles of the Part of *De Rebus* that deals with the magisterium of the Church. It is possible that these will need some changes or additions to bring them into line with the current tendency to integrate preaching into the liturgy. I do not believe that this tendency has gone so far that the whole set of canons on this subject should be put under liturgy rather than here; rather, I would favor expanding the treatment at this point to include some treatment of the instructional character of the liturgy.
3. *Pastoral Care*. The present Code treats the obligations of bishops and pastors for the care of their flocks in connection with its treatment of the administrative duties of bishops and pastors, and its treatment of how one becomes and remains a bishop or pastor. I would make a division, putting the canons defining the pastoral office (the existing canons on the point, supplemented by conciliar formulations) at this point, and the administrative and tenurial aspects elsewhere. While I realize that there is a certain logic in combining a treatment of the tenure of an office with a treatment of all its duties, I think that a properly apostolic conception of the Christian pastorate, of all that is implied in the cure of souls, requires that it be given its place in the life of the Church, rather than fitted in among the other duties attached to a given office.
4. *Discipline and the Exercise of Ecclesiastical Authority*. Here I would put the canon law's own account of itself, and of the ground and manner of the exercise of ecclesiastical authority. Most of the material contained in the *Normae Generales* of the present Code would go here, with certain modifications to bring out more clearly the

elements of flexibility discussed above. Here also I would put an account of the particular censures by which the mandates of ecclesiastical authority are given personal application. I have indicated above that this is one of the three functions of the material dealt with in the *De Delictis et Poenis* of the present Code, the others being control of access to the sacraments and control of personnel and material resources.

5. *Doctrine and Instruction.* The existing canons on catechetical instruction can go here, along with those on schools and seminaries, with whatever modifications may seem appropriate. Some treatment of other instructional media, such as the Catholic press, might also be desirable. Also, I would like to see all this material introduced by a treatment of the general guidelines for relating speculative theology and other intellectual disciplines to the authoritative teaching of the Church, and vice versa.

Book II—The Life and Conversation of Christians

There are not many canonical guidelines for the living of the Christian life, as distinguished from the operation of the institutional forms in which that life is embodied. Such guidelines as there are, supplemented by conciliar materials, papal encyclicals and allocutions, and new formulations, could be put in this Book, extrapolated as far as possible from institutional aspects.

Part I—The Christian Life in General. Here I would put material dealing with the spirituality of Christians in general—that is, unrelated to any particular state of the Christian life. Most of this material would be rather general, although there are a few specific rules. The following titles will indicate how I would organize this material:

1. *Sanctifying the World.*
2. *Participation in the Witness of the Church.* This should include not only a statement of the apostolic role of every Christian, but also a treatment of good works and social

service as a form of Christian witness. Cf. Book I, Part I, Title 4.

3. *Participation in the Sacramental and Liturgical Life of the Church.* The sacramental and liturgical life itself is the subject of the Book following this. The treatment here is to indicate the role of that life in the personal life and personal sanctification of the individual Christian. It should also include the specific requirements the Church imposes in that regard—annual confession and Communion, Mass attendance, presenting infants for baptism, the eucharistic fast. Finally, this is the place for canons controlling the right to participate in the Church's sacramental and liturgical life—the effects of disciplinary excommunication, irregular marriages, or conduct condemned by the Church, and the extent to which the sacraments and the liturgy are open to non-Catholics.
4. *Private Observances.* Here can go whatever is to survive of the law of fast and abstinence, indulgences, and the like, together with whatever the Church has to say authoritatively on such matters as private vows, spiritual exercises, pilgrimages, and even meditation. All this should be introduced with a few general principles as to the place of private prayer and private devotion in the life of the Christian.

Part II—Particular States of the Christian Life, Except Marriage. Here would go those forms of the Christian life that have a special vocation and a special spirituality. The basic divisions are the clerical state and the state of the evangelical counsels. The latter is divided under the present canon law into the religious life, dealt with in the Part *De Religiosis* of the Book *De Personis* of the Code, and the life of the secular institutes, dealt with in the constitution *Provida Mater.* A further division is incipient in the portion of the Code dealing with societies in which the common life is lived without public vows. I would consider also as a division of the life of the counsels the life of the secular

tertiary, dedicated to living the lay life in the spirit of the counsels under the direction of a religious order; this is at present dealt with in the Part *De Laicis* of the Book *De Personis*.

In view of the current rethinking of the place of the religious life in the Church, it seems likely that the divisions now in use will one day require considerable modification. Especially, it seems that the distinction between active and contemplative religious will need to be sharpened if each state is to fulfill its particular mission. On the other hand, the chapter on religious in the constitution *De Ecclesia* of the Second Vatican Council makes it clear that the Church regards the profession of the evangelical counsels as essentially the same for all. In proposing the following titles, I have kept the existing distinction between religious communities and secular institutes, without attempting to introduce further topical divisions:

1. *The Clerical State.*
2. *The Profession of the Evangelical Counsels in Community.*
3. *The Profession of the Evangelical Counsels in the World.*
4. *The Secular Life in the Spirit of the Evangelical Counsels.*

I have not attempted to provide here for another category which I suspect may come into some prominence in the future, that is, the category of persons who submit themselves to some form of community discipline for the service of the Church, without professing the evangelical counsels. A venerable precedent for such persons is provided by the secular canons of the Middle Ages. Some conceptions of the religious life that are currently being mooted would seem to correspond to such a vocation as this better than to the religious vocation as it has been traditionally conceived.

The framework I am proposing here involves a separation of material dealing with the clerical and religious states from material dealing with the institutional embodiment of those states. This separation has obvious disadvantages from the standpoint of a logical presentation of a conventional legal topic. I adhere to it nevertheless, because it seems to me essential if we are to

give adequate scope and emphasis to the personal, non-institutional elements in the clerical and religious states.

Actually, the division, once resolved upon, is not as difficult as it looks. My criterion involves putting here as to each state the conciliar material and the few canons on its nature and spiritual significance, and its place in the life of the Church, then the canons on initiation into the state in question, its privileges and obligations, and its voluntary or involuntary termination. I find that the remaining canons on clergy and religious, once these have been extracted, are quite effectively limited to those dealing with institutional forms—diocesan and parochial administration for the clergy, superiors, chapters, and administration of temporalities for the religious.

Part III—The Married State and the Christian Family. The present Code treats of the entry into the married state, and of the obligations of married persons to each other and to their children under the Part *De Sacramentis* of the Book *De Rebus.* This approach seems to me not only to give inadequate emphasis to the vocational and ascetic aspects of marriage, but also to belie the theology on which the Church bases its claim to regulate the subject. The teaching of the theologians is that marriage is a personal relation which Christ raised to the dignity of a sacrament, and that what the Church regulates is not the sacrament itself, but the personal relation to which the sacramental character attaches. It is in view of this theological teaching that I would include here the canons dealing with the entry into the married state, and the obligations that state entails, leaving only the form of marriage to be dealt with among the sacraments.

In the titles I propose for dealing with the subject, I have divided the subject in terms of actual relations, treating the sacramental character as something that does or does not attach, depending on the nature of the relation. These are the titles:

1. *Conjugal Love.* Here I would put a statement of the essential character and spiritual significance of the human relationship to which the sacramental character attaches un-

der appropriate circumstances. In entitling this relationship "conjugal love," I do not mean to emphasize the personal character of marriage to the exclusion of the procreative; rather, I would bring out the essential interdependence of the two.

2. *Sacramental Marriage among Catholics.* Here it should be made explicit that Catholics are not free to marry except in accordance with the laws of the Church. By failing to comply with those laws, they cut themselves off not only from the sacrament of matrimony, but also from all participation in the Church's sacramental life. Here I would set forth these two principles, and then deal with the impediments (other than want of form) to marriage, and how, if at all, they may be dispensed from. Here also should go the canons governing separation of spouses.
3. *Sacramental Marriage among Other Christians.* The existing canon law of marriage makes no distinction between Catholics and non-Catholics except by exempting the latter from the rules relating to form and from the impediment of disparity of worship. Thus, the union of two baptized non-Catholics is a sacramental marriage unless one of the diriment impediments of the Code applies. I would modify this rule in two respects.

   First, I would introduce some discrimination into the recognition of sacramental marriages among baptized persons who are not active Christians. If the intent necessary to the validity of a sacrament is an intent to do what the Church does, it is difficult to see how persons can be said to enter an important relationship with that intent if the Christian religion plays no part in their lives. And even if it were theologically possible, it does not seem either necessary or desirable to impose the burdens of sacramental marriage on persons who have no general concern to live as Christians. I would find some formula to allow for the recognition of sacramental marriage among non-Catholics only when they are or subsequently become active in the

practice of the Christian religion, or when they have or subesquently form the intention to live as Christian man and wife.

Second, I would make some allowance for the regulation of non-Catholic marriages by the religious groups to which the parties belong, or, in some cases, by the state. Such a change would accord with present-day ecumenical thinking in recognizing the corporate existence of other Christian bodies; it would also open the way to marriage rules for non-Catholics suitable to their particular needs. It is difficult to see why other Christians should not make their own rules on such matters as the marriage of first cousins or the effect of sponsorship in baptism—especially as the impact of the Church's rules for Catholics is much modified by the possibility of dispensation. By the same token, it seems reasonable to permit the laws of the state on matters like age, notice of intention, or even blood tests, to govern the marriages of those Christians who customarily accept the competence of the state in such matters.

4. *The Marriages of Unbaptized Persons.* Here should go the canons governing the Pauline privilege, an account of the current practice in *privilegium fidei* cases, and the canons dealing with the impediment of disparity of worship, and how it may be dispensed. All this should be prefaced with a general statement of the nature of marriage as a natural union, and how such unions may become sacramental. In accordance with what I said concerning the marriages of baptized non-Catholics, it would seem desirable, if theologically permissible, to provide that baptism alone, without the intention of living as *Christian* married persons, would not be sufficient to make a sacramental marriage of a non-sacramental marriage.
5. *Civil Marriage.* Under this title would be treated those unions accepted as lawful marriages in the civil community, but not falling into one of the three classes just mentioned. As I have already indicated, it seems better to regard such

a union as a defective marriage rather than as a nullity. The primary obligation of the parties, the primary pastoral orientation of the Church, should not be to break up such a union, but to validate it, and attach to it the character of a sacramental marriage. In some cases this will be impossible, either because the marriage is forbidden by divine law, or because one party raises a serious obstacle to the other's living as a Catholic. But in the ordinary case, where the parties come before the Church and express their intention to live as Christian married persons, a sanation of the marriage should be allowed as a matter of course. Furthermore, unless something appears to the contrary, it should be presumed that there is no obstacle to such a sanation.

6. *Family Life and the Raising of Children.* There are in the present Code a few canons on the Christian education of children and the like that could be put under this title. I would add to these a few basic and generally accepted norms on the nature and obligations of family life. Perhaps such matters as the duty to pay a living wage could be dealt with here also.

Book III—The Sacramental and Liturgical Life of the Church

I have already discussed my reasons for treating this as a separate subject in the canon law—that the obligation of these canons, their operational effect, and their significance for the personal lives of Christians, are all both unique and theologically subtle. The Constitution of the Second Vatican Council on the Sacred Liturgy presents a good deal of material that could serve to introduce this subject. For the rest, the existing canons could serve without much modification.

Part I—The Sacraments.

1. *Baptism*
2. *The Holy Eucharist*
3. *Penance* (excluding those canons dealing with indulgences, which I would put in with the observances to which the

indulgences are attached, despite their historical connection with the relaxation of penance)
4. *Confirmation*
5. *Unction*
6. *Order* (modified somewhat to do away with obsolete grounds of irregularity, and to provide for the newly established ordination of married men to the diaconate)
7. *Matrimony* (form only)

Part II—Sacramentals and Public Prayer.

1. *Sacramentals*
2. *The Divine Office* (including the obligation to say it, and the rules governing attendance in choir)
3. *Other Public Prayers* (novenas, processions, and the like —with some elaboration on the existing canons)
4. *Saints and their Cult*

Part III—Churches and Holy Places.

Part IV—The Liturgical Year (including some general treatment, together with a statement of the general forms of piety appropriate to the different parts of the year, and the specific obligations attached to specific days or seasons).

Part V—Christian Burial.

Book IV—The Institutional Life of the Church

By separating those canons dealing directly with institutional forms and their operation from those canons dealing with other matters, I would hope to place the institutions in a context conducive to a recognition of their ancillary position in the economy of salvation, and to an efficient control of their operation. Nevertheless, there is an element of mystery in the institutional life of the Church as surely as there is in the other aspects of her being. Something of this mystery must be expressed in the canons introducing this subject. It should be made clear that the institutional Church is not radically distinct from the Mystical Body, and that particular institutional forms are not to be conceived as standing

apart from the personal, the pastoral, the apostolic, the affective elements in the Church's life, but as essentially united to those elements, providing them with the structure they require. The following divisions of the subject are intended to bring out this character in the institutions they describe. It is contemplated that the treatment of each institution will begin with an account of its pastoral and spiritual goals, followed by a more detailed treatment of its structure and operation.

Part I—The Hierarchy and its Institutions. There is material in the constitution *De Ecclesia* of the Second Vatican Council that may serve as an introduction to this topic. The titles I suggest modify somewhat the treatment in the existing Code, in order to achieve what seem to me desirable changes in emphasis. The most important of these modifications is the dismantling of the existing title *De suprema potestate deque iis qui eiusdem sunt ecclesiastico iure participes.* This title includes the pope himself, ecumenical councils, the cardinals, the curia and other agencies of delegated papal authority, metropolitan and other episcopal agencies above the diocesan level, and plenary and provincial councils. The concept and the allocation of "supreme power" in the Church raise formidable problems of legal theory, and of theology as well. But we do not really have to resolve these problems to recognize that the matters covered in this title could be more meaningfully arranged through the use of narrower concepts. In the first place, I would put the pope and the agencies that derive their authority from him in a single title by themselves.

The agencies of ecclesiastical authority which, while subordinate to the pope, do not actually derive their power from him, are the general council and the episcopate. Whether the general council is simply the episcopate under another form or has a status of its own is another subtle question that might better be left open. In combining general and local councils in a title separate from the other agencies of episcopal authority, I have followed a fairly clear juridical classification that may or may not reflect a deeper theological reality.

The canons dealing with primates, patriarchs, metropolitans, and the like, are now attached to this same title on the supreme power. It would seem that, with the recognition of a collegial authority in the episcopate, these canons might better be conceived as regulating the organization of the episcopate for collective action.

The foregoing discussion will indicate what I have in mind with the following titles:

1. *The Roman Pontiff and the Institutions Exercising his Authority*
2. *The Episcopate and the Agencies of Provincial and Diocesan Administration*—I am in some doubt as to whether provincial and diocesan administration should be put together in a single title. My reason for deciding in favor of the combination is to leave room for some experimentation in the transfer of functions between diocesan and provincial levels.
3. *General and Local Councils*

Part II—The Clergy and the Pastorate. As those matters relating to the personal character of the clergy have already been dealt with, this Part can confine itself to the cure of souls and the organization of the clergy to carry it out. I conceive of this subject in two titles:

1. *The Parish Priest, the Parish, and Parish Institutions.* Here I would develop the concept of the cure of souls, and set forth the obligations of the parish priest. Following these matters would come the appointment and tenure of the parish priest, insofar as the applicable rules differ from those for other ecclesiastical offices. Finally, there could be introduced at this point such offices and institutions as may develop out of the current interest in enlarging the role of the laity in the conduct of parish affairs.
2. *Recruitment, Distribution, Compensation, and Discipline of the Clergy.* Here I would put incardination and the like,

and those disciplinary sanctions (such as supension) which especially involve the clergy. Here too would go those rules of conduct that affect the cleric in his relation to the organization of the Church—as distinguished from those rules already dealt with which affect his personal life in the clerical state. The existing Code makes somewhat the same distinction, placing the personal obligations of the clerical state in a title of *De Personis,* and treating organizational failings in a title of *De Delictis et Poenis.*

In this same title I would include all the canons dealing with ecclesiastical offices and benefices. I would modify the existing law on this subject by including all the material on appointment and tenure under offices, leaving the benefice in its proper position of an adjunct to an office. It should be made clear in the arrangement of the law that the benefice is not the private property of the incumbent, but is bestowed on him to support him in the exercise of his office, and that his rights of tenure exist to afford him suitable security and freedom in the exercise of the office, not to vindicate a property right in the benefice.

Part III—Institutions of the Christian Life. As in the case of the clergy, having disposed of the canons affecting the personal life of religious and other states, we can confine ourselves here to the institutional forms in which these states of the Christian life are embodied. The following titles should require no explanation:

1. *Religious Communities and other Institutions of the Common Life*
2. *Secular Institutes*
3. *Third Orders*
4. *Associations with Ecclesiastical Objects*

I am in some doubt as to whether cathedral establishments—chapters of canons—should be made an additional title here, or

should be included among the agencies of diocesan administration. At present, the role of such establishments in providing an administrative senate for the bishop seems paramount. As I have suggested, however, there might be room for a wider use of such establishments in the future, in which case they might well be dealt with here.

Part IV—Property Devoted to Ecclesiastical Use. There is a Part *De Bonis Ecclesiae Temporalibus* in the Book *De Rebus* of the present Code; this can form the foundation for the treatment of the subject here. I would add some treatment of the manner in which funds are raised for ecclesiastical purposes and the obligation of the faithful to contribute to the support of the Church. I would include in this treatment the canons on simony that appear in the introduction to the *De Rebus* of the present Code.

There should also, it seems to me, be introduced into the canons at this point a treatment of the manner in which the title to church property is to be held for purposes of civil law. This is obviously a matter that differs radically from one jurisdiction to another; nevertheless, it should be possible to lay down some kind of general criteria which could be used in exercising such options as the civil law leaves open, or in seeking modifications of civil law to meet the legitimate needs of the Church.

These points suggest the following titles:

1. *Administration, Distribution and Tenure of Property Devoted to Ecclesiastical Use*
2. *The Raising of Funds for Church Support*
3. *Church Property and Civil Law*

Part V—Formal Judicial and Administrative Procedures. The strict separation of powers that has been so influential in the development of modern secular legal systems has never had much currency in the canon law. Indeed, in view of the personal pastorate which underlies the whole canonical structure, I would

question whether a strict separation of powers doctrine would be appropriate. But there is in the canons a certain incipient distinction between administrative and judicial action, and a somewhat more fully articulated distinction between formal and informal action. Both these distinctions seem desirable, and should probably be brought out more fully.

The formulation of these distinctions is a matter of some subtlety. I would suggest tentatively that formal action is action following a prescribed procedure, whereas informal action may be taken without any procedural requirement, and that judicial action is action taken pursuant to fairly definite rules, whereas administrative action involves a certain discretion to do what may seem appropriate. As an example, let us consider the various ways in which a parish priest can be removed from his office. Transfer under canons 2162-7 is relatively informal administrative action, though some rudimentary procedures are prescribed. Removal under canons 2147-56 is relatively formal administrative action—the procedures are minutely prescribed, but the reasons are broadly discretionary. Deprivation under canon 192, §2, is formal judicial action. Suspension *ex informata conscientia* under canons 2186-2194 is informal judicial action—the procedures are at best rudimentary, but the substantive law is strict. What I have in mind in this Part is to concentrate on formal requirements, leaving the substantive law—whether formally or informally implemented—to be covered elsewhere.

The existing Code makes no express provision for formal review of informal action to determine whether it is within the limits of the discretionary power committed by law to the authority in question. In other words, there is no tribunal in the Church with a function like that of the French Conseil d'Etat, no procedure comparable to the American judicial review of administrative action. "Administrative recourse," the canon law's nearest approximation to these institutions, is, at least in theory, as informal as the proceedings from which recourse is taken, and such formalities as it entails are not explicitly provided in the Code. It would seem that the law of the Church should make

express provision for a strictly formal procedure in which the act of any authority could be set aside if it were found to exceed the limits of the discretionary power committed to him.

Other suggested modifications of existing procedures—mainly in the direction of simplification—will appear under the separate titles:

1. *Formal Procedures in General.* This title should begin with definitions of formal action, judicial action, and administrative action, in the terms discussed above. Then, whatever general rules of procedure seem appropriate should be set forth. Much of the subject can probably be covered in the ensuing titles which deal with specific kinds of proceeding. But what is common to all or most types can be covered here, and there should be in any event sufficient procedural norms to enable the system to handle miscellaneous matters too rare to be dealt with specifically.

   I would think that these general procedural norms would not need to be as elaborate as the ones contained in the present Code. Briefer and more flexible standards, especially in the matter of proof, would afford a desirable discretion in bringing out the issues in the case and arriving at the true facts. If necessary, these general norms could be supplemented by rules adopted by particular courts to meet their own situations.
2. *Courts and their Jurisdiction.* The existing Code provides for an *officialis* and at least a rudimentary court structure in every diocese. In many, if not most, dioceses, there is not enough business to keep this court structure in efficient full time operation. Still less is there enough business for the court structure to be backed up by a bar with skill and experience in presenting cases before it. It would seem highly desirable, then, for ecclesiastical courts to be constituted on a regional basis, covering more than one diocese, or even more than one province.

   At the same time, there is a strong canonical tradition

behind regarding the bishop as the fountainhead of judicial authority in his diocese. Both theological and pastoral considerations militate against departing from that tradition. I would suggest as a solution to the problem that the bishops of a given region, or a majority of them, elect a single *officialis,* and two or more *vice-officiales,* who would hear and determine, in the name of each constituent bishop, all the cases arising in his diocese, except those he reserved for his personal determination. These would be full-time judges, and would maintain a full-time staff, and at least a small full-time bar, supplemented perhaps by qualified secular attorneys.

Above these courts could be constituted full-time appellate courts, perhaps appointed by and acting in the name of a plenary council, or of the metropolitans of a given region. These appellate courts could also entertain formal proceedings for the review of administrative action.

The remaining titles in this Part deal with procedures in particular kinds of cases.

3. *The Imposition of Censures and the Correction of Doctrinal Errors.* The laws on these matters, to the extent they do not already provide for adequate opportunity for the accused to be informed of the charges against him, and to respond to them, should be amended to afford such provision. Also, where a book or a teaching is to be denounced, the author or the teacher should be given the rights of a person accused. These rights should be established in principle in the Book on the Witness of the Church. Here, procedures should be laid down to implement them.
4. *Matrimonial Proceedings.* Except in certain jurisdictions where canonical annulment is given civil effect, and the civil law does not provide for divorce, the usual canonical marriage case is initiated for the sake of someone who wishes to satisfy his conscience by putting himself right

with the Church. This being so, it would seem that the formalities of civil matrimonial litigation are neither necessary nor appropriate in the common law of the Church. No doubt annulments should not be decreed on flimsy evidence or without careful examination. But if a relatively informal examination of the relevant evidence shows good ground for considering the marriage invalid, and there is no indication that additional evidence can be found, an annulment would seem to be in order without further ado.

5. *Canonization Proceedings*
6. *Administrative Control of the Clergy*. Here I would deal with the procedures to be followed in such matters as the removal or transfer of pastors, and the recalling of non-residents. If the current discussion of the freedom of clergy and religious to express themselves on public issues should result in any procedural standards to be met before they can be silenced, such procedures should be provided for here.

   The distinction between this Title and Title 3 of this Part (*The Imposition of Censures and the Correction of Doctrinal Errors*) lies, as I conceive it, in the purpose of the rules being implemented. Censures are imposed and errors corrected as a part of the Church's witness to the principles of true doctrine and right conduct as she has received them. Administrative control of the clergy is exercised in order that the organization of the Church may effectively accomplish its pastoral aims. The difference in purpose entails a difference in the balance to be struck between individual and group interests, and therefore in the procedural safeguards to be accorded the individual. The distinction in question is not unknown to the present canon law. For example, the procedures for removing a pastor for misconduct are different from those for removing a pastor for incompetence.
7. *Proceedings Concerning the Property and Revenues of the*

Church. This would cover administrative proceedings such as those for obtaining permission to sell or hypothecate property, and judicial proceedings such as those for determining which natural or moral person is entitled to a given piece of property or a given fund.

8. *Review of Official Action.* There should be a definite procedure for setting aside administrative action which exceeds the power of the person or authority taking it. I think it would also be wise to make specific provision for appeals from judicial action. Such provision could be made in the title on *Formal Procedures in General,* but I would prefer to see it separately dealt with. This arrangement would contribute, I think, to a desirable shift in emphasis from the merits of the original proceeding to the handling of the original proceeding by the tribunal or authority appealed from. This change would be in accord with modern appellate practice in secular systems, and would contribute to the efficiency of canonical proceedings.

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The preparation of a revised Code of Canon Law along the lines I am suggesting would not be as formidable a task as might appear. A beginning could be made by transposing whole titles or groups of titles into new juxtapositions and assigning new names to them. Once this was done, the additions and amendments that seem appropriate could be introduced at specific points without great disturbance of the overall structure.

I would envisage, then, three steps in the process. The first would be the transposition and renaming of the titles of the existing Code in the manner just suggested. The second would be the introduction of canonical documents enacted since the Code, of those parts of conciliar decrees that should be introduced into the canons, and of whatever else it seemed desirable to add. Finally, desired changes in the substantive context of the existing canons could be made within the framework thus established.

These changes would not, it seems to me, bring about any

radical disruption of the administration of the Church as it is carried out under the present Code. Like the contemporary changes in doctrinal and liturgical formulations, they are intended to bring out with new emphasis something that has always been present. It is hoped that they will enable the canon law to take its place in the renewal of the Church in a manner consistent with its essential character.

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