

# ARTICLE: AN INTRODUCTION TO THE CANONICAL ACHIEVEMENTS OF POPE JOHN PAUL II

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## Reporter

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## Text

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### Introduction

His Holiness Pope John Paul II (Karol Wojtyla, reigned 1978 to 2005) was not a jurist-pope in the tradition of, for example, Pope Gregory IX, who directed St. Raymond of Penafort in the production of the Liber Extra, also called Decretales. <sup>1</sup> St. Raymond's work served as a cornerstone of canon law until the twentieth century. <sup>2</sup> Other examples of jurist-popes abound: Pope Innocent IV was a curial canonist during the drafting of Gregory's Decretales. <sup>3</sup> Innocent's Apparatus in quinque libros decretalium was regarded by many as the best commentary on decretal law ever produced. <sup>4</sup> The Baroque Pope Benedict XIV, often called the first modern canonist, authored extensive canonical publications both before and after his elevation to the Chair of Peter. Some of Benedict's work remained in print until the twentieth century. <sup>5</sup> Finally, Pope Pius XII, as a young priest with [\*2] doctoral degrees in canon and civil law, served as an immediate assistant to Pietro Cardinal Gasparri while the master drafted what would become the Pio-Benedictine Code of Canon Law. <sup>6</sup> Pope John Paul II, in contrast, left us no imposing legal

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<sup>1</sup> For an overview of the canonical accomplishments of Pope Gregory IX (Ugolini of Segni, reigned 1227-1241), see P. Torquebiau, Corpus Iuris Canonici, in 4 Dictionnaire de Droit Canonique 610, 627-32 (R. Naz ed., 1949), and J.M. Powell, Gregory IX, Pope, in 6 New Catholic Encyclopedia 496 (2d ed. 2003).

<sup>2</sup> Powell, supra note 1, at 496.

<sup>3</sup> Compare J.M. Muldoon, Innocent IV, Pope, in 7 New Catholic Encyclopedia 524, 524 (1967) (describing Innocent's canonical career beginning prior to 1226 and ending with his death in 1254), with Powell, supra note 1, at 496 (detailing that Decretales was promulgated in 1234).

<sup>4</sup> For an overview of the canonical accomplishments of Pope Innocent IV (Sinibaldo Fieschi, reigned 1243-1254), see J.A. Cantini & Ch. Lefebvre, Sinibaldo dei Fieschi, in 7 Dictionnaire de Droit Canonique 1029 (R. Naz ed., 1965), and Muldoon, supra note 3, at 524-25.

<sup>5</sup> For an overview of the canonical accomplishments of Pope Benedict XIV (Prospero Lambertini, reigned 1740-1758), see R. Naz, Benoit XIV, in 2 Dictionnaire de Droit Canonique 752 (R. Naz ed., 1937), and M.L. Shay, Benedict XIV, Pope, in 2 New Catholic Encyclopedia 278 (1967).

treatises, presided over no legislative councils, and rendered no significant judicial decisions. But do not conclude from this that my thesis is basically mooted; to the contrary, far from being a canonical sleeper, the papacy of John Paul II had an enormous impact on the canon law of the Catholic Church.<sup>7</sup>

I will divide my remarks into three main areas. First, I will try to set out in some detail what John Paul II actually did in the area of canon law. Even trained canonists have trouble keeping track of the many canonically complex areas of ecclesiastical life that John Paul II worked in, and most non-canonists are quite unfamiliar with the breadth of the fontes cognoscendi - the basic texts and works containing the law - developed during his lengthy pontificate. This Article should help the reader to recognize the major areas in which modern popes impact ecclesiastical law and indicate those areas of law that John Paul II affected.

Second, I will briefly look in a more precise way at how John Paul II did what he did in canon law. His very approach, built on a genuine willingness to listen to others whose expertise might have exceeded his own in this area or that, left us an instructive, but disarmingly simple, example. John Paul II's approach befits not only practitioners of canon law, but of civil and common law as well, and indeed all leaders of large projects and undertakings.

Finally - with what I hope is a healthy timidity inspired by realizing how much more others know than I about Catholic history, theology, and the ecclesiology of the Second Vatican Council - I want to suggest why Pope John Paul II did what he did in canon law. I do **[\*3]** not wish to speculate on the psychological motives behind his approach to law; rather, I wish to discover the principle that guided his canonical thinking. I think that principle was missiological, specifically evangelistic, in nature.

Before we describe, however, the specific canonical activities of his papacy, I would like to devote a few words to highlighting how close we came to having a jurist-pope in John Paul II after all. The evidence for this lies in a small but fascinating episode from 1959, that is, at the dawn of Karol Wojtyla's episcopal career. But for the startling nature of this event to stand out correctly, we need to back up just a bit.

Karol Wojtyla's seminary education, given the terrible conditions then in Poland, contained little in the way of formal canon law.<sup>8</sup> His post-war graduate studies in Rome<sup>8</sup> centered on theology generally and mystical theology in particular,<sup>9</sup> the latter not being a field known for its affinity to canon law. Finally, upon returning to Poland to teach, most of Wojtyla's university activities revolved around philosophy, theology, and literature, and even these occupations would have been hard-pressed by the time he needed to devote to his pastoral duties.<sup>10</sup> In brief, we have in Fr. Wojtyla's primary academic years a very bright priest with almost no formal training in canonistics.

<sup>6</sup> For an overview of the canonical accomplishments of Pope Pius XII (Eugenio Pacelli, reigned 1939-1958), see R. Leiber & R. McNerny, Pius XII, Pope, in 11 *New Catholic Encyclopedia* 396 (2d ed. 2003). Pope Pius XII oversaw the drafting of what was intended to be an Eastern Code of Canon Law, though circumstances limited him to only partial promulgation of the norms. See Praefatio ad Codicem to Codex Canonum Ecclesiarum Orientalium, in 82 *Acta Apostolicae Sedis* 1047 (1990) (explaining the history and promulgation of the Eastern Code of Canon Law, which was eventually published in 1990).

<sup>7</sup> I will not address Pope John Paul II's philosophy of law. One of the earliest attempts to describe that philosophy can be found in Zenon Grocholewski, *La filosofia del diritto di Giovanni Paolo II*, 64 *Apollinaris* 521 (1991). For a review and paraphrased English abstract of Grocholewski's arguments, see Paul Hayward, *Review of Archbishop Grocholewski's Paper on the Philosophy of Law of Pope John Paul II*, *Canon L. Soc'y of Gr. Brit. & Ir. Newsl.*, Sept. 1997, at 72.

<sup>8</sup> See generally George Weigel, *Witness to Hope: The Biography of Pope John Paul II 69-72* (1999) (describing the conditions in Poland during Karol Wojtyla's seminary education); see also Adam Boniecki, M.I.C., *The Making of the Pope of the Millenium: Kalendarium of the Life of Karol Wojtyla 938 illus.* (Kazimierz Chwalek, M.I.C. ed., Irena Mirecki et al. trans., 1st Eng. ed., Marian Press 2000) (1983) (unnumbered pages after 938, showing photographs of some of Karol Wojtyla's academic records).

<sup>9</sup> Weigel, *supra* note 8, at 82-87.

<sup>10</sup> See generally *id.* at 87, 122 (listing Karol Wojtyla's various university activities in Poland).

It is, then, almost unbelievable that, despite this very light background in canon law and notwithstanding many other time-demanding commitments, Fr. Wojtyla managed to publish a paper in 1959 on, of all things, a highly technical and long-disputed question regarding the medieval master canonist Gratian's authorship of the famous tract *De Penitentia*.<sup>11</sup> That article not only satisfied the perennially high editorial standards of the journal *Studia Gratiana*, but its findings were basically accepted by later canonical experts.<sup>12</sup> If [\*4] an episode like this had occurred in another age, one might be tempted to think that some obscure but competent scholar had hoped to gain wider acceptance of his hypothesis by retroactively attaching to his paper the name of someone who turned out to be a famous pope. But in our case, the obscure scholar himself turned out to be a famous pope.

On the faculty of the Jagiellonian University when Fr. Wojtyla first arrived, was one Dr. Adam Vetulani, a well-regarded scholar and historian of canon law.<sup>13</sup> Apparently this seasoned academic could spot new talent among the junior faculty and was quick to try to make use of the young Fr. Wojtyla, who had just been assigned to teach at the university.<sup>14</sup> Wojtyla looked back on the episode at a small gathering of friends and fellow faculty members held at the time of his elevation to the See of Krakow in 1964. As Bishop Wojtyla remarked to the small circle of friends:

Prof. Vetulani wanted to make a canonist of me, or at least a theologian cooperating with canonists, especially in studies of the great Gratian ... But my love of philosophy and theology proved stronger. The only publication in this area appeared, thanks to the Professor, in *Studia Gratiana* in French, my only foreign publication ... .<sup>15</sup>

What we see here is more than a glimpse at how close Pope John Paul II came to a life of canonical studies and perhaps fame. What we see is Karol Wojtyla's uncanny ability to learn quickly and deeply from those around him, to master complex issues in fields not formally his own, and to make contributions to the development of those fields on par with those who have dedicated their lives to such work. I hardly need observe that it was a gift upon which he would draw many times in his life of service.

[\*5] I close my observations on this episode by noting that 1959 was the same year that Pope John XXIII announced his intention to convoke an Ecumenical Council and to reform the Pio-Benedictine Code.<sup>16</sup> Karol

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<sup>11</sup> Karol Wojtyla, *Le traite de <sqrt>Penitentia<sqrt> de Gratien dans l'abrege de Gdansk* Mar. F. 275, 7 *Studia Gratiana* 357 (1959). The passages under consideration may be found in 1 *Corpus Iuris Canonici 1159-1247* (Aemilius Friedburg ed., Bernhard Tauchnitz 1922).

<sup>12</sup> Tad Szulc, *Pope John Paul II: The Biography* 190 (1995). Monsignor Charles Lefebvre, then of the Roman Rota and probably second only to Stephen Kuttner as the world's leading historian of canon law, had apparently seen an earlier version of Wojtyla's article in a Polish canon law journal in 1957. Boniecki, *supra* note 8, at 157. During a faculty meeting to discuss promoting Wojtyla to full-time status, Vetulani related with obvious pleasure that the Rotal auditor had offered "a very positive evaluation" of Wojtyla's arguments. *Id.* For some thirty-five years after its initial reception by scholars, it seems, Karol Wojtyla's article lay quietly in the pages of *Studia Gratiana* until it was noticed by Anders Winroth in the course of preparing his seminal study of Gratian's authorship of the *Decretum*. See Anders Winroth, *The Making of Gratian's Decretum 13-14* (2000).

<sup>13</sup> See Boniecki, *supra* note 8, at 157-58.

<sup>14</sup> See *id.*

<sup>15</sup> *Id.* at 233 (alteration in original); see also Weigel, *supra* note 8, at 150, 220 (relating Professor Vetulani's reminders to Wojtyla of the latter's responsibility to academia).

<sup>16</sup> Less than three months into his pontificate, Pope John XXIII announced his intentions to hold a synod for the Diocese of Rome (the first since the Council of Trent), to convoke the Twenty-First Ecumenical Council, and to reform the Pio-Benedictine Code of Canon Law. See Pope John XXIII, *Questa Festiva* [Allocution Announcing the Convocation of the Twenty-First Ecumenical Council], in 51 *Acta Apostolicae Sedis* 65, 68-69 (1959). This tripartite plan was reiterated a few months later in Pope John XXIII, *Ad Petri Cathedram* [Encyclical Letter on Truth, Unity and Peace in a Spirit of Charity], in 51 *Acta Apostolicae Sedis* 497, 498 (1959). The Synod of the Diocese of Rome was held in January 1960, but exercised little or no influence on either the ecumenical council or the revision of canon law. For the acts and norms of the Synod, see *Prima Romana Synodus A.D. MCMLX* (1960). For a scholarly commentary on the same, see John Abbo, *The Roman Synod*, 21 *Jurist* 170 (1961).

Wojtyla's 1959 essay was, it turned out, his only significant foray into canonical writing until the day he signed into law the revised Code that had been called for that year by Good Pope John. <sup>17</sup>

### I. Areas of Canon Law Impacted by Pope John Paul II

We are ready now to turn to the first main part of my presentation, an outline of the canonical achievements of Pope John Paul II. Heading the list - and it will be a long one - is John Paul II's promulgation of the revised Code of Canon Law in 1983 ("1983 Code"), <sup>18</sup> a set of laws that could rightly be named the Johanno-Pauline Code. <sup>19</sup> Obviously, this single act would have been enough [\*6] to enroll John Paul II in the catalogue of popes influential in the history of canon law, and I would like to explore two of its deeper implications.

First, one must realize that the Pio-Benedictine Code, promulgated in 1917, <sup>20</sup> had itself been a revolutionary legal exercise. It moved the Church for the first time in her history from a governing system based on a series of authoritative canonical collections to a governing system organized around a single integrated canonical code. <sup>21</sup> Now when Pope John XXIII called for the reform of canon law, hardly two percent of Church history had been spent under a system of codified law; if, therefore, a legal system based on codified law was going to be abandoned in the Church (and I need hardly observe that non-codified legal systems are quite capable of effectively governing large and complex societies), the optimum time would have come during John Paul II's papacy. Therefore, by promulgating the 1983 Code, John Paul II effected nothing less than the "first peaceful transfer of power" that political scientists look for before declaring any revolution (even a "legal" one) to have been successful. <sup>22</sup> By bringing to completion and promulgation the 1983 Code of Canon Law, John Paul II confirmed the Church in her epoch-marking shift from collections of law to codified law.

A second significance to John Paul II's promulgation of the revised Code will be evident only with the passage of time. We know now that, by announcing a wholesale revision of canon law in 1959, Pope John XXIII unintentionally rendered the Pio-Benedictine Code of 1917 a lame duck, decades before its successor was ready. <sup>23</sup> This [\*7]

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<sup>17</sup> See Pope John Paul II, *Sacrae Disciplinae Leges* [Apostolic Constitution Promulgating the 1983 Code], in 75 *Acta Apostolicae Sedis* (Part II, Special Issue) vii (1983) [hereinafter *Sacrae Disciplinae Leges*].

<sup>18</sup> 1983 Code; *Sacrae Disciplinae Leges*, supra note 17, at vii (promulgating the 1983 Code).

<sup>19</sup> Commissioned in 1903 under Pope St. Pius X and promulgated in 1917 by Pope Benedict XV, the Code of Canon Law that went into effect then is often called the "Pio-Benedictine Code" in honor of the two popes who were most closely involved in its production. Edward Peters, Curator's Introduction to *The 1917 or Pio-Benedictine Code of Canon Law* xxiii, xxiii n.1 (Edward N. Peters ed. & trans., Ignatius Press 2001) (1918). As is well known, Pope John Paul II took his regnal name in honor of the "Popes of the Council," John XXIII and Paul VI. See Peter Hebblethwaite, John Paul I, in *The HarperCollins Encyclopedia of Catholicism* 713, 713-14 (Richard P. McBrien ed., 1995); Peter Hebblethwaite, John Paul II, in *The HarperCollins Encyclopedia of Catholicism*, supra at 714-15. As I shall discuss below, what eventually became the 1983 Code was first called for by Pope John XXIII, was guided for several years by Pope Paul VI, and was promulgated by Pope John Paul II. See infra text accompanying notes 20-23, 98-105. The association, therefore, of "John" and "Paul" with the 1983 Code works at several levels. In any case, the naming of a canonical code is not the simple matter some might assume it to be. See George Nedungatt, S.J., *The Title of the New Canonical Legislation*, 19 *Studia Canonica* 61 (1985).

<sup>20</sup> 1917 Code; Pope Benedict XV, *Providentissima Mater Ecclesia* [Apostolic Constitution Promulgating the 1917 Code] (1917), reprinted in *Codex Iuris Canonici* xxxix (Pietro Cardinal Gasparri ed., 1918).

<sup>21</sup> See Peters, supra note 19, at xxiii-xxv.

<sup>22</sup> See, e.g., Rene Antonio Mayorga, *Bolivia's Silent Revolution*, 8.1 *J. Democracy* 142, 144 (1997); Robert A. Pastor, *Preempting Revolutions: The Boundaries of U.S. Influence*, 15 *Int'l Security* 54, 64 (1991).

<sup>23</sup> See Cardinal Agostino Casaroli, *Discorso di Sua Em.za rev.ma* [Discourse of Cardinal Agostino Casaroli, Secretary of State], in 15 *Communicationes* 36, 40 (1983); Rosalio Castillo Lara, S.D.B., *Discorso del Pro-Presidente S.E. Mons. Rosalio Castillo Lara S.D.B., Arcivescovo tit. Di Precausa* [Discourse of the Pro-President Archbishop Rosalio Castillo Lara, S.D.B.], in 15 *Communicationes* 27, 28-29 (1983) [hereinafter *Discourse of Lara*]; see also *Pontificia Commissio Codici Iuris Canonici*

caused terrible administrative and pastoral traumas in the Church for a generation, problems which were exacerbated by, or even contributed to, the deep antinomianism that swept Western society in the 1960s. For twenty-four years, no one knew, or could be confident that they knew, what the revised canon law would eventually say on a wide variety of issues, when canon law would get around to saying it, or even whether it was ever going to say it at all (at least in our lifetimes). That experience left its mark on the psyche of the Church; it was an experience that she is in no hurry to undergo again. In my opinion, therefore, it is highly unlikely that a new code of canon law will ever again be developed from scratch. Instead, the selective reform of specific canons or groups of canons will be pursued in the manner of other modern legal systems. As a consequence, the structure and indeed much of the very content of the Code of Canon Law promulgated by Pope John Paul II will be with us for centuries at least and quite possibly as long as Gregory's decretal letters were the core components of the *Corpus Iuris Canonici*: almost seven centuries.

I recognize, of course, that longevity was precisely what most observers expected from the 1917 Code, with many believing that its structure and content would surely weather the coming centuries with ease. Indeed, to accommodate the minor legal updating that the future might portend, the Pio-Benedictine Code was equipped with a mechanism for adding new text without disturbing the numbering of the 2414 canons set in place by Gasparri.<sup>24</sup> Unfortunately for the longevity prospects of the Pio-Benedictine Code, that updating system was never used.<sup>25</sup>

**[\*8]** What then is one to think about my prediction that the 1983 Code will last for many centuries? After all, there is not even an attempt to outline a mechanism for updating the text of the 1983 Code as conditions will certainly warrant. Not to worry, as Pope John Paul II has already shown us how to do it in his 1998 *motu proprio* *Ad Tuendam Fidem*: he simply promulgated additional text for Canons 750 and 1371.<sup>26</sup> No fanfare, he just did it. And his example will be followed. In short, most of the text of the Johanno-Pauline Code is going to be with us for a long, long time. I will return to the 1983 Code when I address how John Paul II did what he did in canon law. For now, I will continue with the basic outline of his canonical accomplishments.

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Recognoscendo, Relatio complectens syntesim animadversionum ab Em.mis et Exc.mis Patribus Commissionis ad novissimum schema Codicis Iuris Canonici exhibitum, cum responsionibus a Secretaria et consultoribus datis, in 14 Communicationes 116, 121 (1982); see generally Julian Herranz Casado, *Renewal and Effectiveness in Canon Law*, 28 *Studia Canonica* 5, 12 (1994); Rosalio Castillo Lara, *Some Reflections on the Proper Way to Approach the Code of Canon Law*, in *Canon Law Soc'y of Am., Proceedings of the Forty-Sixth Annual Convention* 24, 25-26 (1984) [hereinafter *Some Reflections*]; Edward N. Peters, *Five Things That Every Bishop Needs to Know About Canon Law*, *Catholic Dossier*, May-June 2001, at 30, 31.

<sup>24</sup> See Pope Benedict XV, *Cum Iuris Canonici Codicem* [Motu Proprio on the Method of Amending the Code of Canon Law], in 9 *Acta Apostolicae Sedis* 483 (1917).

<sup>25</sup> Not only was no new text ever added, but only once (at least before the conclusion of the Second Vatican Council, following which several canons were wholly abrogated) was any text ever removed from a Pio-Benedictine canon, namely, the following words from 1917 Code: "Item ab acatholicis nati, etsi in Ecclesia catholica baptizati, qui ab infantili aetate in haeresi vel schismate aut infidelitate vel sine ulla religione adoleverunt, quoties cum parte acatholica contraxerint." ["Likewise, those born of non-Catholics, even if they are baptized in the Church, [but] who from infancy grow up in heresy or schism or infidelity or without any religion, as often as they contract marriage with a non-Catholic."] 1917 Code c.1099, § 2, translated in Peters, *supra* note 19, at 379; Pope Pius XII, *Abrogatur Alterum Comma Paragraphi Secundae Can. 1099* [Motu Proprio Repealing the Second Clause of 1917 Code c.1099], in 40 *Acta Apostolicae Sedis* 305 (1948). The deletion of this text had the effect of extending the requirement of canonical form for marriage, 1917 Code c.1094, to all those ever baptized Catholic. As Herranz Casado points out, however, some one thousand norms of the Pio-Benedictine Code were, by interpretation, modified over time, but without the benefit of the textual reform clearly anticipated by *Cum Iuris Canonici Codicem*. Casado, *supra* note 23, at 12.

<sup>26</sup> Pope John Paul II, *Ad Tuendam Fidem* [Motu Proprio Inserting Certain Norms into the Code of Canon Law and the Code of Canons of the Eastern Churches], in 90 *Acta Apostolicae Sedis* 457 (1998) [hereinafter *Ad Tuendam*] (adding text to 1983 Code cc.750, 1371, and to *Codex Canonum Ecclesiarum Orientalium*, *supra* note 6, cc.598, 1436, translated in *Code of Canons of the Eastern Churches* 232-33, 504-05 (Arthur J. Espelage, O.F.M. ed., Canon Law Soc'y of Am., Latin-English ed. 2001) (1990).

Yves Congar spoke many times of the importance for the Church that she be able to breathe with both lungs, by which he meant, of course, Western and Eastern Christianity.<sup>27</sup> For most of the twentieth century, canonistics could, as it were, draw breath from the codification of Western canon law. It was not until 1991, however, thanks to Pope John Paul II, that Eastern Catholicism enjoyed for the first time its own Code of Canon Law.<sup>28</sup> In promulgating the Eastern Code, the Pope himself used two-lung imagery to underscore the importance of bringing Eastern canonical discipline into a more organized condition while at the same time respecting the authentic uniqueness of Eastern institutes and traditions.<sup>29</sup> At that point, John Paul II had two complete codes of canon law to his credit. Most men would have retired.

This discussion of the promulgation of these codes brings me to the second major area of papal canonical and legislative activity, for **[\*9]** both codes of canon law were promulgated by means of an ecclesiastical document known as an "apostolic constitution." Apostolic constitutions are the highest (though, as we shall see, not the only) form of legislative document the Church utilizes.<sup>30</sup> During his twenty-six year pontificate, John Paul II promulgated, in addition to two complete codes of canon law, no fewer than ten major, normative apostolic constitutions.<sup>31</sup> Reviewing them provides us with a tour of several areas vital to Church life and administration. I will survey them quickly.

In 1979, less than a year into his pontificate, John Paul II promulgated the apostolic constitution *Scripturarum Thesaurus*, by which the decades-long project to provide a liturgically normative *editio typica*, or official version, of Sacred Scripture was completed.<sup>32</sup> That same year, the Pope's intense concern for Catholic higher education was reflected in his promulgation of the apostolic constitution *Sapientia Christiana*, through which the norms for pontifical universities and faculties were reorganized.<sup>33</sup> And little more than ten years later, the apostolic constitution *Ex Corde Ecclesiae* extended this kind of solicitude to all Catholic colleges and universities.<sup>34</sup>

To return to the chronological outline, in November of 1982 - note that this is actually a few months before the promulgation of the revised Code, which occurred in January of 1983 - in the apostolic constitution *Sanctae Crucis et Operis Dei*, John Paul II established the Church's first "personal prelature."<sup>35</sup> This is a history-making **[\*10]**

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<sup>27</sup> See, e.g., Yves Congar, O.P., *After Nine Hundred Years: The Background of the Schism Between the Eastern and Western Churches* (Fordham University Press 1959) (1954).

<sup>28</sup> Pope John Paul II, *Sacri Canones* [Apostolic Constitution Promulgating the Code of Canons of the Eastern Churches], in 82 *Acta Apostolicae Sedis* 1033 (1990) [hereinafter *Sacri Canones*].

<sup>29</sup> *Id.* at 1035-36.

<sup>30</sup> See Francis G. Morrissey, O.M.I., *Papal and Curial Pronouncements: Their Canonical Significance in Light of the Code of Canon Law 14-17* (Michel Theriault ed., 2d ed. 1995).

<sup>31</sup> The term "normative apostolic constitutions" is mine, and I use it to distinguish such from the large number of apostolic constitutions that establish new organs of ecclesiastical governance such as dioceses, apostolic administrations, and so on. An apostolic constitution that, however, falls somewhere in between these two types would be Pope John Paul II, *Magnum Matrimonii Sacramentum* [Apostolic Constitution Establishing the Pontifical Institute for the Study of Marriage] (1982), [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/apost\\_constitutions/documents/hf\\_jp-ii\\_apc\\_07101982\\_magnum-matrimonii-sacramentum\\_it.html](http://www.vatican.va/holy_father/john_paul_ii/apost_constitutions/documents/hf_jp-ii_apc_07101982_magnum-matrimonii-sacramentum_it.html).

<sup>32</sup> Pope John Paul II, *Scripturarum Thesaurus* [Apostolic Constitution Promulgating the New Latin Vulgate], in 71 *Acta Apostolicae Sedis* 557 (1979).

<sup>33</sup> Pope John Paul II, *Sapientia Christiana* [Apostolic Constitution on Ecclesiastical Universities and Faculties], in 71 *Acta Apostolicae Sedis* 469 (1979).

<sup>34</sup> Pope John Paul II, *Ex Corde Ecclesiae* [Apostolic Constitution on Catholic Universities], in 82 *Acta Apostolicae Sedis* 1475 (1990).

document from a purely legal point of view. It is too early to tell whether this pontifical act will constitute the single splash in the prelature pond, or whether in time other personal prelatures will come into being as a result of what might be the beginning of a reconsideration of the fundamental canonical principle of territoriality.<sup>36</sup> Either way, John Paul II will have left his mark on such institutes.

The year 1983 saw not just the monumental promulgation of the revised Code of Canon Law discussed above but, on the same day (albeit with less fanfare), the complete reorganization of the canon law governing the beatification and canonization process in the apostolic constitution *Divinus Perfectionis Magister*.<sup>37</sup> John Paul II's own extensive use of these procedures is, of course, well known.<sup>38</sup>

**[\*11]** Moving on, while 1986 saw the reorganization of military chaplainries by the apostolic constitution *Spirituali Militum Curae*,<sup>39</sup> it was 1988 that offered what nearly all observers agree was the single most important piece of legislation issued by Pope John Paul II besides his two codes of canon law, namely, the apostolic constitution

<sup>35</sup> Pope John Paul II, *Sanctae Crucis et Operis Dei* [Apostolic Constitution Establishing Opus Dei as an International Personal Prelature], in 75 *Acta Apostolicae Sedis* 423 (1983); see also Weigel, *supra* note 8, at 449-50. Among the first comprehensive canonical analyses of personal prelatures, and one that includes very valuable conciliar and legislative textual histories, is that of Joseph Fox, O.P., *The Personal Prelature of the Second Vatican Council: An Historical Canonical Study* (1987). See also William H. Stetson & Javier Hervada, *Personal Prelatures from Vatican II to the New Code: An Hermeneutical Study of Canons 294-297*, 45 *Jurist* 379 (1985).

<sup>36</sup> The evidence suggesting this shift is intriguing. Besides the advent of personal prelatures mentioned above, see, for example, 1983 Code c.518, which enabled personal parishes to be established without the apostolic indult formerly required by 1917 Code c.216, § 4. A greater openness to making use of personal jurisdiction was also set out by the 1967 Synod of Bishops. See *Pontificia Commissio Codici Iuris Canonici Recognoscendo, Principia quae Codicis Iuris Canonici recognitionem dirigant*, in 1 *Communicationes* 77 (1969). See generally Richard D. Cunningham, *The Principles Guiding the Revision of the Code of Canon Law*, 30 *Jurist* 447, 453-54 (1970). The cultural implications of instant global communications - whereby real communities based on common backgrounds and interests are prevailing over those based on common geography - are just beginning to be sensed in this area.

<sup>37</sup> In contrast to the Pio-Benedictine Code, which treated beatification and canonization procedures extensively, see 1917 Code cc.1999-2141, the Johanno-Pauline Code contains but a single norm in this area, 1983 Code c.1403, which provides that:

§ 1. *Causae canonizationis Servorum Dei reguntur peculiari lege pontificia.* [The causes of the canonization of the Servants of God are regulated by special pontifical law.]

§ 2. *Isdem causis applicantur praeterea praescripta huius Codicis, quoties in eadem lege ad ius universale remissio fit vel de normis agitur quae, ex ipsa rei natura, easdem quoque causas afficiunt.* [The prescriptions of this Code, however, are applicable to the aforementioned causes whenever the pontifical law refers to the universal law or when it is a question of norms which affect those causes from the very nature of the matter.]

*Id.*, translated in Code of Canon Law 504-05 (Canon Law Soc'y of Am. trans., Latin-English ed. 1999) (1983). The special pontifical law concerning canonization can be found in Pope John Paul II, *Divinus Perfectionis Magister* [Apostolic Constitution on the Causes of Canonization], in 75 *Acta Apostolicae Sedis* 349 (1983). See also Congregation for the Causes of Saints, *Normae Servandae in Inquisitionibus ab Episcopis Faciendis in Causis Sanctorum* [Norms to Be Observed in Inquiries Made by Bishops in the Causes of Saints], in 75 *Acta Apostolicae Sedis* 396 (1983); Congregation for the Causes of Saints, *Decretum Generale de Servorum Dei Causis, Quarum Iudicium in Praesens Apud Sacram Congregationem Pendet* [General Decree on the Causes of the Servants of God Whose Judgment Is Presently Pending at the Sacred Congregation], in 75 *Acta Apostolicae Sedis* 403 (1983) (supplementing the special pontifical law concerning canonization). Important discussions of modern law and practice in this area include: *Canonization: Theology, History, Process* (William H. Woestman, O.M.I. ed., 2002); Kenneth L. Woodward, *Making Saints: How the Catholic Church Determines Who Becomes a Saint, Who Doesn't, and Why* (1990); Theodor J. Zubek, O.F.M., *New Legislation About the Canonization of the Servants of God*, 43 *Jurist* 361 (1983).

<sup>38</sup> See, e.g., Woodward, *supra* note 37, *passim*; see also Weigel, *supra* note 8, at 446-49.

<sup>39</sup> Pope John Paul II, *Spirituali Militum Curae* [Apostolic Constitution on Spiritual Care of the Military], in 78 *Acta Apostolicae Sedis* 481 (1986). These norms flesh out 1983 Code c.569, translated in Code of Canon Law, *supra* note 37, at 219 ("Cappellani militum legibus specialibus reguntur." ["Military chaplains are governed by special laws."]).

Pastor Bonus, which reorganized the Roman Curia through which the pope conducts his normal governance of the Church.<sup>40</sup> Prior to this, John Paul II - whose alleged disinterest in daily administrative supervision is a topic of debate now - had been issuing minor modifications in the structure of the Roman Curia for some time.<sup>41</sup> In Pastor Bonus, however, the theme of authority-as-service,<sup>42</sup> the dependency of canon law on ecclesiology,<sup>43</sup> and the need to respond to the world as it exists today with the message of Christ as it has existed for all time,<sup>44</sup> emerged clearly and cogently. The Pope himself regarded Pastor Bonus as nothing less than the third leg of his legislative stool, alongside the two major codes of canon law.<sup>45</sup>

**[\*12]** In 1992, John Paul II, ever the teacher, used the weighty form of the apostolic constitution, and not an encyclical letter or even an apostolic letter *motu proprio*, to promulgate the original version of the Catechism of the Catholic Church.<sup>46</sup> In 1996, perhaps sensing his own time was drawing near, the Pope modernized the norms by which the conclave that would elect his successor would be run.<sup>47</sup> Finally, in 1998, in the apostolic constitution *Ecclesia in Urbe*, the governing structures of the Vatican City State were updated in several respects.<sup>48</sup> So, by 1998, John Paul II had two codes of canon law and ten apostolic constitutions to his credit. Again, most men would have retired.

But even this review of the apostolic constitutions of John Paul II does not bring to a close the narration of his legislative activity. Some very important normative provisions were made by the Pope in apostolic letters given, as the technical term has it, *motu proprio*, meaning, in response to his own observations.<sup>49</sup>

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<sup>40</sup> Pope John Paul II, *Pastor Bonus* [Apostolic Constitution on the Organization of the Roman Curia] (1988), in 80 *Acta Apostolicae Sedis* 841-930 (1988) [hereinafter *Pastor Bonus*]. These norms flesh out in particular two canons, namely 1983 Code cc.360-61, on the Roman Curia. See also James H. Provost, *Pastor Bonus: Reflections on the Reorganization of the Roman Curia*, 48 *Jurist* 499 (1988).

<sup>41</sup> See, e.g., Pope John Paul II, *Familia a Deo Instituta* [Motu Proprio Establishing the Pontifical Council for the Family], in 73 *Acta Apostolicae Sedis* 441 (1981); Pope John Paul II, *Dolentium Hominum* [Motu Proprio Establishing the Pontifical Commission for the Apostolate of Health-Care Workers], in 77 *Acta Apostolicae Sedis* 457 (1985); Pope John Paul II, *Quo Civium Iura* [Motu Proprio Bringing the Laws of Vatican City into Conformity with the 1983 Code], in 79 *Acta Apostolicae Sedis* 1353 (1987); Pope John Paul II, *Sollicita Cura* [Motu Proprio Reforming the Vatican City State Appellate Tribunal], in 80 *Acta Apostolicae Sedis* 121 (1988).

<sup>42</sup> See *Pastor Bonus*, supra note 40, P P 2, 7.

<sup>43</sup> See *id.* P P 5-7, 10-14.

<sup>44</sup> See *id.* P P 4, 13.

<sup>45</sup> *Sacri Canones*, supra note 28, at 1038-39; see also Weigel, supra note 8, at 446.

<sup>46</sup> Pope John Paul II, *Fidei Depositum* [Apostolic Constitution on the Publication of the Catechism of the Catholic Church], in 86 *Acta Apostolicae Sedis* 113 (1994). The revised and definitive Latin text of the Catechism was promulgated by Pope John Paul II three years later. *Catechismus Catholicae Ecclesiae* (1997); Pope John Paul II, *Laetamur Magnopere* [Apostolic Letter Approving and Promulgating the Latin Typica Edition of the Catechism of the Catholic Church], in 89 *Acta Apostolicae Sedis* 819 (1997).

<sup>47</sup> Pope John Paul II, *Universi Dominici Gregis* [Apostolic Constitution on the Vacancy of the Apostolic See and the Election of the Roman Pontiff], in 88 *Acta Apostolicae Sedis* 305 (1996). See generally John J. M. Foster, *The Election of the Roman Pontiff: An Examination of Canon 332, § 1 and Recent Special Legislation*, 56 *Jurist* 691 (1996). Let me observe as an aside that, with the obvious exception of Pope John Paul I, every pope of the twentieth century felt the need to rework his predecessor's conclave norms. See Frederic J. Baumgartner, *Behind Locked Doors: A History of Papal Elections 201-25* (2003); *The Code of Canon Law: A Text and Commentary* 270 (James A. Coriden et al. eds., 1985).

<sup>48</sup> Pope John Paul II, *Ecclesia in Urbe* [Apostolic Constitution on the Vicariate of Rome], in 90 *Acta Apostolicae Sedis* 177 (1998).

<sup>49</sup> See Morrissey, supra note 30, at 18 (ranking *motu proprio* among the principal sources of canon law).



Besides the four *motu proprio* used to effect preliminary reforms in the Roman Curia already noted above <sup>50</sup> and the one used to add text to the two codes of canon law, <sup>51</sup> Pope John Paul II utilized this device on several other occasions. A *motu proprio* was used, for example, in 1984 to reconstitute the Pontifical Council for Legislative Texts. <sup>52</sup> Two more appeared in 1988, one to legislate anew on the [\*13] rights and duties of advocates and proctors before Roman tribunals, <sup>53</sup> and the other to rectify certain aspects of the schism brought about by the Lefebvre movement. <sup>54</sup> Another came in 1998 to regulate the authority of episcopal conferences; <sup>55</sup> another in 2001 to settle some long-disputed questions on the reservation of certain ecclesiastical crimes to the Congregation for the Doctrine of the Faith, an issue that in turn bore directly on canonical criminal statutes of limitations; <sup>56</sup> and finally, one more in 2002 with regard to certain norms on the Sacrament of Confession. <sup>57</sup> At this point, the burden of showing John Paul II to have been a very active legislator in the course of his twenty-six years on St. Peter's throne is, I think, satisfied, but our survey of the Pope's wider activities in canon law is not complete.

Besides formal canonical and legislative provisions, the use that Pope John Paul II made of canon law in his wider writings is eminently worthy of exploration. But it will be a daunting task. In the fifty-eight bound tomes of the authoritative set of John Paul II's writings, the *Insegnamenti di Giovanni Paolo II*, comprising some 750,000 printed pages, I would estimate there to be over 1000 express references to or citations of canon law. <sup>58</sup> Because the texts of the Good Shepherd have not been "shepardized," these citations have yet to be systematically mined for insights they offer into the "mind of the legislator." <sup>59</sup> Indeed, much remains to be done.

A number of genres within this corpus suggest themselves for closer study in this regard, including papal addresses to professional [\*14] organizations, especially canonical societies, <sup>60</sup> and his remarks to bishops in *ad limina* visits. <sup>61</sup> Surely, though, an especially important set of papal speeches would be the annual addresses that John

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<sup>50</sup> See sources cited *supra* note 41.

<sup>51</sup> See *Ad Tuendam*, *supra* note 26.

<sup>52</sup> Pope John Paul II, *Recognitio Iuris Canonici Codicis* [Motu Proprio Establishing the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law], in 76 *Acta Apostolicae Sedis* 433 (1984).

<sup>53</sup> Pope John Paul II, *Iusti Iudicis* [Motu Proprio on Norms for Rotal Advocates], in 80 *Acta Apostolicae Sedis* 1258 (1988).

<sup>54</sup> Pope John Paul II, *Ecclesia Dei* [Motu Proprio Establishing a Commission to Expediently Bring the Priestly Society of St. Pius X into Full Ecclesial Communion], in 80 *Acta Apostolicae Sedis* 1495 (1988).

<sup>55</sup> Pope John Paul II, *Apostolos Suos* [Motu Proprio on the Theological and Juridical Nature of Episcopal Conferences], in 90 *Acta Apostolicae Sedis* 641 (1998). It is interesting to recall that *Apostolos Suos* began not as a papal document, but as a curial document which had been circulated for critiques by the Congregation for Bishops. See Vatican Congregation for Bishops, *Draft Statement on Episcopal Conferences*, in 17 *Origins* 731 (1988).

<sup>56</sup> Pope John Paul II, *Sacramentorum Sanctitatis Tutela* [Motu Proprio on Safeguarding the Sanctity of the Sacraments], in 93 *Acta Apostolicae Sedis* 737 (2001). The norm in question was 1983 Code c.1362, § 1, cl. 1.

<sup>57</sup> Pope John Paul II, *Misericordia Dei* [Motu Proprio Explaining Certain Aspects of the Celebration of the Sacrament of Penance], in 94 *Acta Apostolicae Sedis* 452 (2002).

<sup>58</sup> See generally John Paul II, *Insegnamenti di Giovanni Paolo II* (2001).

<sup>59</sup> See 1983 Code c.17, translated in Code of Canon Law, *supra* note 37, at 7 (indicating that, if the meaning of a law is in doubt, recourse may be had to, *inter alia*, the *mens legislatoris* or "mind of the legislator").

<sup>60</sup> See, e.g., Pope John Paul II, *Address to the Canon Law Society of Great Britain and Ireland* (May 22, 1992), in 37 *Pope Speaks* 374 (1992); Pope John Paul II, *Messaggio del Papa al Congresso di Ottawa*, in 15 *Communicationes* 125 (1984) [hereinafter *Congressio di Ottawa*].

<sup>61</sup> Bishops are to travel to Rome *ad limina apostolorum* every five years to report to the Holy See on the state of the diocese entrusted to their care. 1983 Code cc.399-400; see also *Pastor Bonus*, *supra* note 40, arts. 28-32. For an example of where *ad*

Paul II gave to the Roman Rota, the Church's highest judicial court. <sup>62</sup> On twenty-six occasions, John Paul II offered remarks to the Rota at the beginning of the Church's judicial year, almost as many times as all his predecessors combined since Pope Pius XII began the practice on the eve of World War II. <sup>63</sup> Focusing largely on marriage law, these speeches were delivered with the understanding that they would help animate the practice of canon law around the world. Already, John Paul II's Rotal addresses have been the subject of several excellent studies. <sup>64</sup> Many scholars look to these addresses for the light they shed on marriage jurisprudence, but it seems that there is at least as much legal wisdom in these talks as there is sound matrimonial and pastoral theology. <sup>65</sup> To take but one of several good examples, John Paul II's Rotal remarks in 1984 are replete with important observations on and admonitions for the practice of canon law, and include a number of points that ring true of the practice of civil and common law. Permit me to quote at length here and notice the way **[\*15]** the Pope, in his leisurely phenomenological style, drops gems on a range of topics from judicial imperatives at one end to the proper place for scholarly critique of ecclesiastical institutions at the other:

You are the servants of the law and, as I said to you on another occasion quoting Cicero, you are the law itself speaking... .

... .

[This requires] a special commitment to know adequately the new law... . You must know it perfectly, not only in the procedural and marriage sections which are so familiar to you, but in its entirety, so that you may have complete knowledge of it, as magistrates (magistrati), that is, as masters of the law that you are.

This knowledge presumes an assiduous, scientific, deep study which is not limited to pointing out the possible variations with respect to the previous law, or to establishing its purely literal or philological meaning, but which takes into consideration the mind of the legislator (mens legislatoris) and the reason of the law (ratio legis). This will give you a global view which enables you to penetrate the spirit of the new law. For the issue in substance is: The Code is a new law and it is to be evaluated primarily in the perspective of the Second Vatican Council, to which it is intended to conform fully.

Knowledge is followed almost spontaneously by fidelity which, as I said ... is the judge's first and most important duty toward the law.

Fidelity is above all the sincere, staunch, and unconditional acceptance of the law legitimately promulgated ... .

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limina remarks were used by Pope John Paul II to convey important points on canonical (here, tribunal) administration, see Pope John Paul II, Address to the Bishops of the United States Making Their Ad Limina Visit (Oct. 17, 1998), in 44 Pope Speaks 162 (1999).

<sup>62</sup> English translations of most of Pope John Paul II's Rotal addresses can be found in Papal Allocutions to the Roman Rota 1939-2002 (William H. Woestman, O.M.I. ed., 2002) [hereinafter Papal Allocutions].

<sup>63</sup> See *id.* The only year Pope John Paul II did not address the Roman Rota was 1985, when he was in South America. See David D. Price, Law at the Service of Truth and Justice: An Analysis of Pope John Paul II's Rotal Allocutions, 53 Jurist 155, 155 n.1 (1993).

<sup>64</sup> The literature here is extensive and includes the following: Giuseppe Comotti, Considerazioni circa il valore giuridico delle allocuzioni del Pontefice alla Rota romana, 16 *Ius Ecclesiae* 3 (2004); Price, *supra* note 63; William A. Varvaro, Rotal Jurisprudence 1985-1990, 55 *Canon Law Soc'y of Am. Proc.* 156 (1993); William A. Varvaro, Rotal Jurisprudence in the 1990s, 60 *Canon Law Soc'y of Am. Proc.* 224 (1998); William A. Varvaro, Trends in Rotal Jurisprudence: Surveying U.S.A. Cases (1980-1985), 53 *Canon Law Soc'y of Am. Proc.* 19 (1992). An excellent overview of the talks is available in Francis G. Morrissey, O.M.I., Some Themes to Be Found in the Annual Addresses of Pope John Paul II to the Roman Rota, 38 *Studia Canonica* 301 (2004).

<sup>65</sup> See William H. Woestman, Introduction to Papal Allocutions, *supra* note 62, at xiii, xiv.

Such a recommendation of fidelity addressed to persons ... like you ... would seem completely superfluous. Nevertheless, two considerations induce me to make such a recommendation.

The first derives from the particular situation of the drafting of the law (*ius condendum*) through which we have lived for more than twenty years. In that period a critical attitude in regard to drafts or schemata of law was spontaneous, I would say almost a duty, especially in the case of experts and specialists. This way of thinking revealed the defects and deficiencies with the intention of improving them. Such an attitude could then have been very useful [\*16] and constructive for a more accurate and perfect formulation of the law. Today after the promulgation of the Code, it must not be forgotten that the period of drafting (*ius condendum*) is over and that now, the law, even with its possible limitations and defects, is a choice already made by the legislator after careful reflection and which, therefore, demands full adherence. Now it is no longer a time for discussion, but for implementation.

The other consideration is also based upon similar motivation. Knowledge of the Code just abrogated and long familiarity with it could lead some to a kind of identification with the norms contained in it. It could be considered better and, therefore, worthy of nostalgic regret, with the knowledge of a kind of negative "fore-knowledge" of the new Code - which would be read almost exclusively in the perspective of the former. This could be so not merely for those parts which repeat almost literally the previous law (*ius vetus*), but also for those which are objectively real innovations.

...

[Finally,] another important aspect of the relationship of the judge with the law revolves around the interpretation of it.

In a strict sense, the true authentic interpretation which declares the general meaning of the law for the entire community is reserved to the legislator, according to the well-known principle: The source of the law is the source also of interpretation (*unde ius prodiit, interpretatio quoque procedat*).

...

The interpretative power, however, is to be placed, above all, in the formation of jurisprudence, that is, of that ensemble of concordant decisions, which ... plays a notable role in filling possible lacunae in the law.<sup>66</sup>

There is, after this recitation of what we might call Pope John Paul II's "textual" contributions to canon law, yet another way in which his canonical legacy will function for some decades yet. It is by way of what I call his personal, or perhaps better, his personnel, contributions to canonistics.

[\*17] Several dicasteries of the Holy See - notably the Congregation for the Clergy,<sup>67</sup> the Congregation for Bishops,<sup>68</sup> and the Congregation for Divine Worship and the Discipline of the Sacraments<sup>69</sup> - regularly engage in the application of canon law and, in the course of their work, contribute mightily to the *stylus* or *praxis curiae* that advances the science of canonistics.<sup>70</sup> These offices, however, tend not to treat of abstract canonical issues that

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<sup>66</sup> Pope John Paul II, Address to the Roman Rota (Jan. 26, 1984), in 76 *Acta Apostolicae Sedis* 643 (1984), translated in *Papal Allocutions*, supra note 62, at 181, 182-84 (footnotes omitted) (internal quotation marks omitted).

<sup>67</sup> *Pastor Bonus*, supra note 40, P P 93-94.

<sup>68</sup> *Id.* P P 75-82.

<sup>69</sup> *Id.* P P 62-70.

<sup>70</sup> See, e.g., 1983 Code c.19, translated in *Code of Canon Law*, supra note 37, at 8-9, which provides:

*Si certa de re desit expressum legis sive universalis sive particularis praescriptum aut consuetudo, causa, nisi sit poenalis, dirimenda est attentis legibus latis in similibus, generalibus iuris principiis cum aequitate canonica servatis, iurisprudentia et praxi Curiae Romanae, communi constantique doctorum sententia.* [Unless it is a penal matter, if an express prescription of universal

are crucial for the wider development of canon law. Instead, that task falls especially to three other dicasteries, namely, the Roman Rota; the Apostolic Signatura, which is basically the Church's highest administrative court; and finally, the Pontifical Council for Legislative Texts, which plays a vital role in the authoritative interpreting of canon law under section 1 of Canon 16.<sup>71</sup> The decision-making membership of the Signatura and the Council for Texts is limited to bishops, and membership on the Rota is limited to priests, but all appointments to these dicasteries are made by the pope.<sup>72</sup> While there is no such thing as life tenure attached to these memberships, most appointees in fact serve until their promotion to other duties or normal retirement. Now, if Franklin D. Roosevelt had as many years in the presidency as John Paul II had in the papacy, the former would not have needed his "court-packing plan."<sup>73</sup> Consider that at the time of the Pope's death in 2005, nineteen of the twenty judges (called auditors) on the Roman Rota were John Paul II appointees.<sup>74</sup> At that same time, all sixteen episcopal members of the **[\*18]** Apostolic Signatura were his appointees, as were all twenty members of the Text Council.<sup>75</sup> Please do not misunderstand my point here: I am not claiming that these groups think or act monolithically. We know, for example, of significant disagreements among Rotal judges because their judicial sentences are published and because, as priests, they tend to engage more in scholarly writings than do the episcopal members of the other dicasteries.<sup>76</sup> In those other offices, though, we can be sure that canonical debates are real. Still, as a whole, papal appointees to high canonical judicial offices seem much less likely than their common law Supreme Court counterparts to surprise their patrons with departures from his and, more importantly, the Church's legal tradition. Thus, I suggest that, through the work of his appointees, John Paul II's legal vision will endure for many more decades.

Finally, in concluding this outline of what Pope John Paul II did in canon law,<sup>77</sup> we have to point out that at least once (though I would **[\*19]** argue twice)<sup>78</sup> when the Pope decided not to do something in canon law, this decision

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or particular law or a custom is lacking in some particular matter, the case is to be decided in light of laws passed in similar circumstances, the general principles of law observed with canonical equity, the jurisprudence and praxis of the Roman Curia, and the common and constant opinion of learned persons.]

Id.

<sup>71</sup> 1983 Code c.16, § 1; Pastor Bonus, supra note 40, P P 121-29, 154-58.

<sup>72</sup> Pastor Bonus, supra note 40, P 127.

<sup>73</sup> See Rayman L. Solomon, Court-Packing Plan, in *The Oxford Companion to the Supreme Court 2003-04* (Kermit L. Hall et al. eds., 1992).

<sup>74</sup> By the twenty-first century, the only auditors not appointed by Pope John Paul II were Jose Maria Serrano Ruiz, appointed in 1970 by Pope Paul VI, and Antoni Stankiewicz, appointed in 1978 by Pope Paul VI. See *Tribunale Della Rota Romana*, in *Annuario Pontificio* 1298 (2000).

<sup>75</sup> See sources cited supra note 40. Since Pastor Bonus was issued by Pope John Paul II, he was therefore the only Pope to appoint members to the Apostolic Signatura and the Council for Texts, as these institutions were created by that document. See Pastor Bonus, supra note 40, P 127.

<sup>76</sup> The decisions of the Roman Rota are reported in *Tribunal Apostolicum Sacrae Romanae Rotae, 65 Decisiones seu Sententiae: Selectae Inter Eas Quae Anno 1973 Proderunt Cura Eiusdem Apostolici Tribunalis Editae* (1982). Examples of the scholarly work of present Rotal judges include: Raymond L. Burke et al., *Incapacity for Marriage: Jurisprudence and Interpretation* (Robert M. Sable ed., 1987); Grzegorz Erlebach, *La nullita della sentenza giudiziale "ob ius defensionis denegatum" nella giurisprudenza rotale* (1991); Pio Vito Pinto, *La Giustizia Amministrativa Della Chiesa* (1977).

<sup>77</sup> As I claim nothing more here than an introduction to papal canonical activity, I hope I might be excused for omitting discussion of such other important areas of papal canonical activity as authentic interpretations of the 1983 Code issued under Pope John Paul II (see 1983 Code c.16) and curial documents approved, in whole or in part, by him in forma specifica. Authentic interpretations emanating from the Council on Legislative Texts with the approval of the pope are one of the most common ways to refine and update the canons of the Code. Some thirty-two provisions of the 1983 Code were authentically interpreted during John Paul II's papacy. See generally Lawrence G. Wrenn, *Authentic Interpretations on the 1983 Code* (1993). The approval of curial documents in forma specifica endows such documents (or parts thereof) with papal authority, providing yet another way to modify existing canonical legislation. James H. Provost, *Approval of Curial Documents In Forma Specifica*, 58 *Jurist* 213, 215 (1998). Some noteworthy examples of curial documents approved in whole or in part in forma specifica include: Congregation for

was very important. I speak here of his decision to withhold the *Lex Ecclesiae Fundamental* ("LEF") from promulgation.<sup>79</sup> The LEF was envisioned as a sort of - and I stress "a sort of" - constitutional document of Church legislation. In roughly one hundred canons, Eastern and Western principles of governance would have been articulated and made applicable throughout the Church.<sup>80</sup> The project, with its vast ecclesiological implications, had already gone through four (or seven, depending on how one counts) iterations when John Paul II tabled the document just before its expected promulgation.<sup>81</sup> His action engendered numerous ecclesiological and canonical studies, and doubtless will continue to do so for some time.<sup>82</sup> But while he withdrew the LEF from consideration, John Paul II saw to it that those parts vital to the articulation of basic rights and duties in the Church were not lost. As is well known, the so-called canonical "Bill of Rights" that one finds in Canons 205 to 230 of the 1983 Code was drawn substantially from the LEF.<sup>83</sup>

## II. How Pope John Paul II Impacted Canon Law

We turn now to the second part of this Article, namely, the part wherein we ask how Pope John Paul II went about the task of reforming canon law. Of course, the answer to this question can be fully appreciated only by grasping firmly how the whole of his papacy worked, a challenge beyond my ken. But in brief, I believe [\*20] that John Paul II accomplished the canonical tasks before him with a huge amount of hard work and, less obviously, with a genuine willingness to listen to and learn from the advice of others.

Take for instance John Paul II's supervision of the completion of the Code of Canon Law. As Weigel notes, "The [canonical] drafting process had dragged on for more than fifteen years when Pope John Paul II took a personal hand in the matter and drove the process through to a conclusion."<sup>84</sup> Now, while I think it a bit unfair to describe this hugely complex reform process as having "dragged on" for fifteen years (knowing that the first draft of revised laws are frequently the most difficult to formulate),<sup>85</sup> it is certainly true that John Paul II's energy and talents

Clergy, *Ecclesiae de Mysterio* [Instruction on Certain Questions Regarding the Collaboration of the Non-Ordained Faithful in the Sacred Ministry of Priests], in 89 *Acta Apostolicae Sedis* 852 (1997); Congregation for Education, *Novo Codice* [Decretum Revising the Order of Studies in the Faculties and Departments of Canon Law], in 95 *Acta Apostolicae Sedis* 281 (2003).

<sup>78</sup> Consider the progress of the block of norms for the proposed, but basically abandoned, "administrative recourse tribunals," as set forth in Edward N. Peters, *Incrementa in Progressu 1983 Codicis Iuris Canonici 1458-92, 1549* (2005) [hereinafter *Incrementa*]; see also Craig A. Cox, *The Procedural Law That Might Have Been: Some Proposed Changes That Were Not Adopted During the Code Revision Process*, 50 *Jurist* 613 (1990).

<sup>79</sup> O.G.M. Boelens, *Introduction to Synopsis "Lex Ecclesiae Fundamental*, at v (2001).

<sup>80</sup> *Id.* at vi; see also Albert Gauthier, O.P., *The Progress of the Lex Ecclesiae Fundamental*, 12 *Studia Canonica* 377, 388 (1978) ("The *Lex Ecclesiae Fundamental* ["LEF"] has the advantage of throwing light on more fundamental norms, common to the whole Church, Western and Eastern ...").

<sup>81</sup> A complete textual history for the LEF is available in Boelens, *supra* note 79.

<sup>82</sup> See, e.g., *id.* at v-viii; John J. Coughlin, O.F.M., *Canon Law and the Human Person*, 19 *J.L. & Religion* 1 (2003-04).

<sup>83</sup> See 1983 Code c.203-30; see, e.g., Canon Law Soc'y of Gr. Brit. & Ir., *The Canon Law: Letter & Spirit* 116 (Gerard Sheehy et al. eds., 1995); *The Code of Canon Law: A Text and Commentary*, *supra* note 47, at 117-18; James A. Coriden, *A Challenge: Making the Rights Real*, 45 *Jurist* 1, 3-6 (1985).

<sup>84</sup> Weigel, *supra* note 8, at 445; see also *Discourse of Lara*, *supra* note 23, at 26-29.

<sup>85</sup> See John A. Alesandro, *The Revision of the Code of Canon Law: A Background Study*, 24 *Studia Canonica* 91, 97 (1990):

The project was much more extensive than originally conceived. It would far surpass the first codification [of 1917]. This would be an in-depth revision. It would require a series of schemata which could be critically examined and amended (as the conciliar schemata had been). It was a vast undertaking that would require a very competent full-time staff, a considerable amount of money, and quite a bit of time.

*Id.* But see *id.* at 132 ("The start [of the revision process] was too fast, the middle too slow, and the end again too fast. Of the nearly twenty years of revision, fully two-thirds elapsed while the initial schemata were readied for world-wide viewing.").

deeply influenced the reform process. For example, he sought and received frequent, sometimes daily, updates as to what was happening in the various coetus assigned to produce sections of the proposed law.<sup>86</sup> At one point, during the pivotal week-long Plenaria session held in October 1981, the Pope attended the commission discussions, although he sat quietly and made no interventions.<sup>87</sup>

But in addition to listening, Pope John Paul II was also reading. Weigel reports that by February of 1982, the Pope had already read the whole of the proposed Code twice in anticipation of convening a **[\*21]** small group to sit down with him and read through, one more time, every canon intended for the new law, taking as much time as they, and he, felt necessary to understand the import of each norm that would one day carry his signature.<sup>88</sup> Adam Vetulani would have been pleased, and I can only imagine that John Paul II's thoughts must have gone back often to his days under the Polish canonist's tutelage. In any case, in fourteen half-day sessions, John Paul II and his group examined every single norm of the new law and, as I discovered in the process of producing my *Incrementa in Progressu*, real changes occurred in the law as a result.<sup>89</sup> Four new canons were added, nearly thirty significantly augmented, another ten were deleted, and at least thirty-five others were seriously trimmed, to say nothing of dozens of norms undergoing minor or stylistic emendations.<sup>90</sup> "There was, in brief," as I noted in the *Incrementa*,

ample reason for [Archbishop] Castillo Lara to have observed that "this Code, therefore, is a pontifical law, not merely because it was promulgated by the authority of the Supreme Pontiff, but also because it bears the imprint of the personal interest of the Roman Pontiffs and of their specific legislative will."<sup>91</sup>

When one considers this personal example of papal willingness to spend time really listening to subordinates who just might know more about a given situation than does the leadership, of willingness to make the efforts necessary to understand deeply the intricacies of the problems confronting one, and of willingness to take action that respects such input, the question arises as to whether these examples of a Johanno-Pauline approach to law find an echo in the revised Code of Canon Law. I would say that they do just about everywhere because they are surely near the heart of some of the most important advances made by the Second Vatican Council. Moving now to the third part of this presentation, I ask what animated the Pope's **[\*22]** approach to canon law. To answer this question, once again, I back up.

### III. The Missiology Behind Pope John Paul II's Work in Canon Law

I noted earlier that Pope John Paul II left us no imposing legal or canonical treatises. That is certainly true if by "imposing" we mean massive works on the scale of those produced by Pope Innocent IV or Pope Benedict XIV. But it is not accurate to say that John Paul II left us no direct writings on juridic sciences at all, for indeed he did. The

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<sup>86</sup> See, e.g., Pericles Felici, *Salutatio Summi Pontifici ex parte Cardinalis Praesidis*, in *Congregatio Plenaria: Diebus 20-29 Octobris 1981 Habita* 598 (1991) [hereinafter *Plenaria*]. For a particularly animated example of the role such frequent updates could play in the revision process, see *id.* at 374-75, wherein a report on the Roman Pontiff's displeasure with an attempt to rollback Pope Paul VI's disqualification of cardinal electors above the age of eighty obviously impacted deliberations.

<sup>87</sup> See *id.* at 333-34, 348. The Supreme Pontiff also addressed the Plenaria participants at their closing session. See *Allocutio Summi Pontificis Ioannis Pauli II ad Sodales, Consultores et Officiales Pontificiae Commissionis Codici Iuris Canonici Recognoscendo Coram Admissos Die 29 Octobris 1981 Sessione Plenaria Exeunte* [Discourse of Pope John Paul II to Judges, Officials, and Advocates of the Court of the Sacred Roman Rota], in *Plenaria*, *supra* note 86, at 595 [hereinafter *Allocutio Summi*].

<sup>88</sup> Weigel, *supra* note 8, at 445. Pope John Paul II himself had signaled his intention to conduct a close study of the proposed text in his closing remarks at the Plenaria. See *Allocutio Summi*, *supra* note 87, at 595, 598 ("Mea deinde cura erit attentissimo prorsus animo inspicere postremos fructus operis Vestri necnon optata vestra de recognitione hac normarum canonicarum rite tandem terminandam.").

<sup>89</sup> See generally *Incrementa*, *supra* note 78.

<sup>90</sup> *Id.* at xiii; accord Alesandro, *supra* note 85, at 128-29.

<sup>91</sup> *Incrementa*, *supra* note 78, at xiii n.14 (quoting Discourse of Lara, *supra* note 23, at 17-18).

flagship of those varied works must surely be the apostolic constitution *Sacrae Disciplinae Leges* by which the 1983 Code was promulgated, and which we know the Pope wrote personally.<sup>92</sup> A consideration of *Sacrae Disciplinae Leges* suggests at least two reasons John Paul II did what he did in canon law.

First, John Paul II himself said repeatedly that the revision and promulgation of the Code of Canon Law was done in order to give juridic form to the teachings of the Second Vatican Council, especially its ecclesiological teachings.<sup>93</sup> In fact, he and others have referred to the 1983 Code as the last document of the Second Vatican Council.<sup>94</sup> He even remarked that:

**[\*23]**

To work for the proper implementation of the Code is to work for the upbuilding of the Church herself. It is to work for the salvation of the world. It is to play an extraordinarily constructive role in continuing the redemptive mission of Christ himself. Canon Lawyers must be aware of their grave responsibilities in the task of consolidating the life of the Church at every level, according to the spirit of the Gospel, overcoming uncertainties and banishing laxity in the observance of a discipline which, by reason of its ordination to the life and mission of the Church, is truly sacred and salvific.

I wish therefore to express my admiration for the invaluable contribution that Canon Lawyers are making to the pastoral and apostolic mission of the Church.<sup>95</sup>

But as impressive and as sufficient as such a motive would be, it only moves us part of the way toward understanding why John Paul II wanted to bring out the new Code. I think that the Pope saw something deeper and quite new in the Second Vatican Council.

The teachings of the Second Vatican Council are fundamentally, of course, the teachings of Christ. But beyond that, all ecumenical councils strive to respond to the pastoral issues of their time. Thus, to the degree that canon law reflects theology, the new Code should reflect juridically the pastoral issues that the Church faces at present. Therefore we must ask the question: Is there something unique about the pastoral exigencies facing the Church today and if so, does the new Code take this exigency into consideration? The answer to both questions, I think, is yes.

The Church has a long and even charming history of impetuously rushing in to work, to pursue the good, to conduct liturgy, to take on educational operations, and to perform social ministries. She does all of these things decades, sometimes even centuries, before she stops and begins to reflect on what she is doing. This delay is sometimes a

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<sup>92</sup> See *Some Reflections*, supra note 23, at 30; see also Weigel, supra note 8, at 445. Weigel also references a 1997 conversation with then-Archbishop Zenon Grocholewski of the Apostolic Signatura. *Id.* at 445, 906 n.20. I do not think that the promulgating document for the Eastern Code, *Sacri Canones*, rises to the level of legal sophistication found in *Sacrae Disciplinae Leges*. Focusing, understandably, on topics of concern especially to Eastern Catholics, *Sacri Canones* seems to rely on *Sacrae Disciplinae Leges* for the latter's fine articulation of underlying legal principles. See *Sacri Canones*, supra note 28.

<sup>93</sup> See *Sacrae Disciplinae Leges*, supra note 18, passim; see also *Congressio di Ottawa*, supra note 60, at 125-27.

<sup>94</sup> See, e.g., Pope John Paul II, *Allocutione Ad Praelatos Auditores S. Romane Rotae coram admissio* [Discourse of Pope John Paul II to Judges, Officials, and Advocates of the Court of the Sacred Roman Rota], in 76 *Acta Apostolica Sedis* 643, 644 (1984), translated in 29 *Pope Speaks* 173 (1984). I understand the sense in which such terminology is used, but I still suggest some caution in taking it. The Code of Canon Law is not a conciliar document, and it does not arise from or participate in the charism of an ecumenical council. It is an exercise of Petrine authority. Moreover, it was not the last document called for by the Second Vatican Council - the Rite of Exorcism promulgated in 1999 holds that distinction - and it was, finally, Pope John XXIII who called for the reform of canon law, not the Second Vatican Council. Monsignor Brian Ferme refers to the revised Code as the "crowning document" of Vatican II, a phrase that gets us closer to the essence of the thing. See Brian E. Ferme, *Ius Condere: Historical Reflections on the 1983 Code*, 63 *Jurist* 171, 189 (2003).

<sup>95</sup> *Congressio di Ottawa*, supra note 60, at 126-27.

question of limited personnel and resources, which can hardly be spared for academics when there is real work to be done. At other times, it seems that things just need time to develop.

Now for the last several decades, I suggest, the Church has been facing a truly new problem and steadily setting about the development of a truly new response to it. An awareness and understanding of this new problem began to emerge, albeit only in roughest outline, with John XXIII, who stated the following in his **[\*24]** opening address to the Second Vatican Council: "The greatest concern of the Ecumenical Council is this: that the sacred deposit of Christian doctrine should be guarded and taught more ... ." <sup>96</sup> And here I pause to ask, what do you think Pope John XXIII said, that Church doctrine should be taught more "precisely," more "accurately," more "deeply"? No, instead, sacred Church doctrine should be:

taught more efficaciously.

... .

In order, however, that this doctrine may influence the numerous fields of human activity ... the Church ... must ever look to the present, to the new conditions and new forms of life introduced into the modern world which have opened new avenues to the Catholic apostolate.

... .

... The whole world expects a step forward toward a doctrinal penetration and a formation ... which ... should be studied and expounded through the methods of research and through the literary forms of modern thought. The substance of the ancient doctrine of the deposit of faith is one thing, and the way in which it is presented is another. And it is the latter that must be taken into great consideration with patience if necessary, everything being measured in the forms and proportions of a magisterium which is predominantly pastoral in character. <sup>97</sup>

Now, I suggest that the degree to which a teaching is judged efficacious is not simply the degree to which it is accurate, or profound, or detailed, but rather the degree to which it penetrates the mind and heart of the listener. A perfect and pristine message that does not reach the listener is not efficacious.

Skip ahead to Pope Paul VI, who in 1975 added, it seems to me, greater clarity to what Pope John XXIII already sensed was needed. In his apostolic exhortation *Evangelii Nuntiandi*, Pope Paul VI wrote:

**[\*25]**

At the end of the [Third General Meeting of the Synod of Bishops, the Fathers] decided, in an act of deep and simple trust, to put the results of their work into the hands of the Shepherd of the universal Church, declaring that they looked to the Pope for a new impulse which would launch a more prosperous period of evangelization in a Church more richly suffused with the perennial power and energies of Pentecost. <sup>98</sup>

A new period of evangelization is mentioned. Notice that while Pope Paul VI was thinking of the task in terms of a "period," he was much clearer that a deep-seated newness concerning evangelization was coming into focus. But it was Pope John Paul II who brought these threads together and placed the concept and even the term "New Evangelization" directly before us.

In 1990, he wrote in *Redemptoris Missio*:

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<sup>96</sup> Pope John XXIII, *Gaudet Mater Ecclesia* [Allocution at the Opening of the Second Vatican Council], in 54 *Acta Apostolicae Sedis* 786, 790 (1962), translated in *The Documents of Vatican II* 710, 713 (Walter M. Abbott, S.J. ed., Joseph Gallagher trans., 1966).

<sup>97</sup> *Id.* at 790-91, translated in *The Documents of Vatican II*, supra note 96, at 713-15 (emphasis added).

<sup>98</sup> Pope Paul VI, *Evangelii Nuntiandi* [Apostolic Exhortation on Evangelization in the Modern World], in 68 *Acta Apostolicae Sedis* 5, 6 (1976), translated in 21 *Pope Speaks* 4, 5 (1976).



Our own times offer the Church new opportunities in this field. We have witnessed the collapse of oppressive ideologies and political systems; the opening of frontiers and the formation of a more united world due to an increase in communications; the affirmation among peoples of the Gospel values which Jesus made incarnate in His own life (peace, justice, brotherhood, concern for the needy); and a kind of soulless economic and technical development which only stimulates the search for the truth about God, about man and about the meaning of life itself.

God is opening before the Church the horizons of a humanity more fully prepared for the sowing of the Gospel. I sense that the moment has come to commit all of the Church's energies to a new evangelization and to the mission *ad gentes*.<sup>99</sup>

In 1994, seeming to correct himself in mid-sentence, John Paul II wrote in *Tertio Millennio Adveniente*:

Part of the preparation for the approach of the Year 2000 is the series of synods begun after the Second Vatican Council: general synods together with continental, regional, national and diocesan **[\*26]** synods. The theme underlying them all is evangelization, or rather the new evangelization, the foundations of which were laid down in the Apostolic Exhortation *Evangelii Nuntiandi* of Pope Paul VI, issued in 1975 following the Third General Assembly of the Synod of Bishops. These synods themselves are part of the new evangelization: they were born of the Second Vatican Council's vision of the Church.<sup>100</sup>

Finally, in 2001, he said in *Novo Millennio*, "Even in countries evangelized many centuries ago, the reality of a 'Christian society' which, amid all the frailties which have always marked human life, measured itself explicitly on Gospel values, is now ... ." <sup>101</sup> And again, I pause to ask you to speculate on what John Paul II thought of the current state of these Gospel values: are they "in doubt," "questioned," or "deteriorating"? No, said the Pope, they are "gone."<sup>102</sup> "Today we must courageously face a situation which is becoming increasingly diversified and demanding ... . Over the years I have often repeated the summons to the new evangelization. I do so again now ... ." <sup>103</sup>

So what is the fire that drove the pastoral focus of the Second Vatican Council, that took root during the reign of Pope Paul VI, and that, I think, animated John Paul II's papacy? What is it that explains more than any other single factor the kind and quality of changes we see in the 1983 Code of Canon Law? It is the summons to a New Evangelization.

Consider it from another angle: the techniques needed to bring Christ to a people that has never heard of him (something the Church has been doing since Pentecost) are one thing; the techniques needed to bring him to a new generation within a basically Christianized culture (something the Church does with every new generation) are something else.<sup>104</sup> But the techniques needed to bring Christ to a people or culture that thinks it has already tried Christ and thinks Him a failure (or worse, thinks Him a cover for indifference to **[\*27]** suffering, exploitation of the innocent, impotence to affect human lives, various forms of rapaciousness in the name of divine destiny, and so

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<sup>99</sup> Pope John Paul II, *Redemptoris Missio* [Encyclical Letter on the Permanent Validity of the Church's Missionary Mandate], in 83 *Acta Apostolicae Sedis* 249, 252 (1991), translated in 36 *Pope Speaks* 138, 140 (1991) (emphasis added).

<sup>100</sup> Pope John Paul II, *Tertio Millennio Adveniente* [Apostolic Letter on the Coming of the Third Millennium] P 21 (1994) [hereinafter *Tertio Millennio Adveniente*].

<sup>101</sup> Pope John Paul II, *Novo Millennio* [Apostolic Letter at the Close of the Jubilee Year], in 93 *Acta Apostolicae Sedis* 266, 294 (2001), translated in 30 *Origins* 489, 501 (2001).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 501-02 (emphasis added).

<sup>104</sup> See Cardinal Avery Dulles, S.J., *John Paul II and the New Evangelization: What Does It Mean?*, in *John Paul II and the New Evangelization* 2, 7-8 (Ralph Martin & Peter Williamson eds., 2006).

on), those techniques are something else yet again. And it is this third situation, one wherein the Church faces not so much a non-Christian culture but a de-Christianized one, which confronts the Church in the Western world today. It is this situation, never before faced by the Church - certainly not on a large scale - that I suggest underlies most of the startling summons to a New Evangelization. There remains now only to suggest that the elimination of institutes from the Pio-Benedictine Code and the introduction of new structures into the 1983 Code correlate strongly with the need to provide the Church with a legal system effective to the overriding missiological goal of New Evangelization.  
105

So, how might the Johanno-Pauline Code enable the New Evangelization to take root among the pastoral priorities that always face the Church and thus are always the subject for solicitude in canon law? I think there are several ways this has happened. First, there was the excision of some canonical structures that simply no longer served a pastoral purpose in a period of New Evangelization. Keeping in mind that the Johanno-Pauline Code of 1983 is some 650 canons (or twenty-five percent) shorter than was the Pio-Benedictine Code of 1917, one can begin to see just how many canonical institutes must have been dropped or significantly abbreviated along the way.<sup>106</sup> Actually, the reduction in Pio-Benedictine norms is even sharper - I am guessing more like thirty-three percent - for several score new canons are found in the 1983 Code, meaning that additional space had to be made for them.

Notable areas of reduction include the removal of some 140 canons on beatification and canonization already mentioned above, and the elimination of another 130 canons from ecclesiastical penal law (itself a subject warranting a full study).<sup>107</sup> Beyond these better [\*28] known examples, though, we should recall the almost complete abandonment of the parochial benefice system, which once required some eighty or eighty-five canons for treatment.<sup>108</sup> Another thirty canons were eliminated by greatly reducing the so-called "chapters of canons" (a presbyteral institute that never really caught on in the New World)<sup>109</sup> and a variety of other blocks of ten and twenty canons on such things as the increasingly impractical "Index of Forbidden Books" and tedious norms on cemeteries and sacred furnishings.<sup>110</sup> All of these reductions, I suggest, helped clear the canonical decks for dealing with much more pressing items of pastoral importance. For all that, the heavy lifting, as it were, was to be done by new institutes brought into the 1983 Code.

At this point, rather than trace out all the new institutes of canon law to be found in the revised law (as if that were possible), I want to highlight some that are not simply important in themselves, but which are also important for drawing out the themes that I think most directly animated Pope John Paul II's approach to canon law in general.

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<sup>105</sup> My claim is not that the concept of New Evangelization was expressly incorporated into the 1983 Code. I could hardly sustain such a blunt assertion in light of the relative infrequency with which the term "evangelization" occurs in the revised law. See Xaverius Ochoa, *Index Verborum ac Locutionum Codicis Iuris Canonici* 160 (1983).

<sup>106</sup> Compare 1983 Code, with 1917 Code. The stability of certain ecclesiastical structures can itself be an evangelizing sign. See Dulles, *supra* note 104, at 12.

<sup>107</sup> Compare 1983 Code, with 1917 Code. There are many places one could begin such studies. For example, the trend toward favoring the reduction of *latae sententiae* penalties from the 1917 Code to the 1983 Code is certainly remarkable; in fact, it culminated in the complete elimination of *latae sententiae* penalties from the Eastern Code of Canons. *Canon Law Soc'y of Am.*, *supra* note 23, at 895.

<sup>108</sup> Compare 1983 Code, with 1917 Code.

<sup>109</sup> See *The Code of Canon Law: A Text and Commentary*, *supra* note 47, at 407-10.

<sup>110</sup> The Index of Forbidden Books was actually abolished somewhat before the 1983 Code appeared. See Pope Paul VI, *Integrae Servandae* [Motu Proprio on Reforming and Renaming the Congregation for Doctrine and Faith], in 57 *Acta Apostolicae Sedis* 952, 954 (1965); see also Congregation for the Doctrine of the Faith, *Post Editam* [Decretum Abrogating 1917 Code cc.1399, 2318], in 58 *Acta Apostolicae Sedis* 1186 (1966); Congregation for the Doctrine of the Faith, *Post Litteras Apostolicas* [Notification Revoking Force of Law for the Index of Forbidden Books], in 58 *Acta Apostolicae Sedis* 455 (1966). In this context, one could also consider, for example, the changes in norms on associations of the Christian faithful. Although these changes did not materially affect the raw number of canons involved, they did put a whole new face on such canonical institutions under the revised law. Compare 1917 Code cc.702-25, with 1983 Code cc.298-329.

We already know that John Paul II thought that the Synod of Bishops was a vital component of the New Evangelization because he said so in *Tertio Millenio Adveniente*.<sup>111</sup> It will help us, then, to have a clear grasp of its salient characteristics. Among other things, the Synod of Bishops is post-conciliar (a minor point in itself perhaps, but not entirely insignificant, as suggested above). It is permanent, advisory in nature, and an expression of collegiality.<sup>112</sup> Now, of these **[\*29]** three characteristics considered canonically, only that of "permanence" is easily understandable outside of theo-canonical circles. The other two, "advisory" and "collegial," are - as long experience has taught me - usually thoroughly misunderstood and underappreciated. Label a group "advisory" and one has basically consigned it to normative irrelevance; call a body "collegial" and it sounds, at best, like one is making an end run around the lawful authority of leadership. Neither perception is remotely true in canon law (or, for that matter, in sound ecclesiology),<sup>113</sup> and it is a pity that I cannot drive home that point. Let me say this much: legislating for consultation is legislating for the reality of modern times. The world and uncounted numbers of its practical undertakings are too large and complex for any one person to still think he can understand everything necessary to reach wise conclusions and to formulate sound policies for most such projects. Moreover, legislating for collegiality upholds the dignity of the many people who, even if in unequal shares, must come together to make most projects work.

Thus, to continue noting those modern canonical institutes that seem to reflect in a permanent way the values of consultation and collegiality, we should call attention next to episcopal conferences in that they are post-conciliar, permanent, advisory (for the most part, notwithstanding approximately eighty canons that require implementation by episcopal conferences), and obviously collegial.<sup>114</sup> Likewise, presbyteral councils are permanent, advisory, and collegial.<sup>115</sup> Diocesan pastoral and finance councils are, at present, wholly advisory, at least quasi-permanent, and arguably collegial.<sup>116</sup> Lastly, there are parish pastoral and finance councils, which are again advisory,<sup>117</sup> and the revitalized diocesan synod.<sup>118</sup>

**[\*30]** Finally, some non-governing institutes of canon law that were preserved in the reform of codified law might be facing numbered days. I think here of the obligatory canonical form for marriage contained in section 1 of Canon 1108, a requirement which has been debated steadily for some fifty years,<sup>119</sup> and I wonder, moreover, with Pope

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<sup>111</sup> Recall Pope John Paul II's observation that Synods "were born of the Second Vatican Council's vision of the Church." *Tertio Millennio Adveniente*, supra note 100, P 21.

<sup>112</sup> See, e.g., Thomas J. Reese, S.J., *The Experience of Special Synods*, 59 *Canon Law Soc'y of Am. Proc.* 26, 26-27 (1997); Jan P. Schotte, C.I.C.M., *The World Synod of Bishops: Media Event or Pastoral Powerhouse?*, 50 *Canon Law Soc'y of Am. Proc.* 52, 53-55 (1989). See generally Jan P. Schotte, C.I.S.M., *The Synod of Bishops: A Permanent Yet Adaptable Church Institution*, 26 *Studia Canonica* 289 (1992). For a study strongly critical of the current state of the Synod of Bishops, see James A. Coriden, *The Synod of Bishops: Episcopal Collegiality Still Seeks Adequate Expression*, 64 *Jurist* 116 (2004).

<sup>113</sup> The place to begin one's examination of the canonical authority of "advisory" or "consultative" bodies or actions is, of course, 1983 Code c.127, on advice and consent. For information on collegial bodies, see initially 1983 Code c.115, § 2, and 1983 Code c.119.

<sup>114</sup> *Id.* at cc.447-59. Although episcopal conferences are advisory for the most part, there are approximately eighty canons that require implementation by episcopal conferences.

<sup>115</sup> *Id.* at cc.495-502.

<sup>116</sup> *Id.* at cc.492, 511-14 (diocesan finance council and diocesan pastoral council, respectively).

<sup>117</sup> *Id.* at cc.536-37 (parish pastoral council and parish finance council, respectively).

<sup>118</sup> *Id.* at cc.460-68. Could still other modern canonical institutes be understood as accommodations necessitated by a New Evangelization imperative? I think so. Consider, for example, the concept of parochial team ministry authorized by canon 517 of the 1983 Code, a norm that in some ways actually reverses the Pio-Benedictine law found in canon 460 of the 1917 Code. *Id.* at c.517; 1917 Code c. 460. But see 1983 Code c.526, § 2 ("In the same parish there is to be only one pastor or one moderator ... any custom contrary to this is reprobated and any privilege contrary to this is revoked."). Still, even for those institutes outlined above, one can do little more than speculate as to their eventual outcomes. Some of those listed might not last.

Benedict XVI whether the presumption of sacramentality that is currently applied to every marriage between two baptized persons is still supportable. <sup>120</sup> But those topics certainly deserve much more attention than can be given here.

### [\*31]

#### Conclusion

Just a few days ago, I was talking history with one of my children. The characters of Hammurabi, Solon, and Justinian, to which list I added Charlemagne and Napoleon, came up as examples of famous law-givers [legis latores] over the millennia. The interesting thing that we noticed about our list was that by most standards, none of the famous men thereon would be considered "lawyers," yet each had an incalculable impact on his respective legal tradition. They each saw law as indispensable to sound government and to the welfare of their subjects. They each accepted advice and counsel from the legal specialists of their time, to be sure, but in the end, they personally and seriously accepted their fundamental duty as legislators, and as a result, history was forever changed. Such is the caliber of the catalogue wherein, I think, we will one day find recorded the name of Pope John Paul II.

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<sup>119</sup> 1983 Code c.110, § 1. This survey of the literature suggests that the questions about the retention of canonical form are not unique to American canonistics. See generally John A. Abbo, A Change in the Form of Marriage, 19 Priest 670 (1963); John A. Abbo, The Form of Marriage, 20 Priest 64 (1964); John C. Barry, The Tridentine Form of Marriage: Is the Law Unreasonable?, 20 Jurist 159 (1960); Jean Bernhard, Evolution du Sens de la Forme de Celebration du Mariage dans l'Eglise d'Occident, 30 Revue de Droit Canonique 187 (1980); William Cahill, Change the Marriage Law?, 64 Homiletic and Pastoral Rev. 115 (1963); Edward Dunderdale, The Canonical Form of Marriage: Anachronism or Pastoral Necessity?, 12 Studia Canonica 41 (1978); C.J. Hettinger, Collegiality and the Form of Marriage, 24 Jurist 335 (1964); James I. O'Connor, S.J., Should the Present Canonical Form Be Retained for the Validity of Marriage?, 25 Jurist 66 (1965); Ladislaus Orsy, S.J., De Forma Canonica in Matrimoniis Mixtae Religionis, 52 Periodica 320 (1963); Victor de Reina, Emision del Consentimiento y Forma del Matrimonio: Bases Doctrinales Canonicas, in Acta Conventus Internationalis Canonistarum 577 (1970); James A. Schmeiser, Welcomed Civil Marriage: Canonical Statements, 14 Studia Canonica 49 (1980); Remigiusz Sobanski, Velut Ecclesia Domestica et la Forme Civile du Mariage, 16 Studia Canonica 353 (1982); Henri Wagnon, La Forme Canonique Ordinaire du Mariage: Abolition ou Reforme?, in Acta Conventus Internationalis Canonistarum 702 (1970).

<sup>120</sup> See, e.g., Pope Benedict XVI, Address to Parish Priests of the Alpine Diocese of Aosta, Italy (July 25, 2005), translated in What the "Grain of Wheat" Teaches Us Today, L'Osservatore Romano (English ed.), Aug. 3, 2005, at 2. Discussing the subject of Holy Communion for divorced and remarried Catholics, Benedict XVI remarked:

None of us has a ready-made formula, also because situations always differ. I would say that those who were married in the Church for the sake of tradition but were not truly believers, and who later find themselves in a new and invalid marriage and subsequently convert, discover faith and feel excluded from the Sacrament, are in a particularly painful situation. This really is a cause of great suffering and when I was Prefect of the Congregation for the Doctrine of the Faith, I invited various Bishops' Conferences and experts to study this problem: a sacrament celebrated without faith.

Whether, in fact, a moment of invalidity could be discovered here because the Sacrament was found to be lacking a fundamental dimension, I do not dare to say. I personally thought so, but from the discussions we had I realized that it is a highly-complex problem and ought to be studied further.

Id. at 5. The provision in question is 1983 Code c.1055, § 2, translated in Code of Canon Law, supra note 37, at 387 ("Quare inter baptizatos nequit matrimonialis contractus validus consistere, quin sit eo ipso sacramentum." ["For this reason a matrimonial contract cannot validly exist between baptized persons unless it is also a sacrament by that fact."]).