

THE FORMATION OF THE NEW CODE OF CANON LAW

The codification of the ecclesiastical law begun in 1904 by Pius X, of happy memory, and finished under Benedict XV in 1917 is undoubtedly one of the greatest achievements recorded in the history of the Church. Never before have the numerous laws of Holy Mother Church been so briefly and so perfectly arranged as they are in their present form. Consequently, it is of great interest to ascertain the history of this marvelous codification.

In the preface to the New Code, Cardinal Peter Gasparri has written the official and most authoritative account of the latest systematizing of the Canon Law. Furthermore, Father Joseph Noval, O. P., considered the greatest living authority in ecclesiastical law after Cardinal Gasparri, and cooperator with this illustrious Cardinal in the completion of the New Code, explained the nature and the history of the formation of the New Code in a lecture given at the Angelico in 1917. Each of these sources of information has been used in the preparation of this article.

The Plans

In his *Motu Proprio* "Arduum sane Munus," of March 19, 1904, Pope Pius X planned the new codification of Canon Law. "We wish," wrote the Pope, "that all the laws of the Church given by her up to the present time, be gathered, analyzed and digested; omitting those which are obsolete or have been hitherto annulled; that new laws be added according to the conditions of our times." Obviously here was a task. Innumerable were the laws enacted up to that time by the Holy See; a complete knowledge of them was almost impossible. Considering the multitudinous customs of nations and races, Pius X entrusted his plans to men of almost every clime and tongue, to laymen and to clergy, to celebrated Doctors and to ecclesiastical prelates.

Pope Pius X immediately instituted a Pontifical Commission of sixteen Cardinals to control the entire procedure. These Princes of the Church were nominated by the Holy Pontiff himself and while in session were presided over by him. In the Pope's absence the eldest Cardinal presided. Cardinal Peter Gasparri was appointed Secretary to this Pontifical Commission.

The next step was the election of a second group comprising forty-two Consultors. These were men preeminently pro-

ficient in Theology and Canon Law, appointed by the Pontifical Commission and explicitly approved by the Holy Father. There were on this second Commission thirty-seven clerics and five laymen. Nineteen were selected from the regulars, thus distributed: One Augustinian, two Benedictines, four Dominicans, one Servite, one Mercedarian, one Carmelite, five Jesuits, one Capuchin, two Redemptorists and one member of the Congregation of the Holy Ghost. The four Dominicans were: Fr. Albert Lepidi, Master of the Sacred Palace; Fr. Thomas Esser, Secretary of a Sacred Congregation; Fr. Maurice Kaiser, General Postulator for the Canonization and Beatification of Dominican Saints, and Fr. Joseph Noval, professor at the Angelico, Rome. During the twelve years of codification many of the Consultors died, while others were raised to Bishoprics or given other charges before completing their work. Twenty-three new consultors were appointed in the course of the work. One was an Augustinian, one a Benedictine, one a Franciscan, three Jesuits and one a Sulpician; the remainder were diocesan priests. Cardinal Gasparri was appointed by the Pope President of the Universal Council of Consultors.

A third group of workers composed of Bishops and Ordinary Prelates together with those eligible to form a Provincial Council, aided in the great work. They were called the Collaborators. The Catholic Universities outside Rome having been invited to assist in the functioning of the committees, many of them responded and were given the work assigned to the Consultors.

Execution of the Plans

On March 25, 1904, the plans for the new codification of ecclesiastical law were moved closer to realization for on that date Cardinal Gasparri, Secretary of the Pontifical Commission, wrote a letter to the Archbishops of the Universal Church. The Metropolitans were commanded to procure from their suffragans, and those eligible to vote in Provincial Councils, any suggestions of reform or addition to ecclesiastical law in accordance with the peculiar conditions of their dioceses and to needs of the Catholic Church at large. All data was to be forwarded to the Secretary of the Pontifical Commission within four months.

Upon receipt of the Episcopal reports, Cardinal Gasparri arranged and coordinated them. After this process they were sent to the Vatican Press. Printed copies were distributed to

the Consultors, who assembled for several days in universal meetings to decide upon the division of the material gathered, and to select a method of codifying the canon law. The consultants were assigned two main groups; each group to conduct separate meetings. Cardinal Gasparri presided over one group. His secretary was the Most Rev. Eugene Pacelli, the present Apostolic Nuncio in Bavaria. The other group was presided over by Cajetan de Lai, now Cardinal Secretary of the Roman Consistorial Congregation. Most Rev. Adam Sapieha, the present Archbishop of Cracow, was his secretary.

Each separate article, for instance *De Baptismo*, was apportioned to two or more Consultors, bound to secrecy not to divulge what part they took in the work. As many as six were assigned to labor on the more difficult articles. However, no one could know who was detailed to the same matter until the meetings of the consultants. Each Consultor was permitted to choose three subjects for codification. Thus work of excellent merit was obtained, for many of the consultants had years of experience spent in teaching the particular branches of Canon Law which they had selected.

The method set down to be followed by each Consultor in his private labors of codifying the Canon Law was as follows:

First, he must investigate all laws given by the Church on any canon he was to formulate; especially laws made after Gregory IX published his decretals in 1234.

Secondly, only those laws were to be considered which dealt with the Church discipline, though, when necessity demanded it, he might touch upon principles of faith and natural law.

Thirdly, he should endeavor to transcribe from documents faithfully, clearly and as briefly as possible, at the same time taking note of the edition, volume, page, and the most accurate reference to those documents from which he constructed any given canon.

Fourthly, whenever the Consultor found a matter on which different opinions existed he ought to give a certain and definite decision.

Fifthly, every Consultor was allowed the freedom to change old laws and to make new ones, provided he thought it necessary and stated his reasons for such action.

Sixthly, the Latin or Roman law and a style adapted to the majesty of Canon Law should be employed in writing the Code.

Seventhly, Consultors were obliged to deliver their writings to Cardinal Gasparri on the day appointed by him. He had them printed and then sent the writings of two or three to each of the Consultors. After private examination each Consultor was to state any objectionable features he might find in the course of his review.

Such, then, was the private labor of the Consultors in the formation of the various articles of the Code.

No less important was the work of common and public meetings at which the Consultors assembled weekly beginning in November, 1904. One group was called together on Sunday for three hours, the other convened on Thursday for the same period of time. Each Consultor was bound to bring to the assembly the writings of the others which he had revised.

Upon invitation from the President, the Consultors, one by one, discussed their revisions, first in general, then in detail, stating their objections to each canon. After this, the author of the canon answered, disclosing for the first time the identity of the author of that part of the Code. Each discussion was terminated by the respective President and the decision recorded by his secretary. Then the canon adopted by the most votes was read aloud. This procedure took place in the instance of every canon. Should a few persons or even one give weighty reasons for the adoption of another canon in preference to the one chosen by the majority, recordation of each canon was made by the secretary. Subsequently both were submitted to a Universal Council of Consultors or to the Pontifical Commission. The minutes of every meeting were printed and a copy of them sent to each Consultor who had entered the discussion. After studying the disputed matter in private for another week the canons were recalled for criticism at the following meeting. Such was the routine until unanimous agreement was obtained. It might be noted here that nothing was inaugurated into the New Code of Canon Law until it had been revised at least four times. Some parts were publicly discussed six, ten, or twelve times.

Canons adopted by unanimous consent of each group of Consultors were submitted by Cardinal Gasparri to the Pontifical Commission bound under precept to return them in a month with any remarks or suggestions. Upon receipt of the canons and notes attached, Cardinal Gasparri arranged them

and brought them up for discussion at the meetings of the Pontifical Commission. The Cardinals changed, corrected and suppressed according to the outcome of the meetings. Even this process did not make the canons definitive. Meetings were held weekly by the Cardinals except during the summer.

As soon as certain correlative parts had been completed, Cardinal Gasparri joined them in the form of a pamphlet and sent them to all who in the future might be called to participate in an Ecumenical Council. The Bishops aided by able men in their respective dioceses appended their criticisms on the canons. These were coordinated at general meetings held by the various Metropolitans and then forwarded to Rome. To each canon Cardinal Gasparri attached the criticisms of all the Bishops, and after having the entire work printed he submitted the whole to the Pontifical Commission. The Commission after mature deliberation gave its final and definitive decision. The Canons were then proposed to the Holy Father for confirmation.

Such was the process of formation carried out in the New Code. All its parts were finished in 1916. The only thing then remaining was to systemize the numerous canons. All this work was done by Cardinal Gasparri in one year. In 1917 he presented the text of Canon Law for the final approbation of the Holy Father, Pope Benedict XV who published it on May 27th, 1917, by his constitution "Providentissima Mater Ecclesia." The new Code was not enforced until Pentecost Sunday, 1918. That day was happily chosen for on Pentecost the Holy Ghost descended upon the Apostles and Disciples enlightening them in the ways of Christ's precepts and granting them sufficient grace for their observance.

—Bro. Vitalis Fueyo, O. P.