



**CCEO AND THE REVISED BOOK VI OF CIC:
A COMPARATIVE STUDY**

Fr. Biju Varghese Perumayan

Introduction

- Interrelationship between CIC and CCEO
- They form integral parts of one *Corpus Iuris Canonici* in the Catholic Church.
- Each Code has its own particularities, especially in the penal norms.
- It is in the section of penal sanctions that CCEO and CIC, for all that they have in common, can also be best seen to follow each its own genius

Order of the Presentation

- 1) Main differences in the penal norms of the codes
- 2) Are these differences reduced after the revision of Book VI?
- 3) Do the similarities of the penal norms in the Codes have increased?
- 4) Concluding remarks

1. Differences

1.1 In the Latin Code, there are both *latae* and *ferendae sententiae* penalties while in the Oriental Code, only *ferendae sententiae* penalties. The reasons for abolishing *latae sententiae* penalties in the Oriental Code were: they do not correspond to genuine Eastern traditions, and being incomprehensible in the East, they do not constitute a real deterrent.

Medicinal Approach

1.2 CCEO has prevalently a medicinal approach in the application of penalties. Therefore, the Latin distinction between expiatory penalties and censures is not found in CCEO. It was interpreted that the distinction sometimes gives Easterners the impression that the ecclesiastical authority intends the punishment as an “avenging” (*vindicatio*) or as an “atonement for the offense” (*expiatio delicti*). Instead, in accord with Eastern mentality, all penalties in CCEO are medicinal in the positive sense of curing the offender and healing the wound caused by the offence.

1.3 There are major and minor excommunications in CCEO. Instead in CIC, there are excommunication and interdict.

1.4 The distinction between penalty and penance in CIC can. 1340 is not found in the corresponding CCEO can. 1426, because for CCEO, penances are also penalties that have a medicinal character.

Demotion

1.5 A very typically Eastern penalty is the demotion of a cleric to a lower grade. In this penalty the cleric, although he retains his grade of ordination (bishop or priest), is only allowed to exercise those acts of the power of order or of governance which are in accordance with the lower grade to which he was demoted, that is that of a priest or a deacon (can. 1433§1).

2. Differences Continue

- ▶ The classical differences between the penal laws of the Codes remain almost the same even after the revision of Book VI of CIC. For example, the *latae sententiae* penalties are still present in Book VI of CIC.

Differences Continue

- ▶ Before the revision, the following Latin penal canons had no parallel in CCEO
- ▶ 1311, 1312, 1318, 1322, 1325, 1327, 1330, 1340, 1341, 1343, 1345, 1348, 1357, 1372, 1385, 1396 and 1399.
- ▶ None of them is abrogated in the revised Book VI.

Differences Continue

- ▶ **New Norms:** many new norms in the revised Book VI of CIC which are not present in the Oriental Code (1311§2, 1321§1, 1326§3, 1332§§2-3, 1335§1, 1338§§4-5, 1339§§4-5, 1346§1, 1361§4, 1362§3, 1371§§2,4,5, 1377§2, 1379§§3-4, 1382§2, 1386§3, 1388§2, 1389, 1392, 1393§2, 1395§3 and 1398). Most of them are the penal norms promulgated after 1983 through *Sacramentorum Sanctitatis Tutela* (SST) and *Vos estis lux mundi* (VELM). A few of these new norms, as discussed below, already exist in CCEO.

Differences Continue

- ▶ Before the revision, the following Oriental penal canons had no parallel in CIC/83 (1401, 1402§§1&3, 1403, 1404, 1406§2, 1407§3, 1411, 1412§1, 1423§1, 1426§2, 1427§2, 1428, 1431§2, 1433§1, 1438, 1460 and 1465). Among these CCEO canons, as far as I understand, only canons 1401 (theological canon - responsibility of pastors) and 1428 (regarding the surveillance of the offender) have found parallels in the revised Book VI of CIC (canons 1311 and 1339 §5).


3. More Similarities


- ▶ 74 canons out of 89 of Book VI of CIC have been modified. Certain modifications in the revised text have brought more similarity between the sections of penal norms of the Codes.

3.1 Title

- ▶ The title of Book VI of CIC/83 was “Sanctions in the Church” (*De Sanctionibus in Ecclesia*). But, when CCEO was promulgated in 1990, the canonists of the Eastern Churches preferred the title, “Penal Sanctions in the Church” (*Sanctionibus Poenalibus in Ecclesia*). Now, the title of Book VI of CIC is modified as “Penal Sanctions in the Church” as in CCEO. The change is not casual.


- ▶ The title of the penal section in CIC/17 was “*De delictis et poenis*” (Delicts and Penalties). “In reality, during the *iter revisionis* of CIC/83, there was formed a line of opinion (minority, but nonetheless present) that wanted to remove the penal nature of the book in favour of discipline of the sanctioning type, a disciplinary system adhering less to the rigid concepts of offense and penalty, and more along the lines of a sanctioning administrative system than a true penal system.” This was reflected in the change of the title from Delicts and penalties to “Sanctions in the Church” . avoiding any reference to “penal” .

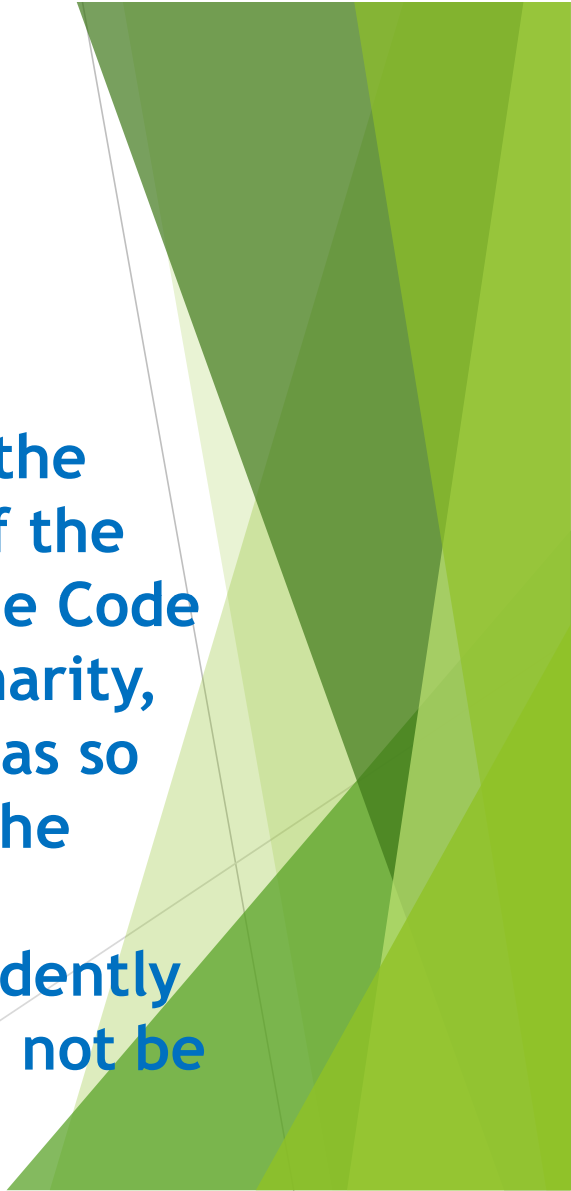
- 
- ▶ However, the term “sanction” could either have a penal or non-penal meaning. Throughout CIC, the term “sanction” refers to an intervention by the competent authority or by the law, by virtue of which a confirmation, approval or recognition with juridical value is given, a juridical link is created, or a penalty is imposed. The specific meaning in each case should be deduced from the context in which it is used.

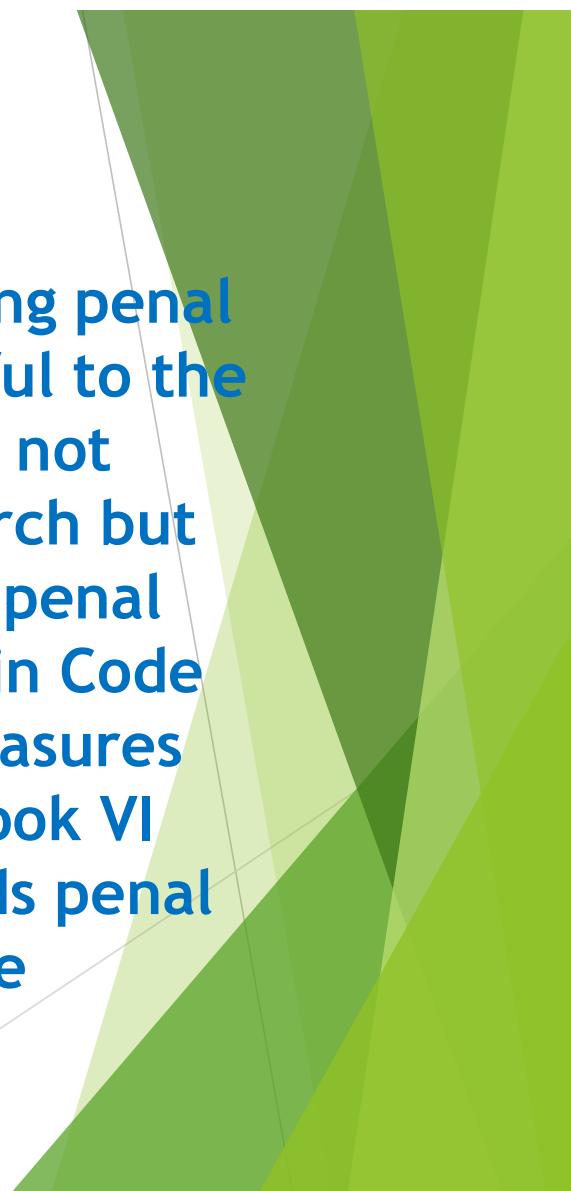
- 
- ▶ Therefore, during the codification of the Oriental Code, some experts wanted to add the term *poenalibus* to the title. According to them, sanctions in canon law need not always be penal and therefore, without the addition *poenalibus*, the title would not be precise. Now this reasoning is taken into consideration also by those who worked for the revision of Book VI.


3.2 Need for penal measures

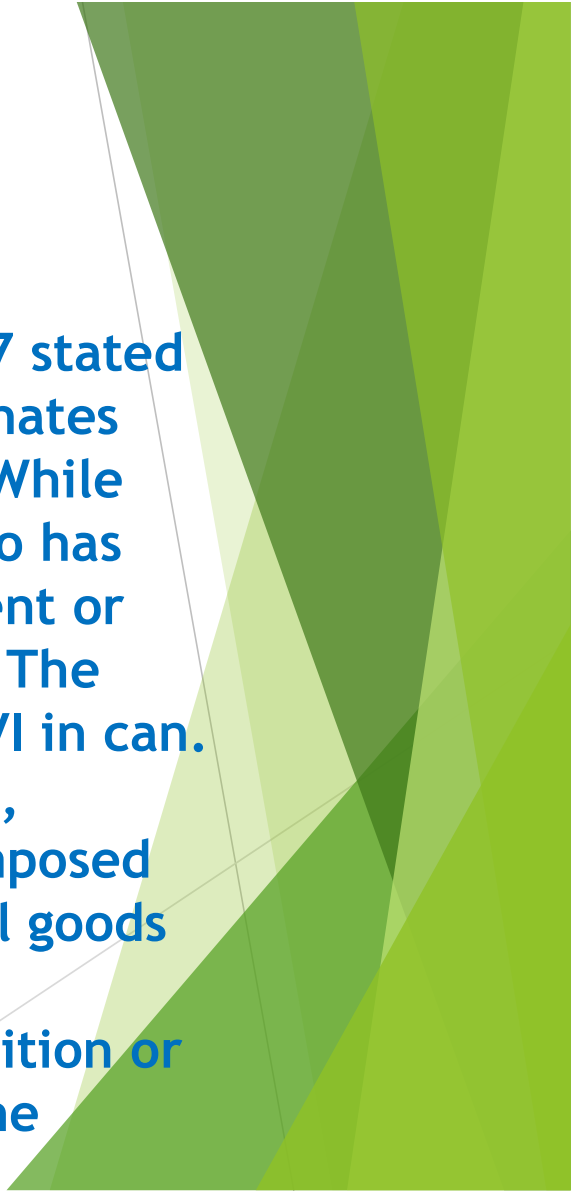
- ▶ Four general positions in the penal discussions of the post-Conciliar period:
 - ▶ 1) total abolition of penal law;
 - ▶ 2) abolition of all *latae sententiae* penalties and exclusive use of *ferendae sententiae* penalties;
 - ▶ 3) a reduction of all penalties but possibly the maintenance of some *latae sententiae* penalties;
 - ▶ 4) a disciplinary Church order apparently without any sanctions


- 
- ▶ Though the thesis of the abolition of penal law was not admitted, the need for a thorough recasting of the penal section was accepted. Between the radical thesis of the abrogation of all penal sanctions by the so called “anti-penalists” and the more moderate thesis of a thorough revision of the penal law, CIC/83 opted for the second one.


- 
- ▶ Principle three of the Revision wanted a less rigid approach in the future Code: “It is necessary that the Church’s law be in harmony with the attainment of the supernatural end by all men. Hence, the laws of the Code of Canon Law must shine forth with the spirit of charity, temperance, humaneness, and moderation, which as so many supernatural virtues distinguish the laws of the Church from every human or profane law. [.....] Furthermore, the good of the universal Church evidently demands that the norms of any future Code should not be too rigid.”


- 
- ▶ Many of the objections of the authors to the existing penal law during the codification of Latin code was helpful to the Oriental Commission. The Oriental Commission did not discuss at all the necessity of penal law in the Church but on its revision, so that it may be really an oriental penal law. The Oriental Code in comparison with the Latin Code underlined more the need to employ the penal measures in the correction of an offender. The revision of Book VI has paid attention to this positive approach towards penal measures. This could be seen in modification of the following canons.

- 
- ▶ Once CCEO was promulgated, its introductory canon (1401) was very much appreciated for its theological richness. One of the appreciated aspect of this canon was its reference to the necessity of adopting penal measures by the pastors. The canon in its last part stated: “Indeed, they (the pastors) are even to impose penalties in order to heal the wounds caused by the delict, so that those who commit delicts are not driven to the depth of despair nor are restraints relaxed unto a dissoluteness of life and contempt of the law.” This canon theologically expressed the necessity of imposing penalties.

- 
- ▶ **Unlawful alienation of ecclesiastical good: CIC/83 can. 1377 stated that “a person who without the prescribed permission alienates ecclesiastical goods, is to be punished with a just penalty. While the corresponding can. 1449 in CCEO stated: “A person who has alienated ecclesiastical goods without the prescribed consent or permission is to be punished with an appropriate penalty.” The clause “consent” is now incorporated in the revised Book VI in can. 1376 §1, 2°: “a person without the prescribed consultation, consent, or permission, or without another requirement imposed by law for validity or for lawfulness, alienates ecclesiastical goods or carries out an act of administration over them are to be punished with the expiatory penalties of an order, a prohibition or a deprivation (CIC can. 1336 § 2-4), without prejudice to the obligation of repairing the harm.”**

- 
- ▶ On the other hand, the introductory canon of CIC/83 (1311) dropped a paragraph of its source canon in CIC/17 (2214) which already contained a theological formulation on the need to punish, citing Council of Trent.
 - ▶ Now, in order to highlight the necessity of applying the penal measures, the revised text of Book VI of CIC has added a paragraph to canon 1311, which states: “The one who is at the head of a Church must safeguard and promote the good of the community itself and of each of Christ’s faithful, through pastoral charity, example of life, advice and exhortation and, if necessary, also through the imposition or declaration of penalties, in accordance with the provisions of the law, which are always to be applied with canonical equity and having in mind the restoration of justice, the reform of the offender, and the repair of scandal.”

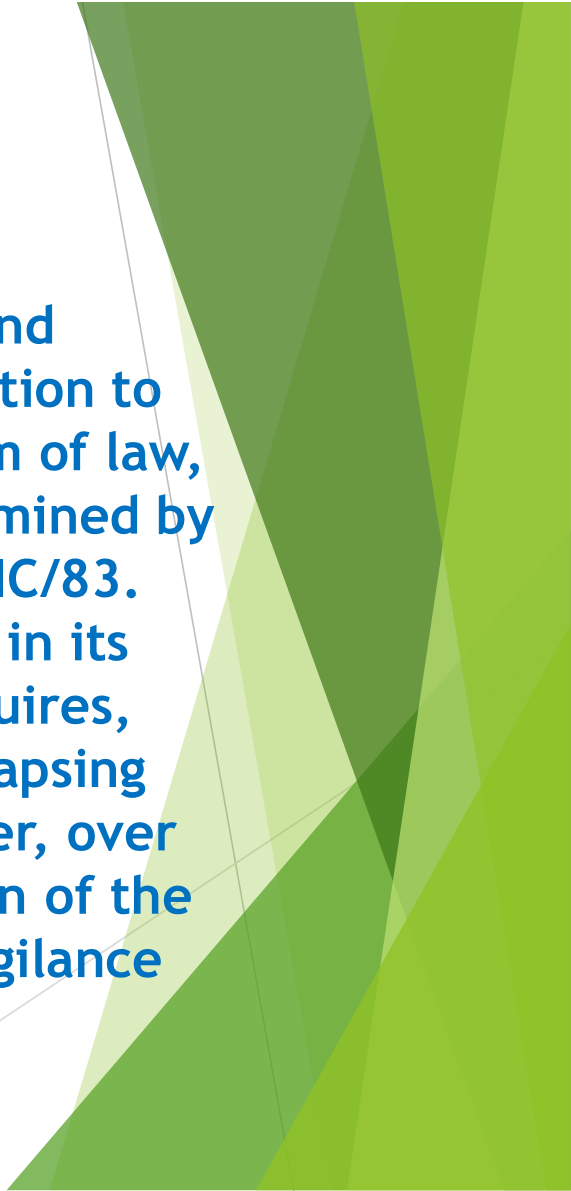
- 
- ▶ This change could be seen also in the modifications to can. 1341. The old version stated: “the Ordinary is to start a judicial or administrative procedure for the imposition or the declaration of penalties only when he perceives that neither by fraternal correction nor reproof, nor by any method of pastoral care, can the scandal be sufficiently repaired, justice restored and the offender reformed.” Now the revised text of canon 1341 states: “The Ordinary must start a judicial or an administrative procedure for the imposition or the declaration of penalties when he perceives that neither by the methods of pastoral care, especially fraternal correction, nor by a warning or correction, can justice be sufficiently restored, the offender reformed, and the scandal repaired.”




► The change from “is to” to “must” and from “only when” to “when” are noteworthy. That shift emphasizes the new text’s general expectation that bishops and superiors will incorporate penal law into their ordinary governance of the Church’s life, as part of a general tightening of Church discipline. I think we will hear more about this dimension in tomorrow’s presentation.

▶ 3.3 Another similarity due to the revision is seen regarding the unlawful alienation of ecclesiastical good: CIC/83 can. 1377 stated that “a person who without the prescribed permission alienates ecclesiastical goods, is to be punished with a just penalty. While the corresponding can. 1449 in CCEO stated: “A person who has alienated ecclesiastical goods without the prescribed consent or permission is to be punished with an appropriate penalty.” The clause “consent” is now incorporated into the revised Book VI in can. 1376 §1, 2°: “a person without the prescribed consultation, consent, or permission, or without another requirement imposed by law for validity or for lawfulness, alienates ecclesiastical goods or carries out an act of administration over them are to be punished with the expiatory penalties of an order, a prohibition or a deprivation (CIC can. 1336 § 2-4), without prejudice to the obligation of repairing the harm.”

- ▶ **3.4 Another similarity between the codes due to the revision is: CIC/1983 can. 1360 was: “The remission of a penalty extorted by grave fear is invalid.” While CCEO can.1421 included reference also to force and fraud. “The remission of a penalty extorted by force, grave fear or fraud is null by the law itself.” The Revised text of can. 1360 has included these two references of the Oriental norm: “The remission of a penalty extorted by force or grave fear or deceit is invalid by virtue of the law itself.”**

- 
- ▶ **3.5 CCEO can. 1428:** “If the gravity of the case demands and especially if it concerns recidivists, a hierarch can, in addition to the penalties imposed by sentence in accord with the norm of law, place the offender under supervision in the manner determined by an administrative decree.” This canon had no parallel in CIC/83. Now in the revised text of CIC, can.1339 has incorporated in its paragraph §5 this aspect: “If the gravity of the case so requires, and especially in a case where someone is in danger of relapsing into an offence, the Ordinary is also to subject the offender, over and above the penalties imposed according to the provision of the law or declared by sentence or decree, to a measure of vigilance determined by means of a singular decree.”

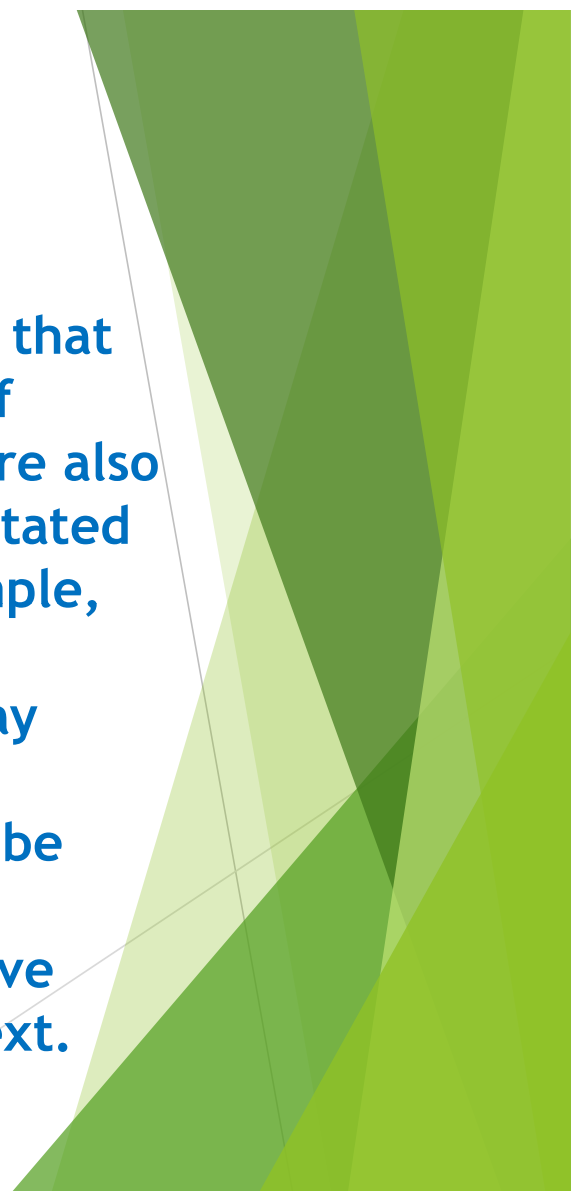
▶ 3.6 CIC/83 can. 1342 stated that, “whenever there are just reasons against the use of a judicial procedure, a penalty can be imposed or declared by means of an extra-judicial decree.” The expression “just reasons” was not at all easy to interpret. On the other hand, CCEO prescribes as a general rule that a canonical penalty must only be imposed after a penal trial (can. 1402). “If there are grave causes that preclude a penal trial and the proofs concerning the delict are certain, the delict can be punished by an extra-judicial decree, provided it does not involve a privation of office, title, insignia, or a suspension for more than one year, demotion to a lower grade, deposition or major excommunication.”. The spirit of this CCEO canon seems to have been considered in the revised text, which asks in the choice of extra-judicial means to observe canon 1720, especially in what concerns the right of defence and the moral certainty in the mind of the one issuing the decree, in accordance with the provision of can. 1608.”


- 
- ▶ **3.7 Revised text can. 1316: “Diocesan Bishops are to take care that as far as possible any penal laws are uniform within the same city or region.” In CIC/83 it was any penalties which are to be imposed by law are uniform. CCEO had in its can. 1405§3: penal laws of particular law are uniform in the same territory.**


4. Concluding Remarks

- ▶ The revision of Book VI is to be appreciated from many points of view. From the Oriental point of view, the emphasis of the revised text on the necessity of applying the penal measures, especially as an expression of pastoral charity aiming at the reform of the offender, is a positive feature to be appreciated.
- ▶ The much debated issue of *latae sententiae* penalties still remain unresolved. I think this is one of the areas which the Bishops find very difficult to execute.


- ▶ **Reserved delicts:** After the promulgation of CIC/83, the main development in the penal law was the motu proprio *Sacramentorum Sanctitatis Tutela*. In the context of the prescription of penal action, CCEO can. 1152§2,1 stated of the reservation of certain delicts to the Apostolic See and CIC/83 can. 1362 §1,1 stated of the reservation to the Congregation for the Doctrine of the Faith. The Codes did not identify these reserved delicts. In 2001, Pope John Paul II issued SST reserving certain delicts to the CDF and promulgating the substantive and procedural *Normae de gravioribus delictis*.

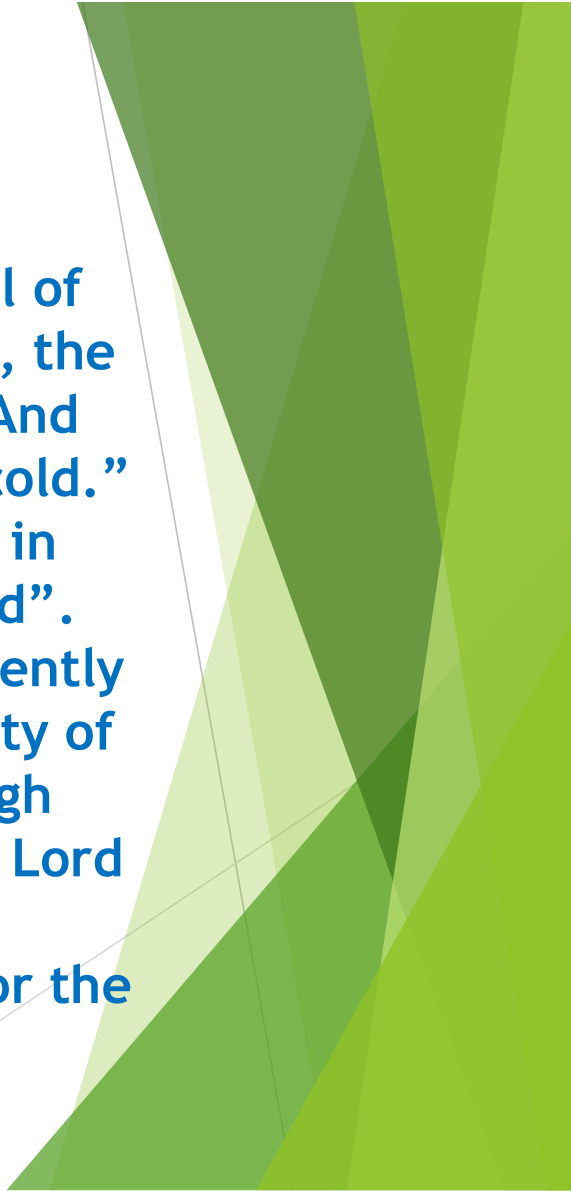
- 
- ▶ The revised text of Book VI, does state in can. 1362 §1,1 that the offences reserved to the CDF have a special period of prescription. Some of the new crimes stated in the SST are also incorporated into the revised Text. However, nothing is stated about the reservation of the delicts to the CDF. For example, can. 1398 which speaks of the offence against sixth commandment of the Decalogue with a minor does not say anything about its reservation to the CDF and its special procedural norms. The explanation may be that it would be included in the revision of Pastor Bonus, regarding the competence of various Dicasteries. However, it would have been better to add some reference to it in the revised text.


- 
- ▶ **The content of CCEO can. 1465 should have been included in the revised text. According to this canon, “a person who, ascribed to any Church sui iuris, including the Latin Church, and exercising an office, a ministry or another function in the Church, has presumed to induce any member of the Christian faithful whatsoever to transfer to another Church sui iuris contrary to can. 31, is to be punished with an appropriate penalty.”**


- 
- ▶ According to CCEO can. 1: “the canons of this code concern all and solely the Eastern Catholic Churches unless, with regard to relations with the Latin Church, it is expressly established otherwise.” When the interrelationship is expressly stated, that norm of CCEO effectively become part of Latin canonical legislation.”
 - ▶ This is one of the nine CCEO canons which explicitly name the Latin Church. “CCEO can. 1465 explicitly forbids under penalty also those of the Latin Church who exercise a ministry or hold any office or function in the Catholic Church to induce in any way Eastern Catholics to transfer to the Latin Church.” Therefore, those who follow the Latin code should be aware of such a penalty applicable to them.


- ▶ CIC can. 1399: This canon raised the issue of the ecclesial relevance of the so-called principle of legality *nulla poena sine lege* (no penalty without a law). Though there were arguments in defence of this canon, in 2012, the Secretary of the Pontifical Council for Legislative Texts had stated regarding this canon: “The new text seeks to specify the purpose of the canon, explaining the type of conduct referred to, in line also with a well-established international jurisprudence. The new version of the canon would permit to punish serious conduct, contrary to divine or ecclesiastical law, which could help to reasonably foresee the penal intervention of the authority ‘*dummodo necessitas urgeat damnum et scandalum reparandi*’.” However, in the new text no change is found in the text of this canon.

- 
- ▶ In the light of the revision of CIC, does the Oriental Code require any revision? Surely Yes. The new canons in Book VI with due modifications should be part of CCEO. The number of norms in Book VI which do not have any parallel canon in CCEO has increased significantly.
 - ▶ As far as I understand, the reduction of the differences in the penal laws of the Codes was not among the objectives of the revision of Book VI. Though canonists had already pointed out the difficulties in the application of penal law due to the differences in the Codes, it was not considered as a need. If it were among the objectives of the revision, I think, much more could have been done.

- 
- ▶ To wind up the presentation, I would quote from the Gospel of Mathew 24:12: “And because lawlessness will be increased, the love of many will grow cold.” Another translation states: “And because iniquity shall abound, the love of many shall wax cold.” If we, pastors and canonists, do not administer well justice in the Church, the risk is that “the love of many will grow cold”. We have already given ample chances for that and consequently the love of many seems to be even frozen. The role and duty of the canonists, I believe, is to foster the love of many through administering justice correctly, in other words, serving the Lord in justice and truth. It is good to recall the words of Pope Benedict XVI: “Punishment can be an act of love.... Love for the sinner and love for the person who has been harmed are correctly balanced if I punish the sinner in the form that is possible and appropriate”.

- 
- ▶ Allow me to make an observation. We all hold that the revision of Book VI was necessitated because the new circumstances demanded the application of penal measures. This necessity, according to me, was due to two reasons in the context of the crisis of the abuse of minors by clerics. Firstly, the credibility of the Church, as a moral institution was questioned. The Church was accused of cover up through its pastoral approach. Secondly, the Church and society realised that there are priests who are morally weak and therefore need to be reformed. In other words, the needs were to regain the moral credibility of the Church and the reform of priests. Now, we the canonists should reflect whether our revised penal norms could effectively serve these two purposes.

- 
- ▶ I think we have already attained the first objective by applying the penal measures more strictly through a zero tolerance approach. But could the Church reform any of its offender through its penal measures is to be seriously thought of. Often, due to the particularities of our approach in the penal procedure, the offender is not reformed but becomes a rebel. The aftermath of a penal process often raises contempt, disunity or disorder in the Body of Christ. The penal processes often generate prolonged animosity in the punished towards the ecclesiastical authority.

- 
- ▶ Here is the responsibility of the canonists. A relational approach in the application of penal power. harmony among the various aims of penalties. The penal discipline is a matter of relationships. The ecclesiastical authority and the community try through the penal procedure to re-establish the relationships broken by the delicts of certain members of the Church. St. Paul's exhortation to correct one not as an enemy but as a brother (2 Thess. 3: 14-15). Pope John Paul II asks to have "an attitude of reverent consideration in the conduct of processes."

THANK YOU

**“ We know that the law is good
if one uses it properly.”**

1 Tim 1:8

Thank You

