

The Canonical Tradition of the Orthodox Church

I. The Theological Basis for Church law

Canon Law

Although generally referred to as "Canon law", such a name given to Church law suggests a parallel to secular law. It would be more correct to call it the **tradition of the Holy Canons**, since they are the object of its concern. This law of the Church, her Canonical tradition, is an outgrowth of the Holy Canons; and it appears on the surface to have much in common with secular law, involving persons invested with authority (the bishops), as well as the means of creating, formulating, interpreting, executing, validating, amending and revoking laws (through Synods or conciliar actions).

Church and Secular Law

The apparent similarity of Church law to secular law led some to contest the integrity of the former. Yet without it, it is clear, there would be many varied problems besetting the Church. In the last analysis, Church law exists to safeguard particular interests from the arbitrary intervention of superior interests. It should not be understood as subjecting a person to subservience, but as guaranteeing his freedom. Contrary to what some have believed, Church law differs **essentially** from secular law. Its difference lies mainly:

1. in the premise that the original source of Canon law is found in the will of God to establish His Church on earth. Consequently, the source of its authority stems from the will of God;
2. in the purpose of humanity's salvation -
 - ◆ time (extending beyond this life into the next life)
 - ◆ scope (including one's conscience)
 - ◆ and place (the universal Church).

The Main Goal of Canon Law

When our Lord entrusted the work of salvation to the Church, which is a society of mortal men and women, He obliged her to provide herself with the necessary means of survival. This was to assist her in organizing herself, in overseeing the orthodoxy of her members, and in guarding against factions. In short, He obliged her to provide herself with a set of rules to live by. In so doing, the Church as a community of faith came to be associated with a juridical organization or

jurisdiction. This does not mean, however, that the community of faith was thereby reduced to a legal institution. The distinction is an important one.

Historical Background

Our Lord Himself instituted some elements of such an order. He preached the Gospel of salvation to His contemporaries but did not leave to their arbitrary will the task of spreading His message for the benefit of future generations. He assigned that task to a group of men chosen with divine care and wisdom, the Apostles, who were clearly aware of the sacred mission with which they were entrusted by the Master. Following His ascension, He endowed them with the authority to make the decisions necessary to assure the continuation of the work He had already begun. Decisions such as the election of Matthias to take the place of Judas among the Apostles and setting the conditions for entry into the Church were made at the outset. In fact, they constitute the beginnings of Church law, in the development of which Saint Paul played a predominant role.

With the spread of the Christian community throughout the entire area of the Mediterranean, the initial organization of the Church soon had to be extended. During this stage of growth, a hierarchy was developed and new conditions of life modeled after the teachings of Christ came into existence. It thus became necessary to define the status of the believer within the Christian community and society at large.

This organization was only rudimentary, but it clearly was there. It is quite evident that the Church in her primitive period had no precisely defined juridical organization, much less a technique or science of law. However, all the elements of a true juridical organization were there. Those persons invested with authority made rules and demanded strict adherence to them. Synods came out unsparingly against those who threatened the unity of the Church and the purity of her doctrine. They did not hesitate, furthermore, to impose severe sanctions upon those who opposed her discipline. It was the **First Ecumenical Synod of Nicaea (325)** which referred to Canons as the disciplinary measures of the Church. The distinction, therefore, between

- ◆ κανονες, the disciplinary measures and rules adopted by the Church, and
- ◆ νομοι, the legislative actions taken by the State,

came about quite early.

Canon Law in the Christian Society

The law that emerged from the earliest times developed in response to the needs of the ecclesiastical community. During both good and bad periods of Church history, her law ***has adapted itself constantly to the circumstances of her time***, up to the present day. The collections of laws which the Church has promulgated in no way detract from her exalted status and sacred character. They reflect a certain imperfection; however, this imperfection lies not in the institution of the Church but in those individuals of whom it is composed. As an institution of divine origin composed of human beings, the Church is at the same time both a human and a divine institution. It might be said that it is at the crossroads of the finite and the infinite, the created and the uncreated, the human and the divine.

Christ entrusted the work of salvation to His Church - that is, to human beings. Because of this, He gave the Church roots in history and subjected her to temporal contingencies. It is in the Church and through the Church that human beings must in principle attain their salvation. When we speak of the Church, we speak of a society. As such, she is governed ***by rules which determine her organization and her relations to her members*** and to those outside her fold.

Furthermore, the Church is not to be identified with her rules. The Church indeed has rules, but she has much else besides. She has within her treasures of another order and another value besides her Canons. She has her theology, her spirituality, her mysticism, her liturgy, her morality. And it is most important not to confuse the Gospel and the ***Pedalion*** (Collection of Canons), theology and legislation, morality and jurisprudence. Each is on a different level and to identify them completely would be to fall into a kind of heresy. ***The Canons are at the service of the Church***; their function is to guide her members on the way to salvation and to make following that way easier.

Church legislation is only one aspect of her life, and above all does not represent her essence. The Church is the Mystical Body of Christ; however, her presence in history necessarily has brought forth a juridical system and juridical institutions. Law indeed has its purpose in the Church and is justifiable. But it must also be recognized that this law is of a special character. The uniqueness of Canon law, which sets it apart from secular law, is due to the special character of the Church it serves. Because it shares to some extent in the exalted mission of the Church, it differs from all other systems of law.

II. The Composition of Church Law

The Essence of Canon Law

Given the above justification for the existence of Church law, it now remains to define what in fact it is and of what it is composed. Church law, commonly referred to as Canon law, is **the system of law emanating from the holy Canons**, which derive from the Church on her own authority. The Church, as has already been stated, is at the same time both a human and a divine institution. As an institution with a human element, the Church has need of laws to govern her organization, her relations to her members, to those outside her fold, to the state, and to other religious and secular bodies. Nevertheless, Church law is first and foremost spiritual, since its main purpose is the spiritual growth of the faithful. Furthermore, its main object of concern is the inner disposition and intention behind one's actions.

Collections of Canon Law

The holy Canons, which are the basis of Canonical tradition within the Church, stem from three main sources:

- ◆ Ecumenical Synods (representing the universal Church),
- ◆ Local Synods (subsequently ratified by the Ecumenical Synods as representing the tradition of the universal Church),
- ◆ and the Fathers of the Church.

All of these Canons, which number about one thousand, are contained in several collections. The one most widely used today in the Greek-speaking Orthodox Churches is the **Pedalion** (the "Rudder"), which takes its name from the metaphor of the Church depicted as a ship. As the ship that is guided safely to its destination by means of a rudder, in like manner are the members of the Church guided on their voyage through life by means of the holy Canons.

Unlike the Canon law of the Roman Catholic Church (Codex Iuris Canonici), the Canon law of the Orthodox Church has not been codified. Neither is it prescriptive in character, anticipating a situation before it actually takes place; instead, it is **corrective in nature**, responding to a situation once it has occurred. Because of the absence of a universal codification binding upon all autocephalous or self-governing Orthodox Churches, great importance is attached to the **local legislation** of each of these churches. Canon 39 of the Quinisext Synod or the Synod of Trullo, held in 691, recognized the right of a local Church to have its own special laws or regulations: **"For our God-bearing fathers also declared that the customs of each church should be preserved..."** - Such laws or regulations, however, must always reflect the spirit of Church universal law as found in the holy Canons.

The Canonical Tradition

The overriding consideration in the acceptance of a local Church custom as law is the **spiritual well-being of the members** of Christ's Mystical Body. What is of importance is how people in any age or place may best serve and worship God. It is obvious that what is well intentioned for the Church as a whole may not be so well suited to some particular local conditions. Similarly, what is good for one age or place may under different conditions constitute a hindrance. This is the reason why Church Canonical tradition has such regard for local custom. Having evolved within the context of local conditions, it best expresses the mind of the local Church on how the cause of God may be served in her special conditions. Custom is the continuously expressed will of God's people. The significance of this statement becomes apparent when one realizes that the last Ecumenical Synod with universally binding legislation occurred twelve centuries ago (787 A.D. in Nicea). Consequently, **the emergence and growth of local custom** especially since that time is what in large measure has sustained the Orthodox Church throughout the ages.

The growth and development of a local custom that acquires the force of law is what gives to the Church's Canonical tradition its great flexibility. Local laws or regulations are the means by which the Church's universal Canonical tradition adapts itself to changing circumstances. Although this is true, it must not be supposed that any local custom automatically establishes itself as part of the Church's Canonical tradition. For that, certain conditions must be met:

- ◆ it must be the conviction of the ecclesiastical community concerning a certain act repeated in the same way for a long time;
- ◆ two main conditions are necessary for the acceptance of the custom as law:
 - ◆ it must have enjoyed a long and steady practice, and
 - ◆ the consensus of opinion must be that it has the force of law.
- ◆ In order for custom to be accepted as a source of Church Canonical tradition, it must be in full harmony with the holy tradition (incl. Scripture), as well as doctrine.

Codification of Canon Law

Because of the apparent dissimilarity among the legal systems of the various autocephalous Churches, there are those

- ◆ who consider a uniform codification of Church law a near impossibility, and that a separate codification for each of them will be necessary.
- ◆ who reject codification outright as conflicting with the spiritual essence of Orthodoxy. They believe that the deep unity which exists among all the Orthodox Churches in faith and sacramental life can continue to be maintained according to the local traditions of each autocephalous Church.

Nevertheless, both of these views have been challenged by former Metropolitan [now Patriarch] Bartholomaios of Philadelphia in his article entitled "A Common Code for the Orthodox Churches" (Kanon I [Vienna, 1973], 45-53); he reminds those who stress the dissimilarity among the legal systems of the autocephalous Churches that within Orthodoxy there is basically a single law, whose most important sources are common to all the Orthodox Churches. Furthermore:

- ◆ ***... the Orthodox Church is neither the sum of a number of independent Churches, nor a federation of Churches with an external, inter-church law, but one Church, the Body of Christ, within which the local Churches are expressions of the one, undivided, living, holy, universal Church in various places.***
(Archondonis, "A Common Code," p. 48).

On the other hand, those who reject codification on the grounds that it conflicts with the essence of Orthodoxy are reminded that the Church is not only a charismatic body; she is an institution with both a divine and a human element; and, as such, she is in need of a code of laws to enhance the evolution of ecclesiastical life and to assure the further development of Orthodox Canon law.

III. The Characteristics of Church Law

Applicability of Canon Law

Any discussion of the characteristics of Church law must necessarily address the question of the applicability of the holy Canons to today's realities. Viewpoints expressed on this vital issue range from one extreme to the other, and are mutually exclusive:

- ◆ There are those who revere the letter of the Canons. But as has already been remarked, "no one seems to absolutize all of them" (cf. John Meyendorff in "Contemporary Problems of Orthodox Canon Law", *The Greek Orthodox Theological Review* 17 (1972) 41].
- ◆ Then there are those who deny the relevancy of the entire body of Canons in its present state.

Obviously, both views leave little room for a conciliatory approach but rather tend to polarize.

In order to effect a rapprochement between the widely divergent views just mentioned, the question must first be asked: How were the holy Canons meant to be understood?

Nicholas Afanasiev, in his article entitled "The Canons of the Church: Changeable or Unchangeable?" offers a formula which might be acceptable to all factions, (St. Vladimir's Theological Quarterly 11(1967) 54-68.):

- ◆ ***Canons are a kind of Canonical interpretation of the dogmas for a particular moment of the Church's historical existence... They express the truth about the order of Church life, but rather than expressing this truth in absolute forms, they conform to historical existence*** (Ibid. p. 60).

Such a formula recognizes the absolute validity of all the Canons as practical aids which gave expression to doctrinal truths at some point in history. Some of these aids, however, it sees ***as having outlived the purpose for which they were originally intended***, i.e., they are conditioned by time. Consequently, they cannot give expression to doctrine without causing distortion, simply because they were intended for another era. This, of course, cannot be said of all the Canons, since there are many which express doctrine as clearly today as when they were first adopted by the Church. Therefore, while some Canons continue to reflect doctrine in practice, others do not ***and must be seen in historical context in order to be understood***. The following example will illustrate this point.

It is a doctrine of the Church that the ecclesiastical hierarchy is an institution ordained by God. There are Canons that express this doctrine, but in conformity with the era in which they were adopted. Canon 5 of the Holy Apostles forbids a bishop, presbyter, or deacon to put away his wife under the pretext of religion. A later decision of the Sixth Ecumenical Synod introduced celibacy for the episcopate and directed that all previously ordained bishops should leave their wives. This Synod was correct when it said that it was publishing the new decree "not with any intention of setting aside or overthrowing any legislation laid down by the Apostles, but having due regard for the salvation and safety of people and for their advancement." (Ibid., p. 63) The apostolic Canon expressed a doctrine concerning the ecclesiastical hierarchy, ***but in conformity with its era***. When the historical conditions of life will change again, so too will the manner in which this doctrine was expressed.

Pastoral Significance of Canon Law

The Canons ought also to be understood as ***pastoral guidelines***. As such, they should serve as models upon which subsequent ecclesiastical legislation is based whenever possible. The Canons of the Fathers, in particular, reflect the pastoral nature of their contents. The Fathers who wrote them did not think that they were writing legislative texts. In most cases, they were either responding to the questions put to them by individuals seeking their counsel, or else expressing

their views on matters of grave concern to the Church. Because of their pastoral sensitivity and the high esteem in which they were held, these Fathers greatly influenced both their contemporaries and succeeding generations. As a result, the directives contained in the Canons of the Fathers prior to the Sixth Ecumenical Synod were recognized by the second Canon of that Synod as equal in authority to the synodal Canons themselves. In fact, several of the Canons of St. Basil, repeated among the Canons of the same Sixth Ecumenical Synod were recognized by the second Canon of that Synod as equal in authority to the synodal Canons themselves.

The Fathers whose Canons appear in our Canonical collections exerted no less an influence upon the development and formation of the Canons of other Synods. Consequently, the pastoral nature evident in the Canons of the Fathers is also easily discernible in the Canons of the Synods. It is because of this characteristic that the Canons have been referred to as "fruits of the Spirit", whose purpose is **to assist mankind in its quest for salvation**. Certainly such a lofty purpose can only be appreciated when the Canons are understood as pastoral guidelines and not as legislative texts. Viewed simply as legislative texts, the Canons differ little from laws to be upheld rigidly and absolutely. Recognized, however, as the pastoral guidelines that in fact they are the Canons serve the purpose for which they were intended **with compassion and flexibility**. It is this latter understanding of the Canons which makes comprehensible the exercise of **Oikonomia** as practiced in the Orthodox Church today.

The Concept of Oikonomia (Divine Economy)

Unlike secular law or Mosaic law, the purpose of Church law is the **spiritual perfection of her members**. Mere application of the letter of the law is replaced by a sense for the spirit of the law, and adherence to its principles. This purpose is the determining factor when authority is granted to apply the law when circumstances warrant according to each individual case. The spirit of love, understood as commitment to the spiritual perfection of the individual, must always prevail in the application of the law. **The abolition of the letter of the law by the spirit of the law** has led to the institution of Oikonomia, exercised in **nonessential** matters. Through "divine economy", which is always an exception to the general rule, the legal consequences following the violation of a law are lifted.

Oikonomia is granted:

- ◆ by the competent ecclesiastical authority and
- ◆ has not so much the character of urgency as it does the **character of compassion** for human frailty.

- ◆ The character of compassion is justified by the Church's ardent desire **to prevent any adverse effects from the strict observance of the law** in exceptional circumstances.
- ◆ The premise upon which an exception is granted is **the general welfare of all concerned**.

This premise exists in all systems of law but it finds its fullest expression in Church law. As the law of grace, it is characterized primarily by the spiritual attributes of compassion, pastoral sensitivity, and forgiveness.

Oikonomia is not something to be applied at random or arbitrarily. It is governed by defined guidelines that must be strictly adhered to by the competent ecclesiastical authority granting it.

- ◆ First and foremost, exception from a law which has been endowed with universal recognition and validity is not possible.
- ◆ It is only from a law that has not been endowed with such authority that a person can be released, **if this is deemed spiritually beneficial**.

The right to exercise Oikonomia is the sole prerogative of the legislator (council or holy synod of bishops). This right can in turn be delegated to individual bishops by the corporate authority of the synod. This delegation must, however, be within the limits prescribed by the Canons and according to the express authorization of one's superior legislative authority. (See, for example, Canon 2 of Ancyra:

It is likewise decreed that deacons who have sacrificed [to pagan idols] and afterwards resumed the conflict shall enjoy their other honors, but shall abstain from every sacred ministry, neither bringing forth the bread and the cup, nor making proclamations. Nevertheless, if any of the bishops shall observe in them distress of mind and meek humiliation, it shall be lawful to the bishops to grant more indulgence, or to take away [what has been granted].

As evidenced by the phrase, "...it shall be lawful to the bishops to grant more indulgence, or to take away [what has been granted]", Oikonomia **may be both a more lenient or a more strict observance of the rule**. Consequently, Oikonomia is any deviation from the norm.

- ◆ The exercise of Oikonomia ceases if its cause no longer exists; and
- ◆ if the basis for its application rested upon false or pretended grounds.
- ◆ Once Oikonomia has been applied, the normative practice is restored as before.

- ◆ Temporary departure from the normative practice through Oikonomia does not set precedent.

The institution of Oikonomia has been actively invoked throughout the history of the Orthodox Church. This is perhaps due in part to liberal trends of thought in the cultural milieu within which the Orthodox Church flourished. Although authority in the exercise of Oikonomia, especially in matters of great importance, rests with the Synod of bishops of each local church, this authority, as indicated, can be delegated to individual bishops as well. The Ecumenical Synod (or Council), as supreme administrative, legislative and judicial body in the Church, administers ultimate authority in the exercise of Oikonomia. It alone can alter or overrule the decision of any subordinate ecclesiastical authority. In the realm of conscience, however, it is the spiritual father who has been entrusted with the authority to exercise Oikonomia according to his good judgment. The determining factor in its application, however, must always be the spiritual welfare of the penitent.

Canonical Discipline

Since the realm of conscience has been mentioned, a final word remains regarding the character of canonical discipline. Following a penitent's admission of guilt in the sacrament of Forgiveness, the spiritual father determines whether acts of penance (επιτιμια) should be prescribed. These acts of penance may include fasting, prostration, prayer, acts of charity, or minor excommunication (temporary exclusion from Holy Communion) among others. Acts of penance must not be confused with punishment in the sense of retribution for evil committed. They must not have any element of vindictive punishment about them. On the contrary, the purpose of the Church's canonical discipline is both ***pastoral and pedagogical***. It seeks both to correct and reform the repentant sinner and to protect the community from the resulting sin. Consequently, by depriving the sinner of Holy Communion for a time, it seeks to impress upon the individual the gravity of his sin. At the same time, if the sin is publicly known, it seeks to demonstrate that certain acts are, beyond any doubt, inadmissible for everyone.

Conclusion

The Church, who is the Mystical Body of Christ, disposes of her own means to achieve the salvation of all her members. Although the Church is simultaneously a human and a divine institution, her earthly aspect is predominantly spiritual. So long as the Church retains this aspect of her existence, the holy Canons together with the canonical tradition emanating from them will be an essential part of her earthly life. In conclusion, it is the Church's Canons and Canonical tradition,

which assure the external means of security within which the life of the spirit is nurtured and preserved.

SUGGESTED FOR FURTHER READING

N. Athanasiev. "The Canons of the Church: Changeable or Unchangeable?" *St. Vladimir's Theological Quarterly*, 11(1967), pp. 54-68.

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