

Can Canon Law be Described as ‘Ministry’?

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Abstract

When it is misapplied, canon law can cause great unjustified unhappiness, but this paper argues that the content is basically, the practice of which is an authentic form of the church’s ministry that is necessary for the structure and life of the church.

Keywords

Canon law, Ministry, Catholic Church

Canon Law gets a bad press, often called ‘the dark side of the Good News’ or ‘the arteriosclerosis in the Body of Christ’. Sometimes what is said about canon lawyers is equally as unflattering. Yet canon law, done well, can be described as a ‘ministry’. Done badly, it can become a misery. How do we reconcile canon law, the rules or norms for the governance of the external life of the church, with Thomas O’Meara’s definition of Christian ministry as ‘the public activity of the baptised follower of Jesus Christ flowing from the Spirit’s charism . . . on behalf of a community to witness to, serve and realize the kingdom of God’.¹ So, how does canon law serve the community, and serve and realise the kingdom of God?

Where did Canon Law come from?

What is now set out in the 1983 Code is derived from a long history, and its canons have various sources such as Sacred Scripture, ecclesiastical assemblies and local and ecumenical councils. These dealt with issues such as reconciliation for Christians who had abandoned their faith and infant baptism, heretical teachings, questions on the sacraments, Sabbath observance, rules governing those in ministry, and the alienation of ecclesiastical property. The conversion of

¹ Thomas O’Meara OP, *Theology of Ministry* (revised edition) (New York: Paulist Press, 1999) p. 150.

Constantine the Great in 312, and the subsequent involvement of emperors in the life of the church led to imperial edicts being another source of law. These addressed themselves to questions of internal governance of the community, liturgical issues (Sunday observance, the date for Easter), and many other varied subjects such as the burial of heretics, decorum in church, episcopal interest in military payment, donations for pious purposes, and segregation of monks and nuns. Other sources of authoritative writings emerged during the course of the fourth-century, one being the writings of the Fathers, and a second being papal letters and decretals. Subsequent ecumenical councils also became a source of canons, the most well-known of which is the Council of Trent (1545-1563), which enacted a series of decrees on the internal reform of the church in addition to major doctrinal clarifications. Various collections of canons made during the centuries culminated in a definitive Code being promulgated in 1917. However, following the Second Vatican Council (1962-1965) which led to a new self-awareness of the Church in terms of a renewed ecclesiology of 'communio', the Code was subsequently revised and the new version was promulgated in 1983. Divided into seven books, and incorporating many of the insights of the Council, the Code deals with General Norms (aspects of interpretation), The People of God (including their rights and obligations), The Teaching Office of the Church, The Sanctifying Office of the Church, Temporal Goods, Sanctions (penal law) and Processes.

What does canon law do for the community itself for the advent of the Kingdom?

The new Code was promulgated by Pope John Paul II, the supreme legislator, on 25 January 1983, by way of an apostolic constitution. In this constitution, the Pope notes that the purpose of the Code is not to replace faith, grace, charisms or charity, but 'looks towards the achievement of order in the ecclesial society ... such that it facilitates at the same time an orderly development in the life both of the ecclesial society and of the individual persons who belong to it'.²

The noted canonist, Ladislav Orsy, states:

The purpose of canon law is to assist the Church in fulfilling its task which is to reveal and to communicate God's saving power to the world. Law can help by creating order in the community, an order that

² The official language of the Code is Latin; this translation is from the *Code of Canon Law Annotated*, 2nd edition, eds. E. Caparros, H. Aube, et al, Wilson & Lafleur (Montreal, 2004) p. 7. Future references are abbreviated to CCLA, with page number.

leads to tranquillity and peace: a good disposition for the 'assembly' to become 'light to the nations'. The law can be also a teacher to the people, as the Torah once was: guiding them toward the kingdom.³

So it has a positive aspect: the preservation of right order; looking to the common good and the rights of individuals. As Frank Morrissey writes: 'The law, as a means to an end, can only be justified if it fulfils its mission: providing freedom and a context wherein free choices can be made without the threat of the arbitrary hanging over everyone'.⁴

Looking back to Pope Paul VI, canon law was in the first instance something that revealed the image of God to the church. In his Allocation of 1973, he says:

If canon law has its foundation in Christ, the Word Incarnate, and hence serves as a sign and instrument of salvation, it does so only because of the work of the Holy Spirit, who imbues it with power and strength. Thus canon law must express the life of the Spirit, produce the fruits of the Spirit, and reveal the image of Christ.⁵

The church's law has an 'authentically spiritual character' and must be 'informed by the Spirit of Christ' (1977).

Secondly, Pope Paul saw it having a function: the protection of the common good and (as may be seen in the title of several of his Allocutions) the protection of justice.⁶ Quoting Louis Bouyer, Pope Paul says that: 'a community without law ... will never be anything else but a community of the capricious' (1972). The need for a juridical system within the church is noted in several places, in contradiction to the spirit of the age which advocates 'an exaggerated spirit of freedom [which] is trying to prevent the exercise of any norm of a juridical system ... [and which seeks] to substitute a juridical relativism for the eternal norms inscribed by God on the human heart' (1968). Rather, 'the need for a juridical system detracts nothing from the value of freedom or from the esteem in which it ought to be held' (1970). Canon law protects both 'superior and subject, so that even the suspicion of arbitrariness may be eliminated from ecclesiastical administration' (1977).

Thirdly, he saw that canon law (and in particular the work of the Roman Rota in its particular role in relation to marriage cases) was 'to protect the conscience, to motivate it, and when necessary also

³ L. Orsy, 'Theology and Canon Law' in *New Commentary on the Code of Canon Law*, ed. J. Beal et al, (New York: Paulist Press, 2000) pp. 1-9.

⁴ F. Morrissey, 'Introduction' to *A Handbook on Canons 573-746*, eds. J. Hite, S. Holland, D. Ward, (Collegeville Minn, Liturgical Press, 1985) p. 13.

⁵ The Allocutions of both Popes can be found in *Papal Allocutions to the Roman Rota 1939-1994*, W. H. Woestman (ed), (Ottawa, St Paul, 1994).

⁶ 1965, 1967, 1977, 1978.

to restore it' (1963). The work of the Rota proclaims particularly 'the existence of a divine law that does not pass away or grow old' (1968), while canonical procedure demands a way of dealing with problems that 'profoundly affect the consciences of persons and the order of the family within the broader framework of the common good of the ecclesial community' (1978). By giving a 'a thorough explanation of justice as the foundation of society', Paul expresses the hope that this sense of justice could be restored in the modern conscience, which is 'so inclined to ethical subjectivity, opportunism, situation ethics, and consequently to juridic relativity' (1967).

John Paul II saw the church as a model and witness to the world in the area of relationships between the individual and the community. The church is to be a 'mirror of justice' (1979) and its vocation 'includes a committed effort to be the interpreter of that thirst for justice and dignity which the men and women of our age experience so strongly' (1979). This theme of 'justice', and in particular to the administration of ecclesiastical law is a recurrent theme in the Pope's allocutions to the Rotal judges, who are reminded that 'the juridical and the pastoral dimensions are united inseparably in the Church' and are in harmony 'because of their common goal – the salvation of souls' (1990).

Secondly, law 'facilitates ... an orderly development in the life both of the ecclesial society and the individual persons who belong to it'.⁷ It overcomes the idea of the self as 'an exclusive and isolated individual' by leading 'to the affirmation of the self as an authentically social being through acknowledgement of and respect for the other as a person endowed with universal, inviolable, and inalienable rights and invested with a transcendent dignity' (1979). Canon law, therefore, protects rights, and even a penalty that is threatened or imposed 'is seen as a means of fostering communion, that is, as a means of repairing those deficiencies in the individual good that have come to light in the anti-ecclesial, criminal, and scandalous behaviour of the members of the People of God' (1979).

Thirdly, canon law is educative, 'both of individuals and society, with the intention of bringing about an ordered and fruitful environment in which the human-Christian person can come into being and mature in an integral way' (1979). In a practical way, this occurs through the witness to the truth by the administration of law by ecclesiastical judges who, in applying norms based on the truth, 'promote the proper formation of the personal conscience' (1994), in terms of marriage in particular, and the upholding of rights and obligations generally.

⁷ *Sacrae Disciplinae Leges*, Apostolic Constitution, 1983, in Caparros and Aube, p. 7.

Applying canon law as a 'ministry'

That is the overall general theory of canon law as 'ministry' – what it can do for the community. But much depends on how it is applied. And this relates to the idea of the 'minister' of canon law. In the secular sphere, we have heard of 'hanging judges' – those who pass hefty sentences on offenders; prosecuting barristers who are determined to get a guilty verdict ... what about those who function as 'canon lawyers'?

We might have our own horror stories of those who think they know canon law and attempt to apply it.

1. A mother with three children has been in hospital. Pregnant with her fourth child, she is warned that she and her child are in danger, and she is offered a termination. She refuses, but her husband agrees (civil law at the time means that only he has to give consent). While drowsy and still recovering from the procedure, the hospital chaplain visits her to tell her that she is now excommunicated because of the abortion. She has not been to Mass in 45 years, as her family's disapproval of her is total because she has been excluded from the church.
2. Fr Joe notices that Mrs B. comes faithfully to Mass every Sunday but never receives communion. One day, he gently mentions this to her. She tells you that her first marriage was violent and short-lived. She had to marry him as he had raped her and made her pregnant. Before and after the marriage, the violence continued, which threatened her pregnancy. She eventually left him, fearing for the safety of her young child. She replies that she is in her second marriage, having divorced her first husband, and she tells you that the parish priest at the time told her that she had no chance of an annulment.
3. June is organising the funeral of her father, Alec. He received the last rites, but had not been a practising Catholic. 'He can't have a Requiem Mass', the priest says, 'but we can have prayers in the chapel at the funeral home'. When she protests, she is told: 'that's the law of the Church'.

All of these should have been handled more sensitively. What gets in the way of canon law being 'ministry' tends to be those who think they know the law, and do not, and those who apply the law by the letter, and not the spirit. James Coriden reminds us that the salvation of souls is the supreme law of the church, and that the rules must always

serve the church's religious purposes.⁸ Faith, hope, and love must guide our application of the rules, which are means to an end and are intended to inculcate certain values. And he reminds canonists of the need for self-knowledge, as personal disposition often influences the way that individuals impose or obey rules. Further, he proposes that they exercise discernment, and practise prudence, the virtue that helps persons to rule themselves and others rightly and reasonably. The virtue that enables us to select and put into operation the most suitable means to an end. Every prudent act involves taking counsel about available options, making a choice among them, and putting the decision into action. He also advocates observing economy and applying *epikeia* [breaking a law to achieve a higher good], thus taking account of the inherent inadequacies of all human laws by applying them sensibly and wisely to individual cases. One example is the general rule against Catholics marrying non-Christians (c. 1086), but that pastoral judgment sometimes counsels a dispensation from the general prohibition. *Epikeia* is morally superior to a merely verbal or rigid application of rules, and therefore a better form of judgment.

So far, so good. While we can speak of canon law as 'ministry', there is a danger that has been highlighted in reports on the sexual abuse issue. To look at this, we return to the 1917 Code of Canon Law. It can be argued that this code was concise, clear, comprehensible and logical and achieved its purpose of making ecclesial law understandable and so applicable in the church. Interestingly, it was based on an existing secular model of national codified law, notably the Napoleonic Code. However, it eventually had the effect of canon law being understood as too rule-orientated and somewhat severe in its effect. As far as reception of the law is concerned, the 1917 Code came to be associated with legalism, that is, the mere following of rules without taking account of particular circumstances of the needs of the faithful. Whether this was the issue of the law itself, the way in which it was taught, or how it was applied by insensitive pastors, remains open to discussion. Nevertheless there was a perception in the pre-Vatican II Church generally of the code being too authoritarian, doctrinaire, centralised and legalistic, and this view grew in strength during the twentieth-century. There was a desire expressed by some (many?) for a more flexible, relaxed and responsive canon law which was more 'pastoral'. The aftermath of the Second Vatican Council and the revision of canon law led to what James Campbell calls 'canonical pastoralism' in canon law, and he defines it in this way:

Canonical pastoralism is the approach to canon law which prefers pastoral and theological concepts and language in canon law over and

⁸ J. Coriden, *Canon Law as Ministry* (2000).

against traditional legal and canonical ones and which leads to canon law being perceived as a branch of pastoral theology rather than a species of law.⁹

The way in which those accused of child sexual abuse is a good case in point. In the Code of Canon Law it is clearly set out what are the expectations of priests and religious. Canon 1717 begins a set of canons that outline the process for dealing with a credible allegation that is made to a bishop against a priest. And canon 1395 in particular deals with delicts against the sixth commandments, particularly those involving force and/or minors. However, as we have come to know from several reports on child sexual abuse, action was often taken by bishops who were aware of sexual abuse by sending a priest for therapy and then restoring him to ministry, or moving him from parish to parish in the hope that this would somehow help cure him, or remove him from temptation. When action then had to be taken, there was a reliance on psychological therapy for suspects of clerical child sexual abuse, rather than applying penal canon law. The effect of all this was injustice for those accused and the Christian faithful generally, since clerics who were guilty of such offences did not face a tribunal in the church but were dealt with solely by administrative processes.¹⁰ In place of the juridical aspect of the Roman Catholic Church's constitutional structure came a largely unaccountable executive. It might be said that the modern 'pastoral' emphasis of canon law resulted ironically in a new form of legalism, even absolutism, due to proper canonical procedures being overridden by administrative process and the rise of the executive in the church to the detriment of the juridical.

This was a point picked up by the Australian Royal Commission, which noted that, though there were canons in place to deal with perpetrators, these were not followed. Instead, people were treated by means of informal measures. Not only this, but canonists giving evidence were divided in their understanding of the 'pontifical secret' (that abuse cases were dealt with secretly 'in-house'). Secondly, there was a lack of clarity on whether civil law trumped canon law (referring to canon 22). Thirdly, canonists noted that, as the

⁹ James Campbell SJ, *Canon Law: A Comparative Study with Anglo-American Legal Theory* (Oxford: OUP).

¹⁰ See W. Richardson, *The Presumption of Innocence in Canonical Trials of Clerics Accused of Child Sexual Abuse. A Historical Analysis of the Current Law* (Canon Law Monograph Series, Peeters, Leuven, Walpole, MA, 2011), M. L. Hidalgo, *Sexual Abuse and the Culture of Catholicism: How Priests and Nuns Become Perpetrators* (New York, Haworth Press, 2007); T. P. Doyle, A.W.R, Sipe, and P. J. Wall, *Sex, Priests and Secret Codes: The Catholic Church's 2000-Year Paper Trail of Sexual Abuse* (Los Angeles, Volt Press, 2006); P. Fleming, S. Lauber-Fleming and M. T. Matousek, *Broken Trust: Stories of Pain, Hope and Healing from Clerical Abuse Survivors and Abusers*, (New York, Crossroad, 2007).

Diagnostic and Statistical Manual suggested, paedophilia was an illness, imputability was considered to be diminished, and could be used as a defence. In the recommendations in the final report of the Royal Commission, a number of recommendations are given. I will limit myself to two: (i) recommendation 16.9: 'All delicts relating to child sexual abuse should be articulated as canonical crimes against the child, not as moral failings or as breaches of the 'special obligations of clerics and religious to observe celibacy'; (ii) recommendation 16.11: 'The Australian Catholic Bishops' Conference should request the Holy See to amend canon law to ensure that the 'pastoral approach' is not an essential precondition for the commencement of canonical action relating to child sexual abuse'.

Conclusion

Can we say that canon law is a form of ministry? Done properly, it can be, but done badly it can become misery, generating anger, anguish and alienation. If it is ignored on the basis of a false understanding of 'ministry', it means that we will be picking up the pieces for a long time to come.

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