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Canon law and latin legal characterization

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Abstract

The purpose of the article is to focus on the early history of law in our era, when secular law and religious one shaped each of their own legal system, but at the same time were not clearly distinguishable and separable. The work highlights some important but key nuances that seem to particularly characterize the dimensions of religious and secular law. The main results of the article form a set of conclusions about the presence of secular and spiritual values in the common legal culture of the distant Roman Empire. In times, when canon or religious law, which manifested itself as one of the facets of values of the Christian church, began to become an inevitable part of secular law. In the end, it is important to note that the work as a whole concludes that the political and dogmatic, hence the divine and traditions of the Roman Empire of the ancient state, were became more and more vividly and obviously apparent not only in laws, decisions and edicts of the empire, but also in their potential and possible clash with the acts and regulations issued by the church as a competing force for the power of the empire.

Keywords

church, canon law, Roman law, Christian rights

INTRODUCTION

The contemporary exploration of canon law is one of the key aspects of European cultural history. So, looking directly at the emergence of law in the early centuries of our era it is **a unique** and noteworthy fact. Because the main aspects of the theoretical part of the law of later centuries can be understood on the basis of the compilation of ancient Latin law and religious norms. The **significance of the article** also lies in the fact that although this topic of the emergence of canon law is reflected in the history of international law, in the field of study of Latvian law there is relatively scarce literature on the content of Church and canon law and their history. Therefore, the work mainly uses only specific foreign legal literature, from which the author of the work has selected the most significant and important set of information and materials in order to achieve the purpose and task of the work, namely, to study and explore the origins of canonical and Latin law in the first centuries of our era and their influence on the later Western European legal space. Thus, the following **research methods** and **information acquisition resources** are applied in the work, on the way to achieving that goal. Namely, despite the fact that in European legal science, the step of application of legal rules has been known for centuries, and the history and philosophy of law mainly get in according with the approach of G. Kelly's personal constructs (see more on the methods of obtaining primary and secondary data in (Pumpišs, 2014). Qualitative methods of content analysis and *functional analysis of texts* cover *comparative, analytical, deductive, empirical, historical* and *descriptive methods.* In the mentioned work, these methods are reduced to categories of legal history and philosophy. In the history of law, different meanings to canon law are attached. It is often placed in the same weight category as the corpus of Roman law. But despite the importance and uniqueness of canon law, studying the various aspects of the history of law and assessing the origins of rights, and consequently of laws, there is such a thing that exactly this component of law, that is, canon law, is often relegated to the background, although it was a very important quintessence of empire, state and Latin law, specifically and most accurately in the later centuries of the millennium. Directly for the exploration of this topic, and from such a perspective, the said work is structured and constructed, but it does not attempt to be a completely new discovery, although it significantly opens up the possibility of looking at the modern architecture of law through the prism of archaics (ancient times) and history, through the perspective of the study of the history and philosophy of law.

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RESEARCH RESULTS AND DISCUSSION

Christian rights and Roman law

Canon law as the regulatory instrument of the established church, which turned the latter into an institutional body, manifested itself at the same time by becoming a bridge between the state (within the meaning then current) and religious communities (the society within the meaning then current), where the representatives of these two dimensions—both those of the spiritual dimension and those of the secular one, came to have, as if compulsorily, such legal relations between themselves; thus the administrative church became thoroughly comparable to modern state institutions within their material and existential meaning or, in other words, existed in a state of self-reproduction and legal development and within the framework of self-justification.

This aim, according to the political and dogmatic scheme then existing, resulted in the creation of a body of administrative law as the first legal manifestation of this kind known in Western Europe, a body which was at the same time a common denominator or a recipe for ensuring strong management by combining mundane things with spiritual ones without discriminating between them and by replacing intangible, incomprehensible things with Christian values but in particular with a discipline based on strict regulations.

This 'aim' did not consist only of the social and legal status and of the Christian rights, and in particular, the cult of the rights of 'the dead', or issues of future rights, which has always been a topical issue in all political systems, and indicative manifestations of religion that followed suit, including among the Christian community and, at the same time, among all the nationals of the Roman Empire of that time. The church had to become a thing that was necessary for practical purposes, accessible and, at the same time, a thing required in order to be able to provide every resident of the Roman Empire with the required and appropriate presentation of rights or reception of canon law and Roman law that would meet their daily needs. The church of rights did not include just places of worship, such as churches, monasteries, hospitals and orphanages, but also secular administrative institutions. The interaction between them and the interaction between Roman law and canon law is set out in this article below.

Unlike the regulations laid down by Roman law, the church was entrusted, in accordance with its sermons, with relevant charity tasks, especially with taking care of the sick and the poor. The helpless and those deprived of rights were to find the solution for their problems, according to the instructions given by the church, in the bodies of the church itself rather than within the secular authorities of the worldly power, and these people are then the subjects of the regulations of canon law. These people were widows and orphans, prisoners, persons persecuted for various reasons, minors and the mentally ill, children whose parents threatened to sell them into slavery or to a brothel, the old and those yet unborn. The church therefore took over the relevant public functions, such as price control and consumer protection. The church did not have only the role of a tolerated guardian in these legal issues; the church also had strong rights within the country as well as property at its disposal which was required to perform its tasks, the management of which, in turn, required finding a legal framework within Roman law. The rest of this study will point to such points of contact between canon law and Roman law.

Administrative church and canon law

Taxes and sizeable donations significantly contributed to the economic property of the church. On these grounds, a special emphasis was placed on the rights of citizens to express their last will at the church. Relatives who were not supported by the church were deprived of the right of appeal regarding the last will. On the other hand, the church had to keep accurate accounts of its income: *Upon receipt by a venerable bishop of an amount left by the will of Christ, a protocol had to be drawn up, stating the amount and the time of receipt, which was to be produced to the government of the province as soon as possible¼* (Cod., I, 3.28.§, 2).

The state managed the property of its church as a whole. Therefore the church was not entitled to dispose of its key capital at its sole discretion. It was already in Roman law that the property of temples was removed from market circulation according to '*res extra commercium*' (a thing outside commerce in Latin) (Fellmeth and Horwitz, 2021). The Christian Empire and the church itself strictly adhered to this basic law. Any key assets that the church had once obtained were not to be sold anymore: 'S*o it be then determined that whatever belongs to the property of the Holy Church or will be acquired in the future shall be kept ¼ with reverence as untouchable: since the Church is the eternal mother of faith and truth, its property will then be kept inviolable perpetually as well*' (Cod., I, 2.14).

This manifest idea has its dark sides. The needs of the politically influential increased over the hundreds of years alongside the growing wealth of the church. Expropriation of church property is not a rare phenomenon in Western history and particularly in connection with the application of the rules of Roman law. Carolingians benefited from the main assets of the church using them to cover the needs of infertile lieges; citizens in medieval towns fought with monks over the estates of monasteries. Laws were passed, at the level of the Constitution, at the time of Lutheran reform as well as during the French Revolution regarding the expropriation of large monastic properties (Fichtenau and Munz, 1957, 190). The material benefits brought by the political success of the Reformation and the French Revolution and the substantial

input, without which the national formations of the modern times and their territorial size cannot be imagined, cannot be explained without taking into account the former prohibition under Roman law to sell the property of the church.

The church would not have become either the established church or the church of rights if it had not sought greater legal autonomy. The most successful state body of the ancient church under Western law was its court of rights or the bishop's court (*episcopalis audientia*) (Hartmann and Pennington, 2016, 201). The established ecclesiastical court too had traditions and the legacy of the imperial court jurisprudence. Roman law was originally managed by priests, clergy and laity, while Roman lawyers took pride in calling themselves 'the priests of justice' (Witte and Frank, 10). Thus, based on theological grounds, the Christianization of worldly rights took place concurrently with the recognition of the rule of law within the church. A step was made towards Roman traditions in this connection and the practice of perceiving them through thinking in Biblical terms was started. Apostle Paul had forbidden the members of his community to follow secular laws in disputes within the church. Many bishops of the established church spread the rights of the ecclesiastical court over the entire body of citizens. Since all persons were Christians in terms of rights, they had to obey the bishop's court in line with the church doctrine (Yeo, 2004, 53).

The Justinian Code and *episcopalis audientia*

Judges appointed by bishops and the secular court clashed with these claims. The Justinian Code contained an extensive article devoted to *episcopalis audientia*. But it was not yet determined whether and to what length the ecclesiastical court would crowd out the secular one and the extent to which these courts would compete with each other (Hartmann and Pennington, 2016, 201). Emperor Constantine was still liberal in this field but his followers restricted the bishop's court again. The church was prohibited from setting lawbreakers free from secular courts. The jurisdiction to which secular citizens were subject was not to be a matter of the church in any way (Cod., I, 1.4). In disputes over civil rights, a bishop merely had to act as the conciliator of both parties, too. '*Where the parties had agreed to refer their dispute to a bishop, they were allowed to so¼ but they could do this only in disputes over civil rights and only in cases where the bishop accepted the position voluntarily and as an arbitrator¼*' (Cod., I, 4, 7).

On the other hand, a bishop as a supervisor of national virtues had the task to take care, because of his position and in respect of the spiritual heritage, of prisoners, minors, widows and other parts of the society that were socially difficult to supervise. The extent to which they were subject to jurisdiction and the judicial form itself had to remain separated from the secular court. This was promoted on condition that the theologically educated ones (bishops) were admitted to ecclesiastical courts as judges. This ordinance (Cod., I, 4.15) could have been favourable for theologians-lawyers of the church. They used the ecclesiastical court to continually confirm theological foundations of their own and at the same time to show themselves as playing on a level field in competition with professional lawyers of the secular court. The Western Roman Empire had long ceased to exist in terms of law when the church created an order of law in its ecclesiastical court which stood above the secular rights.

The freedom from taxes was an important privilege of the church. The church held the monopoly in teaching religious affairs. Another privilege was also the recognition of the special legal status before the Pope and his seat in Rome as well as all other servants of the church (Honore, 1993, 230). The right to become guardians could not be imposed on them. These and other advantages were used by clerics of the antique world to attract secular officers. The emperor had to speak on the subject of civil servants not being allowed to work or act as clerics: '*We want no public officials to take up the post of a bishop or priest alongside their positions¼*' (Cod., I, 3.53).

Clerical activities had to be kept separate from secular public service. Although the emperor maintained a relevant system of governance, such prohibitions could not curb the attraction and impact of the servants of the church for long. The worldly addition contributed to the improvement in the quality of the church staff. Professional knowledge that exceeded the care for soul was required in the service of the church as well (Pharr, 1952, 84).

The service of mercy instituted by Jesus Christ in the church was turned into an administrative apparatus with the right of intercession by the church: '*The judge-bishop necessarily had to order that prisoners be brought to him on Sundays*, *had to hear them personally*, *question them to make sure that the robust prison staff did not torture the prisoners inhumanely*. *If the prisoners lacked food, the bishop had to take care of it and additionally give 2 to 3 coins of money, as he thought fit, from the property of the church to every one of them a day to aid the poor in their poverty by means of these expenses; in any event, arrangements had to be made so that prisoners could wash themselves, subject to ensuring appropriate supervision*' (Cod., I, 4.9).

Intercession, mediation by the church was also provided for in the laws concerning church asylums (RDM, 1999, 14). Those persecuted by enemies, especially believers, who managed to escape inside the church were safe. It was an old right which was supervised and further improved by the church. This resulted in difficulties of a practical nature. Once homeless persons who had been rescued threatened to take over the ruling over the church house, they even dared to raise demands to priests and hindered them in the management of the church affairs. Therefore the emperor

extended the scope of the shelter to the entire land of the church. The church was capable of freeing itself from the seekers of asylum: '*The temples of the Supreme God must be open for the persecuted, and it is not only the altar and the interior of the church and whatever is enclosed by four walls that must grant them an asylum*, *but a place for the refugees to escape to must be found, up to the external borders of the plot of land of the church, so that everything that is situated between the church itself and next to its passages – which may be apartments, houses, gardens, washing rooms and aisles between columns – would protect a refugee as if he were inside a room in the church*' (Cod., I, 4.9).

As a state body, the church was supervised by the emperor. This is witnessed in particular in the imperial discipline of its servants. It was not always that they had a good honour or dignity. Moral wretchedness appeared even in the midst of bishops. Thus the emperor himself had to take care of the dignity of the church staff. The country lived on the prayers of priests and, accordingly, in line with their perfect lifestyle. Worldly driving forces and passions of the church servants threatened the Empire. According to the foundations of law, they had to be examples of virtue for the nation, and they were supposed to stay that way for all their lives. The emperor made accusations '¼ *that some of the highly reputable deacons and priests and also some bishops loved by God do not avoid playing dice between themselves and in this way they indulge in an improper game which is often forbidden for laymen too*¼' (Cod., I, 4.33). Bans had to be imposed on church servants repeatedly and impressively in respect of attending horse races, going to the theatre and attending animal fights. These provisions resulted in frequent conflicts which were a bad example, especially for young priests.

Officials of lower ranks, secular and church officials had to observe a strict discipline and certain moral flaws could be ignored now and then, whereas those on higher levels within the hierarchy had to comply with even stricter procedures. Care had to be taken to ensure that the post of a bishop did not get in the wrong hands. Here the church experienced strained relationships between the will of the community and the interests of the state and the church hierarchy. The Bible testifies that in electing a bishop, the consensus of the ecclesiastical people served as evidence of the impact of the Holy Spirit. In response to this, the church had to stress that the church elite and ecclesiastical people should agree on a single nomination for the bishop's post. It was specifically emphasized where it was the case, for example, in the case of *vita* Adalberon (the Bishop of Würzburg): '*The neighbouring bishops, all the diocesan prelates, rulers and noblemen, district patrons, tribunes and nobility, the clergy and commoners, people of all ages and genders, from the smallest to the tallest, all shouted as one, in a unanimous consent, inspired by the common will, that Adalberon be the most dignified candidate for the bishop's post*' (c.5, MGH SS XII, S. 131). The consensus regarding the election of the bishop was an imitation of a Biblical model turned into law. But there was no consensus every time.

Christian church and key norms

According to the view of the Christian church based on its key norms, the voice of the people was by no means the voice of God. Additional solutions were needed in cases of lack of unanimity. The Holy Spirit needed to enter law after the bishop had exercised worldly power. Although it could as well have happened in the same way as in the case of Saint Martin of Tours (316–397 A.D.); the nation had a better sense and the College of Bishops was forced to accept not so pleasing a man who was to become a national saint later on (Barrow, 2015, 291–293). But it was not the law. Confronted with the choice between the popular opinion and the experience of the established church, Roman emperors and the church decided against the popular feeling and in favour of the hierarchical experience.

In 535, Emperor Justinian issued a long law concerning the election of bishops and the exercise of the functions of the bishop's post (6 November). Care had to be taken already during the process of designation of a candidate. The candidate had to produce a flawless resume (CV). To make sure that no criminal could enter the office, representatives of the people had to be queried about any possible objections prior to the ordination. This involved producing evidence. If those who objected had no evidence of a punishable act on the part of the candidate, then the person who raised objections could be punished.

The candidate could not come from the public service but he was required to have a long record of service in the clergy. He was not allowed to enter the bishop's office as a layman and to make his way through the church hierarchy in too short a period of time. The road to posts in the church was a filter of values. The candidate also had to be unmarried, and if he was a widower, he was allowed to marry only one virgin and not a widow or a divorcee; it was stressed particularly that the candidate was in no case allowed to have a civil wife. Similarly, the candidate was not allowed to have any offspring. The church post was not inheritable (Barrow, 2015, 294–295). Celibacy was a good protection for the church from the succession of officers despite the unrest of the age. A candidate to the bishop's post was required to have a serious knowledge of the church doctrine and attention was paid to ensure that the candidate did not enter the office through the use of money or thanks to large gifts. The emperor stressed the obligation of the bishop to act as resident. The bishop had to stay together with his parish and was not allowed to be absent from his place of office for more than a year. He had to report to his patriarch before going to the city. The bishop

was not allowed to request an audience with the emperor in the city by himself.
The bishop's post served as a model for all priests. Whatever the emperor requested for this office was binding upon every priest. The church could not consecrate too many priests. The needs of the church, rather than a free market of the position, determined—just like in the worldly public service—appointments, promotions and basic supplies. In the church, the rights of officials of the antique world survived the centuries of the Middle Ages. The antique rights of officials may be used as an example for the modern state in the new era by comparing them to Roman law.

The various legal aspects of the church and empire

Firstly, the synod, council was the opposite of individual bishops of the church. It was a place of gathering for bishops for discussions, decision-making and issue of laws at different levels of government of the Empire. The synod was a place where formulas for the future and laws for ecclesiastical provinces and for the worldly church were produced, particularly in times of structural changes. Even Emperor Constantine the Great (who retrained the right of making the final decision or granting approval in all matters) left the dogmatic legal entity of the church at the discretion of the synod (Schaff and Wallace, 2007, 451).
Secondly, the article will clearly demonstrate how issues relating to church life were regulated in the light of law, according to the interpretation of the ancient canon law, with references made to Roman law then still in place. It will show how cases of adulterous priests, heretics, troublemakers, sinful nuns were handled. Church officials had to formulate certificates of positions. During the first years of the established church, the issue of what to do with state spies among parishioners, whose names had remained secret up to then but which had become known from acts of the Empire which had become accessible, had to be dealt with. The church increasingly adopted the form of the contemporary rights of the Empire and of the worldly church and remained safe from the permanent threats of splitting apart which could come from unconnected provincial churches, and it is the problematic situations related to these rights that this article is devoted to.
Thirdly, the agreement between the emperor and the Pope as the supreme powers was not enough to solve these tasks. The unity of the church also relied on the unity of its bishops. Although this unity could be achieved by making lots of efforts and compromises, synods remained next to the Pope and the post of bishops as an indispensable basis for the constitution of the church. Therefore, the history of the church shows the repeated shifting of the internal power of the church from the Pope to councils and back to the Holy See again. Differing views and the aims of the church policy were further shaped and developed in such bipartite negotiations for hundreds of years. The dispute could not be settled hastily by what would seem to be the last word of either party. Where the Pope thought that he had definitely made up his mind, proposals of the council were presented in the final instance in return. Where the council thought to have given the final answer, the papal administration could still make practical changes. The first big surge of such councils took place in the 4th century A.D.: the Council of Elvira from 304 to 306, the Synod of Rome in 313, the Synod of Arles in 314, the Synod of Ancyra, the Synod of Neocaesarea and the Empire Council of Nicaea in 325 (Schaff and Wallace, 2007, 451). New law-making parliaments of the imperial church and ecclesiastical provinces followed thereafter.

CONCLUSIONS

The main **conclusions of the work** and their **influence** on the development of the study of canon law can be summarized in the following theses below:
1. The initial stage and cooperation of the church and empire were never smooth. This can easily be determined by looking at the mentioned sources, publications and articles, where most scholars of canon law directly emphasize the former nature and later significance of the legal rivalry between the state and the church. Namely, that the Church was necessary for the state and for the state was necessary the Church. The question, until the final collapse of the Roman Empire, was how to connect these two worlds of law, that is, secular and spiritual power.
2. In the future, it is important and essential to analyse, to clarify, to specify, if there is a justification in the work that the Church also assumed the institution of state power and performed its legal functions, such as matrimonial or succession matters. Then the relevant question for further discussion and study would be how far the church went with its canon law into secular life and into solving its problems, and secondly, which of them borrowed more of the law paradigm—the church from the state or the state from the church.
3. The main basic source of church and canon law is and remains the Holy Scripture, the decisions of the Synod and the papal edicts. They are sources of canon law and laws. On the contrary, the rule of law and political influence in the case of empire and state were primarily and in principle rested in the hands of a single person, emperor. It can be concluded, from the findings of the article, that the Church, through canon law, exercised the rights of the so-called God, which, however, the Church was forced to adapt to the needs of the empire, but not only. The empire was also relatively forced to obey the Church's edicts, implemented through the Holy Scriptures,

the Synods of Bishops, the edicts of the Holy See (Pope), as well as the order and traditions of canon law.

4. It can be concluded that, in the same way as in the empire, with its heavy-handed legislative system, which created a considerable apparatus of civil servants (laymen), the Church was not able to avoid splitting of different kinds and the cumbersome and bureaucratic nature of decision-making. At least in the field which can be called the sphere of canon law. This was due to the fact that the various legislative initiatives, which served as a base for building most of the canon law, did not fall solely within the competence of the Holy See. This competence was further divided between bishops, their consils and synods. Thus, the examples already mentioned in the work demonstrate and leads to the conclusion that canon law and the earlier legislation of the empire were significantly contemporary, in some ways did not stagnate and included the legal peculiarities of their era, which manifested themselves in the legislative traditions of those distant centuries.

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