

Introduction to Canon Law

- By Rev. Fr. Nilindra Gunsekera sss

I. Etymology, Sources and Scope

Canon law is the body of laws and regulations made by ecclesiastical authority, for the good government of the Catholic Church. The word 'Canon' is derived from the Greek *kanon*, i.e. a rule or practical direction. In the fourth century it was applied to the ordinances of the councils of the Catholic Church.

The title 'canon law' (*jus canonicum*) emerges within ecclesiastical nomenclature around the twelfth century. It is referred to as the 'Corpus juris canonici.' Canon law is also called 'ecclesiastical law' (*jus ecclesiasticum*). For sake of specificity, we note that the term canon law denotes in particular the law of the 'Corpus Juris,' while ecclesiastical law refers to all laws made by the ecclesiastical authorities.

The ultimate source of canon law is God, Whose will is manifested either by the very nature of things (natural Divine law), or by Revelation (positive Divine law). Both are contained in the Scriptures and in Tradition. Positive Divine law cannot contradict natural law; it rather confirms it and renders it more definite

Canon law has been viewed from two different perspectives: the Roman School and the German school. Proponents of the Roman school, e.g. Cavagnis (*Instit. jur. publ. eccl.*, Rome, 1906, I, 8), argue that public law is the law of the Church as a perfect society established by Jesus Christ. Private law embraces all the regulations of the ecclesiastical authorities concerning the internal organization of that society, the functions of its ministers, the rights and duties of its members. The Roman school views public ecclesiastical law as having been derived exclusively from Divine and natural law. The German school, define public law as the body of laws determining the rights and duties of those invested with ecclesiastical authority. For them private law is that which sets forth the rights and duties of individuals as such. Public law would, directly intends the welfare of society as such, and indirectly that of its members. Private law would look primarily to the wellbeing of the individual and secondarily to that of the community.

Universal law is that which is promulgated for the whole Church; but different countries and different dioceses may have local laws limiting the application of the former and even derogating from it. Finally, different classes of persons, the clergy, religious orders, and the laity, including belonging to secular institutes, and those in the married state have their own laws.

We distinguish between the law of the Western or Latin Church, and the law of the Eastern Churches. We also distinguish between the law of the Catholic Church and those of the non-Catholic Christian Churches, the Anglican Church and Eastern Orthodox Churches.

Canon law has evolved over three distinct eras: from the beginning to the 'Decretum' of Gratian; from Gratian to the Council of Trent; from the Council of Trent to our day. The law of these three periods is referred to respectively as the ancient, the new, and the recent law (*jus antiquum, novum, novissimum*). It may also be referred to as the ancient law, the law of the Middle Ages, and the modern law (Laurentius, "Instit.", n.4).

II. Emergence of Canon Law

A legislative and executive power has always existed in the Church. It has been conferred by the Son of God and is referred to as the primacy of Peter (Mt.). However, legislative authority makes laws only when circumstances require them and in accordance with a definite plan. Even in the case of canon law, the written law (*jus scriptum*) emerged from the unwritten law (*jus non scripture*) or the customary law, resulting from practice and custom.

In the beginning the Church merely preserved the canons of Church Councils. Letters of popes, and episcopal statutes were also preserved for the sake of posterity. Yet, the practice of extracting general principles from them or the systematization of the laws in force, was not considered.

The process of systematization begins in the eleventh century with the grouping together of particular laws, subjects, or decrees. The scientific treatise on canon law is compiled only in the middle of the twelfth century, and that is in the 'Decretum' of Gratian. Thus was established the science of canon law, which is designated as the methodical and coordinated knowledge of ecclesiastical law. Yet, the 'decretum' of Gratian was compiled through personal initiative. All the ancient collections are private, due to personal initiative, and have no official authority - even the 'Decretum' of Gratian is of this nature. On the other hand, official or authentic collections are those that have been made or at least promulgated by the legislator. They begin with the 'Compilatio tertia' of Innocent III.

Nevertheless, Gratian's 'Decretum' served as the first text book of canon law. It was replaced by the method adopted by Bernard of Pavia in his 'Breviarium' and by St. Raymund of Pennafort in the official collection of the 'Decretals' of Gregory IX, promulgated in 1234. These collections, did not include the texts used by Gratian. They consisted of five books, each divided into 'titles.' The subject matter of these five books is recalled by the phrase: 'judex, judicium, clerus, connubia, crimen' (i.e. judge, judgment, clergy, marriages, crime). Thus developed the method of studying and teaching.

In the sixteenth century the successors to the decretalists tried to apply, not to the official collections, but in their lectures on canon law the method and division of the ‘Institutes’ of Justinian: persons, things, actions or procedure, crimes, and penalties (Institutes, I, ii, 12). This process was popularized by the ‘Institutiones juris canonici’ of Lancellotti (1563). This was also followed in the 1917 code.

In the sixteenth century, especially in Germany, the study of canon law was developed and improved like that of other sciences, by the critical spirit of the age: doubtful texts were rejected and the *raison d’être* and tendency or intention of later laws traced back to the customs of former days.

The first object of the science of canon law is to fix the laws that are in force. Most of the texts since the Council of Trent, have been and will be drawn up as abstract cases for all canon law. It was not so in the Middle Ages where the canonists formulated the law by extracting it from the accumulated mass of texts or by generalizing from the individual decisions in the early collections of decretals.

A law in force, when known, must be explained. In explaining the reason for a law the historical (i.e. source and evolution), philosophical (principles), and practical (i.e. application) aspects must be elaborated. Practical application of the law is the object of jurisprudence. Towards this end, jurisprudence collects, coordinates and utilizes, the decisions of the competent tribunal.

A. Canonical Collections in the Eastern Churches

Even at an early period we discover a greater local disciplinary uniformity between the Churches of the great sees (Rome, Carthage, Alexandria, Antioch, later Constantinople) and the Churches depending immediately on them. The disciplinary decisions of the bishops of the various regions form the first nucleus of local canon law. When these texts, spread from one country to another by means of the collections, they become universal and are the basis of general canon law.

The situation differs in the East. From the early days up to the end of the fifth century, certain writings, closely related to each other, served as brief canon law treatises on ecclesiastical administration the duties of the clergy and the faithful, and especially on the liturgy. Such writings are called pseudo-epigraphy or apocrypha (cf. ‘Teaching of the Twelve Apostles’ or ‘Didache,’ or ‘Didascalia,’ which was based on the Didache; the ‘Apostolic Constitutions’ which were an elaboration of the Didache and Didascalia;; the ‘Apostolic Church Ordinance’). Yet, only the ‘Apostolic Canons’ were included in the canonical collections of the Greek Church. The most important of these documents the ‘Apostolic Constitutions’ were removed by the Second Canon of the Council in Trullo (692), as having been interpolated by the heretics. Nevertheless, the eighty-five Apostolic Canons, accepted by the same council rank yet first in the above-mentioned ‘Apostolic’ collection.

The law of the separated Eastern Churches did not influence the Western collections. The Greek collection of canon law begins early in the fourth century: in the different provinces of Asia Minor, to the canons of local councils were added those of the ecumenical Council of Nicea (325), which was everywhere held in esteem.

This collection was so highly esteemed that at the Council of Chalcedon (451) the canons were read as one series. It was increased later by the addition of the canons of (Constantinople (381), with other canons attributed to it, those of Ephesus (431). Chalcedon (451), and the Apostolic canons. In 692 the Council in Trullo passed 102 disciplinary canons. They date back to the end of the sixth century.

B. The Canonical Collections in the West to Pseudo-Isidore

In the West, canonical collections developed as in the East, but about two centuries later. Collections of national or local laws appear first. By the fifth century collections of local laws appear. These contain canons of the Greek councils. Two earliest collections of the canons known in the West were called 'Hispana' or 'Isidorian' (attributed to St. Isidore of Seville) and 'Itala' or 'ancient' (Dionysius Exiguus improved upon it). Almost all the Western collections, are based on the same texts as the Greek collection.

By the sixth century the Roman Church was completely organized and the popes had promulgated many legislative texts; but no collection of them had yet been made. The only extra-Roman canons recognized were the canons of Nicea and Sardica,

Dionysius Exiguus compiled at Rome a double collection, one of the councils, the other of decretals, i.e. papal letters. These two collections were joined together as the canonical code of the Roman Church, not by official approbation, but by authorized practice.

By the middle of the eighth century, Adrian I gave (774) the collection of Dionysius - to which had been added subsequent 'decretals' of popes - to the future Emperor Charlemagne as the canonical book of the Roman Church. This collection, is often called the 'Dionysio-Hadriana.' In all Frankish territory, it was accepted as 'Liber Canonum,' and promulgated as the official canon of the Catholic Church throughout the whole empire of Charlemagne at the Diet of Aachen in 802. This was an important step towards the centralization and unification of the ecclesiastical law in the West.

The canon law of the African Church was strongly centralized at Carthage. The collections were made as the decisions of the preceding councils began to be inserted into the Acts of each subsequent Church council. Today the canon law of the African Church is contained in the collection of Dionysius Exiguus, as the canons of a 'Concilium Africanum.' Through this channel the African texts entered into Western canon law.

In Spain, on the contrary, at least after the conversion of the Visigoths, the Church was strongly centralized in the See of Toledo. St. Martin of Braga, initiated a collection which

was a kind of adaptation of conciliary canons. It was absorbed in the large and important collection of the Visigothic Church. The latter, is known as the 'Hispana' or 'Isidoriana,' because it was attributed erroneously to St. Isidore of Seville. About 850, there emerged a collection of the False Decretals, or the Pseudo-Isidore, which was the most complete of the 'chronological' collections.

C. The "Decretum" of Gratian, the Decretists, 'Corpus Juris' and Codification

The "Concordantia discordantium canonum", known later as "Decretum", which Gratian published at Bologna about 1148, is not, a collection of canonical texts, but a general treatise, in which the texts cited are inserted to help in establishing the law. His object, was to build up a juridical system from all these documents.

It was adopted at Bologna, and elsewhere, as the textbook for the study of canon law. The 'Decretum' of Gratian is not a codification, but a privately compiled treatise. It was the work of canonists and not legislative authorities to build up a system of canon law.

Professors at Bologna commented on Gratian's work. The first commentators are called the 'Decretists.'

While lecturing on Gratian's work the canonists laboured to complete and elaborate the master's teaching. They collected the decretals of the popes, and the canons of the Ecumenical councils of the Lateran (1179, 1215). Five collections were made between 1190 and 1226, and served as the basis for the work of Gregory IX, which was the first step towards codification of canon law.

The great collection of 'Decretals' of Gregory IX were compiled by St. Raymund of Pennafort. They represented a more advanced state of law, and a collection which was sufficiently extensive to touch almost every matter, and become therefore, the basis for a complete course of instruction. Various other collections emerged under papal patronage gradually forming a comprehensive body of canon law called the '*corpus juris*.'

After the fourteenth century, except for its contact with the collections we have just treated of, canon law loses its unity. The actual law is found in the works of the canonists rather than in any specific collection; each one gathers his texts where he can; there is no one general collection sufficient for the purpose. The sources of law later than the 'Corpus Juris' are:

- the decisions of councils, especially of the Council of Trent (1545-1563), which are so varied and important that by themselves they form a short code, though without much order;
- the constitutions of the popes, numerous but hitherto not officially collected, except the "Bullarium" of Benedict XIV (1747);
- the Rules of the Apostolic Chancery;

- the 1917 Code of Canon Law;
- lastly the decrees, decisions, and various acts of the Roman Congregations, jurisprudence rather than law properly so called.

For local law we have provincial councils and diocesan statutes. It is true there have been published collections of councils and Bullaria.

III. Codification

In 1590 the jurisconsult Pierre Mathieu, of Lyons. published under the title 'Liber septimus' a supplement to the 'Corpus Juris.' It includes a selection of papal constitutions, from Sixtus IV to Sixtus V (1471-1590), but not the decrees of the Council of Trent.

Many times during the nineteenth century, especially at the time of the Vatican Council (Collectio Lacensis, VII, 826), the bishops had urged the Holy See to draw up a complete collection of the laws in force, adapted to the needs of the day. I

Pius X officially ordered a codification, for the whole canon law. This great work was finished in 1917. This code of 1917 was revised by the 'new' code of canon law promulgated in 1983.