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Culture as One of the Determinants of Legislation: A Case of Canon Law

Abstract: The aim of this article is to show how culture influences church legislation and to identify possible dangers associated with it. The article illustrates examples of changes in Church law that take place under the influence of culture. The conclusions are as follows: canon law submits to culture and it is a possible threat because it loses its ecclesiastical and salvific character. The legislator should be aware of such a phenomenon and try to preserve specific features, especially the purpose of canon law.

Keywords: canon law, culture, lawmaking principles, art of legislation

The problem of the paper can be formulated in two questions: (1) Is there an impact of the culture on the Catholic Church legislation? and (2) if yes, how does it manifest itself?

To explore the problem and answer the above questions, first, one must establish the relationship of the Church, as a simultaneous creator and recipient of canon law legislation, to the world, as the carrier of culture. Second, it seems necessary to look closer at the culture itself and analyze the phenomenon in question to see how it can determine the legislation understood in this paper both as a process of making law and the outcome of the process. Detailed elements of the influence in question are to be presented in further sections of this article.

Church–World Relation

From the beginning, Christianity sees itself in a clear-cut but not absolute opposition to the world. The members of the new religion were aware of their distinctness from the world, and the foundation of that distinctness was their faith and its requirements. The followers of Jesus Christ were different from others (1 Cor 5, 12), which is why others called them by the name—Christians (cf. Acts 11, 22). The vision of dualism between the Church and the world is dominant in Christian philosophy and theology. An example of such an understanding of the Church’s position to the world is that the Christians of the first centuries used to say that “the world was created for the sake of the Church.”¹

This kind of opposition of Christianity to the world was also visible in the life of the ancient Christians, as the author of *Epistle to Diognetus*² noticed:

For the Christians are distinguished from other men neither by country, nor language, nor the customs which they observe. For they neither inhabit cities of their own, nor employ a peculiar form of speech, nor lead a life which is marked out by any singularity. [...] To sum up all in one word—what the soul is in the body, Christians are in the world. [...] The soul dwells in the body, yet is not of the body; and Christians dwell in the world, yet are not of the world.

The characteristic of the relation between the Church and the world, which can be called dualism, comes from religious beliefs. On the one hand, God, the creator, made the world for His glory³ and, as the Book of Genesis states, made the world good (cf. Gen 1: passim) and the Spirit of the Lord filled the earth (cf. Hab. 2:14 and Wis 1:7). On the other hand, moral theology views the world as one of the primary sources of human sin. Not everything that the world brings can be entirely and without reservation accepted by the Church. For example, St. Paul sharply contrasted “the wisdom of the world” and “the wisdom of the cross” and he recommended to accept only the latter (1 Cor, 1: 17–25).

This duality of foundations of the Church’s attitude towards the world makes it difficult to establish this attitude. However, it is necessary to specify this relationship. It is because the Church must carry out her mission in the world and some kind of dialog with it.

¹ *Catechism of the Catholic Church* (Vatican: Libreria Editrice Vaticana, 1992), no. 760.

² *Epistola ad Diognetum, Patrologiae cursus completus*. Series Graeca, ed. Jacques-Paul Migne, vol. 2, col. 1159–1186. Translation taken from by Alexander Roberts and James Donaldson, *Ante-Nicene Fathers*, Vol. 1. Edited by Alexander Roberts, James Donaldson, and A. Cleveland Coxe. Revised and edited for New Advent by Kevin Knight (Buffalo: Christian Literature Publishing Co., 1885.)

³ *Catechism of the Catholic Church*, no. 293.

Understanding Culture

The element of what is understood by the term “world” in the above paragraph of the paper is the culture. Looking at the commonly used reference books, that is, popular dictionaries, one can see that the term “culture” is defined as the whole of material and spiritual achievements of humankind, and also as shared beliefs, values, customs, practices, and social behavior of a group of people especially transferred and passed along to next generations.⁴ This definition is very capacious. It refers mainly to material culture, that is, the achievements that culture consists of.

In *Gaudium et Spes*⁵ (no. 53), the Second Vatican Council presented a different understanding of the term culture. It focused on the functions that culture performs. The Council Fathers stated that in general culture means everything that man perfects and develops the manifold talents of his spirit and body. Culture offers means of knowledge and work to subject the world to man’s power and makes social life more human, both within the family and in the entire state community, through the progress of customs and institutions. Finally, culture expresses, communicates, and preserves in the course of the centuries the great spiritual experiences and aspirations that serve the progress of many and even of humanity as a whole.

Both definitions of culture presented above, that is, (1) the dictionary definition (material aspect) and (2) conciliar definition (functional aspect) would be useful for the presentation of the reasoning behind this paper. However, what might occur helpful certainly is a distinction between the culture of “an individual person” and “a group of people”—which can be called (1) particular culture and the culture of “all humanity and a whole,” that is, (2) universal culture.

The Entanglement of the Legislator

It is widely recognized that no one can stay completely outside the culture of the origin and the culture in which he or she exists. There is no easy escape from the so-called cultural matrix.⁶ Both, the material and functional aspects

⁴ Cf. Entry: “culture,” in *Webster’s New World Dictionary*, ed.-in-chief Victoria Neufeldt, 3rd college ed. (Boston: Houghton Mifflin Harcourt, 1994), 337.

⁵ Sacrosanctum Concilium Oecumenicum Vaticanum II, “Constitutio pastoralis *Gaudium et spes* de Ecclesia in mundo huius temporis,” *Acta Apostolicae Sedis*, vol. 58 (1966): 1025–1115.

⁶ Cf. Benranrd Lonergan, *Method in Theology* (Toronto: University of Toronto Press, 1999), XI.

of the culture are almost always seen in the general outlook of the person to everything that is outside and also in the attitude which individuals have for themselves.

It means that also a legislator in the Church is not free from the influence of his culture.⁷ It can be said that culture is one of the determinants of the legislative process that the legislator takes. The determinant in question is visible not only in the process of making law but also in the results thereof, namely, in a product of legislative activity. This mechanism of influence makes the law-making process and its results such that the legislator never creates “a pure legal system,” but “an entangled legal system.” The very mechanism of entanglement results from the specificity, that is, the opportunities and limitations of the individual legislator. This process cannot be a priori seen as unfavorable for the outcome of legislative action, but, as a matter of fact, it can have negative effects.

Looking at the problem from the perspective of the users of law, it is to be said that they can expect that the legislator will show them respect and take into consideration the specifics of their culture in the process of making law.⁸ For proper interpretation of the laws and reaching their real sense, the users of law (addressees) are obliged to know the culture in which context the law was formulated.⁹ Here it must be noticed that universal canon law, although made for the faithful who live all over the world, that is, in many cultures, is itself made in mainly European one.¹⁰

Increase of Legal Rules for Relations

The element of universal culture is visible in the observation formulated in the ancient principle *ubi societas, ibi ius*. It expresses the absolute necessity of the existence of law in human society, due to the specific shape of human nature. This principle is today rather an unquestionable axiom and one should agree with it, in theory, but only with reference to the communities other than the Church.

⁷ Ladislav Örsy, “The Interpreter and His Art,” *The Jurist*, vol. 40 (1980): 46.

⁸ Myriam Wijlens, “Salus animarum suprema lex”: Mercy as a Legal Principle in the Application of Canon Law?” *Jurist*, vol. 54 (1994): 588.

⁹ John M. Huels, “Interpreting Canon Law in Diverse Cultures,” *Jurist*, vol. 47 (1987): 289–290.

¹⁰ Ladislav Örsy, “The Interpretation of Laws: New Variations on an Old Theme,” in *The Art of Interpretation. Selected Studies on the Interpretation of Canon Law* (Washington DC: Canon Law Soc. of America, 1982), 70, ft. 23.

In the case of the Church the principle is limited in translating the phenomenon of law in the Church. It is because it does not exhaust the reality and complexity of the Church as *communio*. The phenomenon of law in the Church emerges from the nature of the Church which is not only sociological, in other words, only human. The Church is not only a society, but also and foremost, communion of the people with God (cf. LG¹¹ 8).

Today, one can observe in various societies (states) a growing number of areas of life which are regulated by law, and, as a consequence, growing numbers of laws. The relationship among people is regulated more and more by legal norms. Even morality seems to be replaced by the law. It can be said that people do not trust them anymore. The fairness of relations and justice is no longer secured by the personal moral qualities of the parties of the relationship, but by written agreements and the legal institutions called to execute the agreements.

In the Church, one can observe the same processes as it is seen in the other communities. Privacy, for example, was governed among members of the community by law of love as well as such Christian determinants as patience, kindness, goodness, faithfulness, gentleness (cf. Ga 5:22–23). The supreme legislator was of the conviction that it would be enough to formulate in Code of Canon Law a general norm about privacy like can. 220. The rest was left to the law of love.

Unfortunately, currently, even the Church in the European countries, has very detailed laws to protect privacy of the Catholics in the Church, like Polish General Decree on the protection of individuals with regard to the processing of personal data in the Catholic Church.¹² It is surely the influence of the culture, which claims to regulate almost everything exclusively. It can be said that the church legislator is today following the legal idealism of his colleagues and shares the view that the law is the best regulator of human behavior and relations between people.

¹¹ Sacrosanctum Concilium Oecumenicum Vaticanum II, *Constitutio dogmatica Lumen gentium de Ecclesia, Acta Apostolicae Sedis*, vol. 57 (1965): 5–75.

¹² See, for example, “Dekret ogólny w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych w Kościele katolickim wydany przez Konferencję Episkopatu Polski, w dniu 13 marca 2018 r., podczas 378. Zebrania Plenarnego w Warszawie, na podstawie kan. 455 Kodeksu Prawa Kanonicznego, w związku z art. 18 Statutu KEP, po uzyskaniu specjalnego zezwolenia Stolicy Apostolskiej z dnia 3 czerwca 2017 r.,” *Acta Konferencji Episkopatu Polski*, vol. 30 (2018): 31–54.

Absolutely Normative Character of Law

The next issue which is widely recognized in the universal culture and used as common principle of legislation, is the conviction of the ancient lawyers that *ius non docet sed iubet* or *lex moneat, non doceat*. It means that rules contained in law must have only an absolutely normative character because law is a form of expression of legislator's will, which must be an authoritarian one.

The conviction is based on the fact that the human community, in general, expects that the law would perform certain functions that humanity needs at a given stage of its development. The main of these functions is regulation of human activity. Only through this function the law protects some rights and imposes some duties on the individual and community. This is important for the functioning of an individual member of the community and of the community as a whole. It means that culture determines the normative character of the law.

However, in the case of the Church it should be slightly different. It is true that the faithful also expect the normativity of law, but the character in question must be specifically understood and applied in the Church.

Canon law is to impose the will of the legislator and, at the same time, it is his doctrinal teaching. The Church legislator is both a lawgiver and a teacher of the faith. The second aspect requires that he must take into account the contemporary church doctrine of religious freedom developed at the Second Vatican Council.

The church legislator cannot overlook that the Church is not like a state—a compulsory society. A man is free in choosing the religion and way of worship. As a result, the church legislator is allowed and even should create law in the form of good advice, encouragement, wishes or exhortations. Some canons of Code of Canon Law are indeed exhortations. It means that they express what the legislator desires, but they do not create right and duty situations and should not be changed into binding obligations. But, on the other hand, it must be remembered that the will of the legislator binds even if it is not a right and duty situation. He has power. He represents the authority of Christ and his Church. Exhortations are norms for the believers, but they are considered not as legal norms but moral norms.

Unfortunately, the number of laws enacted by a particular church legislator in Poland and the form in which they are formulated show that the normative character of law present in the culture is also becoming a main characteristic of canon law. Even a simple and not very important norms are guarded by sanctions. For instance, in the case of the cited Polish General Decree on the protection of individuals with regard to the processing of personal data in the Catholic Church, there is art. 42. The article consists of a variety of sanctions, which are of (1) civil, (2) administrative, (3) criminal, and (4) discipli-

nary nature. On the other hand, there is no single exhortation to the addresses to respect the privacy of others.

The Scope of Subject Matter of Law

As far as the scope of the subject matter of law is concerned, the particular culture imposes a certain scope of legal regulations. What needs to be regulated and the way in which it is regulated is declared by the *demos* (people)—the majority of the people. The legislator, usually bound by an election cycle, is dependent on the people's will. So, one can say, travestyng the Roman maxim: *Quod demi squareit, legis habet vigorem* ("What pleases the people, enjoys the value of the law"). When one looks at today's subject matters regulated by law, for example, EU law or European countries, for instance, regulations concerning homosexual marriages, adoption of children by homosexual couples, etc., one can see that the subject of regulation is clearly influenced by culture.

When it comes to the issue of the influence of culture on the subject of the regulation of canon law, it can be seen very clearly on the particular level of this law. Canon law, for example in Poland, no longer develops internal and ecclesiastical matters, such as sacraments. To provide some illustration of this matter, one can mention that the instruction on the baptism of children was issued in 1975, and the one concerning marriage was enacted in 1986.¹³ However, at the same time, the affairs of the world entered into the church legislation. The two examples are the General decree issued by the Polish Episcopal Conference: (1) on the protection of individuals with regard to the processing of personal data in the Catholic Church and (2) on the preparation and modification of the baptismal act in connection with adoption.

It should be remembered that from the beginning the Church has had her own law, separate from the secular one, embedded in the religion and closely connected with the church matters. Canon law is to be an endogenous regulator of the religious life of the faithful. It was precisely this kind of lawmaking that exposed Christians to the reaction of the Romans. It was one of the charges against Christians: *leges sibi fecerunt* ("they made laws") and the argument for persecution of them.

¹³ In June 2020, new decree in this matter came into force, that is: Dekret ogólny Konferencji Episkopatu Polski o przeprowadzaniu rozmów kanoniczno-duszpasterskich z narzeczonymi przed zawarciem małżeństwa kanonicznego z dnia 8 października 2019 r., *Akta Konferencji Episkopatu Polski*, vol. 31 (2019): 28–93.

Conclusion

The legislator in his legislative action is not free from various influences, including culture. The cultural context is also present in the outcome of his legislative activity. Such influence is a natural thing. Also, the role of culture as a determinant of canon law is significant. It is manifested in the form of (1) the fact of regulating many areas of the life of the faithful, (2) the strictly normative form of regulation, and (3) specific scope of the subject matter of regulations.

The ecclesiastical legislator should also be aware of the fact that he has not a human, but a divine mandate to perform his function, and thus not human interests or human expectations are the main determinants of his actions. Culture is a product of a sinful man, and by itself, it is tainted. As a result, it seems that the attitude of the Church to such a culture cannot be an attitude of either a priori and full acceptance or a priori full rejection of its material achievements or functions. It should be an attitude of dynamic, that is, variable in scope, rational and critical openness.

Acceptance of what the culture of the world carries, including the culture of law in canon law, should reflect the relationship of the Church to the world, that is, an attitude of rational, dynamic, and critical openness. If not, culture can be a threat to the canon law identity. The ecclesiastical legislator should remember that although it is a canonical law, that is, true law and subject to sociological mechanisms, the main determinant for canonical law should remain theology.

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La culture comme déterminant de la législation Le cas du droit canonique

Résumé

L'ambition de cet article est de montrer l'influence de la culture sur la législation de l'Église et d'indiquer les menaces possibles liées à ce phénomène. L'article examine, à titre d'illustrations, des exemples de changements dans la loi de l'Église; il s'agit de changements influencés par la culture. Les conclusions sont les suivantes: le droit canonique succombe à la culture et il existe donc une menace réelle qu'il perde de son caractère ecclésial et rédempteur. Le législateur doit être conscient de ce phénomène et essayer de maintenir les spécificités du droit canonique, en particulier l'objectif du droit canonique.

Mots-clés: droit canonique, culture, règles de droit, art législatif

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La cultura come fattore determinante della legislazione Il caso del diritto canonico

Sommario

Lo scopo dell'articolo è mostrare l'influenza della cultura sulla legislazione ecclesiastica e indicare le possibili minacce legate a questo fenomeno. L'articolo illustra esempi di cambiamenti nella legge ecclesiastica che sono influenzati dalla cultura. Le conclusioni sono le seguenti: il diritto canonico soccombe alla cultura e quindi c'è una reale minaccia che perda il suo carattere ecclesiale e salvifico. Il legislatore dovrebbe essere consapevole di questo fenomeno e cercare di mantenere le caratteristiche specifiche del diritto canonico, in particolare lo scopo del diritto canonico.

Parole chiave: diritto canonico, cultura, norme del diritto, arte legislativa