

REV. EMMANUEL JADA PATRISIO

THEOLOGICAL FOUNDATION OF ADMINISTRATIVE CANON LAW

Abstract. Prior to Vatican Council II there has been a dominant ecclesiology which looked at the Church as an institution. “that is to say, the view that defines the Church primarily in terms of its visible structures, especially the rights and powers of its officers.” With the coming of Vatican II, the Church is defined “in the nature of sacrament—a sign and instrument that is of communion with God and of unity among all men.” The principal paradigm of the Church in the documents of Vatican Council II is that of “the people of God . . . The Church is seen as a community of persons each of whom is individually free.” It is with this view of the Church as a circle of friends and not a hierarchical pyramid that we shall explain the theological foundation of Administration Canon Law in the Code of 1983.

Key words: the Church; Canon Law; II Vatican Council.

1. INTRODUCTION

In 1967 the commission responsible for the revision of the code presented to the Synod of bishops in Rome for consideration ten principles which were going to guide the revision of the code. The synod fathers discussed those principles from 30 September to 4 October and adopted them with a few reservations.¹ The ten principles of revision contain the theological foundation of administrative canon law in the Code. The principles are founded on the equal human dignity of all people who are created in the image of God (Gen 1:27a), men and women (Gen 1:27b). According to Vatican II, the Church is “the people of God”² and not the ‘people of the leaders.’ The

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¹ John A. ALESANDRO, “General introduction,” in *The code of Canon Law: A Text and Commentary*, ed. James A. Coriden, Thomas J. Green, and Donald E. Heintschel (New York, Mahwah, NJ: Paulist Pres, 1985), 6.

² Dogmatic Constitution on the Church *Lumen Gentium*, Chapter II, No. 9.

Church is not “a perfect society”³ as was the view prior to Vatican II. The Church is “a sacrament of salvation,”⁴ a sign of redemption’s in the world. The “pilgrim Church” here on earth is not yet perfect as the “triumphant Church” in heaven. The Church is the “Body of Christ” according to Pauline ecclesiology (*cf.* 1 Cor 12), of which not all the members have the same function, but all the members are important. Human beings are body—soul composites, therefore administration should take into account this distinction and the harmony between the internal and the external forum. Jesus Christ gave his followers the new law of love (*cf.* Jn 13:34), therefore, justice, mercy and love must permeate all the laws of the Church (*cf.* Hos 6: Mt 9:13), the spirit must be that of salvation of all souls (*cf.* canon 1952), the common good, communion. The Church as communion follows the model of the Trinity itself, where the Father creates, the Son redeems and the Spirit sanctifies; this calls for the principle of subsidiarity in Church’s administration. Administrative Canon Law deals with the threefold munera of Christ: teaching, sanctifying and ruling (governing or leading). All administration or all leadership in the Church is for service which is expressed in three ways: legislative, executive and judiciary powers.

2. THE PEOPLE OF GOD

All human beings are created by God and in that sense all human beings are God’s people or the people of God. However, when we use the term “people of God” technically we refer to the covenanted people of God. In the Old Testament the term “people of God” is applied to the Israelites, the chosen people; in the New Testament this term is applied to the Church which was found by Christ. What constitutes people as the people of God is a covenant between them and God. In the Old Testament God made a covenant with Abraham and his descendants (Gen 17). A covenant is a pact, an agreement; it is a contract. The ideal covenant is between two equal parties; it is a mutual give and take. Even between unequal, in order to stand, a covenant calls or an equal or equitable observance of the terms of the mutual agreement. It is promise based on good will and trust and calls for cooperation between the parties in order to fulfil it. A covenant is sealed by a visible exchange of gifts or sign. The covenant between Abraham and God

³ Avery DULLES, *Models of the Church* (New York: Doubleday and Company, 1978), 8 and 27.

⁴ *Ibid.*, 58.

was to be sealed with the circumcision of all Abraham's male descendants (Gen 17:10 f.).

In the book of Exodus renewed His Covenant with Abraham's descendants now under the leadership of Moses. The sign of the covenant was the two tablets of the law, the Ten commandments. The people bound themselves to follow the Torah (*cf.* Exodus 24) and Yahweh promised to bless them and their land. Therefore, we can say, in the Old Testament, the signs or the stipulation of the covenant between God and the Israelites was circumcision and the Torah. All aliens who were to join the Israelites were bound to be circumcised and to keep the Torah (*cf.* Exodus 12:43–44, 48–49).

In the New Testament, God makes a covenant with all the baptized. The visible signs of the covenant are baptism in water and sharing the Eucharist; this is what makes people, "the people of God". Not every human being created by God is referred to as part of the people of God and a subject of Administrative Canon Law. Hence Canon Law 204 paragraph one states that:

Christ's faithful are those who, since they are incorporated into Christ through baptism are constituted the people of God. For this reason they participate in their own way in the priestly, prophetic and kingly office of Christ. They are called, each according to his or her particular condition, to exercise the mission which God entrusted to the Church to fulfil in the world.

Yet baptism alone is not enough to make a subject of Administration Canon Law in the Church. We read from canon 96 that:

By baptism one is incorporated into the Church of Christ and constituted a person in it, with the duties and the rights which in accordance with each one's status, are proper to Christians, in so far as they are in ecclesial communion and unless a lawfully issued sanction intervenes.

This means that one might be baptized but one may still lose some or all of his rights and duties in the Church. This is what happens in the case of apostates, heretics and schismatic (*cf.* canon 1364 § 1 and 2) who get a *latae sententiae* excommunication from the Church and its communion (*cf.* canon 1331 § 1 and 2)

There are three marks or characteristics of the Church or the people of God according to the teaching of the Second Vatican Council. Vatican Council II draws its teaching from the sixteenth and seventeenth century theologian, Robert Berlarmino (1542–1621), who had written: "The one and true Church is the community of men brought together by the profession of

the same Christian faith and conjoined in the communion of the same sacraments under the government of the legitimate pastors and especially the vicar of Christ on earth, the Roman Pontiff”⁵ (cf. *Lumen Gentium*, No. 8). Therefore, the same profession of faith, sharing the same seven sacraments and the acknowledgement of the Supreme Pontiff is what makes one a Catholic and a subject of Administrative Canon Law, with rights and duties in the Church (cf. canon 205).

Canon 208 states that: “flowing from their rebirth in Christ, there is a genuine equality of dignity and action among all of Christ’s faithful. Because of this equality they all contribute each according to his or her own condition and office, to the building up of the Body of Christ;” Because of their baptism Christ’s faithful “participates in their own way in the priestly, prophetic and kingly office of Christ. They are called each according to his or her particular condition, to exercise the mission which God entrusted to the Church to fulfil in the world” (canon 204 § 1). However. “By divine institution, among Christ’s faithful there are in the Church sacred ministers, who in law are also called clerics, the others are called lay people”. (canon 207 § 1). According to canon 129 § 1, “those who are in sacred orders are, in accordance with the provisions of law, capable of the power of governance, which belongs to the Church by divine institution. This power is also called the power of jurisdiction.” Paragraph two of the quoted canon states that “lay members of Christ’s faithful can cooperate in the exercise of this same power in accordance with the law”.

There has been debate among canonists as to what this “cooperation” means. For an explanation we may resort to canon 274 § 1 which states that: “Only clerics can obtain offices the exercise of which requires the power of order or the power of ecclesiastical governance.” “The power of governance is divided into legislative, executive and judicial power” (canon 135 § 1). In accordance with the spirit of this canon, “The Episcopal Conference can permit that lay persons also be appointed judges. Where necessity suggests, one of these can be chosen in forming a college of judges” (canon 1421 § 2). In this sense we can see that lay people can participate in the power of governance in the Church through being delegated some subsidiary functions and roles which do not require the exercise or orders and are not prohibited by the law (cf. canon 131 § 1).

⁵ Cited by A. DULLES, *Models of the Church*, 20.

3. THE CHURCH AS SACRAMENT AND HERALD OF SALVATION

According to the Catechism of the Catholic Church (CCC) “sacraments are perceptible signs (words and actions) accessible to our human nature. By the action of Christ and the power of the Holy Spirit they make present efficaciously the grace they signify” (CCC, No. 1084).⁶ Implicit in the documents of Vatican Council II is the view of the Church as a “sacrament”,⁷ a sign, an indicator, not the destination. The theology of the Church as a sacrament helps people to understand that the pilgrim Church is not yet perfect, but is in need of perfection, guidance and renewal, hence the principle; *ecclesia semper reformanda* (the Church is always renewing itself).⁸ Henry de Lubac, one of the prominent theologians who shaped the theology of the Second Vatican Council writes, “if Christ is the sacrament of God, the Church is for us the sacrament of Christ, she represents him in the full and ancient meaning of the term, she really makes him present.”⁹ According to Charles Davies, a leading British theologian also at the Second Vatican Council; “as the basic sacrament, the Church is the ground in which the seven sacraments are rooted.”¹⁰ Administrative Canon Law also deals with the administration of the seven sacraments of the Church and this has to be done with the view that the Church itself is a sacrament or “the Universal Sacrament of Salvation” (*Lumen Gentium*, No. 48).

The word “herald” is from Old French where it means “an official who made proclamations, carried state messages... a person who announces significant news; messenger, forerunner...”¹¹ The Church’s duty understood as herald (*cf. Lumen Gentium*, No. 8) is to proclaim Jesus Christ who dwells in their hearts. Christians are to proclaim the kingdom of God the Father; a kingdom which does not mean food and drink, but justice, peace and joy in the Holy Spirit (*cf. Rom 14:17*). The Christians are servants of the word of God and not masters. The Christian leaders and ministers are sent to serve

⁶ Cf. BISHOPS OF ENGLAND AND WALES, *A Catechism of Christian Doctrine*, No. 249. A. DULLES, *Models of the Church*, citing John Paul II, p.226

⁷ Cf. *Lumen Gentium*, Nos. 1.48 and 49, in *Vatican Council II: The Conciliar and Post Conciliar Documents*, ed. Austin Flannery (Nairobi: Dominican Publications Africa, 1995).

⁸ *Unitatis Redintegratio*, No. 6, in *Vatican Council II*. Also BENEDICT XVI, Encyclical Letter *Spe Salvi*, No. 22.

⁹ Henri DE LUBAC, *Catholicism* (London: Burns and Oats and Westbourne, 1950), 29. Also A. DULLES, *Models of the Church*, 66.

¹⁰ Charles DAVIS, *Theology for Today* (New York: Sheed and Ward, 1962), 239.

¹¹ David B. GURALNIK et al (eds.), *Webster’s New World Dictionary of American Language* (New York: The World Publishing Company, 1956), 350.

those who are under them in Church and not to Lord it over them (*cf.* Mk 10:42–45). In the Church, authority and power is understood as service not as status and privilege. Hence, what canon 1284 § 1 states about the administration of temporal goods in the Church can be applied to every aspect of Church administration, that, “All administrators are to perform their duties with diligence of a good householder,” It is as Jesus would say in the gospels: “Who then is the wise and trustworthy servant whom the master placed over his household to give them their food at the proper time? Bless that servant if his master’s arrival finds him doing exactly that” (Mt 24:45–46). Administrators or those in authority in the Church have also obligations to fulfil before God and before his people. In the same quoted passage Jesus says, “But if the servant is dishonest and says to himself; ‘my master is taking his time,’ and sets about beatings his fellow servants and eating and drinking with drunkards, his master will come on a day he does not expect and will cut him off and send him to the same fate as the hypocrites.” (Mt 24:48–51). This means that the public or common good should be put first before the interests of individual leaders. This also brings us to the principle of equality before the law.

4. THE CHURCH AS THE BODY OF CHRIST

Drawing some insights from St. Paul’s theology, Vatican Council II views the Church as the Body of Christ (*cf. Lumen Gentium*, No. 7, 1 Cor 12) in that body not every part has the same function. There are lay members and clerics in the Church. This is because the ministerial priesthood does not only differ in degree from the common priesthood, but “essentially” (*cf. Lumen Gentium*, No. 10). “Though they differ essentially and not only in degree, the common priesthood of the faithful and the ministerial or hierarchical priesthood are nonetheless ordered one to another; each in its own proper way, shares in the priesthood of Christ” (*ibid.*). This means that there is equality and unity among all Christ’s faithful, though there is diversity in the functions or roles they can play in the Church. Besides the differences which come though the sacrament of orders, there are also different charism and infused virtues among Christ’s faithful (*cf.* 1 Cor 12:1-11).

However, “among these gifts the primacy belongs to the grace of the apostles to whose authority the spirit himself subjects even those who are endowed with charism (*cf.* 1 Cor. 14)” (*Lumen Gentium*, No. 7). There are also some acquired virtues or skills which people gain through their hard

labor and training. Hence canon 228 § 2 states that: “Lay people who are outstanding in the requisite knowledge, prudence and integrity, are capable of being experts or advisors, even in councils in accordance with the law, in order to provide assistance to the pastors of the Church.” This brings us to the principle of the interdependence of all the members of the Body of Christ which also calls for solidarity among them. *Lumen Gentium* states that: “From this follows that if one member suffers anything, all the members suffer with him and if one member is honored, all the members together rejoice (cf. 1 Cor 12:26)” (No. 7). Therefore, the administration of penalties or sanctions in the Church is not for retribution or vengeance, but aims at three purpose (a) repair scandal, (b) restore justice and (c) reform the offender (cf. canon 1341).¹²

5. THE CHURCH AS THE FAMILY OF GOD

The African Synod of Bishops of 1994 came up with the model of the Church as the family of God (cf. John Paul II, *Ecclesia in Africa*, No. 43), but this was not a new idea since this has an echo in the documents of the Second Vatican Council (cf. *Lumen Gentium*, No. 11; *Apostolicam Actuositatem*, No. 11) where the family is viewed as the “domestic Church.” The view of the Church as a family calls for the participation of all the members in contributing for the common good of all. In practical terms this call for subsidiarity in the Church’s day-to-day operations. According to the encyclical letter of Pope Pius XI of 1931 *Quadragesimo Anno*, No. 79, the principle of subsidiarity means “that one should not withdraw from individuals and commit to the community what they can accomplish by their own enterprises and industry.”¹³ Concretely this means that what the particular Churches can do on their own the diocese must not interfere. This is a decentralization of authority of justice in the Church. It means that decisions should be made at the most appropriate level of their implementation. There are no people who should think for others and dictate what should be done while others are passive recipients who have only to implement what has

¹² Francis G. MORRISSEY, *Sanctions in the Law of the Church* (Nyahururu: Canon Law Society of Kenya, Tabor Hill Pastoral Centre, 2005), 5.

¹³ Quoted by Thomas Massaro and Richard E. Mullahy, “Subsidiarity,” in *New Catholic Encyclopedia*, Vol. 13 (Detroit: Thompson/Gale, 2003²), 567. Cf. Oscar WERMTER, *Politics for Everyone and by Everyone: A Christian Approach* (Nairobi: Paulines Publications Africa, 2005), 5.

been decided. This calls consultation before decisions are made by the Church authorities and also delegation of duties in the execution of the decisions by the authorities and administrators. Hence, both the Second Vatican Council and the Code of Canon Law call for the establishment of various consultative bodies in the Church such as the parish pastoral Council, the presbyteral Council, the Finance Council, the Board of Consultors and so on (cf. *Lumen Gentium*, No. 37; *Christus Dominus*, No.27; *Apostolicam Actuositatem*, No. 26; canons 536, 537, 495 and 502). Canon 137 § 1 states that “Ordinary executive power can be delegated either for an individual case or for all cases, unless the law expressly provides otherwise.”

One other aspect of the Church as the family of God is “charity.” God is love¹⁴ and whoever remains in love remains in God and God in him” (1 John 4:16, cf also 1 Jn 4:8).

Love is good and we know good is always diffusive of itself. Therefore, love in Church administration is shown through sharing of responsibilities because “love is never jealous” (1 Cor. 13.4).

We can trace the principle of subsidiarity right to the scriptures where Moses’ father-in-law said to him (Exodus 18:17–23, also Nb 11:16–17):

What you are doing is not right. You will only tire yourself out, and the people with you too, for the work is too heavy for you. You cannot do it all yourself... choose capable and God fearing men, men who are trustworthy and incorruptible and put them in charge of them as heads of thousands, hundreds, fifties and tens and make them people’s permanent judges. They will refer all important matters to you, but all minor issues they will decide themselves so making things easier for you by sharing the burden with you... you will be able to stand the strain and all these people will go home satisfied.

This brought about the institution of the seventy elders or judges (later called Sanhedrin) among the Israelites. Taken allegorically, we may say, Moses represents the Holy Father (the Supreme Pontiff), the seventy elders represent bishops who may be permanently delegated some offices by the Pope and Eldad and Medad represent some people who may temporarily be delegated to perform certain acts by the bishops, and Moses’ reply to Joshua is an answer to all who are against subsidiarity in the Church. “Are you jealous on my account? If only all Yahweh’s people were prophets and Yahweh has given them his spirit!” (Nb 11:29). A question has been posed as to what sort of family does the model of the Church look up to as its arche

¹⁴ BENEDICT XVI, Encyclical Letter *Deus Caritas Est*, No.1.

type, modern nuclear family or traditional extended family. The answer is to neither of these two since they are both imperfect, but to God himself, that is, the communion of the Holy Trinity.¹⁵ The Holy Trinity consists of equal persons with the same nature and yet they are distinct but nonetheless work in harmony. Traditionally, theology would say God the Father is the Creator, the Son is the Redeemer, and the Holy Spirit is the sanctifier.¹⁶ There is respect for each other's rights, duties and roles. Hence in Canon law we talk of the competent forum and the area of jurisdiction (*cf.* canons 1502, 1504 and 1505). Competence may be territorial or personal or depend on the subject matter.¹⁷

Territorial competence can be that exercised by the Diocesan Bishops only over his diocese and personal competence can be that exercised by a Religious Superior no matter where he or she is dealing with his or her subject. Competence or jurisdiction can depend on the subject matter, for example there are certain cases only reserved to the Holy See or the Roman Pontiff himself (*cf.* canons 1367, 1370 § 1, 1378 § 1, 1382 and 1388).

We have already said that human beings are “body soul composites” that means they are capable of performing both external and physical acts and internal spiritual acts. The second principle of revision of the 1983 Code stated that: “the code should improve harmony between the external and the internal forum, reducing conflict between them to a minimum, especially in regard to the sacraments and ecclesiastical penalties.”¹⁸ This is reflected in the code, for example, *cf.* canons 1074 and 1079 paragraphs 1 and 3. The acknowledgement of the fact that there is an internal and an external forum calls for the respect of the right to privacy for each and every member of the family of God (*cf.* canon 220) and “whoever unlawfully causes harm to another by a juridical act, or indeed by any other act which is deceitful or culpable, is obliged to repair the damage done” (canon 128).

Hence, “Christ faithful may lawfully vindicate and defend the rights they enjoy in the Church, before the competent ecclesiastical forum in accordance with the law” (canon 221 § 1).

¹⁵ Cf. Robert J. KASLYN, “Baptism as Basis for Church Ministry: Application of the Ecclesiology of Communion,” *The Jurist* 60 (2000): 314, 323, 327. A. DULLES, *Models of the Church*, citing Pope John Paul II (APPENDIX). “The ecclesiology of John Paul II,” 221, 223

¹⁶ Frank J. SHEED, *Theology and Sanity* (New York: Sheed and Ward, 1946), 57

¹⁷ Juan Ignacio ARRIETA, *Governance Structures within the Catholic Church* (Milan: Wilson and Lafleur, 2000), 27

¹⁸ J.A. ALESANDRO, “General introduction,” 6

This is a right for all, irregardless of one's position or status in the Church. This recognizes the equality of all Christ's faithful before the law (*cf.* canon 221 § 2) and the right to due process. "Christ's faithful have the right that no canonical penalties, be inflicted upon them except in accordance with the law" (canon 221 § 3).

God is full of mercy and love (*cf.* Ps 130:8, 136:1–3, Joel 2:13), therefore all administrative acts should aim at unity, the public or common good and the good of individuals (*cf.* canon 1752). Hence, as regards denying people sacraments the Zimbabwe Catholic Bishops' Conferences' *National Pastoral Directory* (1998) warns administrators and pastors, "In doubtful cases, it is better to err through mercy and compassion than through severity and refusal."¹⁹ Justice must always be tempered with mercy. Punishment must be the last resort after means of solving disputes such as conciliation, arbitration, fraternal correction or reproof have failed (*cf.* canons 1341, 1446 and 1742).

6. CONCLUSION

The Theological foundation of Administrative Canon Law in the 1983 code can be traced back to our understanding of God himself and the ecclesiology of the Second Vatican Council of understanding the Church as the people of God, the family of God, the Body of Christ, the Universal Sacrament of salvation and herald of the Good News of Christ and the kingdom of God. God is one but not lonely; he is three equal Divine persons that is, the Father, the Son and the Holy Spirit. God is a communion of persons. God is the model and source of love which has been shown in the person of Jesus Christ who died serving his brothers and sisters though; He is head of his Body the Church. Therefore, the principles of the common good, solidarity, participation, subsidiarity and equal dignity of all must be seen in all arms of Church administration. All administration in the Church is service exercised in mutual respect, love and trust, all authority and power should led to the salvation of souls (canon 1752), for all ecclesiastical offices must further a spiritual purpose (*cf.* canon 145 § 1).

¹⁹ ZIMBABWE CATHOLIC BISHOPS' CONFERENCE, *National Pastoral Directory* (Harare: Kolbe Press, 1998), 28

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TEOLOGICZNE PODSTAWY
ADMINISTRACYJNEGO PRAWA KANONICZNEGO

Streszczenie

Przed Soborem Watykańskim II percepcja Kościoła ograniczała się do jego instytucjonalnego wymiaru. Sobór Watykański dokonał istotnej zmiany, po której Kościół to rzeczywistość złożona (*realitas complexa*), w której pierwiastek Boski i ludzki tworzą jedną komplementarną całość. Autor, opierając się na tej koncepcji (niehierarchicznej), dokonuje analizy teologicznej części Kodeksu Prawa Kanonicznego dotyczącej administracji Kościoła.

Słowa kluczowe: Kościół; prawo kanoniczne; Sobór Watykański II.