

## THE PRINCIPAL DIFFERENCES BETWEEN ORTHODOX CHURCH LAW AND THE LAW OF THE ROMAN CATHOLIC CHURCH

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**Abstract.** *When discussing church law one must first bear in mind its complex structure. The central, fundamental part of church law is **canon law**, which regulates the **internal life of the Church**, and this primarily means the organization of the Church as a community of priests and laypersons, their mutual rights and obligations, and the activity of the Church within this community: the clerical work; teaching; government and trial. **Ecclesiastical law** is also a part of church law, and it regulates matters of common interest to the Church and the state. Religious education in state schools in particular requires the coordination of Church and state. The fundamental source of church law in general and canon law in particular is found in **divine laws**. The point of departure between Orthodox and Roman Catholic church law is found precisely in the **different interpretation** of divine laws.*

*The supreme authority of all Church, the Ecumenical Council decides on its own competences. It judges on teachings prominent in the Church and specifically condemns heresy. It regularizes the governance of the Church in general and hierarchical Churches in particular, and also deals with the rights of the Churches in governance. The conciliarity principle is valid for hierarchical Orthodox churches, too – their supreme bodies are regional councils. The Ecumenical Councils of the Orthodox Church are legitimate successors of the Apostolic Council, and are therefore also the institution of divine law. The Orthodox Church recognizes seven Ecumenical Councils, held in the period 325 – 787. That is to say, the Orthodox Church does not accept the position that the Roman popes are his successors. It remains unknown who founded the Roman church. However, this was certainly not the apostle Peter.*

**Key words:** *Christianity, bible, church law, Catholic Church, Orthodox Church, Apostle Peter.*

When discussing church law one must first bear in mind its complex structure.

The central, fundamental part of church law is **canon law**, which regulates the **internal life of the Church**, and this primarily means the organization of the Church as a community of priests and laypersons, their mutual rights and obligations, and the activity of the Church within this community: the clerical work; teaching; government and trial. Let us mention that church dogmas, also a subject matter of dogmatics as a philosophy of Christianity, represent a constituent part of canon law, since their breach means a particularly serious guilt according to church law. Due to such an important position of canon law, the discipline dealing with it is called **canonistics**.

**Ecclesiastical law** is also a part of church law, and it regulates matters of common interest to the Church and the state. For instance, marriage is a holy sacrament for the church, but marriage and the family also provide the basis for the life of a community – a state or a nation. The church funeral is a holy act, however the legal organization of cemeteries is today inevitably in the jurisdiction of the state and the local government – for cultural, hygienic, and reasons of town planning. Religious education in state schools in particular requires the coordination of Church and state. The temple is a holy place, but it can also be a historic cultural monument protected by the state. And so forth. The view that the Church holds, that the relations between state and Church should be harmonious, is reflected in the position that matters of ecclesiastical law should be ordered through a mutual agreement of the two. This agreement is called a **concordat**. To be sure, a concordat is usually a formal agreement that the state and the Church conclude as two equal parties, a contract, therefore, made after the model of international treaties. However, this form is not obligatory. There is a concordat also if the state orders the matter single-sidedly, by a legal act, after it has obtained the positive opinion, i.e. consent of the Church.

Finally, there is also the so-called **law of religious communities**. These are regulations by means of which, in the regime of the separation of Church and state, the state imposes its will on the Church in those matters that the Church believes should be defined by the agreement of the two parties. These regulations, viewed as hostile by the Church, are not a source of church law. However, the science of church law still studies them as they regulate the relations between Church and state.

The fundamental source of church law in general and canon law in particular is found in **divine laws**. Divine laws are proclaimed mostly in the New Testament. Divine laws from the Old Testament pertaining to the Jewish church and nation are not valid for the Church as a "New Israel". However, divine laws from the Old Testament which are general in nature, primarily the Ten Commandments that God declared to Moses, still hold for the Church.

The point of difference between Orthodox and Roman Catholic church law is found precisely in the **different interpretation** of divine laws.

In the Orthodox view, the New Testament laid foundations for the episcopal-conciliary governance of the Church. According to the Gospel of Matthew (18, 18), the Lord Jesus, speaking about the Church, said to his students – the apostles: "Verily I say unto you, whatsoever you shall bind on earth shall be bound in heaven: and whatsoever you shall loose on earth shall be loosed in heaven." Later on, the apostles would transfer their right and duty of supreme governance of the church to their successors, bishops, through ordination, and these would then ordain new bishops; this gave rise to the so-called apostolic succession (*successio apostolica*), the first principle of **legitimate** exercise of full

church authority. Today this principle is not accepted only by the majority of Protestant Churches: for them, a bishop is not heir to the apostles, but rather a mere church or civil servant. The apostles are, however, equal in rights, and they resolve all issues related to the Church as a whole, the Christian Ecumene, together, in a conciliary way. And this is the second principle of **legitimate** exercise of full church of authority, the conciliarity principle. As it may be, the Lord Jesus explicitly condemned any idea of a possible hierarchy among the apostles, i.e. of apostolic supremacy. This is what the Gospel says (Matthew, 18, 1-4): "At the same time came the disciples unto Jesus, saying, who is the greatest in the kingdom of heaven? And Jesus called a little child unto him, and set him in the midst of them, And said, verily I say unto you, except you be converted, and become as little children, you shall not enter into the kingdom of heaven. Whosoever therefore shall humble himself as this little child, the same is greatest in the kingdom of heaven." Again, the mother of the apostles Jacob and John, sons of Zebedee, asked Him to allow them to sit with him in the Kingdom of Heaven, one to the right, the other to the left; having heard this, all the other apostles became angry with these two brothers. The Gospel continues (Matthew, 20, 25-27): "But Jesus called them unto him, and said, You know that the princes of the Gentiles exercise dominion over them, and they that are great exercise authority upon them. But it shall not be so among you: but whosoever will be great among you, let him be your minister. And whosoever will be chief among you, let him be your servant." Finally, the same question was posed during the Last Supper (Luke, 22, 24-27): "And there was also a strife among them, which of them should be accounted the greatest. And he said unto them, The kings of the Gentiles exercise lordship over them; and they that exercise authority upon them are called benefactors. But you shall not be so: but he that is greatest among you, let him be as the younger; and he that is chief, as he that doth serve. For whether is greater, he that sitteth at meat, or he that serveth? is not he that sitteth at meat? but I am among you as he that serveth."

In the narrower sense, the conciliarity principle was first expressed at the Apostolic Council in Jerusalem, probably held in AD 49. The jurisdiction and decisions of this Council became part of the regulations of the Scriptures, and thus have the power of divine laws. The Apostolic Council resolved that Christian Gentiles were exempted from the duties imposed by the law of Moses, except that they had to abstain from meats offered as a sacrifice to the idols, from blood, from strangled animals, and from fornication – "from which if you keep yourselves, you shall do well." (Acts, 15, 29). It was also allowed that the apostle Paul and Barnabas should continue preaching the Gospels to Gentile brothers. As for the Jews, the Council found that their evangelization should still be carried out by the Church of Jerusalem, primarily by the apostle Peter (Gal, 2, 7-8). The Council still had to pay its debt to the historical situation, prescribing that the Christian Jews, Judeo-Christians, were still to adhere to the Law of Moses (Acts, 15, 21): "For Moses of old time hath in every city them that preach him, being read in the synagogues every sabbath day."

The Ecumenical Councils of the Orthodox Church are legitimate successors of the Apostolic Council, and are therefore also the institution of divine law. It is desirable, but not necessary, that all hierarchical Churches should be present at the Ecumenical Council. However, it is important that the Council's decisions be accepted by all the Churches, both those whose representatives participated in the Council, and those who had no representatives, nor provided their position on issues to be discussed in the Council in specific epistles. "There have been heretical councils", Nikodim Milaš says (Orthodox Church Law, 3<sup>rd</sup> Ed, Belgrade

1926, 309), "like the one where the semi-Arian symbol was added, or such, whose acts were signed by numerous bishops, more of them than at the Fifth Ecumenical Council, and also such whose resolutions were signed by both patriarchs and emperors. However, all these councils have not been recognized as ecumenical for the simple fact that the faithful people could not accept those decisions as the true voice of the church." The Orthodox Church recognizes seven Ecumenical Councils, held in the period 325 – 787.

The supreme authority of all Church, the Ecumenical Council decides on its own competences. It thus defines the dogmas of faith and presents them in the form of symbols and religious positions (Canon 7 of the Third Ecumenical Council). It judges on teachings prominent in the Church and specifically condemns heresy (Canon 1 of the Second Ecumenical Council). It clarifies and defines rules (canons) adopted at the previous Councils (Canon 1 of the Fourth Ecumenical Council). It regularizes the governance of the Church in general and hierarchical Churches in particular, and also deals with the rights of the Churches in governance (Canons 6 and 7 of the First Ecumenical Council). It orders the ranks and rights of bishops (Canons 4 and 6 of the First Ecumenical Council). Based on the Scriptures, the holy tradition and Christian morality, it exercises judicial power over the bishops, including autocephalous bishops, and also over hierarchical Churches themselves (Canons 12, 13, 32, 33, 55, 56, and 81 of the Fifth and Sixth, Trullan Ecumenical Council).

The conciliarity principle is valid for hierarchical Orthodox churches, too – their supreme bodies are regional councils. However, in the old times, when all metropolitan Churches were autocephalous, according to the Canons 34 and 37 of the Canons of the Holy Apostles, the archbishop always had to act with the knowledge of all other bishops from his archbishopry, and there was a council of bishops twice a year, where the bishops discussed with one another the dogmas and resolved church disputes. Jevsević Popović comments on this (General Church History, I, Srem. Karlovci 1912, 2<sup>nd</sup> phototype edition, Novi Sad 1995, 293): "The archbishop was merely an individual preserving unity among the bishops. To be true, in his province he had not only a honorary, but also a jurisdictional primacy, however not with monarchic, but only with presidential powers, and not according to divine law, coming from Christ, but according to human law, made by the church after the apostles."

The bishops of Rome, the popes, turned this principle upside down, having established an unlimited, monarchic power over their Church and having expressed thereby their claim to such power over the entire ecumenical Church, i.e. to their sole autocephaly. The climax of such apostasy from the fundamental legal principles of original Christianity is found in the proclamation of the dogma of papal infallibility, declared in the constitution "Pastor Aeternus" by Pius IX on 18 June 1870. This dogma ruined any remnants of a national Roman Catholic Church and introduced a total centralism, a precursor to contemporary globalism.

The Roman popes found **legitimacy** for this outrageous abuse of law in the statement of the Lord Jesus from the Gospel of Matthew (16, 18-19): "And I say also unto thee, that thou art Peter, and upon this rock I will build my church; and the gates of hell shall not prevail against it. And I will give unto thee the keys of the kingdom of heaven: and whatsoever thou shalt bind on earth shall be bound in heaven: and whatsoever thou shalt loose on earth shall be loosed in heaven."

However, as we have stated before, Jesus gave this same power to other apostles, too. According to the teaching of Protestant Churches, Jesus gave this so-called "Power of the

Keys" (*potestas clavium*) not to Peter in person, but to the Church as a whole. Moreover, a notable Roman Catholic exegete, bishop of Avila Alphonsus Tostatus (died in 1455), claimed the same, and was never considered a heretic for this. History has showed that the latter interpretation is correct. (See: Richter/Dove/Kahl, *Lehrbuch des katholischen und evangelischen Kirchenrechts*, I, Neudruck Aalen 1975, 309 sqq.).

Starting from the "power of the keys" proclamation, the Roman popes have constructed the following theories: First, the apostle Peter was the first of the apostles, and thus the head of the Church as a whole. Second, the apostle Peter was the first bishop of Rome and died in Rome, crucified head down, in the time of Nero's persecution of Christians, in AD 64 or 67. Therefore, the Roman popes are heirs to the apostle Peter and thus heads of the entire Church. The popes have not only considered themselves Peter's successors, but have also identified with him. They often declare themselves: "I am Peter" (*Ego sum Petrus*).

A critical examination of the sources reveals that such theories are untenable.

We have already shown that the Lord Jesus did not allow that any supremacy among the apostles should be established; the hierarchy that emerged among the bishops later is an institution of human, and not divine law. However, was there not a factual, indirect supremacy of Peter over other apostles? Not at all. Peter was the oldest and the most eloquent of the apostles. As such, he often mediated their positions, opinions, and feelings to the Lord. However, he also fell into profound weakness. It is at him that the Lord directed, just after the praise ("You are Peter..."), a strict exhortation: "Get thee behind me, Satan: thou art an offence unto me: for thou savourest not the things that be of God, but those that be of men." (Matthew, 16, 23). He renounced the Lord with an oath, for which he repented bitterly (Matthew, 26, 69-75). It was only the resurrected Lord that forgave him and prepared him for missionary work (John, 21, 15-18). Peter did not chair the Apostolic Council of Jerusalem, even though he was present and spoke there. Additionally, he had to justify his appearance with the baptism of the centurion Cornelius (Acts, 11, 1-18). The apostle Paul criticized him in his presence for being double-faced in spreading the Gospel in Antioch (Gal, 2, 14): "If thou, being a Jew, livest after the manner of Gentiles, and not as do the Jews, why compellest thou the Gentiles to live as do the Jews." Decisive to the appreciation of Peter's position in the Church of Jerusalem is the testimony of the apostle Paul, who put him to the second position, behind Jacob (Gal, 2, 9): "And when James, Cephas (which means Peter in Aramaic), and John, who seemed to be pillars, perceived the grace that was given unto me, they gave to me and Barnabas the right hands of fellowship; that we should go unto the heathen, and they unto the circumcision."

The Protestant Churches hold the position that the apostle Peter was never in Rome. To be true, the Orthodox Church accepts the traditional view that he perished in Rome, but not that he was a Roman bishop. That is to say, the Orthodox Church does not accept the position that the Roman popes are his successors. Even further, more recent Orthodox Church historians question the position that the apostle Paul ever visited Rome; (see, for instance, Jevsević Popović, *op. cit.*, 195 sqq., 225 sqq.; M. E. Posnov, *The History of the Christian Church [История Христианской Церкви]*, 2002). As it may be, Acts of the Apostles, which the apostle and gospel writer Luke wrote quite some time after Peter's death, perhaps around AD 80, although providing elaborate details on the activities of the apostle Peter, say nothing about his stay in Rome. This text would have to talk about this when describing the arrival of the apostle Paul in Rome (around AD 61), when he was welcomed there by Christian brothers (Acts, 28, 14): "And from thence, when the brethren

ren heard of us, they came to meet us as far as Appii forum, and the three taverns: whom when Paul saw, he thanked God, and took courage." However, Peter was not among the brethren. It remains unknown who founded the Roman church. However, this was certainly not the apostle Peter. In his epistles from Rome, the apostle Paul also failed to report that he had met Peter there, although in the Epistle to Galatians he described in detail his encounters with Peter in Jerusalem and Antioch. An exquisite contemporary scholar, the theologian Heussi (*Die römische Petrustradition in kritischer Sicht*, Tübingen 1955, 1 sqq.), based on the analysis of Paul's Epistle to Galatians (2, 6-9) concluded that, in the time in which it was written, around AD 57, the apostle Peter was no longer alive, i.e. that he had died long before Nero's persecution.

It would be useful here to mention a comment by the world-renowned papal historian, Kühner, even though, as a Roman Catholic believer, he stands on the position of the official tradition of his Church (H. Kühner, *Lexikon der Päpste*, Wiesbaden 1991, 23): "Peter was the first archbishop of Antioch and, as the first head of the Roman Christian municipality, he may be taken for the first Roman bishop. However, one can discuss papal dignity only beginning with the third decade of the 4<sup>th</sup> century."

Among numerous forgeries that the Roman popes have used to prove a right of theirs, "The Donation of Constantine" (*Constitutum Constantini Imperatoris – Donatio Constantini*) was given global historical importance. It is contained in a legal collection, which is otherwise packed with forgeries, "Pseudo-Isidorean Decretals" (*Decretales Pseudo-Isidorianae*), from which, around 1140, it was taken over and incorporated into Gratian's *Decretum*, the first part of the Body of Canon Law (*Corpus iuris canonici*), which would remain the principal source of the canon law of the Roman church, even though as early as in the 15<sup>th</sup> century cardinal Nicholas of Cusa and universal humanist scholar Lorenzo Valla had empirically proved that it was forged. "The Donation of Constantine" is older than Pseudo-Isidorean Decretals; it originated in the forger's workshop of pope Symmacus (ruled from 22 November 498 to 19 July 514), who is also a Roman Catholic saint; (see: Kühner, *op. cit.*, 54 sq.). According to the false "Donation of Constantine", pope Sylvester the First, who in reality never met Constantine the Great, cured this alleged major persecutor of Christians from leprosy and baptized him. In return, having decided to move to the East of the Empire, Constantine granted the popes dominion over Rome and all of Italy with the western provinces, and gave them the imperial insignia, so that, from that point on, the popes were legitimate rulers of the Western Roman Empire. "The Donation of Constantine" was efficiently used by pope Stephen the Second in winter 753/54, who showed it to the King of the Franks Pepin the Third, otherwise an usurper of the throne. Pepin "believed" and granted papal rule over the city of Rome and Central Italy – through this, a church state was made which endured until 20 September 1870. Pepin was rewarded by being recognized as a legitimate ruler and a Patrician of the Romans (*Patricius Romanorum*), and also "the adopted son" of St. Peter.

However, having proclaimed the dogma of their own infallibility, the Roman popes exceeded the legitimacy of Peter – since the apostle Peter was a man who made mistakes. This is why with this dogma the popes proclaimed themselves gods. Accordingly, this new papal legitimacy can be founded only on apostle Paul's Second Epistle to Thessalonians, which says (2, 4): "Who opposeth and exalteth himself above all that is called God, or that is worshipped; so that he as God sitteth in the temple of God, shewing himself that he is God." It is also suggestive that the Code of Canon Law (*Codex iuris canonici*)

promulgated by Benedict XV in 1917, whose slightly revised 1983 version remains the principal source of law in the Roman Catholic Church, fully cancels the difference between the rules of the Ecumenical Church and later papal legislative additions, so that today's Roman Catholic canon law is only and exclusively papal law. Undoubtedly, signs are present that the end of the Christian eon, and therefore the arrival of Antichrist, is near. However, in the same Second Epistle to Thessalonians, the apostle Paul says that this end, or coming, will not happen until there is the "one who restrains", the "katechon" (2, 6-7). Today, after almost twenty centuries, we know that only the Orthodox Church can be this katechon. For it is only this Church that preserves and maintains as pure the **sources** of the Christian river, including the memory of the Christian Empire, "The Byzantine Commonwealth". This preservation and memory are also reflected in the resolution of the Holy Synod of Bishops of the Serbian Orthodox Church of 12/25 May 1939 – standing in sharp contrast to the motorised legislation of the Roman popes and their incessant production of new false miracles and false saints: "That the Krmchya<sup>1</sup> shall remain our official canonical Code until it is replaced by a new one."

## OSNOVNE RAZLIKE IZMEĐU PRAVOSLAVNOGA CRKVENOG PRAVA I PRAVA RIMOKATOLIČKE CRKVE

**Milan Petrović**

*Kada je reč o crkvenome pravu, najpre se mora imati u vidu njegova složena struktura. Središnji, stožerni deo crkvenoga prava čini kanonsko pravo, koje uređuje unutrašnji život Crkve, a to u prvom redu znači ustrojstvo Crkve kao zajednice sveštenih lica i laika te njihova međusobna prava i obaveze, kao i delatnost Crkve unutar te zajednice: sveštenodejstva; učenje; upravljanje i suđenje. Deo crkvenoga prava je i eklezijastičko pravo, koje uređuje materije od zajedničkoga značaja za Crkvu i državu. Verska nastava u državnim školama naročito zahteva koordinaciju Crkve i države.*

*Glavni izvor crkvenoga prava uopšte i kanonskoga prava napose čine božanski zakoni. Ishodište razlike između pravoslavnoga i rimokatoličkoga crkvenog prava leži upravo u različitom tumačenju božanskih zakona. Kao vrhovna vlast celokupne Crkve, Vaseljenski sabor je sam opredeljivao svoju nadležnost. On utvrđuje dogmate vere i izlaže ih u obliku simbolâ i verskih stavova, prosuđuje učenja istaknuta u Crkvi i posebno osuđuje jeresi. Princip sabornosti važi i za oblasne pravoslavne crkve – njihovi vrhovni organi su oblasni sabori. Vaseljenski sabori pravoslavne Crkve legitimni su nastavljajući Apostolskoga sabora, te su s toga i oni ustanova božanskoga prava. Pravoslavna Crkva priznaje sedam Vaseljenskih sabora, koji su držani u razdoblju od 325. do 787. godine. Pravoslavna Crkva ne prihvata predanje da su rimske pape njegovi naslednici. Ko je osnovao rimsku Crkvu, ne zna se. Apostol Petar, međutim, to nikako nije.*

Ključne reči: *hrišćanstvo, biblija, crkveno pravo, Katolička crkva, Pravoslavna Crkva, apostol Petar.*

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<sup>1</sup> Krmčija, Krmchya (Constitution) – St. Sava's translation of Byzantine Church Code, 13<sup>th</sup> century (translator's remark).