LEGAL WISDOM OF THE CHURCH: THREE EXPERIENCES

Introduction

A basic conviction I have reached is that wisdom is the art of agape. Canon 1752 of the Code of Canon Law coins it as the salvation of souls being the supreme law of the Church. But salvation is Christ's agape artfully and skilfully administered to the sinner. It is the Wisdom of the Cross. So, however remotely or indirectly, every canonical norm must lead to the *Soter*, the Saviour. That is easier to perceive in some norms rather than in others. Yet it seems clear that the Wisdom of the Church's law can only mediate the Wisdom of the Cross if it is to be truly wise.

Hence, the wisdom of the law neither issues from, nor is it confined to, positive ecclesiastical law itself. Pope Benedict XVI delivered a masterful speech to the Roman Rota in 2012 in which he highlighted well the "hermeneutic horizon" of canon law. I quote one short paragraph from the beginning of his speech:

> *"Were one to identify Canon Law with the system of the laws of the canons, the understanding of what is juridical in the Church would essentially consist in grasping what the legal texts establish. At first glance, this approach would appear to attribute to human law its full value. However, the impoverishment which this conception would bring about is obvious: the practical oblivion of the Natural Law and of the Divine Positive Law, as well as the vital relationship of every Law to the communion and the mission of the Church, deprives the work of the interpreter of vital contact with ecclesial reality."*[1]

As examples of criteria that are not in canon law itself, but which are essential to its interpretation, I mention in passing *aequitas canonica* and *epikeia*. Canonical equity is at root a spiritual attitude. It acts as a corrective to the rigour of the written law in the face of the concrete circumstances of a given case, so as to protect the supernatural good of the individual.[2] In some ways

[1] https://www.vatican.va/content/benedict-xvi/en/speeches/2012/january/documents/hf_ben-xvi_spe_20120121_rota-romana.html accessed on 20th August, 2023. Translation slightly altered.

[2] Examples of canonical equity in the law itself are those of mitigating circumstances (c. 1324) and the reduction of accumulated penalties (c. 1346 §2).

it calls on a higher justice and is an expression of agape for the good of the souls involved.[3]

Likewise, *epikeia* (reasonableness) can be invoked whenever the application of a law in a given case would be harmful to someone's salvation. Had the legislator been able to foresee that harm, he would have dispensed from the law.[4]

With this broader hermeneutical horizon of the law in mind, I offer three brief reflections on the theme of the "legal wisdom of the Church" taken from my experience of the universal, "national"[5] and then local dimensions of Church life.

Experience at the universal level

I spent sixteen years as a papal diplomat. Thirteen of them were spent in countries with *bilateral* diplomatic ties with the Holy See. Three were spent in the *multilatera*l context of the UN and other international specialised institutions with offices in Geneva. In all these cases, we worked within the parameters of canon law on the one hand and international diplomatic law on the other.[6] Due to time constraints, I can only focus here on one instance which demonstrates, I believe, the wisdom of the Church's law in action at this international level.

When I was sent to the Apostolic Nunciature in Venezuela, in 1994[7], I was taken aback to realise that, due to the terms of a Convention between Venezuela and the Holy See[8], the President of the Republic was still accorded this privilege: he had the right of foresight of the name of any new bishop nominated by the Pope. If he had objections of a general political

[3] Cf. G. Ghirlanda, "Il diritto nella Chiesa", *Editrice Pontificia Universita Gregoriana*, Roma, 1990, 3rd edition, pp. 70-71.
[4] Ibid., pp.477-478.
[5] Strictly speaking, of course, we can't describe the Catholic Church as "national", but as perhaps regional or inter-regional or inter-diocesan. I use the term loosely for ease of discourse.
[6] In terms of canon law, that included both the 1983 Code of Canon Law as such and ecclesiastical law more broadly (e.g. the special norms for the appointment of bishops; the regulations for Pontifical Representations). In terms of diplomatic law, the main instrument was the 1961 Convention of Vienna on diplomatic relations.
[7] My diplomatic rank was secretarial, not ambassadorial.
[8] Convention between the Holy See and the Republic of Venezuela, ratified in October 1964, article 6. The Convention was ratified while Vatican II was in full swing.

nature to the candidate chosen, the Holy See would have to present another name. In its own way, this is a vestige of the investiture controversy of the Middle Ages which lingered in Church-State relations until recent times. Vatican II, in par. 20 of "Christus Dominus"[9] had openly petitioned the competent public authorities of the nations to relinquish such privileges voluntarily in the interest of the Church's freedom of religion. I believe some did so, but Venezuela was not among them.

A test of this state of affairs occurred in 1995 when there matured a proposal to create a Military diocese or Ordinariate for Venezuela. We were instructed at the time by the Holy See to try and negotiate an agreement with the Venezuelan government which would omit any reference to the presidential privilege. It was an attempt by the Church to get the wedge in. The Church wanted to renegotiate the 1964 Convention itself and secure for all future episcopal appointments an end to what was really a form of presidential veto. However, the Venezuelan Foreign Minister demurred. He would not accede to the Holy See's request for a new law to establish the Military Ordinariate in which said veto disappeared. His position was that the new agreement should be kept within the matrix of the ratified 1964 Convention. So, while we were successful in getting the Military Ordinariate created[10], the Venezuelan President's privilege remained intact. He could still veto the episcopal nomination of a candidate he considered to be politically uncomfortable.

So, what was at stake here in terms of the legal wisdom of the Church?

If we had time, a historical excursus on the complex matter of the separation of church and state would be here in order.[11] So, at the risk of massive over-simplification I will make just a few points. Just as historical circumstances

[9] Interestingly, the text of this document was promulgated in October 1965, one year after the ratification of the Convention.
[10] The Agreement was signed on 31 October 1994 and ratified the following year.
[11] The main headlines of that might read: Jesus' separation of God and Caesar (Matt. 22:21); the Jewish and the Roman rejection of that separation; the Church, first of the catacombs, from 64 AD, and then of Constantine's favour from 313 AD with the Edict of Milan; the collapse of the western Roman Empire and the *de facto* assumption of temporal rule over much of its territory in Italy by the Pope; the donation of Pepin the Short to Pope Stephen II in 756 effectively creating the Papal States; the Investitures controversy of the Middle Ages; the absolutist claims of Pope Boniface VIII in the Bull "Unam Sanctam" of 1302; the Avignon debacle; the swinging pendulum of later claims and counterclaims by Popes, emperors, kings and other heads of state as to which of them was to subject to whom; the Reformation; the French Revolution, the abductions of Pius VI and Pius VII by Napoleon; etc..

had forged to bring into *existence* the Papal States around the middle of the first Christian millennium, so the emergence of nation states in the middle of the second millennium eventually led to the *end* of the Papal States. The process reached a head with the *risorgimento* and reunification of Italy in 1870. This led, however, to the issue called historically the "Roman Question": what was the role of Rome after the Italian Risorgimento since it was now the seat of temporal power of both the Kingdom of Italy and of the Pope? A solution was eventually negotiated by Pius XI and Mussolini in the form of the Lateran Treaty of 1929. It established a minimal territorial state, the Vatican City State, in which the Pope was a temporal sovereign. Thereby, he was free from secular political influence in the exercise of his spiritual role as Supreme Pastor of the universal Church. God would at last be free of Caesar! The Lateran Treaty effectively enacted what Jesus had wanted in the first place: the separation of Church and state.

While there would be much more to say about this, the Venezuelan case I have described exemplifies the desire of the Church to be absolutely free from merely political concerns and control in the appointment of the chief evangelisers and pastors of local churches. To the degree that this is not yet the reality, as in the case of Venezuela and China, it is the patient bilateral diplomatic work of the Holy See which works to achieve it.[12]

It seems important to add that while Church and State must be separated, the wisdom of necessity requires them to interact. Members of the Church are simultaneously subjects of the State. The whole concordat system emerged to ensure that the potential for conflict between Church and State was minimised in areas of life where the mission of the Church and the policies and laws of the state could clash: for example, in the freedom of religion, in schools and education, in property rights, etc..[13] The negotiation of a concordat, or of other less solemn forms of agreement, seeks to put in place in the particular circumstances of a given nation those principles and

---

[12] It is precisely this patient and careful diplomatic work in which the Holy See is currently engaged, however controversially, with the authorities of mainland China. It will be a painstaking process, with stops and starts, and in constant need of compromise and revision.

[13] It's illustrative to take a look at even the headings of a Concordat to realise how many areas of life interest both Church and State and can therefore become the source of both tension and mutual cooperation.

frameworks which will guarantee the freedom of the Church whilst ensuring the due sovereignty of the State.

Experience at the "national" level

For nine years I served as Officialis of the Scottish Catholic Interdiocesan Tribunal based in Glasgow. The vast majority of cases handled by most ecclesiastical Tribunals is constituted by marriage nullity petitions. During my tenure in Glasgow, we also handled other *kinds* of marriage cases, one or two cases relating to the vindication of rights and several penal cases.

But anyone taking a look at Book VII of the Code of Canon Law, entitled "de processibus", would, as I did myself at first, wonder what on earth all this has to do with the life of the Church or the life of the ordinary parishioner. And there are certainly a large number of very dry and formal norms in there! But in using them, one comes to realize that these norms are the fruit of centuries of experience. Wisdom is found in the old, and discretion comes with great age.[14] That's as true of systems and institutions as it is of individuals. So, those dry procedural norms actually piece together the nuts and bolts of a complex search-engine capable of getting to the truth of a case, insofar as that's humanly possible. Justice is then administered on the basis of that truth.

The truth in question, and thus the justice in question, is at root, once again, soteriological: *Salus animarum, suprema lex in Ecclesia* (c. 1752). It is not just about the bare factual truth of allegations, proofs and defences. Nor is it just about the moral truth of judicial argumentation and sentencing. All of that is essential, of course. But its purpose is to promote and defend the truth of *salvation* for the main party or parties involved. Just as the freedom of the Church from political interference is necessary to exercise the mission of salvation, so the Church must ensure that her own internal processes are not undermined by falsehood for the sake of that same mission. Well aware of the human inclination to embellish or manipulate the truth, or to engage in contentiousness for its own sake, or even in revenge, the Church has

[14] Job 12:12.

developed judicial and administrative processes to ensure that the truth is uncovered as diligently and as fully as possible.

People's experience of especially the marriage nullity process varies greatly. For some, it's a clean break with a traumatic past; for others, it's a need to know the truth; for some, it's the famous or infamous "Catholic divorce"; for others, it's a cathartic if painful reckoning with their own mistakes or with those of the other party; for some, it's a necessary evil to regain access to peace of conscience and the sacraments of the Church; for others, it's an obstacle to precisely these same things. And all of that is before we even ask the theological or canonical questions associated with marriage nullity or dissolution. When Jesus says that wisdom is proved right by her actions[15], he only does so after showing how people's different reactions to himself proceed from themselves. To the degree that the Church's law shares in His mission of salvation, analogous reactions will ensue to it, too.

What I grew to appreciate over time was, in fact, the wisdom of the nullity process in action. In the midst of the huge spectrum of subjective approaches, attitudes, prejudices, expectations, etc., it demonstrates a masterful balance between the rigour of an objectively blind justice and the flexibility which allows the judge to tailor the norms to each case. Each case will have something new, its own idiosyncrasies; but because of the vast corpus of jurisprudence extant, from that of the Roman Rota to that of the local tribunal itself, it is the rare case which is completely new. The accumulation of *case* wisdom complements the framework of *normative* wisdom which in a combined way assists the judges in reaching the *specific* wisdom which accrues to the concrete case.

In my view, Pope Francis' reforms in marriage nullity law contributed two major provisions of practical wisdom. He abolished the automatic review of all marriage nullity decisions by the court of appeal. He also introduced the briefer nullity process, to be judged by the diocesan bishop himself, in cases in which the evidence of nullity is highly persuasive even from a first reading of the petition presented.

---

[15] Matthew 11:19.

A point on which I believe the legal wisdom of the Church in this context could be amplified and refined is to make it possible for more laity, especially married laity, to become tribunal personnel. This would require of course a whole infrastructure of resources in order to provide the theological and canonical training needed. At times, alas, such resources are not even made available for clerics who serve on tribunals, so I am well aware that my suggestion might itself be considered "unwise" or, at least, impractical. I don't think the principle itself, however, is unreasonable since the married can bring to bear the wisdom of their lived vocation on the theological and canonical wisdom of the law. They would enrich it by that very fact especially in processing the nitty gritty evidence of particular cases. It could be argued that anything which can clearly be seen to enhance the wisdom of salvation in the administration of justice in the Church should be pursued as fully as possible as a matter of obligation, and not just as an interesting initiative.

Experience at parish level

At parish level, it may be useful to consider the legal wisdom of the Church from three perspectives: the rights and obligations of parishioners; the rights and obligations of the pastor or parish priest; and the rights and obligations of the parish itself considered as a public juridical personality, that is to say, as a collective subject of rights and obligations.

In terms of the rights and obligations of parishioners, my observation would be that, although most parishioners could not conceptualise or verbalise their rights, they do have expectations in the reality of parish life that their needs be met, and primarily by the parish priest. They expect the priest to do his duty by providing what they intuit as a service owed to them, which is just another way of describing or defining a right. This ranges from everything connected with the administration of Word and Sacrament to the various pastoral services which they expect the priest to deliver, such as school chaplaincy or spiritual counsel.

I tried a couple of years ago to write short articles in the parish bulletin about the rights of the faithful as these are contained in the Code of Canon Law.

I got no reaction, which doesn't mean of course that the articles weren't read or discussed among the people. But I found it significant that not even the type of parishioner who would normally be more vociferous sought to engage with me, positively or negatively, about lay rights in the Church. It's difficult to know whether apathy or a sense of the obvious might explain the lack of reaction. Perhaps if I had arranged the occasional talk on this subject matter I might have had a better result. But experience tells me that the usual suspects would have come out to those talks "to support father" as much as to learn more about their rights. Perhaps another way to look at it is to say: people won't listen to theoretical discourse about their rights, but if a concrete situation arises they will know, sense or try to find out what their rights or duties are in that situation. I suppose at one level, that itself demonstrates that legal wisdom is something more akin to practical experience of relations within the community than to a sort of canonical iCloud with endless reserves of sagacity.

In terms of parishioners' obligations, I would say that the core of these is known and observed mainly be people of a certain age: e.g. Sunday Mass, Easter duties, going to the Church in whose jurisdiction you live, financial contributions, sending the children to a Catholic school, etc.. Secularism and other factors have led to an indifference or abandonment of these duties by the vast majority of nominal Catholics for reasons we all know or suspect. A certain type of practising Catholic also exercises a kind of self-dispensation from canonical obligations in the name of freedom or even of conscience. All of this notwithstanding, the wisdom of the law retains all its soteriological import, and while canonical equity and *epikeia* can and must be invoked when the salvation of souls demands it, their usage would devolve into folly if they became the rule.

With respect to the rights and duties of the pastor or parish priest, the law in some parts effectively translates into legal terms the teaching of *Presbyterorum Ordinis* on the life and ministry of priests. In other parts, it follows the practicalities of the lifespan of the priest from his appointment to his retirement. The canonical rights of parish priests, and of priests in general, are rather basic and, I suppose, obvious. They can probably be divided into personal rights and official rights. Personal rights concern things

like financial and fraternal support or stability in office; official rights are mainly the result of the priest's official obligations, e.g. the right to officiate at all marriages and funerals in his parish, the right to oversee and preside the Liturgy. My experience is that many priests don't know well what their personal and official rights are, especially in relation to their bishop or ordinary. I think more needs to be done to make them aware of those rights but in the context of also making them more aware of the exact nature of their obligations.

My own view is that the law goes too far in some places by making a legal obligation out of what can only be an ideal that is scarcely attainable for most priests. For example, the canons which address the threefold *munera* of teaching, sanctifying and pastoring make for inspiring *paranesis,* but they can be crushing and stressful – and perhaps lead to paranoia! – if a priest were to try and implement them all as canonical, and therefore moral, obligations. The situation on the ground today, at least in many parts of the West, and certainly in Scotland, is that many priests have more than one parish to pastor. And it's not as if you could say, well, give the multiple parishes to the younger priests: there are very few of them! I myself have two parishes, one larger than the other, and find that I am reduced mainly to maintenance of basic ministerial tasks. Even then, that is with the assistance of a paid secretary, a paid hall keeper and a number of valiant volunteers. In such circumstances, there is little time for extra-parochial activity and outreach, even within one's own deanery. I found it very challenging, for example, to try and motivate my parishes to participate in the Synod. No matter how much it may be a movement of the Spirit, I think that, from priests in parishes with an already overwhelming workload, it will necessarily receive a patchy response. The fact that less than 1% of Catholics worldwide has participated in the Synod so far is at least in part a reflection of that.

Not just the parishioners, nor only the parish priest, but also the parish as such, as a public juridical person, is the subject of rights and duties in canon law. The notion of public juridical person is not just a *fictio iuris* because, in fact, it encapsulates something of the nature of the Church as communion. Groups of people, from the family to the religious congregation or secular institute, form natural structures or cells to which are owed certain

protections and recognised certain prerogatives. This is not a sort of atomisation of the Church but a recognition that she is an organic whole made up of distinct organic parts or systems. The status of public juridical person confers a subjective capacity on these cells to act in the promotion and defence of their interests within the law. The law here guarantees those interests both for the good of those who form the juridical person and for the greater public good of the Church herself, the supreme expression of which is, once again, the salvation of souls.

By way of example, one area in which the law protects parishes is in the area of temporal goods. Parish buildings and financial assets (and liabilities) belong to the juridical person of the parish. No parishioner, parish priest or bishop may simply plunder a parish's money or sell its properties. The law sets very clear limits in principle on what the diocese may take by way of parish taxation. The theological reality of the diocese as the sum of its parishes does not translate *talis qualis* into law. In fact, the diocese is itself a public juridical person with rights and duties and, as such, stands *vis a vis* other such persons, including parishes. It does not absorb them. Hence, canon law does not foresee that the diocese's temporal goods are the sum total of the temporal goods of the parishes. There is here a tension, at least in Scotland, with charity law insofar as it does in fact consider the diocese to own all of the temporal goods within its geographical jurisdiction. Even here, though, civil law expects any charity to observe its own internal law. Otherwise it could risk losing its charitable status. The internal law of a diocese is canon law, and in canon law, while the temporal goods of parishes are *in* the diocese, they are not *of* the diocese. The wisdom of this juridical separation of parishes from diocese is to ensure that the diocese does not endanger its own survival by appropriating the temporal goods of parishes in a way that would threaten their viability. It's for the diocese's own good, in other words, that canon law sets these limits.

Interestingly, while the law prescribes the obligation for every parish to have a *finance* council, or at least two competent lay assessors to assist the priest, it does not prescribe the establishment of parish *pastoral* councils. It only recommends them if the bishop considers them necessary or useful. In light of what I have said about the temporal goods of parishes, and in light of the

more probable occurrence of tension or contention between parishes and the diocese, it is clearly very wise that the finance council be obligatory.

As far as parish pastoral councils are concerned, it is certainly the mind of Vatican II, and fits well with the synodal nature of the Church, that there be this normative collaboration between priest and people. My impression is, though, that the parish pastoral council has had mixed success. I'm not sure that the Vicar of Dibley model is one that is reproduced across the country, but it seems that parish pastoral councils frequently focus on merely secondary matters, or on important matters for which a meeting is not required. Technically, where they exist, they should assist the priest in the exercise of *his pastoral ministry* by helping him investigate, programme and implement a pastoral strategy for the parish. If the three main areas of pastoral work are teaching, sanctifying and pastoring, then it is in these areas that the parish pastoral council should really operate. There is no question that there is great wisdom in the Code's vision of these councils, not only because they could bring great life to parishes, but also because, if done properly, they could help priests enormously to face the challenges if not burdens which the ministry demands of them.

Conclusion

If wisdom means imbuing human life with divine agape through actions which embody the truth, then the law of the Church is an important vehicle of wisdom, both horizontally and vertically. The various permutations of the law of the Church[16] have the aim of protecting and promoting the rights and duties of individuals and groups in view of the supreme soteriological fulfilment of human dignity in eternal salvation.

A living communion, of course, means a living law: a law which moves and breathes in symphony with that communion which protects and maximises its moving and breathing capacity. The law of the Church can never be a dead letter. If that happens, the law itself in question must be discarded or revitalised in a way which the salvation of souls demands. And if you take a look at the history of the sources of canon law, it is immediately evident that

[16] Divine natural law, divine positive law, positive ecclesiastical law.

laws were continually being promulgated and abrogated as the Church herself grew in wisdom and maturity across space and time.

Omne ens finitum perfectibile,[17] and Church law certainly falls within finite being. That it's not perfect but perfectible is itself surely a tenet of supreme legal wisdom.

[17] I have been unable to source this phrase however much it sounds like Aquinas. It's perhaps a failure in my memory of something once said in a philosophy lecture many years ago!