THE COMPLEMENTARITY OF CIVIL LAW AND CANON LAW: AN IGWEBUIKE PERSPECTIVE

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Abstract
Civil law and canon law represent two different rationalities that over time have questioned each other. Consequent upon that, very high walls are built due to perceptions that make complementarity look impossible. Igwebuike as complementary thought posits that no individual approach to the problem of human existence actually suffices. No one approach is comprehensive enough. Both systems, civil and canon law, attempt to provide the necessary structures of governance to ensure a well-functioning society. Each has its respective sphere, however, with separate but certainly not incompatible goals to be achieved.
Keywords: Igwebuike, Civil Law, Kanu Ikechukwu Anthony, Canon Law, Complementarity, Jurisprudence, Canonization.

Introduction

We are familiar with the maxim that neither the government nor the Church should enter into the precincts of the other. Such patterns of thought erect a wall between Church and state. A wall that is often kept high and impregnable because it is fueled by a perception that civil and canon law exist in two completely separated and disconnected spheres. Sometimes at best, civil law is considered irrelevant to canon law, and vice versa. Alas the biblical quotation often repeated to hold this view is "Render unto Caesar the things which are Caesar's and unto God the things which are God's." At worst, they are thought of as opponents or obstacles to one another. In spite of the wall of separation between the Church and the State, there is constant interaction between canon law and civil law majorly because Catholics live under these two sets of laws. This paper tries to understand via the tenets of Igwebuike the complementary relationship between civil and canon law.

Civil Law

Civil law is a legal system which can be defined as a comprehensive system of rules and principles usually arranged in codes and easily accessible to citizens and jurists. Civil law promotes cooperation and order, but also predictable, based on a logical and

dynamic taxonomy developed from Roman law and reflected in the structure of the codes (Ezeh N.D). It is a body of rules that defines and protects the private rights of citizens, offers legal remedies that may be sought in a dispute, and covers areas of law such as contracts, torts, property and family law. Civil laws govern ordinary private matters, separate from laws presiding over criminal, military or political matters (Legaldictionary.net, 2014). Conceptually, civil law proceeds from abstractions, formulates general principles, and distinguishes substantive rules from procedural rules. It permits adaptation to change, hence leaving room for the judiciary to adjust rules to social change and new needs, by way of interpretation and creative jurisprudence.

Canon Law

Canon law deals with juridical relations of the Church "*ad intra*" – to maintain law and other in its community. Church was established for "the guidance and salvation of the people of God". The Church's original reason for being is that of service. It is a society founded on love. The spirit of ecclesiastical law is love. The Church's juridical activity is, as it were, a sacramental sign of salvation because the ecclesiastical structure shares in the sacramental nature of the Church (Eboh, 2004). The object of canon law, is to serve as a legal instrument, for the life of the People of God, so that the community of faith can translate the values of the kingdom, into reality, in accordance with the demands of justice and mercy. Faith needs to be reflected in a legal arrangement. However, as faith is lived in a social, political, economic and cultural context, canon law has to meet the challenges in their respective domains. Therefore, by its very nature, canon law has a duty to cope-up with the challenges of times and context (Arulraj, 2017). Canon law cannot be viewed from a univocal perspective since it is law *sui generis.* It cannot be viewed in the same way as the norms of a secular state. It is viewed analogously – partly identical and partly different from norm of civil law.

An Overview of the History of the Relationship Between Civil and Canon Law

In the young Christian communities of the first centuries A.D. the bishops held audiences to decide upon conflicts among Christians. However, they lacked executive power and depended on the willingness of both parties to accept the judgment. If the decision was not accepted, one of the parties could file the case before the imperial courts. This was cumbersome, as it required a new procedure, where everything started all over again. However, as of the reign of Emperor Constantine, in some cases, the imperial courts could give an *exsequatur* to episcopal judicial decisions, without entering into a factual reconsideration of the case (Druwe, 2015).

Emperor Justinian considered the canons of the ecumenical councils as *nomoi*, as civil laws, which also implied according to the common understanding that the *lex posterior* principle was applicable. Thus, the Emperor could change those rules by enacting imperial legislation or judicial decisions. As of the 6th century, the profound mix of canon and imperial laws on ecclesiastical issues, became clear from the so-called collections of *nomokanones*, combining both canons and imperial *nomoi* on issues related to the Church. At the end of the 9th century, Patriarch Photios formulated for the first and the last time in Byzantine legal history, the division of competences between Emperor and Patriarch. Gradually this division started to gain grounds to the extent that in order to enforce canon law it was necessary to convince the Emperor to enact its content as a new *nomos*, in order to circumvent the *lex posterior* principle (Druwe, 2015).

Precise rules on the conflict of civil law and canon law did not exist as sometimes experienced today. Civil and canon law were regarded as two areas of law that started from different perspectives. Canon law dealt with sin, civil law with crimes. "Civil law punishes, canon law heals." Nevertheless, the difference as far as the execution of some sentences were concerned, remained crucial. If physical enforcement was needed, the imperial jurisdiction had to intervene. This leads to a natural discussion of the complementarity between civil law and canon law.

Igwebuike: Complementarity of Civil and Canon Law

Igwebuike is at the heart of African philosophy. It is a manner of being in African ontology. It is comparable to English words such as: complementarity, harmony, communality, etc. notwithstanding, the favoured concept is complementarity (Kanu, 2017). Igwebuike as complementary thought posits that no individual approach to the problem of human existence actually suffices. No one approach is comprehensive enough. Reflecting on the strength in complementarity Chinua Achebe writes that,

> A man who calls his kinsmen to a feast does not do so to redeem them from staving; they have food in their own houses. When we gather together in the moonlight at the village ground, it is not because of the moon; everyman can see it from his own compound. We come together because it is good for kinsmen to do so. Let us find time to come together physically and enjoy the power of togetherness (Achebe, 1994).

The Church and the civil state do not possess the same role, and each has its own function. However, Igwebuike provides a platform for mutual relations hence on this topic, the Second Vatican Council states in *Gaudium et Spes*,

> The Church, by reason of her role and competence, is not identified in any way with the political community nor bound to any political system. She is at once a sign and a safeguard of the transcendent character of the human person. The Church and the political community in their own fields are autonomous and independent from each other. Yet both, under different titles, are devoted to the personal and social vocation of the same men. The more that both foster sounder cooperation between themselves with due consideration for the circumstances of time and place, the more effective will their service be exercised for the good of all… (no.76)

Both the state and the Church have their proper areas of competence, and these no doubt can interact with each other in a complementary relationship. This is reflected even in the canonical system, which frequently takes up civil norms into its own legal structures.

It has long been part of the study of Canon Law to explore the relationships between the Church and the diverse civil governments within whose territories the Church seeks to fulfill its mission. Certainly, some situations in the life of the people of God are best regulated in accordance with the law of the state where they live, therefore canon 22 of the 1983 code states,

> Civil laws to which the law of the Church yields are to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise.

The rule of this canon acknowledges that canon law yields to civil law in certain instances. This is known as the "canonization of the civil law". Canon law however, does not yield the civil law in general, but only in those matters that are defined by canon law itself. Its rules require the effects of civil law to be observed in canon law with the same effects, and in this sense, i.e. the effects of the civil law are "canonized". In other words, the effects of specific civil law become part of the canon law. On the one hand civil laws, insofar as they are canonized, form a constituent element of positive canon law. In this way, the prescriptions of civil law were recognized in the Latin Code of Canon Law. The secular law, thus taken up in Church law and thus approved, is called "*ius receptum seu approbatum*". On the other hand, if civil law conflicts with the canon law concerning the matters of divine or natural law, the civil law is obviously not canonized (Nemec, 2013).

An overview of the matters in which canon law intersect or as canon 22 puts it yields to the civil law are: contracts (c. 1290), prescription (c. 197), settlements and compromises reached through arbitration (c. 1714), the civil effects of marriage (cc. 1058 and 1672), guardianship (c. 98), the mandate to contract marriage by proxy (c. 1105), actions for possession (c. 1500), and labour relations and social security (cc. 231 and 1286), (Outaduy, 2004). By canonizing the civil law on these matters, the canon law avoids conflicts with various laws of the many civil jurisdictions throughout the world.

Sometimes the canon law recognizes the applicability and effects of the civil laws on a certain matter without canonizing the laws, that is, without incorporating them into the canonical system itself. This happens without explicitly citing the civil norm, but simply referring to the need to consult the civil law in an area. For example, canon 105 of the 1983 Code indicates that legal emancipation of minors should follow the norm of civil law. Canon 877 indicates that the recording of adoptive parents should follow that which is practiced in civil law. Canon 1540 assigns evidentiary value of documents in a canonical trial with that which is determined in the civil law of a jurisdiction (Laschuk, 2019). In other canons, the code exhorts or requires the observance of the civil laws on a certain matter, which is another way in which the canon recognizes the applicability of the civil law without canonizing them. The canons on employment of laypersons for example refers to the need to follow civil law in a jurisdiction.

The Church also follows civil (international) law with respect to its diplomatic relations. While there is an ancient practice of the Roman Pontiff sending legates to local Churches, in modern parlance apostolic nuncios are recognized not all as ecclesiastical representatives to a particular Church but also as civil ambassadors to a political entity. Canon 362 indicates that these appointments are to follow the norms of international law with respect to the appointment and recalling of such ambassadors.

Civil actions can sometimes have definite effects in the canonical system. For instance, a civil adoption creates legal effects in the canonical system. One who has legally adopted a person is not free to contract a marriage with that individual nor their offspring, regardless of any civil restrictions on such relationship (c. 1094). Once the civil adoption has occurred, the legal relationship has begun and impediment to marriage now exists. Civil law, also takes itself into canon law in some countries consequent from explicit terms in a concordat. In many non-common law jurisdictions for example ecclesiastical declarations of nullity of marriage or ecclesiastical separations of the spouses will have a corresponding civil effects.

In respect to most legal matters regulated by civil law, canon law says nothing. Morally, citizens are bound to observe legitimate civil laws, but they are obliged to disobey any laws or other directives that "are contrary to the demands of the moral order, to the fundamental rights of persons or the teachings of the Gospel." For the Catholic, two systems of the law oblige simultaneously, canon law (including divine law) and legitimate civil laws. While both are binding within separate but parallel systems, the canon law prevails whenever it conflicts with the civil law. Nevertheless, a contrary civil law can still influence the canonical system. For example, canon law does not recognize the validity of civil divorce, yet many ecclesiastical tribunals will not admit petitions for the invalidity of marriage unless civil divorce proceedings have been finalized, in order to prevent interference from civil authorities in an exclusively ecclesiastical proceeding. Canon law also does not recognize a merely civil marriage by a catholic, yet such an invalid marriage may have consequences in canon law (Beal 2013).

Conclusion

It will be a futile effort to keep raising the wall that separate civil and canon law while comparing the governance of the People of God as against the governance of the citizens of a secular state. Ecclesial law is propelled by faith, mercy, charity and love for salvation of souls. None of these elements could be said to have a prominent role in civil law. It is purely on the basis of secular values such as justice, liberty, equity, fraternity and sovereignty of the people. However, in line with the tenets of Igwebuike common grounds such as human dignity and common good could serve as the starting point for complementarity. Civil and canon law may have different procedures but they are both meant to encourage certain behavior and discourage others from doing that which the law forbids. Canon law has numerous elements in common with civil law. Both are forms of positive law established by a legislator. Both derive their ultimate governing authority from God. Both govern relationships of members within an organization, in the case of one the Church, in the case of the other the state. Both systems attempt to provide the necessary structures of governance to ensure a well-functioning society. Each has its respective sphere, however, with separate but certainly not incompatible goals to be achieved.

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