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The Pastor and Canon Law

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The Code of Canon Law is fundamental to your role as pastor, helping to define your rights and obligations as well as an organizational structure without which it would be nearly impossible to govern. Like any body of law, canon law is also complex and because people approach it from so many different angles, it's useful to begin this discussion with some basic context. We have church law and we have canon law. Church law is bigger than canon law. It consists of conciliar legislation, postconciliar legislation, liturgical law, particular law for a diocese or a country, proper law if you're a member of a religious institute, and custom, which over a period of time can take on the weight of law. What we'll be focusing on in this chapter is the Code of Canon Law for the Catholic Church.

The Code is basically a codification of law within one volume. General law is the universal law of a church; it's binding regardless of where you are territorially. Particular law is for either a specific group or a specific location. We have particular law in the United States through the US Conference of Catholic Bishops, which establishes laws that are confirmed by the Vatican and are binding within the US. We also have personal law where religious, for example, have their own set of laws. And we have diocesan legislation.

Why do we even need law in the church if the church is about love? The answer is that the church and love are not in opposition. We have law to encourage, promote, and support life—the life of the individual and the life of the community, both now and in the future. Law is a servant of theology, just as theology is a servant of faith. If you think

of theology as faith seeking understanding, think of law as theology seeking practice. Because law is subservient to theology, theology has to come first. You cannot read law outside of a theological context. If you do, you become very legalistic and don't understand the "whys" of what you're doing.

In areas where we have weak theology in the church, we may also have weak law. For example, Vatican II made an effort to begin talking differently about marriage, to talk about it in covenant language instead of contract language. The problem is, we haven't really succeeded in developing that theology. As a result, the law lags behind the theology. There's still a lot of contract language, which essentially works; it's not impeding anything. But not until the theology of marriage progresses and becomes more substantive in the life of the married couple—and that really means as covenant—will the law catch up.

The image I like to use for law, and the role of law in the church, is biblically based: the image of the church as the Body of Christ. Think about law—canon law—as the skeleton in the Body of Christ. It serves the same purposes as our own physical skeleton. It gives our body strength. It helps us move. We'd just be blobs on the floor if we didn't have our skeleton. It gives us support. And guess what? It's flexible.

The law has those same qualities. It exists to give support and structure to the church, to let individuals and bodies within the church move from one place to another. Think about it: if every time you sat down to deal with a case in the tribunal and had to think up a new procedure, you'd never get anywhere.

The Flexibility of Canon Law

How do we use law? Again, drawing on that image of the skeleton, the law is necessary but not sufficient for the life of the church. We may be divinely instituted, but we are also human, and if we didn't have some structure and some support we'd have a very hard time surviving as an institution. If all we had was the law, if the first thing people saw when they looked at the church was its law, then it would be as dead as the skeleton that hangs in a lab. It's not a living being.

The law itself is not sufficient for the church. It needs the flesh and blood and spirit to be the living church. As our physical bodies are flexible but become less so over time, so it is with the church's law. If I get

a phone call from a pastor saying, “Here’s my situation, what should I do?” I rarely say, “Do this.” Instead, I say, “You can do everything from here to here and still be within the limits of the law.” That’s where the flesh and blood of the living church comes into play. You need to look at the situation through the prism of your experience and your knowledge of the people involved and decide where you are going to apply the law. Think again of your physical skeleton and the fact some bones are stronger than others. There’s a reason your skull is the hardest bone in the body. It’s because it protects something very important. If I break my finger it may be painful and inconvenient, but it’s not life-threatening. But if I crack my skull, that’s more serious. You need to look at law in the church in the same way. There are some laws that can’t be bent, so you look at what’s behind them. What value is the law protecting?

Let’s consider the laws on sacraments. When the canons are dealing with matter and form of sacraments, they are quite firm. That’s because they’re protecting something very valuable to us, our sacramental life. But other parts of the law are quite flexible. I’m not suggesting that you break the law, but if you slip up and don’t get a detail right with respect to another type of law, it might not be that serious. It won’t affect the validity of anything.

To be adequate for the body, our skeleton needs to grow. To be adequate for the church, the law needs to grow. Canon law is not static. It evolves as a result of the experience of the church. We need a balance and a distinction between stability and rigidity. If our bones become too rigid, they break easily.

That’s what happened with the 1917 Code of Canon Law. Keep in mind, we had no codified law in the church for a very long time, until 1917. We had, to be sure, lots of laws, but no codified law. Almost as soon as the Code was promulgated, however, the world and the church went through the most rapid period of change history had ever witnessed. And very quickly, the law was no longer adequate. We forget that on the same day in 1959 Pope St. John XXIII announced the Second Vatican Council, he also announced a new canon law. But he wisely decided to wait until the council had finished its work before starting work on a codification of church law. Why? Because law needs to follow theology, and we needed to see what was going to emerge from the Second Vatican Council to determine how the law should follow. And not surprisingly, since it was finally promulgated in 1983, the Code of Canon Law has changed multiple times.

Delineating Everyone's Rights and Obligations

So we need canon law to be stable, but not brittle. It gives structure to an organization. It stabilizes. It gives a human and organizational framework. If the law didn't tell you as pastors, "Here is what is expected of you," people might have wildly divergent understandings of what your role is. And if you didn't have law to say, "This is what it is," you could be pulled—if you're not already—from pillar to post, trying to figure out what you're supposed to do.

Not only does the law give you structure but it also governs how individuals relate to a larger group. How, for example, the members of a parish deal with the parish at large. It's not like a shareholder-driven corporation where everybody gets a vote. Still, the law gives structure to a parish so it can function.

The law also prescribes how one group relates to other groups within the church. We want everyone, of course, to work toward the common good. But we have to be careful that one group doesn't interpret the common good as its own personal agenda. That can easily happen at the parish level. And if you don't have structure around how your organizations function, you can have a situation where, for example, the athletic association is dictating how the rest of the parish functions.

To reiterate, you need to have structures in place at your parish that determine how one organization relates to another and how each organization relates to the parish as a whole. Canon law also exists to protect rights and to spell out obligations. We don't have rights in the church because they're in the Code of Canon Law. It's because rights are in the Code of Canon Law that we have the ability to defend them.

The 1983 Code went much further than ever before in delineating the rights and obligations of everyone in a church. There's a section on the rights and responsibilities of the clergy, for example, and another on the rights and responsibilities of the lay Christian faithful. Some rights are human rights codified within the Code of Canon Law. These include the right to one's good name and reputation. Because it's delineated in the Code, if someone within the church, within that organization, violates that right, I can make a claim. I can defend myself because the law has codified that right.

Some rights are ecclesial, that is, by virtue of your baptism you have the right to have the word of God preached to you. You have a right to the sacraments. And those are because of your baptism, not because

it's in the Code. But if someone were to deny you a sacrament without cause, you'd have a hard time defending that right if it wasn't codified, if it wasn't written into the law.

Some rights are ecclesiastical by virtue of the office an individual holds. In your role as pastor, you have certain rights and faculties that come with that office. And they cannot be taken away at whim. A bishop cannot say, "I heard about that homily you preached last week. I'm taking away your preaching faculties." You're a pastor and under canon law you have a right to preach. If the bishop doesn't want you preaching anymore, what can he do? He can remove you as pastor. And there's a process for that, as well, to ensure the church doesn't violate your rights.

It's really about balancing individual rights with the common good. The fact is, I have a right, according to the Code of Canon Law, to make my needs and my personal opinions known to those in authority. There might be times when I choose not to exercise that right because I recognize it's not for the common good (for instance, if my speaking out, which is my right, might undermine the well-being of the larger group). My right didn't disappear. I'm just choosing not to exercise it.

I'd like to also point out that a set of principles was established to revise the Code of Canon Law. And one of those principles is that the law is to make clear the difference between external and internal forums. Law governs the external forum, that is, the external dimensions of life. There may be perfect consistency between what one should do morally and what one should do legally. But in the end, the law is going to deal with the legal and not the moral dimension. And be careful not to impose one on the other. Let me give you an example. In a marriage tribunal case, I must look at the grounds on which the validity of a marriage is being contested. And that means putting aside my moral judgments about the life of one or the other parties. Only if that person's moral failings impacted the marriage within the scope of which the case is being tried are they relevant. I can't just say, "This is a very bad person and I'm therefore going to find the marriage invalid." I have to carefully weigh the legal grounds for doing that. I can't mix internal and external forums.

By the same token, you can look at any of the canons and ask, "What value are we trying to protect with this canon, and what action does it provide for us to do that?"

Affirming the Church as Community

With that as background, let's move to the impact of canon law on parish and pastor, starting with the definition of a parish we find in canon 515:

A parish is a certain community of the Christian faithful stably constituted in a particular church, whose pastoral care is entrusted to a pastor (*parochus*) as its proper pastor (*pastor*) [shepherd] under the authority of the diocesan bishop.

Each phrase needs to be teased out a bit for a fuller understanding. Let's start with "community of the Christian faithful." The original 1917 Code of Canon Law defined a parish as a territorial region within a diocese that had a church to which a pastor was assigned. So, it's a much more institutional notion of parish than we know today. A modern-day parish, according to canon 515, is a "certain community of the Christian faithful," so we sort of flipped the definition around. And that means we have to flip everything else that goes with it. If the pastor is the one entrusted with the parish, then everything he does is for the good of the community. Under the 1917 Code, we thought of the parish as a benefice—a means of financial support. No priest could be ordained without having a benefice, a named source of income. But in the United States we didn't have benefices. So the understanding was that your benefice was the good of the diocese in which you were ordained.

According to canon 515, the parish is also "stably constituted." It is thus presumed to continue its existence unless there's a reason for it to be reconfigured. It's stable.

As for the phrase "in a particular church," we don't entertain a congregational understanding of *parish* in the Catholic Church. We are always part of something larger than what we see before us. Indeed, the parish is larger because of its connection to the diocese and its bishop. And through the bishop, the parish and the diocese are larger because he is their connection to the universal church. We really have to work against a congregational understanding of the parish, especially in this country where we're so driven by individualism. We have to work hard at making those connections.

As we're seeing, the difference between the 1917 institutional model and the 1983 community model of the parish is more than just terminology. It's conceptual and attitudinal. The 1917 Code cast the church as

a perfect society—an institution that maintains within itself everything it needs to achieve its ends. Now, with the benefit of Vatican II, we talk about the church as the *people of God*. We've shifted from perfect society to a much more biblically based notion. Put another way, we've moved from institutional to communal.

Pastor as Parish Shepherd

As our next step toward better understanding canon law, let's change the focus from parish to pastor. And begin by asking a fundamental question: What is a pastor?

Actually, that definition needs to embrace the notion of parish—a community of people. If you examine what canon law says about your role as pastor, the language makes little sense outside the notion of community. The pastor exists for the sake of the parish community; it's what gives meaning to the role and office of pastor. Pope Francis, in one of his talks, said a priest should smell like sheep. He wasn't being literal, of course, but rather making the point that a priest should be so intertwined with his community that when someone looks at him, they don't see just him, they see his parish. It's the biblical notion of pastor as shepherd in the name of Christ. Pastoral service clearly takes precedence over the notion of benefice. So when you take possession of your parish—and we still use that language in the Code—think of it less in terms of “It's become my property” than as “I've become its shepherd.” You're putting your arms around the parish, not putting the parish in your back pocket.

In terms of your actual responsibilities, here's what canon 519 says:

The pastor (*parochus*) [parish priest] is the proper pastor . . . of the parish entrusted to him, exercising the pastoral care of the community committed to him under the authority of the diocesan bishop in whose ministry of Christ he has been called to share, so that for that same community he carries out the functions of teaching, sanctifying, and governing, also with the cooperation of other presbyters or deacons and with the assistance of lay members of the Christian faithful, according to the norm of law.

An important takeaway from this canon is that you are never alone in carrying out your responsibilities. Others within the church are called

on to share the pastoral role with you, including parish priests, deacons, laity, and religious. They assist you in fulfilling your responsibilities. The fact that you don't bear the full weight doesn't mean, of course, you can simply relinquish all responsibility. In terms of *teaching*, you have a primary responsibility to see that the word of God is conveyed to all your parishioners, and that they are instructed in Christian doctrine. *Sanctifying* means presiding over the Eucharist, ensuring it's at the center of the parish assembly and that the faithful participate in the liturgy and devoutly receive the sacraments.

Ruling, or governing, gets a little more complicated. The administrative responsibilities assigned by law to the pastor are many and varied. One of the most important is presiding over the parish pastoral council and parish finance council in order to receive the consultation necessary for the fulfillment of your pastoral role.

In other words, both serve in advisory capacities to you. Sometimes people who sit on these councils feel diminished when you remind them they're an advisory—not a deliberative—body. True, you are the ultimate decision maker, but decision making must be thought of as a process that involves researching, evaluating the information, developing options, recommending a course of action, and implementing it. That's the continuum of decision making—and the councils are involved in each step of the process. Suffice it to say if you use your pastoral and finance councils in that broad range of decision making, they will invariably see there's great meaning to the notion of being an advisory body. You need to know what your diocesan norms are on these councils (they should be available to you), as well as what the finance council functions are in your diocese.

Another aspect of governing that's entrusted to you is financial administration. When you are appointed pastor, you become the administrator of the parish. As background, the parish has a legal identity separate from its members and from the pastor. It's similar to a corporation, whose legal identity is independent of its stockholders, board, and CEO. In legal parlance, that identity is known as a juridic person. Juridic persons come into being in the church either *ipso jure*, by the law itself, or by a decree of competent authority. In the case of a parish, the law makes it a juridic person. As a juridic person, the parish has certain legal rights.

One of those legal rights is to acquire and use church property. How does the parish acquire property? There are multiple ways. The most

common is through the freewill offerings of parishioners on Sunday morning. Other ways are solicited contributions—essentially fundraising and special collections—and taxation, the assessment of which the bishop imposes on the juridic persons under his jurisdiction, including parishes. In other words, he has the right to tax in order to support the work of the diocese. However, it is not an unfettered right. He can only impose a tax that is moderate, proportional to income, and approved by the presbyteral council.

As a pastor you need to be knowledgeable about what property the parish possesses. Where are its assets held? Who is monitoring long-term investments? What are the property lines? What does the civil law say about cemeteries and do those laws apply to my parish cemetery? You do not have to be an expert in real estate, investments, or law, but you do need to have the awareness required of a good steward of the parish property.

Your Administrative Responsibilities

Under canon law, you have some very specific responsibilities as administrator of your parish. First, you must “exercise vigilance so that the goods entrusted to [your] care are in no way lost or damaged” (c. 1284 §2). This means you need to keep a close eye on your bank accounts or statements. You may well have someone in your parish in a part- or full-time bookkeeping role. But it will come as no surprise to you that some people, given the opportunity, will take financial advantage of the parish. So you need to be vigilant by knowing what’s in those parish accounts. You should also exercise vigilance about property in your care by making sure you have the proper insurance coverage. You may think it’s wonderful that you have an open-door policy where anybody can come in and use the parish facilities when they want. It *is* wonderful until somebody gets injured and you get sued. You need to be aware of who’s allowed to use parish property, and when, under your current insurance coverage. And if outside groups are using your premises, you should make sure they have their own insurance coverage.

Second, you should make sure that the goods entrusted to your care are safe, even under civil law. So, if property is given to you as a trust, you need to preserve it as a trust. Be aware that civil law will respect your role as the trustee.

Third—and this is one of your most important responsibilities—you need to ensure that any stipulations of donors are honored and secured. For example, Mary may give \$10,000 for scholarships at your school. This act of generosity puts the onus on you to keep accurate records. Don't trust it to memory. Too much can happen. You need to document the fact that Mary gave X dollars for scholarships to the parish school. And you need to know *how* she gave it. For example, did she stipulate that the principal was to remain stable and the income generated was to be used for scholarships? The best advice I can give is document, document, document.

Fourth, you need to keep accurate records of income and expenditures. This includes drawing up an account of your administration at the end of each year. You are also required to prepare budgets and annual financial reports by the norms of your diocese. Moreover, it is important to share the financial condition of the parish with your parishioners. The more candid you are with them, the more they will believe and support you when you seek their assistance.

Finally, be aware that while you, as pastor, are the administrator of the juridic person, you may not enter into any legal process, any litigation, without the permission of the diocesan bishop. It is your job to know what your legal limits are. Check your diocesan regulations for how to seek the bishop's permission if you are drawn into litigation.

There are two types of administration under your purview: ordinary and extraordinary. Ordinary administration includes everyday tasks like paying the bills and making payroll. Administration is extraordinary by virtue of the act (like putting a new roof on the parish) or its cost. Be aware, however, that extraordinary administration can differ from one parish to the next. Paving the parking lot may be considered ordinary administration in one parish because it has the income to handle it comfortably. In a less affluent parish it may be considered extraordinary administration.

Don't make an educated guess at which category an expenditure or project in your parish falls into. You should check with your diocesan finance office on what acts are extraordinary—therefore requiring the permission of the bishop—and which are ordinary, usually meaning you can proceed on your own.

Canon Law as a Bridge, Not a Burden

I'd like to leave you with this thought: Don't think of canon law as a burden, or as something you pull off the shelf and throw at someone when you have a point to make, as in "it's expressly allowed" or "not allowed," under the Code of Canon Law. Rather, think of it as a bridge that gets you from one place to another. You'll find within canon law basic principles and a framework for fulfilling your responsibilities as pastor. But canon law does not provide an answer to every issue you're going to face. You should be looking for assistance—and wise counsel—from other collaborators, ordained and lay, including your staff and parish councils.

Finally, rely on the ever-present guidance of the Holy Spirit. I can't emphasize that enough. If you've got a big decision to make, don't go first to the Code of Canon Law. Go first to that place of silence and contemplation and ask for the guidance of the Holy Spirit. Then see if you can integrate canon law into your pastoral ministry in a way that helps you make good judgments on behalf of the community entrusted to your care.