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The Relation between Sacred Law and Secular Law. A Comparative Analysis

Abstract

The law system represents all the juridical norms, institutions, and branches of law adopted and assured by the State to regulate social relations, well defined in time and space, without being universally valid and without being made uniform. The law is divided into lay or secular and sacred or religious laws. Canon Law designates a law system different from the State or secular law. The science of Canon Law is part of the juridical-theological sciences group, as it has jurisdiction about both legal and theological matters. Canon Law has a fundamental practical relevance regarding the Church mission around the world and the inter-Orthodox relations, on the one hand, and the connection of the Church with the secular power, on the other hand. Canon Law represents



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a law system complementary to the State system. The relations between the two law systems are complex, and the two have alternated in time. Civil Law and Canon Law have supported each other for a long time defending the institutions of family, marriage, defending the persons and protecting human dignity. For this reason, the relations existing between the two are convergent, complementary and interactive. These two law systems lean on each other for mutual support to help people, as social beings, since the common principle underlying both is human nature, endowed with intelligence and free will.

Keywords

Civil Law, Canon Law, Church, State, Juridical System, Sacred Law, Secular Law

1 Introduction

Law, as a divine gift offered to man for himself and for others, does not spring from the outside, but the depths full of the mystery of his being¹. Everything in the Universe and society submits to a necessary order. Everything follows a law that takes care for all things to remain the same in their essence, as natural order, justice, and harmony require. This law is the divine Logos – the Source of Law, Son of God Incarnate, our Lord Jesus Christ, Who *descended under the law, keeping the commandment just like a man*². Righteousness (justice) consists in following the divine universal Logos, without Whom people would not even be able

¹ Irineu Ion Popa, *Substanța morală a dreptului (The Moral Substance of Law)*, (Bucharest: Universul Juridic Publishing House, 2009), p. 7.

² St. Maximus the Confessor, *Cuvânt ascetic (Ascetic Word), Filocalia (Philokalia)*, vol. II, electronic edition, Apologeticum, (2005), p. 37

to have the slightest idea about righteousness. The Logos as embodied and perfect divine law manifested Himself into the world, in all the divine plenitude and power, settling Himself among the people and inside them once and for all. Christ brings the New Law, the latter or inward one, given by God, never-changing, faultless, and the only redeeming divine law. *Communion, to which God invites all the people, means feeding on the divine commandments, which He sent to the world by His Son, the divine Nomos made man in history*³.

Human law, as a law system and as a juridical science, is dependent upon the divine and eternal law governing the world with the help of the divine reason present in the rationality of the world, while the liberty given to man by the Creator collaborates with the divine will to fulfil man's aim and purpose in the world. Man, by reason, will, feeling, freedom and responsibility, gifts from God and image of God, oscillates and opts, during his existence, between good and evil, so justice needs to be done, and man needs to be straightened by love and the help of divine providence, for the accomplishment of the soteriological and eschatological aim of creation. The supreme, infallible, and eternal court judging the responsibility and imputability for human acts is the divine judgment, as *the Lord of hosts shall be exalted in judgment, and the Holy God shall be glorified in righteousness* (Isaiah 5:16). Divine law and its connection to human law supposes the spiritualization of law, juridical norms, and the legal system in general. The deep connection between divine and human law, of spiritual nature, should be methodologically preceded by an explanation of the connection between human law and spirituality.

Historically, the essential difference between law and religion in democratic societies, which is by itself a clear expression of the spiritualization of law, has paradoxically led to the separation between spirituality and law, encouraging the opinion that spirituality would belong in an inalienable manner to the sphere of

³ Irineu Ion Popa *Substanța morală a dreptului (The Moral Substance of Law)*, p. 80.

religion. While intimately connected to religion, spirituality has a much wider sphere of applicability. Spirituality influences law by its holistic meta-dimensionality⁴, which assures the unity of its moral, political and legal values. The implications of the interaction between law and spirituality could serve as a vehicle for the liberation of law and of the legal systems from the claws of positivism and juridical reductionism.

The search for righteousness and justice is an inherent desire of the human nature and originates from the simple notion of staying alive in a context of social order. The Divinity has founded and based the entire creation on justice and has given this concept a power with a vital character⁵. This order (rule) of life called justice regulates not only the visible world, but also the invisible one, that of the angels or of the celestial and incorporeal powers.

2 Law and morality between spirituality and legalization

Liviu Stan, in his work *Ontologia Juris*, starting from a realistic research of the law, affirms that

“it is in our spirit, we each of us have it inside us. We discover it in us before discovering it around us, and if we discover it in our spirit, we cannot ignore it. We cannot move on to searching it outside us, for, in the end, this quest is conditioned by everything that is found within our spirit. The quest of the law from outside us, we cannot do it except by starting from the idea of law that we have inside us, and which has

⁴ Rafael Domingo, *Why Spirituality Matters for Law: An Explanation*, *Oxford Journal of Law and Religion*, (2019), no. 8, pp. 328, 348, 349.

⁵ Daniel Ayuch, *Justice Between Theory and Practice*, *Icoana Credinței (Icon of Faith)*, 5 (2019), no. 10, p. 5.

been formed by itself, not by a special quest of the law in the objective reality”⁶.

The objective reality gives birth to the ideas of law in our soul, just as it gives birth to the other ideas, namely by the cooperation of the faculties and means specific to the human soul.

The human being does not create his existence from itself but receives it from the Creator, who endowed man with superior capacities, intelligence, and will, being created in God’s image, with the possibility to attain His likeness, by *epektasis*, namely treasuring grace after grace. From the moment of his coming on the earth, the man appears as a free being, aware of the fact that a law is written originally and ontologically in his heart, a law that he has not forged, called the natural moral law, but which is also written in all the creation, so that the entire universe may give glory to the Creator and continually turn to Him.

“This is the true Law, the just reason in harmony with nature, present in all the human beings, eternal constant, given to man by its Creator. It is a never-changing and eternal law, present in everyone and everything, and it can never be replaced by any other law. Not one part of it can be removed, and it cannot be abolished in its entirety either. It is an eternal and immutable law for all the nations and for all the times, written and promulgated by the Creator”⁷.

The moral law imposes to man certain obligatory and unconditional attitudes and acts, having a prescriptible and durable character. The first wrongdoing in the cosmic order (or the original ancestral sin) appears when Adam and Eve abuse their freedom and break the profound aspiration of their being towards Good, giving in to temptation and falling in the sin of disobedience. From that moment, God intervenes in human history to help man find the way of salvation, freedom, and justice, while waiting to

⁶ Liviu Stan, *Ontologia Juris*, (Sibiu: Archdiocese Typography Publishing House, 1943), p. 8.

⁷ Marcus Tullius Cicero, *The Republic*, (New York: published by G. & C. Carvill, 1829), p. 38.

send His Son to him, at the moment decided since eternity, *when the fullness of time had come* (Galatians 4: 4), to establish a new and definitive *oikonomia* of salvation. In his *Critique of practical reason*, Immanuel Kant declared: *Two things fill the mind with ever new and increasing admiration and awe, the starry heavens above me and the moral law within me*⁸.

The norms of Divine Law receive a first and fundamental codification in the *Tablets of the Law* God gives to Moses on Mount Sinai, namely the ten divine commandments expressing the attitude man should adopt towards God and towards his fellow. The commandments are man's place of meeting with God, with Reality, the *topos* for experiencing the truth⁹. Saint Gregory Palamas claims that the fulfilment and contemplation of the divine commandments is sanctified science of the truth¹⁰, these being the alternative to any vain ideology and teaching. The biblical commandments comprise the divine judgments, and so they become the measuring instrument and archetype of any human legislative construction, which should always refer to them in order to be in harmony with the Creator and Supreme Legislator's will.

To these, other prescriptions will be added, principally of natural and criminal nature (in addition to the organization that nations will gradually acquire). In the course of the centuries, and especially between the years 750 and 333 B.C., the prophets have the mission to apply the Mosaic Law, to call to its observance, to fight against breaches, and to bring the people of Israel to repentance

⁸ Immanuel Kant, *Critica rațiunii practice (Critique of Practical Reason)*, translated in Romanian by Traian Brăileanu, (Bucharest: Paideia Publishing House, 2003), p. 159.

⁹ Picu Ocoleanu, *Liturghia poruncilor divine. Prolegomene teologice la o nouă cultură a legii (The Liturgy of the Divine Commandments)*, 2nd edition, (Bucharest: Christiana Publishing House, 2008), pp. 3-24, 26.

¹⁰ Sf. Grigorie Palama (Saint Gregory Palamas), *Despre sfânta lumina (About the holy light)*, *Filocalia (Philokalia)*, vol. VII, (Bucharest: The Bible and Mission Institute of the Romanian Orthodox Church Publishing House, 1977), p. 367.

by threats and promises¹¹, all these perfected and renewed by the coming in the world of God's Son, the Saviour Jesus Christ, the Righteous Judge, the New and Great Legislator (*Nomothetes*)¹², who came not to abolish the Law, but to make it perfect (Matthew 5: 17), by this fulfilment, perfection and divine interpretation, becoming possible to go beyond it and abrogate it (Romans 10: 4), the Good News, a New Covenant, the Law of the New Testament or the perfecting of the Old Law (*Novum Testamentum in Vetere latet, Vetus Testamentum in Novo patet* – Blessed Augustine) being brought to the entire mankind.

Consequently, we are invited to meet with God in the law, so that also by the law and the commandments we may know Him because the law means to order and discipline. By fulfilling the commandments, people come in touch with their Creator, enjoy the power received from Him, and, actually, collaborate with God by serving Him. However, where the law is not respected and applied, the divine will is breached, and anarchy and chaos settle in, opposed to the cosmic order and the eternal divine order set by the Creator when He made the whole creation.

3 The Science of Civil Law and the Law of Canon Science

The science of law or the juridical sciences study the laws of the existence and development of the State and of law, the political and juridical institutions, their concrete-historical forms, the correlation with the other components of the social system, the way in which the political-juridical institutions influence society and bear, in their turn, the social influence.

“The complexity of the social-juridical phenomenon determines a structuring of the efforts made in order to research

¹¹ Dominique le Tourneau, *Le droit canonique*, (Paris: Presses Universitaires de France, 2002), p. 7.

¹² Picu Ocoleanu, *Liturghia poruncilor divine (The Liturgy of the Divine Commandments)*, p. 87.

it, a sharing of the roles according to the necessity to highlight the aspects correlated to this phenomenon. Law, a complex phenomenon of society, is studied from the global perspective, as a well-knit system, with characteristic elements; from a historical perspective, it is a phenomenon which preserves certain permanent features along the course of its social development, but which changes, at the same time, in the framework of this development; and also from a structural perspective, a phenomenon with multiple qualitative determinations, with composing elements that are, in turn, in a state of serious intertwining”¹³.

“The relations between law and science, or the problem of its status from this perspective become increasingly complex and a research priority, at the same time on the conceptual level and the level of interpretation or on the level of the concrete application of the legal norms. In terms of theoretical essences, a priority becomes the themes about the comparative approach, such as: scientific rationality and juridical rationality, scientific fact or juridical fact, law and non-law, tough law and supple law”¹⁴, secular law and sacred law.

The law system represents the totality of the juridical norms, juridical institutions, and branches of law adopted and assured by the State in order to regulate social relations, well-delimited in time and space, which are not universally valid and are not made uniform. By the concept of the juridical system, we understand both the law system, as normative structure, and other components, consisting in the content and form of law, the sources of law, equity, juridical conscience, and the rule of law. The law sys-

¹³ Nicolae Popa, *Teoria generală a dreptului (General Theory of Law)*, (Bucharest: C.H. Beck Publishing House, 2008), pp. 2, 4.

¹⁴ Mircea Dușu, Manifestul juridic al Centenarului. A venit timpul pentru o știință a dreptului și o cultură juridică românești! (The Legal Manifesto of the Centenary. Now it is time for a Romanian science of law and legal culture!), *Studii și Cercetări Juridice (Studies and Legal Research)*, 8 (64), (2019), no. 1, pp. 15-16.

tem is the result of the unity between law branches and law institutions. Consequently, juridical norms do not exist separately but are grouped in juridical branches and institutions. The norm is the basic element of the law system¹⁵. Among the elements of the law system, namely norms, institutions, and branches, there are organic fusions, correlations, and interdependencies, as they come together and complement each other in the framework of the legal system. Law represents, therefore, the totality of the conditions limiting freedoms to make harmony among them possible¹⁶, to achieve justice and social order.

The juridical norm is defined by the theory of law as

“a social rule of conduct, general and obligatory, instituted or sanctioned by the State power under different forms, meant to assure the consolidation and development of social relations in harmony with the governors’ interests and will, ultimately determined by the material living conditions in the society and whose observance is imposed, if necessary, by the State’s coercive force”¹⁷.

Ion Craiovan defines the law system as

“the totality of the legal norms which comprises fundamental and structural relations, of principle for the juridical normativity, has an internal coherence that ensures its functionality, applicability, expresses interdependencies between the juridical norms, forms a whole that cannot be reduced to its composing elements”¹⁸.

Law branches, constituting subsystems of the law system, and the juridical institutions, need to start from the object of the juridical regulation as a fundamental criterion. The law science

¹⁵ Nicolae Popa, *Teoria generală a dreptului (General Theory of Law)*, p. 64.

¹⁶ Edmond Picard, *Le Droit Pur*, (Paris: Editeur Ernest Flammarion, 1908), p. 97.

¹⁷ Ioan Muraru, Elena Simina Tănăsescu, *Drept constituțional și instituții politice (Constitutional Law and Political Institutions)*, vol. I, 14th edition, (Bucharest: C.H. Beck Publishing House, 2011), p. 21.

¹⁸ Ion Craiovan, *Teoria generală a dreptului (General Theory of Law)*, (Bucharest: The Military Publishing House, 1997), p. 203.

theorists consider that the object of the regulation is the objective criterion determining the formation of a law branch, while the method is the subjective criterion, determined by the legislator's will, respectively by the interest of the political force leading the society¹⁹. Thus, a law branch is a distinct collection of juridical norms, in relational interdependence, regulating the social relations with the same specific character, while the juridical institution comprises the law norms having as object a certain unitary group of social relations, from which specific legal relations are engendered. "The general principles of law, the juridical institutions, and the juridical norms are in relations of coordination and mutual conditioning"²⁰, because they cooperate and control each other in view of the law system coherence, both in letter and in spirit, for the realization of a unitary legislation and jurisprudence.

When classifying the law types or branches, it is advisable and appropriate to start by considering both the law content and the features specific of the manner of expression of this content. When speaking of law typology, one needs to have in view the dependence on the typology of the social organization systems and the belonging to a juridical civilization area²¹.

Law is divided into lay or secular law and divine or religious law. Divine law represents the sum of the law principles and norms foundational for the organization and leadership of Christian denominations²², religious organizations and communities. Religious law has several branches: Christian, Mosaic or Rabbinic,

¹⁹ *Ibidem*, p. 204.

²⁰ Sofia Popescu, *Teoria generală a dreptului (General Theory of Law)*, (Bucharest: Lumina Lex Publishing House, 2000), p. 213.

²¹ Mihai Bădescu, *Familii și tipuri de drept (Families and Types of Law)*, vol. 2, (Bucharest: Lumina Lex Publishing House, 2002), p. 9.

²² Liviu Stan, *Ramurile și împărțirea dreptului (The Branches and Division of Law)*, *Biserica și Dreptul. Vol. VIII. Fragmente de curs (The Church and the Law. Fragments of lecture)*, (Sibiu: Andreiana and Astra Museum Publishing House, 2017), p. 108.

and Muslim²³. In its turn, Canon Law is divided into the three great Christian denominations: Orthodox, Catholic, and Protestant.

Lay or secular law has two directions: internal, dealing with social relations within the State, and external, dealing with interstate relations, hence the name *law of nations (jus gentium)*.

The existence of relations between the two law systems, the lay one represented by the State and the religious one, as expression of the cult, is composed of alternations in time, from which the following juridical-social phenomena can be observed:

“dissolution of law in religion, radical separation or a more or less prudent coexistence. The principle of secularism does not mean denying religious freedom or freedom of conscience; the freedom of faith is acknowledged, as a measure safeguarding the State, at least by the distinction, vital for it, between religious space and political space”²⁴.

Canon Law or Church Law designates a law system complementary to the State or secular one. Over time, there have been various interrelations between ecclesial or canonical legislations and the lay, secular, or State ones. Civil law and canon law have supported each other for a long time, “in defending the institutions of the family and of marriage, of the persons and in protecting human dignity”²⁵, therefore between them, there are relations of convergence, complementarity, and interaction.

The science of canon law is part of the juridical-theological sciences group, having competence in juridical but also in theological matters. Canon law, part of the divine law, is superior to positive law, with reverberations in natural law, and is connected to the juridical branches of secular law, such as constitutional law, labor law, civil law, criminal law, procedural law, international

²³ Mihai Bădescu, *Familii și tipuri de drept (Families and Types of Law)*, p. 9.

²⁴ Liviu-Marius Harosa, *Drept canonic (Canon Law)*, (Bucharest: Universul Juridic Publishing House, 2013), p. 12.

²⁵ *Ibidem*, p. 11.

law, administrative law, and financial law, by the existence of mixed juridical institutions. The specificity of canon law, its emergence, and service in the bosom of the Church, as part of her mission and pastoral work, sets it apart from all the other law branches.

The origin of canon law is the human conscience, in which God planted from the beginning the instinct or disposition for what is allowed or forbidden²⁶, a behavior that, later, the social environment and education develop and make perfect. Its usefulness resides in the fact that it is as old as man, and in man's native structure lies the necessity for norms of leadership and of moral and social conduct.

“Law arises neither from a metaphysical principle, nor from the essence of man or from his sovereign and free will, but is a factual state, in which the sanction and the protection of certain activities maintain the solidarity necessary for life in society”²⁷.

In the beginning, canon law had as much importance as Roman law, and they were both considered common law, generally obligatory for the peoples of Europe²⁸, constituting the bases of today's modern law.

4 The Role of Law in the Life of the Church and the State. Comparative aspects

The apparent similarity between canon law and State law has made certain theorists contest the integrity of ecclesial law.

²⁶ Constantin Dron, *Valoarea actuală a canoanelor (Current Value of Canons)*, (Iași: Doxologia Publishing House, 2016), p. 112.

²⁷ Jean Cruet, *La vie du droit et l'impuissance des lois*, (Paris: Editeur Ernest Flammarion, 1908), pp. 180-181.

²⁸ I. S. Berdnikov, Dreptul bisericesc (The Church Law), in *Biserica Ortodoxă Română (The Romanian Orthodox Church)*, XIV (1891), no. 12, p. 907.

There have been anti-canonical theories, such as spiritualism, Christian dualism, monism, legal positivism²⁹, which constitute an unjustified reductionism, excluding the Church from the juridical sphere.

“It is easy to fight the falseness and error of these trends and ways of thinking by the historical evidence of the State action which by the secular law system has acknowledged and ordained the Church and canon law among the primary juridical systems, having the power to produce juridical norms by themselves”³⁰.

The objective pursued by the Church and by the State does not allow us to admit coordination understood in the sense of equality. The State works for the world, the Church for heaven and eternity. However, when we consider future life as man’s ultimate aim, and we refer to everything from a purely religious perspective, the State itself has no other mission but to offer its citizens adequate means for reaching their religious destination, abiding by law principles in harmony with the divine law. While the State has been created in order to make law prevail, the Church has not been created with the necessary purpose of having a law system. However, if the Church has a law system, this is because of the simple reason that she could neither exist, nor act without this ephemeral condition.

While the existence of the State is confused with that of the law, in the Church life, law is but a subsidiary or secondary means³¹. The norms of law according to which the Church governs herself, make up a law system and a law field separate from the law that has its origin and meaning from the State authority³². These two societies move on quite different grounds, and the law of one can be neither compared, nor coordinated with the law of the other. Although they stand on an equal footing, namely they are equal

²⁹ Liviu-Marius Harosa, *Drept canonic (Canon Law)*, p. 19.

³⁰ *Ibidem*, p. 23.

³¹ F. H. Vering, *Droit canon*, I, (Paris: IN, 1879), p. 20.

³² I. S. Berdnikov, *Dreptul bisericesc (The Church Law)*, p. 903.

in authority, competence and importance, nevertheless the two legal systems are independent and can be studied together in a general juridical sciences system.

The two law systems, canonical and civil, support each other, aiming to help people, as social and religious beings, to acquire happiness and material and spiritual prosperity. In man, there is the sprout and seed of law, truth and beauty. For this reason, the common principle on which both the secular law and the ecclesial law rely is human nature, endowed with intelligence and free will. It is precisely these intrinsic precepts and values of man that make him able to live in an organizational society, which exists due to positive laws. Intelligence gives man the ability and aptitude to legislate, determining relations of equality, equity, and justice among the members of society, while free will gives man the possibility to collaborate with the positive laws, ordained by and for the respective society. If the Creator had not given man intelligence and freedom, there would have been no State law and no ecclesial law³³. A major difference between canon law and secular law is the fact that the main source of the first is God's will to establish His Church on earth, while the other's power is given by the will of a people.

“Human society, as a social phenomenon, makes human law a social creation, juridical order is not a pre-established, given order, but a constructed one. This juridical order is presented as a collection of general and abstract law rules whose observance is assured by State coercion”³⁴.

Without positive law, the principles of natural law, although written in man's conscience, cannot be operational. What materializes these principles is the human reason illumined by the

³³ Lewis Patsavos, *Valențele duhovnicești ale sfintelor canoane (Spiritual Dimensions of the Holy Canons)*, translated from English by Emanuel Tăvală, (Sibiu: Andreiana Publishing House, 2012), p. 22.

³⁴ Mircea Duțu, *Procesul lui Iisus (Jesus' Trial)*, (Bucharest: Herald Publishing House, 2011), p. 11.

Creator. However, positive law, lying at the basis of any law system, an emanation of the rule of law, remains powerless when it comes to achieving man's salvation because its origin is man, while the salvation desideratum originates in God. Juridical logic has gradually become estranged from the logic of Christian perfection³⁵, and the idea of creating a juridical-moral system that would save man or make him happy is a utopic idea. "The primary meaning of law and of the commandment was theological and community-related, referring to the word of God the Logos in its paradigms for the existence in the world. Only later was the term *law* confiscated by the juridical world"³⁶. The ontological meaning of *law* has been lost, and the modern concept of law and justice is limited only to the strictly juridical aspect, of justice made by the court through the application of criminal or civil laws.

"Civil law and political law, just as canon law, have God as their author, because the various prescriptions they include are nothing else than the development of God's primitive and immediate institution. He is the One Who created Civil Law, giving man freedom and dominion over the land, imposing on him the law of work. He created Political Law, founding society, by establishing the institutions of marriage and family; finally, by the hope in a Redeemer, common to all men, He formed the connection uniting mankind to its Creator; He laid the foundation of the religious society and granted a right that is fundamental and the main sanction of all the other precepts, because all people's connections among themselves

³⁵ Irimie Marga, *Teologia Dreptului Canonic Ortodox (Theology of Orthodox Canon Law)*, *Statutul actual pentru organizarea și funcționarea Bisericii Ortodoxe Române. Tradiție și înnoire (The Current Organization and Functioning Statute of the Romanian Orthodox Church. Tradition and Renewal)*, (Cluj-Napoca: Cluj University Press Publishing House, 2016), pp. 330-331.

³⁶ Picu Ocoleanu, *Liturghia poruncilor divine (The Liturgy of the Divine Commandments)*, p. 247.

rely on our relations with God, being necessarily subordinated to our ultimate aim”³⁷.

The relation and interaction between secular law and canon law can be observed through the prism of the first juridical regulation of the relations between State and Church, comprised in the provisions of the 6th Constitution (of the *Novellae Constitutiones*) of the Byzantine Emperor Justinian I (482-565), considered the cornerstone of canonical-ecclesial law:

“The greatest gifts that God, in His immeasurable mercy has given to mankind are priesthood and the kingdom. The first serves that which is divine, the second, that which is human, but both have the same unique source and adorn man’s will. To no other dignity should the emperor give more attention than to that of the priests, since they always pray to God, being entrusted with this mission by God Himself. If the first, oriented to God, is completely impeccable, and the other adorns the empire correctly and adequately, then there is a splendid harmony (*symphony*) that will give man the good in general and everything that is necessary. Hence, our greatest preoccupation is for the teachings revealed by God and for the integrity of priesthood”³⁸.

After the Byzantine State-Church relations model ceased, one can talk about the existence of an ecclesial or religious civil law, and of canon law as such. Civil religious law has in its competence the legal framework corresponding to the free and authentic manifestation of the religious feeling, regulating the general regime of the cults in a rule of law, and it needs to be harmonized with the specific character and the principles of canon or ecclesial law or those of the internal law of each religious cult³⁹. For

³⁷ Anselme Tilloy, *Traité théorique et pratique de droit canonique*, Paris: Editeur Arthur Savaète, 1895, p. 349.

³⁸ S. P. Scott, *The Civil Law*, XVI, Cincinnati, 1932, the Novel VI.

³⁹ See Irimie Marga, Raportul dintre dreptul civil religios și dreptul canonic ortodox în România (The relationship between religious civil law and canonical orthodox law in Romania), *Libertatea religioasă în context*

this reason, there has to be a good collaboration and relation between State and Church, for the State to respect the Church and to legislate in religious civil matters considering the religious cults' autonomy and their internal laws and regulations, while the Church, in turn, needs to observe the fundamental law and all the laws of the State within whose borders she carries out her activity, for the good of the society in general, and of the citizen and of the believer in particular.

Canon law interacts with civil law by different values directly and indirectly. Directly, it can interact by spiritual values like love and communion, which are present in each dimension of reality due to the holistic character of the spiritual. It can also interact indirectly by the spiritualization of values specific to other dimensions. For example, pluralism, although not a spiritual value, can still be spiritualized, when love and communion illumine it, the result hoped for being the development of unity in the society, not its fragmentation. Political pluralism could work better if it beheld the relations of the Christian communities or between different Churches and religions of the world (unity in diversity). Something similar is happening with other political and juridical values, such as tolerance and diversity, overarched by the hierarchically superior values of love and communion. In this sense, unity prevails over good and law and acts as a bond between morals and law. "Christianity is a source of values, a growth in richness for the areas it enters, and so it can offer support for a good social development also in the future"⁴⁰.

The close bond formed between State and Church also manifested itself by the fact that "the State appropriated the concept the Christians had about the Church, accepting and confirming, as State laws, the divine law principles lying at the basis of the

românesc și european (Religious freedom in the Romanian and European context), (Bucharest: Byzantine Publishing House, 2005), pp. 203-222.

⁴⁰ I.P.S. Nifon Mihăiță, Archbishop and Metropolitan, *Teologie și misiune creștină (Theology and Christian Mission)*, (Târgoviște: Bibliotheca Publishing House), 2019, p. 367.

Church establishment and organization"⁴¹, a collaboration having as aim the realization of a better, balanced society, meant to develop symphonically, relying on authentic, eternal principles in harmony with the divine will.

Canon law is regarded as an individual and independent juridical system. At the basis of canon law lies the Christian teaching, while at the basis of secular or lay law lies the concept about life and the world, which can be materialistic or idealistic. Canon law deals with the relationships established between people inside the Church⁴², based on their freely consented religious faith, while the object of lay or civil law is the organization of society, on all social levels, in point of the juridical relations arising between people, the organization realized up to the highest level – the State. The sphere of canon law is not only what is heavenly but also what is earthly, and the laws, principles, and norms lying at the basis of civil law, also lie at the basis of canon law because they originate in God.

From an objective perspective, canon law contains the law rules in force in the Church, and from a subjective perspective, it comprises the law branches belonging to the Church. For this reason, in canon law we can distinguish between divine law and human law. Divine law includes the law rules, the full powers absolutely necessary for the Church to attain its goal, emanating directly from her Founder, our Lord Jesus Christ, and represents the unchanged and unaltered basis of the religious society. Human law contains rules and provisions that can take different forms, depending on the various times and places⁴³, and can be amended, completed, or abrogated. The only limit to human law is the fact

⁴¹ Iorgu D. Ivan, *Bunurile bisericești în primele șase secole. Situația lor juridică și canonică (Church property in the first six centuries. Their juridical and canonical situation)*, (Bucharest: Basilica Publishing House, 2014), p. 74.

⁴² Alain Sériaux, *Droit canonique*, (Paris: Presses Universitaires de France, 1996), p. 5.

⁴³ F. H. Vering, *Droit canon*, p. 10.

that it should not contradict divine law or the Church dogmas in general.

The contents of canon law are mainly theological and juridical, while civil law is exclusively lay. In canon law, the coercive force is missing, as it relies on the moral conscience of the man who needs to submit to the law⁴⁴, while in civil law, the laws foresee penalties (according to the logical-juridical structure of the juridical norm: hypothesis, disposition, and sanction). Canon law, being religious law, “does not use coercive, physical means or means depriving of freedom, namely nothing of what can be considered as the intervention of physical force in order to apply a law or execute a punishment on those who disrespect the law norm”⁴⁵, but uses especially means of religious and moral nature. God *does not will the death of the ungodly man* (Ezekiel 33: 11), but his straightening, hence the purpose of canon law, meant to straighten man and lead him to salvation, opposed to the purpose of secular law dealing with the inherent conditions of life and of the relations between the society members, to assure a good State organization and juridical order for the progress of mankind. Thus, law needs to be harmonized with divine law and should not be left on the legalist-juridical level. This is why people speak of “*a new juridical culture*”⁴⁶, of serving God by fulfilling the divine commandments and the divine law, the law appearing in this way as a communion, as life in the spirit and in the truth with Christ, in Christ and by Christ, because law is not necessarily in us, and among us, but comes to us, by the Logos-Nomos, Who has brought to us the revealed and absolute law and truth.

⁴⁴ Liviu Stan, *Ordinea morală (The Moral Order)*, *Biserica și Dreptul. Vol. VIII. Fragmente de curs (The Church and the Law. Fragments of lecture)*, Sibiu: Andreiana and Astra Museum Publishing House, Sibiu, 2017, pp. 119-120.

⁴⁵ Ioan N. Floca, *Drept canonic ortodox (Canonical Orthodox Law)*, vol. I, (Bucharest: The Bible and Mission Institute of the Romanian Orthodox Church Publishing House, 1990), p. 68.

⁴⁶ Picu Ocoleanu, *Liturghia poruncilor divine (The Liturgy of the Divine Commandments)*, p. 251.

5 Conclusions

Church Law and State Law coexisted next to each other, sometimes in juxtaposition, and the development and interpretation of Canon Law was an important indicator of the symbolical and practical impact of the Church on the behavior of the Roman-Byzantine Empire's population. Christianity tried to harmonize and offer an authentic model out of the two powers or levels, material and spiritual, respectively political and religious, to be able to respect the nature of the Church, without annulling the dialectics between this century (history) and the age to come (eschata), between the created and the uncreated, between God's being, on the one hand, and man's being and the world, on the other hand.

The canon and legal life based on the norms of canon law includes the entire range of juridical phenomena needed to confirm the idea of independence of the canonical juridical system by referring to canon law and the legal and social relations⁴⁷, to the canonical juridical conscience and the juridical culture, to the canonical juridical thinking and the ecclesial institutions with legal and administrative functions.

The practitioners of the canon law claim that ecclesial law and civil law are in a relation of analogy so that both of these juridical systems have common features but differ in aspects of specificity of matter and essence. In this way, civil law becomes a point of reference for the study of ecclesial law, and the statement is true as well the other way round. However, one can note a modality of identification only for the features of canon law, which are equivalent to the features of civil law, constituting a coherent system similar to the civil law system.

Consequently, canon law is a well-defined juridical system, delimited by its own juridical norms and which regulates both the

⁴⁷ Igor Oborotov, *The Concept and Features of legal system of Canon Law, Young Scientist*, (2015), no. 12, pp. 110-113.

internal life of the Church and her external life, in relation to other civil and religious institutions.

In the case of the convergence and collaboration between Civil Law and Canon Law, they need to influence each other mutually, by the growth of freely consented morality and equity from the part of the legal and, respectively, of the social transparency and accessibility from the part of the religious. A better collaboration and deepening of the relations between Church and State, is meant to help with an effective and equitable relationship, by establishing connective and dialogue bridges, by a common will and in an institutionalized and predictable way, as viable partners on the juridical, social, educational and cultural realm, in a world that needs, increasingly more, true and sure milestones. In this way, are avoided the adoptions of measures and regulations unproportional and discriminating, regarding the respect of the commitments to religious freedom by the Rule of Law, being assured, at the same time, the loyalty and the real support offered by the ecclesial authority to the State power.

We are naturally led to asking for an independent place for the religious or sacred law in the general law system. The two great divisions of law, canon or Church law, and civil law, are two paths that converge and merge into the general notion of law. These two law systems represent but means when we have in view only man's religious destiny. But, while the religious aim always remains for the Church her main dimension, because to admit a Church and to attribute to her only an earthly purpose is obviously a contradiction and an error, law represents the purpose of the State's existence, considering its temporal limitation⁴⁸. Church law, on the contrary, needs to have the same nature as the Church (autocephaly and sovereignty) and enjoy, in front of any temporal authority, the same independence as the law of a State about the law of another State. From this perspective, the

⁴⁸ F. H. Vering, *Droit canon*, pp. 22-23.

law of the Church is a public law and can claim the same independence. Therefore, there is a canon law and a civil law, and both are part of the general law system.