

# SYNODICAL LEGISLATION AND STATE ECCLESIASTICAL LAWS

BY

PANTELEIMON K. KARANICOLAS  
Metropolitan Bishop of Corinth

---

This brief study is divided into two parts: The first contains the Synodical legislation and the second the edicts, i.e. the state laws, concerning the Church.

In this introduction I shall try to compare the Synodical legislation and the ecclesiastical laws of the State.

Both cover three periods: a) The Byzantine period, b) The period of the Turkish occupation and c) The period of the Greek State.

## THE SYNODICAL LEGISLATION

The convocation of Ecumenical Councils (also called Ecumenical Synods), expressing the Church as a whole, became possible after the persecution of the Christians stopped. The Ecumenical Synods were convoked by the Emperor, whose interest in them rested in the State's concern for maintaining peace and order which was threatened by Inter-Christian strife. The Ecumenical Councils, in fact, constitute the highest authority in the Church, and they compose and issue either dogmas or rules. Rules or canons are, for the most part, laws governing the administration of the Church.

The Seven Ecumenical Synods are widely known, as are the dogmas promulgated and the rules or canons issued by them. These Synods also confirmed the collection of so-called Apostolic Canons, the rules composed by the Holy Fathers and the decisions of various local Synods. From the 9th century and on, no further Ecumenical Synods were convoked, and their absence was covered by various decisions taken either by the Emperor or by the Patriarch of Constantinople and his Patriarchal Synod.

In the course of this study we shall mention such Patriarchal

decisions as 1) the Letters of Patriarch Tarasios (790 A.D.) against the simoniac ordinations, 2) The Tomos (Edict) Decree of Union of Patriarch Nicholas the Mystic (920 A.D.), forbidding a fourth marriage, 3) The Tomos of Patriarch Sisinius (997 A.D.), regarding the prohibitions of certain marriages, 4) The Commentary of Patriarch Alexios I (1040 A.D.), concerning those who were given monasteries through donations, 5) The Tomos of Patriarch John VIII, Xiphilinos, (1066 A.D.), regarding the prohibition of *Mnisteia* (marriage promise, or betrothal), in relation to marriages, 6) The decisions of two Patriarchs, John IX Agapitos (1115 A.D.), and Luke I, Chrysovergis (1157 A.D.), forbidding clergymen to accept state offices and obligations, and 7) The decision of Patriarch Emmanuel II (1250 A.D.), regarding transfers of bishops.

During the period of the Turkish Domination the Synodical legislation consisted of decisions of the Ecumenical Patriarch and his Synod of Bishops. These decisions are judicial, administrative and, for the most part, legislative.

After the issuing by the Turkish Sultan of the *Hatti-Humayun*, i.e. the edict concerning the Church in the Turkish State, the Patriarch set up a council of 7 bishops and 21 laymen. This council met in Constantinople during the years 1858-1860, and the result of the work it carried out during these two years was the system by which the Church could be organised and governed.

There is also a large number of diocesan post-Byzantine codices, containing episcopal decisions of both types: judicial and administrative.

After the Church of Greece became independent (autocephalous), ecclesiastical legislation has unfortunately been most anti-canonically in the hands of the State, under the prevailing principle that «the State dominates the Church through the state laws». This results in the decisions of the Permanent Synod and of the Synod of the Hierarchy of the Church of Greece being of administrative or of moral rather than of legislative character. It is true that very recently in 1969 the Church of Greece has been allowed, either through the Standing Synod or through the Synod of the Hierarchy, to legislate for herself on matters concerning faith, worship, ecclesiastical discipline, internal organisation and administration.

## THE STATE ECCLESIASTICAL LAWS

It should be pointed out that all the state laws concerning the Church have come into existence through the silent acquiescence of the Church. It was Emperor Constantine I who inaugurated the issuing by the State of edicts concerning the Church.

During the Byzantine period more imperial laws followed, then came the Turkish «*Firmanias*» during the Turkish period, and finally in the period of the free State, from the nation's liberation up to the present, various Greek Constitutions have contained certain articles concerning the Church, and certain laws, obligatory for the Greek Church, have been issued.

The most important of the imperial edicts of the Byzantine period are the following:

- 1) The Codex of Emperor Theodosios II (438 A.D.).
- 2) The Justinian Legislation (*Corpus Juris Civilis*).
- 3) The «Selection» of Emperor Leo III (726 A.D.).
- 4) The *Encheiridion* of Emperor Basil I (870-879).
- 5) The *Basilica* («Royals») (60 Books) of Emperor Leo VI (900 A.D.).
- 6) Many separate «*Nearae*» (Novelles, i.e. ecclesiastical laws) were issued by Emperors: Herakleios, Leo VI, Alexios I, Emmanuel I and Andronicos.

It should be pointed out that all the above-mentioned state ecclesiastical laws legislated for the Church were in use and were valid also during the entire period of the Turkish yoke. This was a result of the privileges Sultan Mohammed II, the Conqueror, bestowed upon the Patriarch of Constantinople, Gennadios Scholarios. These privileges were renewed much later in 1839 and 1856 by the edicts issued by the Sultan and known as *Hatti-Serif*, and the already mentioned *Hatti-Humayun*.

The state ecclesiastical laws legislated for the Church of Greece can be easily found in the «Journal of the Government of Greece».

### THE RELATION OF THE SYNODICAL LEGISLATION TO THE STATE ECCLESIASTICAL LAWS DURING THE BYZANTINE PERIOD

The state ecclesiastical laws actually started after the new Roman State recognised Christianity as a state religion. Unfortunately the Edict of Emperor Theodosius I, issued on February 27, 380,

to the population of Constantinople, inaugurated the intolerance of other religions other than Christianity.

This edict was followed by another issued by the same Emperor and proscribing idolatry. The edicts which followed dealt with the stabilisation of the then Orthodox State as well as with matters of church administration.

Till the period of Justinian one comes across edicts such as those of certain Emperors like Marcian and Valentinian III, which 1) stabilise the privileges of the Church, and 2) regard and characterise the disobedience to the Holy Rules (i.e. the H. Canons) as disobedience to the state laws.

The final recognition of the Holy Canons took place in 530 A.D. by virtue of an edict by Emperor Justinian, equating the Holy Canons with the state laws. The same act was repeated by the same Emperor in another edict, the so called *Neara*, (Nouvelles) in 535 A.D. But in 545 A.D. Justinian went further by legislating that the Holy Canons of the Ecumenical Councils convened at Nicaea, at Constantinople, at Ephesus and at Chalcedon, are not only equal to the state laws, but also equal to the Holy Scriptures. Later on, doubt appeared and dispute arose as to whether or not in this imperial decision by Justinian the Holy Canons produced by various local Synods might be included.

Yet these doubts and the dispute somehow ceased after the issuance of the 2nd Canon of the so-called *Penthecti* (Quinisext) Ecumenical Synod. This Synod recognised the canons of all local synods, and those composed by certain Holy Fathers. Finally, in the already mentioned *«Basilica»* of Leo VI (900 AD.), all Holy Canons of all Holy Synods, Ecumenical or Local, without discrimination, became equal to the laws of the State.

The *Nomocanon* of Patriarch Photios in 883 AD, the wonderful *Scholia* on it made by Theodore Balsamon, as well as the already mentioned *«Basilica»*, have become the best sources of Canon Law, in which the principle that in all cases concerning any dispute or contradiction between state laws and church canons the superiority must be on the side of the latter clearly dominates. In a debate in the presence of Emperor Manuel Comninos, the following conclusion, in words of Theodore Balsamon, prevailed: the church canons are said to be more powerful than the state laws because the Holy Canons are the work of both kings and Holy Fathers, while the state laws are the product of kings alone and in no case can they overrule either the Sacred Scriptures or the Holy Canons.

The same attitude is expressed also in the book called *Syntagma*, a work by Matthew Blastaris.

As a conclusion to all that we have said above, I would like to point out that, indeed, the existing struggle between Church and State was most remarkable, and the attempt of the Church to gain superiority for the Holy Canons over and against the state laws most admirable.

### THE RELATION OF THE SYNODICAL LEGISLATION TO THE STATE CHURCH LAWS DURING THE TURKISH PERIOD

After the fall of Constantinople in May 1453, the Church under the non-Christian Turkish regime, was related to it only externally, and governed herself by means of the divine Canons, the Byzantine state ecclesiastical laws, and by decisions either of the Patriarchs, or of the so-called *Endemousa* (Abiding) Synod.

During the Turkish period, one could regard in a broader sense, as state laws concerning the Church, the privileges granted to the Church of Constantinople by Mohammed II, the Conquerer. These privileges consisted of 1) freedom in performing religious duties, 2) a dominant place granted both to the Ecumenical Patriarch and to the bishops, 3) freedom in dealing with Church property, 4) power in imposing upon the faithful what we may call a welfare tax, for maintaining the welfare institutions, and 5) certain rights bestowed upon high clergy concerning family and hereditary rights. All these privileges were always included in the letters call «*Veratia*», issued by the Sultan, following the installation or the ordination of any Patriarch or bishop.

It is not necessary to add here that the privileges mentioned were frequently usurped and violated by the non-Christian and hostile State, but at least, though mostly in theory, the Church was free to act and to be governed by the Synodical and divinely-regarded Canons. Only during the 19th century, under pressure exerted by the Christian Nations, the Turks gave more freedom to the Christian communities living within their territory. Thus Sultan Metzit in 1839 issued the already mentioned *Hatti-Serif*, and in 1856 the *Hatti-Humayun*, both of which constituted part of the Treaty of Paris.

The *Hatti-Humayun* 1) recognised the privileges of the Christians, 2) guaranteed complete religious freedom, 3) granted the right to build churches, schools, and welfare institutions, 4) opposed forced

conversion from one religion to another, 5) imposed full equality among all citizens, 6) granted equal rights to all subjects to hold civil office, 7) allowed the creation of Mixed Tribunals, 8) tolerated the exchange of military duties for the payment of a sum of money, 9) permitted the possession of foreign property, and 10) imposed full religious freedom.

Finally in 1888 all the Regulations for the Great Church of Constantinople, in accordance with the two *Hattis*, were published.

Unfortunately, the loss of the greatest part of her flock in 1922 confined the activities of the Church of Constantinople to purely religious duties, until the Patriarchal period of Athenagoras I, who succeeded in strengthening the Ecumenical Patriarchate through the flock of the Diaspora.

#### THE RELATION OF THE SYNODICAL LEGISLATION TO THE STATE ECCLESIASTICAL LAWS IN THE CHURCH OF GREECE

Even at the very beginning of the Greek Revolution against the Turks, the 1st National Conference in 1821 at Epidavros declared that the main religion in Greece is that of the Eastern Orthodox Church of Christ. Another National Meeting at Hermione in 1927 accepted an application signed and submitted by 5 bishops, requesting the convocation of all the canonical bishops for conferring on matters necessary for the preservation of the Holy Canons.

This convocation did indeed take place, but its decisions proved unnecessary after the first Governor of Greece, John Capodistrias, on 8th October granted the bishops a free hand to act and work according to the divine Canons of the Church. When, in the days of King Otto, the Greek Church declared herself independent from the Patriarchate of Constantinople—against the will and without the consent of the Patriarchate—a good opportunity for the Orthodox Greek Church to achieve a final and canonical basis for her relations with the also Orthodox State was presented. But the opportunity was lost because of the Regent, George Mouer, from Bavaria, who, being himself a Protestant, was a complete stranger to the Greek situation in his mentality, tradition and background. George Mouer also feared the Church, regarding her as a future opponent of King Otto, whose mentality was fully monarchical. G. Mouer declared the King «Sovereign of the Church». G. Mouer was probably influenced by the contemporary happenings in

the West, where the Roman Catholic Church was at the time demanding more power and improved or full rights. The Committee, set up by G. Mouer to study the organisation of the Church, decided the establishment of a Permanent Synod, which would oversee the clergy and would care for the strict observation of the Holy Canons as well as of the correct customs. This was also repeated by another committee working on a new plan for a Church Constitution. Finally, the phrase «Holy Canons» was included in the Ecclesiastical State Law of 4th August 1833, and the Permanent Synod came into being, being modelled on the Russian Synod established by Tsar Peter of Russia (1725 A.D.) and on the Protestant Consistoria. But the fact is that the Holy Canons, although being mentioned, were more or less disregarded, and did not play any part at all within the entire structure of the State in question. George Mour's only concern was to guarantee the power, the rights and the influence of the young monarch, King Otto.

The Church tolerated the situation, waiting for better days, and many times found the opportunity to express her displeasure over such bad ecclesiastical law.

After an entire decade, on 3rd September 1843, a Revolution against King Otto declared the Kingdom of Greece a Constitutional State. On 23rd December 1843, the Permanent Synod, with the cooperation of a number of bishops, immediately submitted for ratification to the representatives of the people a new constitutional plan for the Church.

In this new constitutional plan it was stated that 1) the Church in Greece, having as her Head and Lord Jesus Christ is doctrinally and canonically united with the Great Church of Constantinople, as well as with all the other Sister Churches, 2) she is independent, 3) she, according to the Divine Apostolic and Synodical Canons, and according to the Sacred Traditions, is governed by a Synod of Bishops whose members are called from the hierarchy according to their seniority, 4) the president of the Synod is elected by the bishops, and 5) the ecclesiastical laws which contradict the Divine Canons have no validity. In that constitutional plan the King was described as the «Protector of the Church and Her rights», as the «Defender of the Church», as the «Overseer of the Church», as «Her Orderer through the Holy Synod», and finally as the «Caretaker for putting aside all that is against the Holy Canons within the ecclesiastical legislation.»

In 1843 in the National Meeting of the People's Representatives,

who met in order to set up a new Constitution for the Kingdom of Greece, a draft was submitted by the Church of Greece, to be included in the 2nd Article of the New Greek Constitution.

There was a large and creative debate on the subject. It was said during this debate that the Ecclesiastical Law of 1833 had paralysed the Church of Greece, and that it had weakened the sacred religion of the Greek people. Finally, the above-mentioned article was included, with some variations, in the new Constitution.

The article consisted of two paragraphs, in which it was mentioned that: 1) The main religion in Greece is the Eastern Orthodox Church. Any other known religion is tolerated and its worship is performed freely under the protection of the laws. Proselytism is forbidden as well as any other intervention against the state religion. 2) The Orthodox Church of Greece recognises as Her Head our Lord Jesus Christ. She is inseparably united doctrinally to the Great Church of Constantinople and to all other Churches of Christ having the same faith. She keeps entirely, like the Constantinopolitan Church, the Synodical canons and the sacred Traditions. She is autocephalous, acting independently of any other Church, according to the given rights, and she is governed by a Holy Synod of Bishops.

After 7 years' time, the Ecumenical Patriarchate was asked officially by the Synod of the Greek Church, as well as by the Greek Government, to grant independence to the Greek Church. In the letters of that request, it was especially mentioned that the 2nd Article of the Greek constitution, underlined certain phrases characterizing the Holy Canons as obligatory. The *Tomos* (Act) of the Ecumenical Patriarchate by which the Church of Greece was declared autocephalous (independent) mentioned especially that the Church of Greece ought to be governed in accordance with the Holy Canons and, moreover, without any interference from any secular, i.e. political, power.

In a letter of the Synod of Constantinople to the Greek Government it was mentioned in passing that the Byzantine Emperors had accepted and respected the Holy Canons, and used to issue satisfactory laws in preserving their agreement with the Holy Canons, and in cases where the laws were in opposition to the Holy Canons, the latter prevailed over the former. The same, according to the Synodical decision in question, would apply to any article of any future Greek Constitution.

The Greek state laws which followed, called Σ' (200) and ΣΑ'



(201) (1852), while mentioning the reverence to be accorded to the Divine Canons, in reality only repeated the State Law of 1833. So after the new King, George I, took office, the Church asked the parliament to change and improve the ecclesiastical laws.

It is true that in the Constitution the article referring to the Church remained unchanged and well-grounded until 1968. Then in the new Greek Constitution of 1968 the status of the Church deteriorated.

The ecclesiastical laws after 1852 were continually, more or less, against the Holy Canons, violating them, and were even unconstitutional; yet they were valid and active, by virtue of the power of the State. The Permanent Synod on 2nd May 1868 in submitting three plans of laws regarding the Church, stressed the fact that up to that day, in practice, the ecclesiastical laws were both uncanonical and unconstitutional and that such a contradictory situation ought to be stopped.

But the situation and the validity of the Laws  $\Sigma'$  and  $\Sigma A'$  unfortunately continued unchanged from the years 1852 until 1923, a period of 71 years. Both Laws  $\Sigma'$  and  $\Sigma A'$  were finally abolished on 14th September 1923, and on 31st December of the same year, the Church acquired a new Constitutional Law. It was acquired during the period of a new military revolution following the destruction and defeat in Asia Minor.

This Church Constitutional Charter, or Law, 1) gave to the Archbishop of Athens and all Greece great power, 2) abolished the Permanent Synod, 3) gave the due canonical power to the Synod of the Hierarchy so that it could then meet according to the Holy Canons, 4) introduced a system of Assistant Bishops which up to that time had been unknown, 5) bestowed to the Hierarchy the power of electing new bishops, 6) Decentralised the ecclesiastical judicial system by creating Provincial Ecclesiastical Courts, 7) diminished the power of the state representative to the Church, that is, generally speaking, it weakened state intervention in the administration of the Church. Unfortunately this law was repealed on 25th September 1925 and the articles of the Laws  $\Sigma'$  and  $\Sigma A'$  were again put into force.

After struggles waged by the Hierarchy, the above law was replaced in 1931 by the new Ecclesiastical Law numbered 5187. And while the law changed, the situation unfortunately did not. Then followed Law 5438/1932 and the Presidential Edict of 25th May 1932, and some lesser but compulsory edicts. In 1940, with the consent of the Holy Synod, the Church acquired another Constitutional Law. In 1943 by a Church Constitutional Law numbered 671, the Church attempted once more to free herself from the domination of the State.

The above-mentioned Constitutional Church Law and some state edicts concerning the Church underwent their final change in 1959 when a rather sharp tension arose in Church-State relations.

Most unfortunately in the recent Greek Constitution of 1968, the status of the Church of Greece deteriorated because of a strange discrimination made between the various Divine Canons in that Constitution.

The Holy Canons in this particular Greek Constitution were divided into doctrinal and liturgical on the one hand, and into administrative on the other. The former were invested with Constitutional authority while the latter were deprived of it.

The then Synod, which had been appointed by the State, accepted either the meaning or the wording of this discrimination of the Holy Canons and included both the meaning and wording in the new Church Constitutional Law numbered 126/1969. This Constitutional Law is still in use. This Law 126/1969, while acknowledging the Constitutional deterioration of the Church, and containing many completely anticanonical articles, did on the other hand give to the Church the possibility, already mentioned, of legislating on certain matters concerning her task. Thus a great deal of legislative work has been performed by the Permanent Synod regarding ecclesiastical education, monasticism, church personnel, the *Apostoliki Diakonia*, ecclesiastical museums, church libraries, church finance, and use of chapels.

### CONCLUSION

The relation of the Synodical legislation to the state ecclesiastical law during the Byzantine period was, in general, formed under the following principles: 1) The Divine Rules or Holy Canons, have the same validity as the state laws, and in case of disagreement, the Holy Canons are regarded as superior to the state laws. 2) The state laws, in cases where they contradict the Holy Canons, are null and void. 3) In cases where Synodical legislation does not exist, the vacancy is filled by the Roman-Byzantine Law, provided that law does not harm the principles of Orthodoxy.

The three above-mentioned principles were respected and preserved by the Christian State, and in cases where they were violated by certain Emperors, the Church finally regained her position.

During the Turkish period, nothing can be said regarding the comparison of Church legislation to the state church laws, because

the State was not only Moslem, but it was also, for the most part, unfriendly and hostile to the Church.

The Turkish State always tried to use the enslaved Byzantine Christians according to its needs and interests. Only on such a basis can the *Firmanias* and *Veratias* issued by the Sultans be regarded.

Regarding the relation of the Synodical legislation to the church state laws in the Church of Greece one observes the following:

In the Greek Constitutions the Holy Canons were always maintained, but in the state ecclesiastical legislation, almost without exception, the Holy Canons are either disregarded or violated. This has occurred many times and in a most serious way.

I conclude, first by referring to the words of Patriarch Gregory V:

«All that is governed according to the Divine Institutions, and the sacred Apostolic and Synodical Canons, receives in abundance the Grace of God and produces great glory, but all that transgresses these causes visible ugliness, and finally leads to the loss of souls.»

Secondly, in ending this short introduction of mine, I express a very deep wish: that these wise, modest and Christian words of the great martyr Patriarch touch the ears, and especially the hearts, of the competent officials of the Greek Government, that they may legislate further for the real benefit of the Church of Christ, for that benefit which profits not only the Church, but also at the same time both the State and society as well.