

UNIVERSITY "AUREL-VLAICU", ARAD
FACULTY OF ORTHODOX THEOLOGY
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**THE NATURE OF THE CANONS AND THE PRINCIPLES
OF THEIR INTERPRETATION IN THE ORTHODOX
CANON LAW OF THE 19TH AND 20TH CENTURIES**

**DOCTORAL DISSERTATION
SUMMARY**

**SCIENTIFIC ADVISOR
VERY REV. FR. PROF. DR. CONSTANTIN RUS**

**DOCTORAL CANDIDATE:
RĂZVAN TUDOR PERȘA**

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SUMMARY OF THE DOCTORAL DISSERTATION

Before discussing some of the introductory problems on the proposed theme, we have to provide some explanatory notes on the title of the doctoral dissertation: "THE NATURE OF THE CANONS AND THE PRINCIPLES OF THEIR INTERPRETATION IN THE ORTHODOX CANON LAW OF THE 19TH AND 20TH CENTURIES". Why a title that encompasses such a broad theme? Why is it necessary to address the nature of the canons and at the same time the principles of their interpretation?

First of all, any hermeneutical and exegetical approach has to start by defining the nature of the texts it tries to understand and subject to interpretation. This is more important when we try to understand the canons of the Orthodox Church, texts dated to the first Christian millennium, that apparently could be considered inapplicable to the ecclesial life of the present post-modern society. Therefore, in order to approach the interpretation of the canons, we must first question their nature.

Secondly, in defining the nature of the canons, it is absolutely necessary to define the nature of "Canon Law", that is to say, the whole system of canonical thinking that embraces the canons. If the latter is considered just a system based on legal or juridical doctrine and thinking with some theological implications, then the nature of the canons and the methods of their interpretation will be tributary to the exegesis of legal and juridical texts. According to this view, we will have a legal interpretation of theological and canonical texts with legal methods. If "Canon law" is considered a theological system without legal implications, then the possible incompatibility between theology and legal thinking must be questioned and then we must identify the distinctiveness of "Canon Law" for a possible interpretation of the nature of the canons and their methods of interpretation. We consider that these three elements: *the nature of Canon Law, the nature of the canons, and their interpretation* are fundamentally interdependent, and their separate treatment would lead to a truncated or unfaithful understanding of the canonical tradition of the Orthodox Church.

Although the nineteenth century represented, not only for Orthodox Canon Law, but also for other theological field the moment of their appearance as theological disciplines studied in Universities, requiring a system, unitary vision, and especially an identity, there are few Orthodox studies questioning precisely the nature of these theological disciplines. Those who do it either praise the methods of researching in the field of Canon Law, often borrowed from the Western Canon Law, or unequivocally condemn them on the basis of their Western influences, considering Orthodox theology of this period in the "Babylonian captivity", as if the Orthodox Church lost any element dogmatic, liturgical and canonical consciousness.

From the desire to overcome this bias in the Orthodox theology, I chose this theme for several reasons. By questioning the nature of canon law and canons we can find a key for the inter-Orthodox and ecumenical dialogues. Without understanding the nature of the canons, and without their proper interpretation, any local Church and theologian will arbitrarily use the canons either to break the dialogue or communion with the others, by destroying any kind of sympathy towards them, because they are just „heretics“, or to exaggerate this feeling of measureless love, falling into the uselessness of the canonical tradition of the Church by considering it outdated. I think that no progress can be made for the inter-Orthodox and ecumenical dialogues, unless the canonical aspects of these implications are seriously debated. But in order to reach this debate it is absolutely necessary to have a unit of thought on the nature and interpretation of the canons.

Then, if for the Biblical studies the number of commentaries is very high and the state of research is very advanced, for Canon Law studies, most of the times, the commentaries on the canons are very few in number and predetermined by ecclesiological perspectives based on Church-politics, historically decontextualized, or sometimes even rudimentary.

This doctoral dissertation has a threefold purpose in its structure and development: historical, legal-canonical and theological. The historical purpose is to analyse the system of Orthodox Canon Law synchronically and diachronically and to determine the way of understanding the canons of the Church and their actuality and validity in ecclesial life in order to define the nature of the canons and the principles of their interpretation. The historical development has the potential to give us another view of the nature of the canons. The legal-canonical purpose is to see the relationship between the canonical content and the legal content of the canons and the possibility of applying certain principles of interpretation based on the difference between legal texts and canonical texts. The theological purpose, based on the historical and legal-canonical one, is to see the nature of the canons according to the entire theological system, and not as a separate part of Theology, and to integrate Canon Law in the field of Ecclesiology, Christology, Triadology and Soteriology.

Based on biblical, patristic and canonical texts, I tried with this doctoral dissertation to define the nature of the canons, starting, in the first part of the paper, from the current debate on the subject. In the second part, by returning to the Tradition of the Church, I tried to articulate an Orthodox canonical thinking of the nature of the canons and the possibility of their interpretation in Orthodox theology. My approach is more important when we realise the lack in the Orthodox theology of some consistent exegetical principles of interpretation of the canons, based on scientific

research and unanimously accepted by canonists and theologians. More often the canons are understood just according to the interests of private ecclesiologies or theological ideas of some groups as we can see, for example, in the famous exegetical dispute related to the return to Orthodoxy of the "heretics," or the endless dispute on the meaning of the term ἔθνος in the 34th apostolic canon, or the meaning of the phrase: "barbarian territories ἐν τοῖς βαρβαρικοῖς" in the 28th canon of the Fourth Ecumenical Council. Another issue which this paper wants to identify is the borrowing of some concepts in the field of Orthodox Canon Law from the Catholic and Protestant Canon Law in the 19th and 20th centuries.

Thus, our main goal was to determine the relation between the Orthodox canonical tradition and the complex life of the Church, understood as a divine-human reality and not as a social, organizational or legal predetermined society or identity.

In this paper I tried to use a methodology that combines both the canonical and the dogmatic and ecclesiological approaches, as well as the legal and historical aspects. However, the goal was to respect during the analyse of the concepts the simultaneous application of all these approaches, so that the elements of historical analysis, presented according to the expository method, should not be presented just as sterile historical data, decontextualized by its ecclesiological and canonical content and meaning, but as elements that determine the understanding of certain ecclesial realities. In each subchapter I tried to synthesize the results of the research in one brief conclusion. All five chapters of the doctoral dissertation are conceived as a unit, always taking into account the conclusions of the previous chapters and subchapters.

In this thesis we attempted to analyse the work of the most important Orthodox Canon Lawyers, who influenced the development of a system of Orthodox Canon Law. I chose just some of them because to approach the works of all canonists of the 19th and 20th century would have been impossible. That is why the work is limited, from the beginning, to the works of the main canonists of the nineteenth and twentieth centuries, who have debated the nature of canon law, the canons and the principles of their interpretation.

The doctoral dissertation is divided into five chapters, of unitary length and complexity, in which we tried to cover the proposed themes.

The first chapter entitled "**The Nature and Definition of Orthodox Canon Law according to the main Canonical Handbooks and Works of the 19th and 20th Centuries**", being absolutely necessary for a subsequent articulation of the nature of canons in the Orthodox Church, seeks to question the understanding of the system of Orthodox Canon law and its specificity and its dogmatic, ecclesiological and legal influences of the 19th and 20th centuries. As we said, the hermeneutical approach of the

canons cannot be reached unless the nature of Orthodox canon law is truly clarified. Therefore, a fundamental goal for the possibility of interpreting the canons in the Orthodox tradition is the questioning of the nature of Orthodox Canon Law, or what is meant by the phrase „Canon or Ecclesiastical Law” in the tradition of the Orthodox Church. The first printed handbooks of Orthodox Canon Law were intended to clarify these fundamental concepts such as: the nature of canon law, the division of canon law, its relationship with other theological disciplines, the sources of canon law and others. That is why in the first chapter I have focused on the definitions and different ways of understanding the Canon Law in the handbooks and works of the 19th and 20th centuries. Therefore, I tried to analyse the system and nature of Canon Law in the works of Romanian, Russian, Greek and Serbian Canon Lawyers in order to have a general perspective of the development of Orthodox Canon Law in the aforesaid centuries.

In the first subchapter I analysed the works of the following theologians and Canon Lawyers: Saint Metropolitan Andrei Şaguna, Constantin Clementie Popovici, Vasile Pocitan, Constantin Erbiceanu, Dimitrie, Valerian Şesan, Valeriu Moldovan, Vasile Sava, Lazăr Iacob, Nicolae Popovici, Iorgu Ivan, Ioan Floca. Regarding the works of Fr. Prof. Liviu Stan I have dedicated two subchapters in the second chapter of the paper, because of his different perspective on Romanian Orthodox Canon Law. The last part of the first subchapter is dedicated to the repercussions of the division of Canon Law according to sociological understanding of Ecclesiastical Law for the Romanian Orthodox Theology of the 19th and 20th Centuries. As a conclusion of this subchapter we can say that the great majority of Romanian Orthodox theologians made a difference between “Ecclesiastical Law” and “Canon Law”, the former encompassing the latter. In the view of some authors, the phrase “Church or Ecclesiastical” is preferable to “Canon Law”, since the latter is used predominantly in Catholic theology, and Ecclesiastical Law has a broader field of interests than Canon Law, the latter being included in Ecclesiastical law, as a fundamental part of it. According to the Romanian theologians, Canon Law often refers to the canonical tradition of the first millennium, represented by the holy canons, and Church Law or Ecclesiastical Law refers to all canonical norms, canonical legislation and civil law with reference to religious denominations. In the division of Ecclesiastical law, the Romanian authors were borrowing some of the concepts of Catholic Canon Law. Thus, de Ecclesiastical Law is divided according to authority in *divine law* (*jus divinum*), with the origin in the will of God, and human law (*jus humanum*) a purely Ecclesiastical human Law or political-ecclesiastical Law, as the Romanian authors called it. According to the form, the Canon Law is divided in written Law (δικαίον ἔγγραφον

ἄγγραφον, jus scriptum) and unwritten, (δίκαιον ἄγγραφον, jus non-scriptum, customary), by domain, in universal Law, general or common Law, applied to all Orthodox Churches, and particular law of a local Orthodox Church, or internal law, which regulates the internal relations in the Church, and external law, applied in the relationship of the Church with the state or with other external bodies, or public and private Law (eg. matrimonial law).

The academic research of Canon Law in imperial Russia can be divided into four major periods: the first one, from the end of the 18th century to the half of the 19th century. This was a period of theological and ecclesial development of Canon Law, made almost exclusively by clergymen, in which they tried to define canon law, its methods and its objectives according to theological and ecclesiological doctrines. The second period, from the half of the 19th century to the end of the century, is a period in which canon law becomes a discipline that tried to define its own place not just in the theological Academies, but in the Faculties of secular Law. Canon law becomes a field of research for lawyers and they attempt to find a proper place for Canon Law in the general system of Secular Law by questioning the relationship between Canon Law and Secular Law. The third period, in the first decade of the 20th century, is a period in which some particular problems are discussed, such as the relationship between State and Church, the legal status of the Church, civil marriages and divorce, but also a re-evaluation of the nature of Canon Law that was influenced by legal thinking, especially after Lev Tolstoy's excommunication. The fourth period, related to the third one, ends with the Bolshevik Revolution and with the beginning of communism in Russia. The two periods can be methodologically taken as a unit, but each has its importance and theological distinction.

The next subchapters are taking into consideration the nature of Orthodox Ecclesiastical and Canon Law according to the Greek and Serbian Canon Lawyers of the 19th and 20th Centuries. The twentieth century represented for Catholic and Orthodox Canon law a theological revival, not only because of the publication of many books and studies that address different canonical issues, but primarily because in this period the very nature of Canon law was (re)questioned and therefore as well the nature and validity of the canons of the Church. In this subchapter that takes into consideration the nature of Orthodox Ecclesiastical and Canon Law according to the Serbian Canon Lawyers of the 19th and 20th Centuries we tried to emphasize how Nikodim Milaš answered to the following questions: What is canon law, what does „canon” mean and represent and what is the nature of the canon? At the same time, we tried to see that the basis of this revival was a real crisis in the articulation of the

nature of canon law, considered most often, even today, as anachronistic, if not antithetical to the spirit and the theology of the Gospel.

The second chapter is entitled: **"The Nature of the Canons in the theological debates of the 19th and 20th Centuries"**. The first subchapter of this part of the doctoral dissertations is entitled „The development of the Word κανών - from its botanical meaning to the Tradition of the Orthodox Church". The main purpose of this subchapter is to highlight the diachronic development of the word κανών in the first four centuries of Christianity. To understand how the canonical tradition of the Orthodox Church used this term as a technical term for its synodical decisions we have followed the development of the word κανών from the Bible to the canons of the Church. To fulfil this task, we have started from the etymology of the word, summarizing three theories about the origin of the word κανών. Then we tried to see the relationship between the Hebrew word קַנָּוֹן and its Greek translations in the Old Testament and then to analyse the use of the word κανών in the New Testament. Starting from the existence of two canonical perspectives upon the canonical tradition of the Church, perspectives developed during the late nineteenth century and during the twentieth century, we tried to take into discussion the current theories regarding the meaning of the word κανών. Analysing the thesis of Heinz Ohme, we tried to emphasize that the canons of the Church are the direct expression of κανών ἐκκλησιαστικός, comprising the whole doctrinal, moral and disciplinary normativity of the Church. A division between this normativity and the canons of the Church leads to the introduction of an anachronistic formalist–positivist legal system of the Eastern Church.

In the second part of this chapter I took into consideration some of the most important authors that tried to define the canons in the 20th century and some of the canonical issues of this period such as: the canonical consciousness in the theology of Nicolai Afanasiev and in the theology of Fr. Liviu Stan and its relationship with other concepts of protestant and catholic theologians, having some critics regarding the canonical consciousness in the works of these two Canon lawyers, the concept of changeability and unchangeability of the canons in the works of Nicolai Afanasiev, the ecclesiology of Rudolf Sohm and its influences on the theology of Nicolai Afanasiev and Fr. Liviu Stan regarding the nature of the canons, and the development of the canonical theology of N. Afanasiev in the other theological works of the 20th century. An important subchapter is dedicated to the nature of the canons in the philosophical and theological works of Christos Yannaras and to the critics of Christos Yannaras regarding the canonical theology of Saint Nicodemus the Hagiorite.

The third chapter of this paper is entitled: "**Fundamental concepts and debates regarding the understanding of the nature of the canons in the 19th and 20th Centuries**". In this chapter we tried to answer to a fundamental question: are the canons of the Orthodox Church still valid and actual for the ecclesial communities in the post-modern society? In order to have a clear answer of this question, I have analysed the following concepts: Desuetude of the Canons and the old principle of *Cessante ratione legis, cessat lex ipsa*, the problem of the abrogation of the canons and the principle *lex posterior derogat legi priori*, taking as example the second canon of the Council of Trullo and the changeability and the unchangeability of the canons, different methods of classification of the canons and their content in the Orthodox Canon law of the 20th century; the revision and codification of the canon according to the first canon of the Fourth Ecumenical Council and the second canon of the Council of Trullo. At the same time I have tried to see the relation between canons and secular laws, between ὄρος and κανών, between canons and canonical custom; between fundamental canons and canons from private collections or pseudo-epigraphic canons.

The fourth chapter of this work is entitled: "**Interpretation of the Canons in the Orthodox Canon Law of the 19th and 20th**". In the first subchapter I have focused my attention on the methods and principles of interpretation of the canons in the Canon Law of the Catholic Church according to the Codex Iuris Canonici 1917 and Codex Iuris Canonici 1983. This analysis was very important for the next subchapters because I was able to compare the principles applied by the Orthodox theologians with those that the Catholic Canon lawyer were using at the beginning of the 20th century and after the Second Vatican Council. Regarding the interpretation of the Canons in the Canon Law of the Orthodox Church of the 19th and 20th Centuries, I have analysed the commentaries on the canons of the following authors: Constantin Popovici, Constantin Erbiceanu, Constantin Dron, Nicodim Milas and Peter L'Huillier.

The fifth and last chapter of this work is entitled: "**Basic Principles of Interpretation of the Canons in the Orthodox Canon Law. O systematic Approach**". In this chapter I tried to synthetise some principles of interpretation of the canons based on results from the previous chapters and on the current stage of development of interpretation of biblical and patristic texts. I took into consideration the following elements of interpretation: textual analysis for the interpretation of the canons; historical-critical interpretation of the canons of the Orthodox Church, historical interpretation of the canons, from the point of view of synchrony and diachrony; grammatical Interpretation of the canons; pastoral element of the canons.

In the subchapter „The Importance of Textual Analysis for the interpretation of the canons”, starting from the actual stage of development of the textual criticism of Greek texts, especially of the New Testament, I wanted to emphasize the need of a new complete critical edition of the canons of the Orthodox Church. This necessity is imposed by the textual differences found in the manuscripts that can lead to different interpretations of particular canons and by the lack of a complete critical edition. The existing ones are either non-critical, incomplete, or they do not cover the whole tradition of manuscripts, sometimes not even the most important ones. In order to prove the need of a new critical edition of the canons, I have examined the most important existing editions by highlighting the positive and the negative aspects from the perspective of textual criticism. The editions that were examined in the present article are those of: Georgios A. Rhalles (Γεώργιος Α. Ράλλης) and Michael Potles (Μιχαήλ Ποτλής), the edition of Cardinal Jean Baptiste Pitra, the edition of Périclès-Pierre Joannou and the latest edition of Heinz Ohme.

Another important subchapter, entitled „Translation as a former way of understanding the text of the Canons”, aims to highlight the necessity of a new Romanian translation of the canons of the Orthodox Church through the critical, positive and negative, analysis of the previous translations. In this approach, we have attempted to see not only the accuracy of translating a word from a source language, in our case, Greek, into a target language, but also the way in which a translation can ease or obstruct the understanding of the canon, or even distort the entire meaning of the text. The analysis took into consideration the most important Romanian translations of the canons, including: the Pidalion, Andrei Şaguna’s translation, that of Nicolae Popovici from Nicodim Milaş’s remarks, as well as Constantine Dron’s and Ioan Floca’s translations.

The works ends with examples of abusive interpretations of the canons in the 20th Century.

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