

FAITH, LAW, AND HUMAN DIGNITY

An address by Bishop Maxim (Vasiljevic) given at the Orthodox Christian Attorney Gathering, organized by Christian Legal Society, at Newport Beach Marriott Hotel, October 27, 2017

I would like to begin by expressing my deep appreciation of the initiative to convoke this Orthodox Christian Attorney Gathering in order to reflect on the important issue of Faith and Law.

Theology and law do not correspond completely, but it is their innovative and profound encounter that becomes beneficial—if not indispensable—in accomplishing the duty that these two ministries bear toward man, whom they also serve. The necessity of this encounter today provides us with a central meaning that more and more often in the area of law deals with the concept of *personhood*. We are living in the third millennium since the coming of our Lord, and our generation seems to bear the formidable task of protecting of human existential truth and authenticity based on a communion-centered version of society.

It is rare to see an Orthodox Christian dealing with the subject of law in an inclusive and comprehensive way. It is taken for granted that law has to do with the legal protection of human “rights”, within the political system of so-called “representative democracy,” which is limited mostly to social utility or to the conventional rules of human relations. So, I felt comforted when I saw in today’s program a theme such as: “Being an Orthodox Christian attorney: integrating faith and the practice of law.” Indeed, “if our faith is to mean anything, it should speak to every aspect of our lives, including our careers.” Man cannot be nourished only by “antidoron.” You cannot participate without the political responsibility of belonging, and only through the proxy of representation. Any kind of eucharistic “decaffeination” (docetism) leads to political and cultural “decaffeination.”

If the ecclesial tradition is incompatible with collectivism as *an arithmetic sum total* of non-differentiated individuals, then how can an Orthodox Christian lead an active public life in Western society if he/she is not fully conscious of the basic world-view of the Church?

Most Christians **look at law as unrelated to their experience of the Church** herself, which both abides in history and expects the Kingdom. However, by *nature*, human beings are political beings, according to Aristotle.¹ As the Holy and Great Council of 2016 clearly stated,

¹ “Man is by nature a political animal (ὁ ἄνθρωπος... man is not only a political but a social animal” (Aristotle, *Politics* 1.1252a24-1253a8, trans. Barns)

*The Church does not involve herself with politics in the narrow sense of the term. Her witness, however, is essentially political insofar as it expresses concern for man and his spiritual freedom. The voice of the Church was always distinct and will ever remain a beneficial intervention for the sake of humanity.*²

I. Politikon zôon and zôon theoumenon

As we said, human animals are by nature political animals. To address the human as political animal is to accentuate his horizontal element: his bond, as a human, with the others of his kind. From this spring the universal and inalienable natural human *rights*, which are not dependent on the laws or customs of any particular culture or government. However, as Kallistos Ware holds, this horizontal dimension must be complemented by the vertical axis: “our relationship with God.” According to Ware, “it is this characteristic of human personhood to which St Gregory of Nazianzus (+c.390) draws attention when he describes the human being not as *politikon zôon* but as *zôon theoumenon*, ‘an animal that is being deified.’ (*Oration 38, 11*)”³ Therefore, our right to become gods (the right of deification) is the right of *personhood* and does not belong to the realm of so-called natural rights.⁴

The implications of this feature of human personhood for our picture of law are a subject of ongoing research. Indeed, people have rights both as *individuals* (natural and legal rights) and as *persons*. So, there are rights which are human (like the right of deification), and yet are neither legal nor natural. Still, one issue has to be settled, namely to **reconcile the law of personhood with the law of the individual**. Zizioulas persuasively argued that “the law of personhood is not based either on natural law or on the conventional and essentially utilitarian necessities of a social organization, but on **an ontology of relations** without which nothing could exist as free, not even God Himself.”⁵

Theologians attempt to explain this distinction in the following way: “As individuals people have the rights which come from their nature and which, by intention, protect them (as individuals) from the state and society.”⁶ These are “human rights” in the conventional sense of “natural rights.” However, as *persons*, people have the exclusive right to achieve *deification*, “if possible, in the state and thanks to the state, and

² “Encyclical of the Holy and Great Council, 38.

³ Bishop Kallistos Ware, “Who is Man?” *Again Magazine*, vol. 20, no. 4, 1997/98, 27-31.

⁴ Cf. Vladan Periši, *Theological Disambiguations: An Unconventional Handbook of Orthodox Theology* (Los Angeles: Sebastian Press, 2012), 249–259.

⁵ John D. Zizioulas, *The One and the Many: Studies on God, Man, the Church, and the World Today* (Los Angeles: Sebastian Press, 2010), 405.

⁶ See, for example, Periši, *Theological Disambiguations*, 254.

if not possible, then outside it and even in spite of it, and also in spite of their own nature.”⁷

For this reason, in the current political climate it is useful and necessary to overcome the manifest individualism and a culture of “rights,” which leads to the subjective alteration of rights into entitlements for happiness, as discussed in the Encyclical of the **Holy and Great Council** of Crete in 2016.⁸ The present political understanding is limited to protecting the freedom of the individual but not of the person.

*The approach to human rights on the part of the Orthodox Church centers on the danger of individual rights falling into individualism and a culture of “rights.” A perversion of this kind functions at the expense of the social content of freedom and leads to the arbitrary transformation of rights into claims for happiness, as well as the elevation of the precarious identification of freedom with individual license into a “universal value” that undermines the foundations of social values, of the family, of religion, of the nation and threatens fundamental moral values.*⁹

II. Authority exercised repressively?

One underlying concern in this discussion of law or politics lies in the fact that **every legal or political system operates with force** (though, not necessarily torture), something that can never become an instrument of the Church. “The truth,” we are informed, “shall make you free.”¹⁰

As we can see, freedom is a tricky issue in politics. No doubt, in America, “since our nation’s founding, we have wrestled with what it means to be free.”¹¹ But politics—which continually speaks about human rights and human dignity—is indifferent to the supposed freedom of the human *person*. For this reason, the Cretan Council of 2016 emphasizes that the Orthodox understanding of man,

[I]s opposed both to the arrogant apotheosis of the individual and his rights, and to the humiliating debasement of the human person within the vast contemporary structures of economy, society, politics and communication.... No one has honored man and cared for him as much as the God-man Christ and his Church. A fundamental human right is the protection of the principle of religious freedom in all its aspects—namely, the freedom of conscience, belief, and religion, including,

⁷ Ibid., 255.

⁸ “Encyclical of the Holy and Great Council of the Orthodox Church,” *Annual 2016 of the Western American Diocese* (Los Angeles: Sebastian Press 2016), 32-40.

⁹ “Encyclical of the Holy and Great Council,” 38.

¹⁰ Jn 8.32.

¹¹ Nat Hentof, “Foreword,” in *First Freedoms: A Documentary History of First Amendment Rights in America*, C. C. Haynes, S. Chaltrain, and S. M. Glison, eds. (Oxford: Oxford University Press, 2006), 10.

*alone and in community, in private and in public, the right to freedom of worship and practice, the right to manifest one's religion, as well as the right of religious communities to religious education and to the full function and exercise of their religious duties, without any form of direct or indirect interference by the state.*¹²

III. "Render to Caesar the things that are Caesar's"

The confusion caused by modernity is not limited to the Orthodox world but is also present on a global scale. This offers a theoretical conundrum, to which the Orthodox have yet to address a new prophetic call to a dialogical theology.

*The local Orthodox Churches are today called to promote a new constructive synergy with the secular state and its rule of law within the new framework of international relations, in accordance with the biblical saying: "Render to Caesar the things that are Caesar's and to God the things that are God's" (cf. Mt 22.21).*¹³

The consensus among Orthodox theologians is that synergy with the secular state, "must, however, preserve the specific identity of both Church and state and ensure their earnest cooperation in order to preserve man's unique dignity and the human rights which flow therefrom, and in order to assure social justice."¹⁴

IV. Eschatologically-conditioned politics

The status of freedom and its role within fundamental political law remain unresolved. What should be done? Well, the Orthodox Church evidently has to deal with this reality having itself no political or economic power. The Church's secular weakness today even puts into question its very survival in the third millennium. And yet, this exact period of history invites institutions to be reconstituted, since no establishment can be taken for granted as a historical necessity. This has tremendous political and legal implications. In the constructing of a new paradigm, Orthodoxy would have as its tools an eschatologically-conditioned history.

What does that mean? If the Church offers its eschatological *ethos* to the new paradigm, then a new political theory and action can emerge that will not be limited merely to social utility or to the conventional rules of human relations, even if these are more "efficient." This new *ethos* presupposes deeply existential—and not simply "rational" or "moral"—motivations in order to function. Its goal might be the truth of man and the authenticity of his existence.

¹² "Encyclical of the Holy and Great Council," 38.

¹³ Ibid.

¹⁴ Ibid.

In the winter of 371, the Roman emperor Valens, who was mercilessly sending into exile any bishop who displeased him, suddenly appeared in Cappadocia. He sent the prefect Modestus to Archbishop Basil (St. Basil the Great) and Modestus began to threaten the saint with the confiscation of his property, banishment, beatings, and even death. In a dialogue with deepest political connotations, St. Basil invoked the basic human right with a sentence that summarizes his anthropology: “I am God’s creation commanded to become god.”¹⁵

Ultimately, following Basil the Great, we must understand how important it is to be courageous in dealing with the very sensitive issue of the relationship between the Church and society, especially in regard to urgent contemporary political and socio-economic issues. However, one should be aware that this cannot be done without *theological* criteria, i.e., this can be done only through the *relational experience of the Church*. Readily listening to the global theological conversations and following the best theological voices from East and West, a theologian must focus on a *personalistic* rather than an individualistic view of the law and politics.

The logic is simple. If, as an attorney or technician within the fields of law or administration in modern society, an Orthodox Christian does not transmit the Orthodox vision, he will then himself be assimilated to the very mentality he is called upon to change. How can an Orthodox woman or man be a minister of the Department of justice if that person is not conscious of the eucharistic and personalist approach to human society, and would act merely according to goal-oriented criteria and utilitarian approaches?

Conclusion

In conclusion, the Orthodox Church, being true to an authentic theology of Incarnation, inspired by experience of the Resurrection, and having adopted the audacity of the Holy Fathers, has to enter into a dialogue and produce a new synthesis with that which is best in the modern world.

If the Orthodox man or woman wishes to transmit to Western society what it lacks, and which is amply offered by Orthodoxy, then he/she must **reconcile the law of personhood with the law of individual**.

Law and the Church are obliged to work together in affirming both individual and personal rights. Only then the *icon* of God, that is, the person of man, shall be preserved from the dangers that threaten it.

May the Lord bless abundantly the efforts of all those who are eager, both in ecclesial and legal arena, to equally honor both *politikon zôon* and *zôon theoumenon*.

¹⁵ The entire dialogue is described by Gregory Nazianzen in his *Funeral Oration for Basil the Great*, 48, 4.