ARBITRATION IN THE CODE OF CANON LAW

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ABSTRACT

Arbitration is the submission of a dispute to an unbiased third person designated by the parties to the controversy, who agree in advance to comply with the award - a decision to be issued after a hearing at which both parties have an opportunity to be heard. Religious communities in the U.S, like their counterparts in commercial and family law have as well, embraced arbitration as a means of settling disputes among their adherents. For the most part, this has been the case in the Catholic Church despite the Catholic Code of Canon Law's provisos for the wide use of arbitration in dispute resolution amongst her members. This paper is a call for action in that regard and an attempt at the correction of wrong notions of arbitral practices within the ecclesial body. In this regard, it is posited that the Catholic marriage tribunal for instance is neither a marital arbitration tribunal nor "Catholic divorce." The paper argues in conclusion that the lack or underuse of the arbitral system in the Catholic Church is a great omission and a missed opportunity – a missed opportunity of having Catholics settle disputes according to Catholic Christian principles as against the use of the emotionally and financially expensive civil litigation method.

INTRODUCTION

Arbitration is the submission of a dispute to an unbiased third person designated by the parties to the controversy, who agree in advance to comply with the award - a decision to be issued after a hearing at which both parties have an opportunity to be heard.[i] The Code of Canon law on the other hand, is the official law of the Roman Catholic Church which applies to all Romans Catholics. This paper discusses the concept of arbitration in the Catholic Church's Code of Canon law as it applies to her members and the potential benefits accruable from a wider use of the Catholic arbitral resources by both adherents and non-adherents of the Catholic faith.

Arbitration in the United States dates back to the eighteenth century. From the beginning, arbitration was not well accepted by the courts. Attitudes however, started changing in the 1920's when New York became the first state to pass an arbitration law. This New York statute became the progenitor to other state and federal arbitration statutes which followed, especially the Federal Arbitration Act (FAA) of 1925. Since then, arbitration has become a well-established and widely used means of resolving disputes, offering parties an alternative to litigation which is often expensive, time consuming, emotionally exhausting and often too heavy a risk bearing in mind that litigation produces winner and losers unlike arbitration which is always a win-win situation.

The availability of arbitration has meant that in the last few decades, disputing parties can agree on what law applies to them (choice of law), the venue and the arbitrative panel that presides over the dispute. This is true both in commercial law and in family law. Religious communities in the U.S, like their counterparts in commercial and family law have likewise embraced arbitration as a means of settling disputes among their adherents. Chief among them is the The *Beth* Din of America founded in 1960, which offers resolution for both commercial and family disputes amongst members of the Jewish community. The Peace Maker Ministries[ii] offers arbitration services to members of the Christian community especially those of the protestant denominations. Initiatives to establish a network of Islamic arbitration court has been in the works.[iii]

Religious arbitration is defined as a voluntary dispute resolution process, conducted according to religious principles.[iv] St. Paul encouraged the early Christians to settle disputes among themselves, instead of taking them to the courts where unbelievers were the judges.[v] Religious arbitration has covered matters ranging from prenuptial agreements, actual celebration of marriages, divorce, alimony, to child custody and distribution of property in instances of divorce. Arguably, Christian religious arbitration's beginning is traceable to this biblical injunction by the apostle, Paul. The Catholic Church is a major block within the Christian community and so this essay is an attempt to explore arbitration or lack thereof within the Church's ranks.

The 1983 Code of Canon law makes wide provisions for the use of mediation and arbitration in the resolution of disputes between Christians. However, despite the very early origins of Christian religious arbitration and the Canon law's provisions, the use of arbitration as a means of dispute resolution has largely been dormant within the Church's dispute resolution scheme. Where they are available, they have been grossly underused. This is a vacuum which this paper argues that needs to be filled. Catholics constitute a large percentage of the U.S Christian[vi] population with twenty percent of the U.S population identifying as Catholics.[vii] Thus, a resort to a vibrant and robust arbitration system by a group with such a considerable population would mean that the justice needs of a good section of the general population would be well served like in other religious traditions who have full-bodied arbitration services. The underuse of arbitration in the Catholic Church as a means of dispute resolution is a great omission and a missed opportunity of having Catholics settle disputes according to Catholic Christian principles rather being left to the devices of a litigation system that often leaves people licking their wounds if they do not prevail in court. The use of arbitral systems holds immense value to Catholics and others and since arbitration is provided for in the Code of Canon law, the need to institute it and make a wide use of it is long overdue.

BRIEF HISTORY OF RELIGIOUS ARBITRATION IN THE WEST

The history of religious arbitration goes back to ancient England and parts of Europe, particularly France. At this time divine and secular law was so intertwined that they were not

easily distinguishable. The separation of church and state was non-existent and secular law was a derivative of religious principles. For example, in 1489, the English Chancellor held that "each law is, or ought to be, in accordance with the law of God."[viii]

The situation was the same in France as it was in England. Over time, France moved toward greater control - state control of religion, and through the King, religion and state law were inextricably linked. It was "one faith, one law, one king."[ix] It is within this context that the history of religious arbitration is traceable to ancient[x] England and France. The English and French Religious authorities frequently provided routes to justice that were an alternative to the state courts.[xi] They however, exercised compulsory jurisdiction unlike the modern arbitration system. In a way, they looked like modern arbitrative tribunals in the sense that modern religious arbitral tribunals compete directly with civil courts in the way the ancient ecclesial tribunals did.[xii]

In England, the Church courts by the 14th century had started hearing appeals from the common law courts, leading the King to enact a statute to prevent this.[xiii] The statute noted that "the judgments rendered in the King's court are being impeached in the courts of another, to the prejudice and dispersion of our Lord the King."[xiv] It provided that anyone who sought to annul a common law verdict by traveling to Rome would have to appear before the King's council to justify his actions.[xv] Up until the reformation, the Church still exercised jurisdiction over what would today be regarded as contract law.[xvi] A litigant could claim ecclesiastical jurisdiction over a contract dispute by alleging, not that his counterpart had failed to perform, but that he had breached his oath to perform.[xvii] The Church exercised its jurisdiction through the doctrine of *fidei laesio*, or breach of the faith.[xviii] These suits disappeared in the 16th century as the common law courts found ways of exercising jurisdiction over these disputes.[xix] 16th and 17th century Church courts still heard matrimonial, probate, tithe and defamation cases.[xx] Although the Revolution dealt a heavy blow to the Church courts' jurisdiction, they still maintained jurisdiction over matrimonial and probate disputes until 1857 when the secular courts completely took over all jurisdiction.[xxi]

The foregoing is not to be equated with "arbitration" in the contemporary sense, but is does provide a framework for a historical understanding of what is today religious arbitration as it operates in North America.

Religious Arbitration in Colonial and Post-Colonial North America

Prior to 1789, various colonies in America established churches.[xxii] The First Amendment however, prevented an established church from attaining such prominence and influence in American life as was the case in Britain.[xxiii] In Canada, migration and settlement pretty much followed religious lines, with Catholics and Anglicans having complete control of respective colonies and only tolerated non-members.[xxiv] By the early 19th century however, the Church quickly disestablished; first in the Maritime provinces and, and by 1854, nationwide.[xxv] Despite this tenuous relationship between church and state, religious arbitration nevertheless, flourished in colonial and early independent USA and Canada, a proof that religious arbitration is not a modern phenomenon in North America.

In Colonial America, the way in which religious arbitration functioned was most evident in Massachusetts. Because of the central role of church in the life of the early settlers, civil and religious justice was inextricably linked, where church courts even wielded more powers than civil courts. Often churches functioned as the only available courts.[xxvi] What can be regarded as arbitration however, could be seen from the way in which from earlier times, the Massachusetts colony encouraged people to settle disputes outside of the civil law framework.[xxvii] For example, in 1635, an ordinance of a Boston town prohibited any church members from civil litigation until there has been an attempt at arbitration.[xxviii] Thus, there are ample evidence of arbitration between church members in Massachusetts.[xxix] However, church courts could only exercise jurisdiction in cases between members of the same congregation.[xxx] The civil courts functioned as a "back-up" when the civil power was needed - for example, to arrest persons and attach property.[xxxi]

Interestingly, modern day arbitration mirrors the features of religious arbitration in colonial America; features such as speed, informality and cost effectiveness. But surprisingly, by the early 19th Century, civil courts effectively became the only institutions that were available for the adjudication of disputes.[xxxii] At this time, excommunication was the only sanction left to

the Church. This too was beginning to lose its force. In swaths of the country outside of the New England area, religious arbitration however, remained as Christian sects tried to keep their disputes within themselves and avoid the courts. The Oneida community in New York, a society of Christian perfectionists for example, was very averse to litigation and intended to preclude the possibility of it.[xxxiii] A Christian sect of mostly German immigrants in Aurora, Oregon was known to have gone nineteen years without recourse to the courts.[xxxiv] The Mormons in the Utah area were by far the most notable in shunning the courts. They shunned "gentle" justice and lawyers.[xxxv] Brigham Young[xxxvi] was of the view that civil courts wasted time and "destroyed the best interest of the community." For him, "courts are a kitchen of the devil, prepared for hell" and lawyers a "stink in the nostrils of every Latter Day Saint."[xxxvii] Despite their efforts to avoid civil courts by migrating to an unpopulated territory, federal judges arrived with the incorporation of Utah as a territory in 1850.[xxxviii] But even after federal judges began the administration of justice in the territory, the Mormon community generally preferred to deal with intra-community disputes themselves.[xxxix] However, with jurisdiction in religious arbitration being only by parties' consent, and with increased religious diversification in Utah, the power of the religious courts waned.

Christian communities were not the only ones who sought to avoid the courts. Jewish communities for instance, have historically sought to keep dispute resolution in-house, dating back to the second century with the abolition of official Jewish courts by the Roman administration in Palestine.[xl] In Europe, Jewish communities had adopted *Batei Din* which sometimes prevented them from even testifying in court, coupled with a general prohibition against settling disputes in gentile courts.[xli] This prohibition is believed to remain in place.[xlii]

The New York Jewish community adopted a mode of arbitration under the *Kehillah,* a newly created community organization. *Kehillah* tribunals settled both commercial and non-commercial disputes.[xliii] Having faded after World War I, The Jewish Arbitration Court created in 1929 and the Jewish Reconciliation Court of America took the place of the *Kehillah* tribunals.[xliv] The passage of the Municipal Court Act of 1915 gave a boost to Jewish tribunals and made their judgments legally binding.[xlv] Similar measures adopted elsewhere like in Maryland, made it possible for a Jewish tribunal to take off there in 1912.[xlvi]

Religious Arbitration in the USA today

Arbitration in the United States today is governed by the Federal Arbitration Act (FAA) enacted in 1925, and the Uniform Arbitration Act (UAA) enacted in 1955. The UAA has been adopted by thirty five jurisdictions and fourteen other states have legislations that are essentially similar to it.[xlvii] Under the UAA, courts now generally enforce arbitral awards as against hitherto when state laws were hostile to arbitration agreements. These two legislations form the framework of today's religious arbitration in America.

American Jews and Muslims have dispute resolution services in the form of mediation or arbitration. The *Beth* Din of America for instance, founded in 1960 offers resolution for both commercial and family disputes.[xlviii] This indicates that the *Beth Din* continues their role in society. *Beth Din* of America conducts about 400 "family" matters each year - probate matters, divorces and status determination - and 100 commercial matters.[xlix] But for the availability of the *Beth* Din, most of these commercial matters would end up in the secular court. It can be said however, that the religious arbitration services owe their success to secular courts because of the latter's willingness to enforce arbitrative awards as handed down by the religious arbitration services.

In contrast to arbitration within the Jewish community, Islamic arbitration in the United States is in a state of constant flux.[l] Muslim communities have recently embarked on initiatives to institute a network of Islamic arbitration courts around the United States.[li] However, such a network is yet to come into existence.[lii] It is suggested that the lag in Islamic arbitration is likely related to disputes among Islamic jurists about whether Islamic law applies to Muslims living as minorities in non-Muslim states.[liii]

Christian dispute resolution conversely, takes the form of mediation by default and uses arbitration only when a resolution cannot be reached through mediation. Peace Maker Ministries, the current most prominent Christian despite resolution organization in the United States uses this method, as well as its affiliate, the Institute for Christian Conciliation.[liv] Peacemaker Ministries conducts over 100 "conciliations" each year, which include mediations, arbitrations, and church interventions.[lv] It also certifies about 150 conciliators around the country, who each perform conciliations, resolving disputes which might otherwise end up in

the secular court system.[lvi] The aim of the religious procedure (mediation) as stated by the group, is to glorify God by helping people resolve disputes with biblical principles as a guide.[lvii] This is perhaps based on the understanding that the Christian faith is typically not expressed through a body of law. This lack of emphasis on law may perhaps provide an explanation for the contemporary Catholic Christian apathy towards religious arbitration, where there is no great desire for religious tribunals.

THE CODE OF CANON LAW; WHAT IS IT?

Canon law in the Catholic Church is the system of laws and legal principles made and enforced by Church authorities to regulate its external organization and government, to order and direct the activities of Catholics toward the mission of the Church. It is one of the first and most ancient and robust legal systems in the world.[lviii] The "Code" refers to either the book that contains the "canons" or the individual canons of the Code.

According to the public ecclesiastical law school of thought,[lix] wherever there is a human society, there is a legal system. Where there is social interaction and inter-subjectivity, there are rights and duties.[lx] This view makes Canon law a juridical system just like the legal systems in secular societies, except that it is located within the unique society which is the Church.[lxi] Canon law is part of the external structure of the Church which makes visible and operative its internal, spiritual, and salvific nature.[lxii] The Church's internal nature and mission are expressed externally in its organized social unity. Canon law therefore, is one of the Church's pastoral means or instruments which serves its divinely ordained end: the salvation of the faithful.[lxiii]

Canon law is a legal system like any other, and its methodology is purely juridical, but its legislation and interpretations are entirely subject to the Church's authority. It is the ordering structure of the Church, the source of the Church's internal justice, the instrument of its just social order. The canonical order is a structure that is born out of the fusion of divine and human law but conscious of, and sensitive to its theological setting, that is within the mystery that is the Church, the people of God.[lxiv]

The Catholic Church has what is known to be the oldest continuously functioning internal legal system in Western Europe,[lxv] much later than Roman law but predating the evolution of modern European civil law traditions. What began with rules ("canons") adopted by the Apostles at the Council of Jerusalem in the first century has developed into a highly complex legal system encapsulating not just norms of the New Testament, but some elements of the Hebrew (Old Testament), Roman, Visigothic, Saxon, and Celtic legal traditions.[lxvi]

Canon law lies wholly within the Church's authority to compose and administer in contrast to the wide variety of external (usually civil) laws to which the Church generally defers in the pursuit of her divine mission. It operates according to the principles of law chiefly as set out in Aristotelian-Thomistic legal philosophy. This is in contrast to suggestions that Canon law is simply applied theology, morals, or the rules of religious cult.

The actual subject matter of the canons is not just doctrinal or moral in nature, but all-encompassing of the human condition. It has all the ordinary elements of a mature legal system: laws, courts, lawyers, judges, a fully articulated legal code, principles of legal interpretation, and coercive penalties. It however, lacks civilly-binding force in most secular jurisdictions.

The official language of the 1983 Code of Canon law[lxvii] is Latin, a choice retained from the 1917 Code because of the long tradition of precision that Latin brings to ecclesiastical thought and writings. The 1983 Code consists of 1,752 canons or rules, divided into seven topics, or "books." Considering that this single volume regulates most of the juridical aspects of the faith life of the multitude of Catholics around the world, the brevity of the 1983 Code (which is even shorter than the 1917 Code's 2,414 canons) is remarkable.[lxviii]

Canon law affects virtually every aspect of the faith life of the 1.36 billion Catholic Christians around the world.[lxix] Ironically, because Canon Law is so clear in so many places about the expectations placed on the faithful of every state in Church life, there can be the temptation to assume that the mere satisfaction of canonical requirements is sufficient for the Christian life and the attainment of salvation.[lxx] This is the error of legalism against which Pope St. John Paul II warned when he promulgated the Code in 1983. He said:

Canon law is in no way intended as a substitute for faith, grace, charisms, and especially charity in the life of the Church and of the faithful. On the contrary, its purpose is rather to create such an order in the ecclesial society that, while assigning the primacy to love, grace, and charisms, it at the same time, renders their organic development easier in the life of both the ecclesial society and the individual persons who belong to it."[lxxi]

It is a fact however, that the more that Catholics understand their canonical rights and duties, the more effectively they can partake in the Church's mission.

Being an evolutionary work of humans, the Code of Canon Law itself is neither perfect in its formulations nor complete in its anticipation of ecclesiastical issues. It is often necessary and therefore proper, that members have resort to competent Church authority (whether papal, episcopal, or otherwise) to determine what kind of action is best to undertake under specific circumstances.[lxxii]

It has been said that the Code of Canon law predates current western legal systems or is an offshoot of it. This is arguably why Catholics are at home with the secular legal system because the principles of secular law of the western world mirror in large part, the Code of Canon law's rudimentary features. This stands in contradistinction to the notion that Catholicism is a closed system. As the Second Vatican Council (Vatican II) puts it, since the laity, in accordance with their state of life, live in the midst of the world and its concerns, they are called by God to exercise their apostolate in the world like leaven, with the ardor of the spirit of Christ.[lxxiii] This means that just as leaven makes the dough rise and become a risen loaf of bread, so Catholics are called to be in the world acting as a catalyst for a better world. This mission cannot be accomplished if Catholicism is a closed system. Jesus said: "You are the light of the world and salt of the earth. A city set on a hill cannot be hidden."[lxxiv] Members light up the world by being in the world rather than staying closed unto themselves.

Arbitration in the Code of Canon Law:

The Code of Canon law makes elaborate provisions for arbitration in Title III under the heading, "Methods of Avoiding Trials." The title suggests that these methods are intended for the avoidance of contentious trials in the ordinary judicial process, i.e, a trial before a judge in

an ecclesiastical tribunal.[lxxv] In practice however, ordinary contentious trials are used today almost exclusively for marriage annulment cases and only very rarely for other types of controversies between Christians.[lxxvi] This is for several reasons. First: St. Paul wrote that Christians should not drag fellow Christians to a civil court.[lxxvii] This was because at the time, judges and court officials were entirely non-Christians, and the legal system itself was based on non-Christian principles, unlike today when many civil legal systems are evolutionary products of ecclesiastical courts[lxxviii] and often employ principles and terminology with Canon Law roots.[lxxix] Secondly: the personnel of the civil courts are no longer mostly unbelievers, and Christians' legal concerns and the institutions of civil courts are no longer necessarily incompatible, except when court processes become oppressive or hostile to the faith.

In general, recourse to civil courts by one Christian against another is no longer seen as an evil to be avoided, for example when two Christians are involved in a motor accident and one sues the other in civil court for damages.[lxxx] In fact, Canon law defers to civil laws as long as such laws are not contrary to divine law except in cases where Canon law provides otherwise.[lxxxi] Such areas to which Canon law defers to civil laws include contract law (Canon 1290), labor laws (Canons 231 para. 2, and 1286), prescription (Canons 197-199 and 1286-1270), wills and trusts (Canon 1299, para. 2), and probably also tort law (compensation for negligent and intentional harms and injuries; see Canon 128).[lxxxii]

Incidentally, As ecclesiastical courts have relinquished jurisdiction in the civil areas to the civil courts, diocesan tribunals are generally neither prepared to hear such matters nor are they prepared to enforce injunctions or execute judgments for damages.[lxxxiii] Accordingly, most Christians are today more likely to sue a fellow Christian in civil courts to vindicate a right than to bring an action for a contentious trial in a diocesan tribunal. The exception would be in the limited number of cases where a person feels his or her rights as a Christian have been violated by a peer in the community.[lxxxiv] Yet many ordinary Catholic Christians are neither aware of the availability of this avenue of recourse nor do they make use of it.

Although controversies between Christians are rarely litigated today in a contentious canonical trial, the Code provides helpful norms for resolving disputes through less formal means such as reconciliation and arbitration. Canon 1713 is a case in point. It states: "In order to avoid

judicial contentions an agreement or reconciliation is employed usefully, or the controversy can be committed to the judgment of one or more arbitrators."[lxxxv] The term in the Canon law is *transactio*, or settlement which is an agreement by which a controversial matter is settled without a formal trial.[lxxxvi] *Reconciliatio* is another word which is used to refer to conciliation or mediation between disputing parties.

In its Book VII, the Code of Canon Law encourages the use of conciliators, mediators, or arbitrators to avert the ordinary contentious trial (Canon 1446), the oral contentious process (Canon 1659), marriage nullity cases (Canon 1676), cases involving the separation of spouses (Canon 1695), and administrative recourse (Canon 1733). These methods of resolving controversies are commonly referred to as "alternative dispute resolution" (ADR) in the Code; the same term that is used in civil codes. These methods of dispute resolution as prescribed by the Code reiterate the Church's concern to promote the gospel value of reconciliation between aggrieved parties:

If you bring your gift to the alter and there, recall that your brother has something against you, leave your gift at the alter, go first to be reconciled with your brother, and then come and offer your gift. Lose no time; settle with your opponent while on your way to court with him.[lxxxvii]

When two disputing parties are unable to work out their differences by themselves, scripture indicates that the matter is to be brought to other members of the Church for their assistance in resolving the dispute:

If your brother should commit some wrong against you, go and point out his fault, but keep it between the two of you. If he listens to you, you have won your brother over. If he does not listen, summon another, so that every case may stand on the word of two or three witnesses. If he ignores them, refer it to the Church. If he ignores even the Church, then treat him as you would treat a Gentile or a tax collector.[lxxxviii]

The concern for reconciliation as stated by para. 2 of Canon 1733 can be given institutional forms through the creation of offices of conciliation (mediation) and arbitration. The discretion

to establish these has been left to the individual dioceses by the episcopal conferences of the western rite like those of the United States and Italy.[lxxxix] Where they have been established, these diocesan offices have proven to be somewhat effective in resolving conflicts, especially administrative conflicts. Canon 1714 speaks about the process to be followed. It states:

For an agreement, a compromise, and an arbitrated judgment, the norms selected by the parties or, if the parties have selected none, the law laid down by the conference of bishops, if there is such a law, or the civil law in force in the place where the agreement is entered is to be observed.[xc]

This Canon allows the parties in a dispute to select the norms to guide the process of conciliation, mediation or arbitration. In practice, the parties most likely will agree to follow a process established by national bishops conference, the local diocesan bishop, or some civil authority.[xci] In the same vein, Canon 1716 states in paragraph 1 that, "if the civil law does not recognize the force of an arbitrated sentence unless a judge confirms it, an arbitrated sentence in an ecclesiastical controversy, in order to have force in the canonical forum, needs the confirmation of an ecclesial judge of the place where it is rendered."[xcii] Paragraph two states that, "if civil law permits the challenge of an arbitrated judgment before a civil judge, however, the same challenge can be proposed in the conical forum before an ecclesiastical judge competent to judge the controversy in the first grade.[xciii]

The object of this Canon is for the effects of arbitration to mirror each other in both civil and Canon law. Thus, if civil law requires a judge to confirm the arbitrator's decision in order for it to be recognized as civilly binding and effective, then Canon law will also require local ecclesiastical judge to confirm that arbitrator's decision in order for it to be recognized as conically binding and effective. Conversely, if civil law allows an arbitrator's decision to be challenged before a judge in a civil court, Canon 1716, para. 2 allows it to be challenged before the competent ecclesiastical judge in the proper canonical forum.[xciv]

Since 1970, over 900 cases have been submitted for 'due process' consideration in the U.S and decisions have been reached in nearly 500 of these.[xcv] Seventy-six dioceses in the U.S reported experience with cases submitted for 'due process' consideration.[xcvi] This is slightly over 40

percent of the 185 dioceses in the United States at the time of the survey. Eight percent of the dioceses with some case experience account for over two-thirds of the cases submitted for which statistics are available. In terms of cases which have gone through the entire process, the number of dioceses with substantial experience is even smaller. Five dioceses, or three percent of the 185 dioceses in the United States at the time of the study, account for sixty-nine percent of the cases decided.[xcvii] The above statistics show that while Catholic conciliation or arbitration offices are non-existent in many dioceses, and in places where they have been established, they are well underused.

It must be noted that 'due process' (conciliation and arbitration) in the Code are mainly concerned with the resolution of administrative conflicts and does not cover the Church's penal process. Such processes are geared toward clarifying the existence of a violation, assessing the imputability of the defendant, and declaring or imposing an appropriate penalty.[xcviii]

RECOMMENDATIONS

On the need to develop the arbitration system in the Catholic Church as provided by the Code of Canon Law, the following recommendations are hereby made:

1. Since many Catholic Christians and others do not know of the availability of an ADR scheme as provided for in the Code of Canon Law, there is need for greater education and awareness in this regard. As with other arbitration systems, the use of advertisements, both in print and electronic media will not be out of place. Though the Catholic Church in its conservative nature hardly engages in media advertisements, this is one area that advertisement could be useful. Advertising in parish bulletins will be brilliant since a large number of church-going Catholics could be accessed through the usual medium of weekly bulletins published in every parish.

2. Apart from awareness creation, there is need to educate people on the value of church-sponsored arbitration. It is effective, time saving, amicable, and costs many times less than regular civil litigation. It casts the Church's ministry of reconciliation in good light because it

follows the Christian way of peaceful reconciliation among brethren rather than a contentious litigation in a civil court.

3. In line with the educational dimension, it is recommended that experts be trained in the use of the arbitration system. The Catholic Church has a tradition of sending priests, deacons and qualified lay people to specialized schools for training in Canon Law, Theology and other disciplines. Candidates could, therefore, be drawn from priests, deacons and lay people who are trained in Canon and/or Civil Law to specialize in ADR in order to make the services more readily accessible to those who may stand in need of it.

4. It is true that respective Episcopal Conferences (like those of the United States and Italy), have left the creation of offices of conciliation (mediation) and arbitration to the discretion of individual dioceses rather than making their establishment in every diocese mandatory. It is recommended that the creation of such offices be made mandatory in every diocese around the Catholic world, just as the creation of marriage tribunals has not been left to the discretion of individual dioceses. The office of arbitration should be an essential part of the administrative arm of every diocese, given the evidence that where they have been established, these diocesan offices have proven to be somewhat effective in resolving conflicts especially administrative conflicts.

5. A more widely used arbitration system would offer Catholics an added opportunity to better exercise their faith by resolving disputes in a more conciliatory manner, among fellow believers as noted by St. Paul in his first letter to the Corinthians 6:1-6.

CONCLUSION

It will not be surprising to note that contemporary ADR systems within secular law is traceable to the Catholic Church's Code of Canon Law, or better still, early Catholic Christian practices being that it is the most ancient and one of the most robust legal systems in the world. Thus, I note with disappointment that apart from conflict resolution in administrative matters arising with the Church's hierarchy, Catholic dioceses and other Church organs are yet to fully

embrace the system of ADR as provided by the Church's governing law. In some places where it was used, it has been allowed to fall out of use despite its actual and potential value to the Christian community and the wider civil society. At a time when businesses and religious communities are making greater use of arbitration, it will be most opportune for the Catholic Church to capitalize on this moment to better develop her arbitration system or ADR scheme that is already contained in its canonical codes. Religious arbitration not only serves the good of religious communities, it also serves the good of civil society. In fact, is suggested today that ADR is the future of global legal practice. Given the huge amount of money spent on financing court systems in the US and around the world, an ADR system run by a huge organization like the Catholic Church, with a global 1.36-billion-member strength, would mean an appreciable amount of savings in court expenditure if more cases are arbitrated within the Church rather than in the courts. This is one way that the civil society can benefit from a well run Catholic arbitration service.

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ENDNOTES

[i] http://legal-dictionary.thefreedictionary.com/arbitration> accessed August 10, 2021.
[ii] This was as at 2016, the most prominent Christian dispute resolution organization in the United States and perhaps still so till date.
[iii] See Irshad Abdal-Hagg, Islamic Law: An Overview of Its Origins and Elements, 1 *J. ISLAMIC L.* 1, 54-60 (1996).
[iv] Nicholas Walter, Religious Arbitration in the US and Canada, 52 Santa Clara Review 502, 504 (2012).
[v] 1 Corinthians 6:1- 6.
[vi] It is worthy of note that some Christians especially of the evangelical denomination do not refer to Catholics as Christians. This is a misnomer as the Catholic Church is the first and the largest Christian church. So to speak of a Catholicism as an extra-Christian body is like saying pork is not part of a hamburger.
[vii] America's Changing Religious Landscape, PEW RESEARCH CENTER (May 12, 2015), http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/> accessed August 15, 2021.
[viii] JOHN H. LANGBIEN et all., HISTORY OF THE COMMON LAW: THE DEVELOPMENT OF ANGLO-AMERICAN LEGAL INSTITUTIONS 313 -14 (1989).
[ix] PHILLIPE SUEUR, HISTOIRE DU DROIT PUBLIC FRANCAIS 479 (1989).
[x] Ancient here would mean before modern England and France emerged, preferably, the middle ages.
[xi] Walter, supra note 3 at 505.

[xii] *Id*. at 506.
[xiii] First Statute of Praemunire, 27 Edw. 3, stat. 1, c. 1 (1353).
[xiv] Langbein, supra, note 12 at 331.
[xv] *Id.* at 331-332.
[xvi] R.B. OUTHWAITE, THE RISE AND FALL OF THE ENGLISH ECCLESIASTICAL COURTS 1500- 1860, at 15 (2006).
[xvii] *Id.*
[xviii] *Id.* at 15-16
[xix] *Id.* at 19-20
[xx] *Id*. note 16, at 20.
[xxi] Langbein, supra, note 12 at 355.
[xxii] See RELIGION AND THE NEW REPUBLIC: FAITH IN THE FOUNDING OF AMERICA 189- 90 (James H. Hutson ed., 2000).
[xxiii] 1 Stat. 97 (1789).
[xxiv] The Quebec Act of 1774 granted tolerance to Catholics in the province, but Anglicanism was established as the province's religion shortly afterwards. See Robert Choquette, CANADA'S RELIGIONS: AN HISTORICAL INTRODUCTION 141 (2004).
[xxv] *Id.* at 222.
[xxvi] JEROLD S. AUERBACH, JUSTICE WITHOUT LAW 23 (1983).
[xxvii] Walter, supra note 10 at 510.
[xxviii] Auerbach, supra, note 25 at 23.
[xxix] See *Id.* at 23- 24.
[xxx] WILLIAM E. NELSON, DISPUTE AND CONFLICT RESOLUTION IN PLYMOUTH COUNTY, MASSACHUSETTS, 1725-1825, 43 (1981).
[xxxi] *Id.* at 44.
[xxxii] *Id*. at 76.
[xxxiii] Auerbach, Supra, note 27 at 51.
[xxxiv] *Id.*
[xxxv] C. PAUL DREDGE, DISPUTE SETTLEMENT IN THE MORMON COMMUNITY: THE OPERATION OF ECCLESIAL COURTS IN UTAH, IN 4 ACCESS TO JUSTICE: THE ANTHROPOLOGICAL PERSPECTIVE 191- 198 (Klaus- Friedrich Koch ed., 1979).
[xxxvi]President of The Church of Jesus Christ of the Latter-day Saints (LDS Church) from 1847- 1877. Founder of Salt Lake City and the first governor of the Utah Territory.
[xxxvii] Dredge, supra 199.
[xxxviii] *Id.* at 198.
[xxxix] *Id.*
[xl] Auerbach (32) 77.
[xli] *Id.*
[xlii] See EMMANUEL QUINT, A RESTATEMENT OF THE RABBINICAL CIVIL LAW 174 (1990).
[xliii] Auerbach, supra, note 39 at 79.
[xliv] *Id.* at 83- 84.
[xlv] *Id*. at 160.
[xlvi] B.H. Hortagensis, A Successful Community Court, 12 J. AM. JUD. SOC. 183, 183 (1929).
[xlvii] Timothy J. Heinsz, The Revised Uniform Arbitration Act: Modernizing, Revising and Clarifying Arbitration Law, 2001 J. DISP. RESOL. 1, 1 (2001).
[xlviii] See Organizations and Affiliations, BETH DIN OF AMERICA, http://www.bethdin.org/organization-affiliations.asp (last visited Feb. 22, 2020)
[xlix] Walker, supra, note 49 at 521.
[l] Michael A. Helfand, Religious Arbitration and the New Multiculturalism: Negotiating Conflicting Legal Orders 86 N.Y.U.L. Rev. 1231, 1250 (2011).
[li] Abdal-Hagg (n3).
[lii] See ASIFA QURAISHI & NAJEEBA SYEED-MILLER, NO ALTERS: A SURVEY OF ISLAMIC FAMILY LAW IN THE UNITED STATES, IN WOMEN'S RIGHT AND FAMILY LAW: PERSPECTIVES ON REFORM 177 (Lynn Welshman ed., 2004).
[liii] See, Khaled Abou El Fadl, Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eight to the Eleventh Centuries, 1 ISLAMIC L. & SOC'Y *141* (1994).
[liv] R. Seth Shippee, *Peacemaking: Applying Faith to Conflict Resolution*, 10 DISP. RESOL. MAG. 3, 4 (2004).

[lv] Walter, supra note 26 at 520.
[lvi] *Id.*
[lvii] Rules of Procedure, INST. OF CHRISTIAN CONCILIATION, http://www.peacemaker.net/site/c.nuIWL7MOJtE/b.5378801A/Rules_of_Procedure.htm (last visited. Feb. 17, 2020).
[lviii] See Code of Canon Law, the Holy See, http://www.vatican.va/archive/eng1104/_index.htm.> accessed June 12, 2021.
[lix] One of the seven discernable schools of thought in the contemporary debate about the nature of Canon Law.
[lx] James Coriden, Canon Law as Ministry: Freedom and Good Order for the Church 13 (2000).
[lxi] *id*. at 13.
[lxii] *Id*. at 16.
[lxiii] *Id.*
[lxiv] *Id.* at 14.
[lxv] Edward Peters, http://www.canonlaw.info/a_catechistintro.htm.>accessed February 9, 2021.
[lxvi] *Id*.
[lxvii] The latest Code of Canon Law in force within the Catholic Church today.
[lxviii]Edward Peters, http://www.canonlaw.info/a_catechistintro.htm, accessed Feb. 9, 2021.
[lxix] See https://dornsife.usc.edu/iacs/global-christianity/#:~:text=April%2030%2C%202022,the%20world's%20population%20is%20Catholic> accessed September 23, 2021.

[lxx] https://www.crossroadsinitiative.com/media/articles/canon-law-an-intro-for-catechists-ed-peters/>accessed September 23, 2022.
[lxxi]John Paul II, Apostolic Constitution, *Sacrae disciplinae leges* (1983) 16.
[lxxii] *Id.* at 70.
[lxxiii] Pope Paul VI, *APOSTOLICAM ACTUOSITATEM*, DECREE ON THE APOSTOLATE OF THE LAITY, No. 2 (1965).
[lxxiv] Matthew 5:13 - 14.
[lxxv] The Code of Canon Law 1501-1696.
[lxxvi] See M. Moodie. "*Defense of Rights: Developing New Procedural Norms*," 47 J 446 (1987).
[lxxvii] I Corinthians 6:1-8.
[lxxviii] See M CAPELLETTI ET AL, THE ITALIAN LEGAL SYSTEM 9-52 (1967); H. BARMAN, LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION 85-226 (1983).
[lxxix] See F. W. MAITLAND, "EQUITY," IN E. RE, EQUITY AND EQUITABLE REMEDIES: CASES AND MATERIALS 2 (1975).
[lxxx] See W. Bassett, "Christian Rights in Civil Litigation: Translating Religion into Justiciable Categories," 46 *J* 229 (1986).
[lxxxi] The Code of Canon Law 22.
[lxxxii] T. Molloy and J. Folmer, "The Canonization of Civil Law," 46 *CLSAP* 46 (1983).
[lxxxiii] See J. Beal, "Protecting the Rights of Law Catholics," 47 *J* 157-158 (1987).
[lxxxiv] New Commentary on the Code of Canon Law 1804 (John P. Beal et all eds., 2000).
[lxxxv] The Code of Canon Law 1713.
[lxxxvi] L. STELTEN, DICTIONARY OF ECCLESIASTICAL LATIN (1995), s.v. "transactio."
[lxxxvii] Matthew 5:23-24.
[lxxxviii] Matthew 18:15-17.
[lxxxix] See NCCB, On Due Process, 3. While these offices and and procedures are sometimes given the generic label of "due Process," a term whose roots are in the Anglo-American legal tradition, the more commonly used and more technically accurate terms for the functions of these offices are Conciliation and Arbitration.
[xc] The Code of Canon Law 1714.
[xci] For example, see NCCB, ON DUE PROCESS, REV. ED (1972); ARCHDIOCESE OF CHICAGO, OFFICE OF CONCILIATION: NORMS AND PROCEDURES (1987); R. FLEMING, THE LABOR ARBITRATION PROCESS (1965); AMERICAN ARBITRATION ASSOCIATION, LABOR ARBITRATION: PROCEDURES AND TECHNIQUES (1979).
[xcii] The Code of Canon Law 1716 para. 1.
[xciii] *Id.* at 1716, para. 2
[xciv] Beal *et al*, supra, note 83 at 1805.
[xcv] CLSA, Due Process in the U.S.: Survey, 6. For a detailed evaluation of these processes, see pp. 36-39 of the

survey.
[xcvi] CLSA survey 27-29.
[xcvii] Id.
[xcviii] *Id.* at 1806.