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# Fundamental Rights: Comparison of the Approaches in the Canon Law and in the Civil Law

**Abstract:** The Code of Canon Law of 1983 came up with a list of obligations and duties of the Catholic faithful. This list is analogical to those of the charters of fundamental rights and freedoms found in the documents of international law and in the constitutions of democratic countries. The inspiration of church law by civilian law was a reality from the very beginnings of the development of Canon Law: first by Roman Law, in the modern world by complex codifications of civil law, and after Vatican II also the idea of universal human rights. The specifics of the Catholic Church in relation to a democratic state is the incorporation of the subject of law into the Church through baptism which brings, above all, duties and obligations. Thus the catalogue which may now be seen in the Code contains first and foremost a list of duties, not rights, which are not stressed in the modern state. In fact, the modern state has very few demands; often just the payment of taxes and compulsory school attendance. The article deals with the individual obligations and rights found in the Code of Canon Law and compares them with their analogies in constitutions. The concept of civil and canonical norms tends to get closer primarily in the case of inspiration by natural law, whereas the obligations of the faithful represent a specifically ecclesiastical goals, for which no analogy in civil law can be found. After all, the supreme law of the Church is the salvation of souls, indeed, the state does not have such a supernatural goal.

**Keywords:** Church law, civil law, natural law, human rights, fundamental rights and freedoms, duties and rights of the faithful, constitution, the Code of Canon Law, salvation, law, law making, Christians, Catholic Church, rule of law

## The Church Inspired by Civil Law

The Canon Law of the Catholic Church is manifestly inspired by the legal thought and legal provisions adopted from the environment in which the church is active. Historically speaking, the impact of the Roman Law—as expressed in the principle *Ecclesia vivit lege romana* (*Ecclesia vivit iure romano*)—has been of crucial significance. The inspiration is external and contentual. In the age of the Roman Dominate, the regional administrative units were known as the dioceses or eparchies, that is, the same terms used for the local churches in the Canon Law of the Roman church, or in the Oriental churches, respectively. The hierarchs of the church still issue its own decrees or rescripts, as it was practiced by the emperors in ancient Rome. There are numerous instances of such terminological overlaps. However, not just ancient Roman terminology but the general Roman approach to the application of law made an impact on the Canon Law, so the trial is aptly called Roman-canonical trial.<sup>1</sup> The Justinian codification *Corpus iuris civilis* inspired the idea and title of the *Corpus iuris canonici*. It seems as if the ancient Roman civil law was a sort of a mirror for the ecclesiastical jurisprudence; the Church understood itself as a continuator of the best traditions of Roman legal culture, just like it managed to “christen” the Greek philosophers Plato and Aristotle. The pagan Rome of the emperors was replaced with the Christian Rome of the popes.

In the later modern age, voluminous codifications of civil law started to be issued. Those served as an inspiration for the Church which expressed the wish to create a comprehensive and well-arranged codification of all its law. Pius X declared his intention to prepare such a complex regulation of the Canon Law in 1904,<sup>2</sup> that is, four years after the release of the famous German civil code.<sup>3</sup> However, as the title of the codification suggests, the Church was inspired by the monumental Justinian legacy; this time the collection is entitled *Codex iuris canonici*.<sup>4</sup>

<sup>1</sup> “The system of Canon Law based on the impact of Roman Law (which can still be seen in the trials before ecclesiastical courts) is gradually being perfected. Nevertheless, in the fields of public law, the Canon Law developed its own framework, independent on Roman Law.” Jiří Rajmund Tretera and, Zábaj Horák, *Církevní právo* (Praha: Leges, 2016), 46.

<sup>2</sup> *Motu proprio Arduum sane munus*, in *Acta Sanctae Sedis*, vol. 36 (1903–1904): 549–551.

<sup>3</sup> “The first proposal of the codification commission from 1887–1888 was refused as it was deemed to be non-German (i.e., too Romance-like) and anti-social. In 1895, the commission came up with a new draft, which the Reichstag approved of as the German Civil Code (BGB, Bürgerliches Gesetzbuch für das Deutsche Reich). The new Code came into force in 1900 and soon became one of the most important codifications of civil law.” Karel Schelle et al. *Právní dějiny* (Plzeň: Aleš Čeněk, 2007), 270.

<sup>4</sup> “The new collection of emperor’s constitutions was being drafted already in 528. The *Codex Iustinianus* was issued a year later as an official and exclusive collection for this source of

Nevertheless, the development which crucially helped define the legal profile of the Euro-American civilization was the concept of fundamental rights and freedoms. The concept was clearly inspired by the Christian faith and natural law; it did not, however, advance within the domain of the Catholic church and its legal and social thought. The Church adopted it fully as a result of the general paradigm shift which took place at Vatican II. Up until that moment, the Church had been very cautious, if not altogether disapproving of the concept. It was considered a legacy of the French Revolution, that is, inimical to the Church: indeed, the ethos of the Revolution inspired the famous Declaration of the Rights of Man and of the Citizen (1789). The Declaration calls human rights “natural, inalienable and sacred,”<sup>5</sup> however, the Jacobin reign of terror sowed a lasting suspicion against revolutionary changes. The liberalism of the 19th century was fiercely anti-Catholic and was not willing to respect the Catholic concept. However, the events of the Second World War led the Catholic Church much closer to the concept of the fundamental rights and freedoms in the form articulated in the Universal Declaration of Human Rights from December 10, 1948. This move was expressed later explicitly by Pope John XXIII in his encyclical *Pacem in Terris*:

Any well-regulated and productive association of men in society demands the acceptance of one fundamental principle: that each individual man is truly a person. His is a nature, that is, endowed with intelligence and free will. As such he has rights and duties, which together flow as a direct consequence from his nature. These rights and duties are universal and inviolable, and therefore altogether inalienable.<sup>6</sup>

This statement was made at a time in which the world was divided into two irreconcilable blocks, one of which led by the Soviet Union disrespected the concept of fundamental rights and freedoms and refused the doctrine behind them. In contrast to the “bourgeois” political human rights, the socialist notion favored various social laws, especially the right to work. However, this right entailed also as an obligation.<sup>7</sup> Even today, in a multipolar world, the notion

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law.” Kolektiv autorů Právnické fakulty UK, *Dějiny evropského kontinentálního práva* (Praha: Leges, 2018), 92.

<sup>5</sup> Cf. Věra Jirásková, *Dokumenty k ústavním systémům* (Praha: Karolinum, 1996), 35.

<sup>6</sup> *Pacem in Terris*, 9.

<sup>7</sup> “The social rights have a crucial importance in the system of constitutional rights and freedoms because they condition the realization of other rights and define the framework of civil duties in the interest of development and satisfaction of the needs of the entire society. The most important and primary right of all citizens is the right to work and to a reward for the realized work according to its quantity, quality and social significance. This right is guaranteed by the entire socialist world in which individuals mature to a full development of their own skills and where they realize their interest, especially with a due share on the social work.” Vladimír Flegl, *Ústavní základy Československé socialistické republiky* (Praha: Svoboda, 1981), 28–29.

of human rights is not recognized generally and universally, although its advocates present it as an incontestable and lasting civilization achievement.<sup>8</sup> The fundamental rights are rooted, especially in the key documents of international law and in the constitutions of the countries that have embraced a democratic and pluralistic system. This is also the case of the Czechoslovak Charter of Fundamental Rights and Freedoms from 1991, which since then has been the backbone of the Czech constitutional order.<sup>9</sup>

## The Ecclesiastical Transposition of the Concept of Human Rights

Human rights and fundamental freedoms have a special status in the doctrine and practice of the Catholic Church. They have been the subject of reflection in Catholic moral theology and, specifically, the social doctrine of the Church, which has had a practical impact on the activities of the Church ad extra. The modern concept of human rights came to exist as a realization of the right to religious freedom, as it can be retrospectively seen from the First Amendment of the Constitution of the United States of America, the so-called *establishment clause*, which stipulates that the freedom of religion is superior to all the other civil rights: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”<sup>10</sup> The issue of the

<sup>8</sup> “The universality of the importance of human rights and freedoms should bridge the still recognizable difference between the Western (democratic and individualistic) attitude to the Eastern (i.e., paternalistic) concept, influenced by the Eastern religions (i.e., Islam, Hinduism, Confucianism, Taoism, Buddhism, and others) or undemocratic authoritarianism (as, for example, in Communist China).” Vladimír Zoubek, *Právověda a státověda. Úvod do právního a státovědního myšlení* (Plzeň: Aleš Čeněk, 2010), 85.

<sup>9</sup> Constitutional Act No. 23/1991 Coll. which introduces the Charter of Fundamental Rights and Freedoms as a constitutional act of the Czech and Slovak Federative Republic, promulgated as a part of the constitutional order of the Czech Republic from 16 December 1992 as Constitutional Act No. 2/1993 Coll. (as amended in the Constitutional Act No. 162/1993 Coll.) [Ústavní zákon č. 23/1991 Sb., kterým se uvozuje Listina základních práv a svobod jako ústavní zákon České a Slovenské federativní republiky, vyhlášena součástí ústavního pořádku České republiky usnesením předsednictva České národní rady ze dne 16. prosince 1992 jako Ústavní zákon č. 2/1993 Sb. (ve znění ústavního zákona č. 162/1998 Sb)].

<sup>10</sup> Josef Blahož, *Dokumenty ke státnímu právu kapitalistických zemí* (Praha: Panorama, 1985), 20.

freedom of religion, the role of the Catholic Church and the state in order to secure this freedom became the subject of the declaration *Dignitatis Humanae* of Vatican II on religious freedom. While the earlier concept was based on the right of the Church to be respected by the state which thereby recognized the Catholic Church as the bearer of the one and exclusive truth, the document of the Council focuses on the human person and his/her right to truth, but also on the necessity to seek the truth.<sup>11</sup> The necessary external conditions that favor this quest are identical with the very preconditions of religious freedom: “This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power.”<sup>12</sup>

After that, a further step was taken in relation to the reflection of the fundamental rights and freedoms in the Catholic Church. The making of the post-conciliar legislation and the Code of Canon Law in particular confronted the Church with the question whether the Church should or should not formulate an analogical catalogue to the list of the fundamental civil rights. This initiated the concept of the Fundamental Law of the Church (*Lex Ecclesiae fundamentalis*), that is, a project addressed to all Catholics regardless of their ritual affiliation. This was to be followed by the promulgation of the new Code for the Latin Church and a special one for the Oriental Catholic churches. Apart from the constitutional grounding of the very fundamentals of the hierarchical institution of the Church, this fundamental law was also supposed to contain a list of the fundamental obligations and rights of all the Catholic faithful. However, the draft of this autonomous ecclesiastical constitution was not authorized<sup>13</sup> and the constitutional norms of the Catholic Church are spread in both codes, that is, in the Code of Canon Law for the Latin Church<sup>14</sup> and in the Code of Canons of the Oriental Catholic Churches.<sup>15</sup> The very idea that one can identify the norms that play a fundamental role in terms of the structure of the Church and in the legally relevant activities of the faithful prove the Church was inspired by secular constitutions and the notion of the fundamental rights and freedoms.

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<sup>11</sup> “For centuries, it had been held that error has no right. This approach was replaced with the idea based on the right of the human person that his or her is violated whenever the right to religious freedom cannot be realized.” Helmut Weber, *Všeobecná morální teologie* (Praha: Zvon, Vyšehrad, 1998), 153.

<sup>12</sup> *Dignitatis Humanae*, 2.

<sup>13</sup> “Although this project was already prepared in ‘paragraphed wording,’ Pope John Paul II unexpectedly crossed it out; perhaps, he found it sufficiently ripe. Thus, the norms of “constitutional” character were finally incorporated (“dissolved”) into both Codes, the Western and the Eastern one, respectively.” Ignác Antonín Hrdina and, Miloš Szabo, *Teorie kanonického práva* (Praha: Karolinum, 2018), 201–202.

<sup>14</sup> *Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus*. In *Acta Apostolicae Sedis*, vol. 75, Pars II (1983): 1–317.

<sup>15</sup> *Codex canonum Ecclesiarum Orientalium auctoritate Ioannis Pauli PP. II promulgatus*. In *Acta Apostolicae Sedis*, vol. 82 (1990): 1033–1363.

However, its transposition into the canonical reader cannot be mechanical; it shows numerous particularities which graphically illustrate the character of the Church in comparison to the secular sphere.

## The Salvation of the Church as the Supreme Law in the Church

In fact, the first peculiarity is the very goal of the Canon Law, as formulated in the final code of the Code of Canon Law, that is, “the salvation of souls, which must always be the supreme law in the Church (*salus animarum, quae in Ecclesia suprema semper lex esse debet*).”<sup>16</sup> The mutual parallelism of the secular legal systems and the ecclesiastical system is due to the fact that the Church on this earth is “constituted and organized in this world as a society (*ut societas constituita et ordinata*),”<sup>17</sup> however, the supernatural goal of the eternal salvation of the faithful is the core distinction and peculiarity of the Canon Law. Therefore, one can understand that the salvation of the souls is a crucial constitutional principle of all Canon Law of the Catholic Church: all the other constitutional and legal norms of the Church, as well as its practice are subordinate to this principle. Although secular jurisprudence recognizes a similar principle in the concept of the *salus publica*<sup>18</sup> and the philosophical reflection also thematizes the common good (*bonum commune*), the canonical *salus animarum* is primarily a theological, not a legal term.

The regard to the salvation of the souls in the practical realization of the Canon Law is multifarious. The Code of Canon Law from 1983 pays attention not only to the purely legal requisites of the legal acts in relation to their validity (*validitas*) or licitness (*liceitas*), but also to the spiritual utility (*utilitas*) or fruitfulness (*fructuositas*). For example, the celebration of matrimony must be carried out in a valid and licit way. However, given the sacramental nature of marriage, that is, it sanctifies both spouses in order for them to reach salvation, a necessary element is “a fruitful (*fructuosa*) liturgical celebration of marriage which is to show that the spouses signify and share in the mystery of the unity and fruitful love between Christ and the Church.”<sup>19</sup>

<sup>16</sup> Cf. CIC/1983, Canon 1752.

<sup>17</sup> Cf. CIC/1983, Canon 204 § 2.

<sup>18</sup> “*Salus animarum* is the supreme law of the Church, beyond all the other individual provisions [...]. Traditionally, in secular legal one mentions the following, analogically worded principle: *salus publica suprema lex esto*.” Redazione di Quaderni di diritto ecclesiale, *Codice di Diritto Canonico commentato* (Milano: Ancora editrice, 2017), 1389.

<sup>19</sup> Cf. CIC/1983, Canon 1063 3°.

Striking and immediately related to the eternal salvation of the faithful are those regulations, which limit the otherwise legally binding requirements to a minimum in the cases of the imminent danger of death (*in periculo mortis*). This is typically the case of the confession: “Even though a priest lacks the faculty to hear confessions, he absolves validly and licitly any penitents whatsoever in danger of death from any censures and sins, even if an approved priest is present.”<sup>20</sup> Clearly, civil law cannot dispose of an analogical regulation because supernatural goals are beyond its reach, even though in the constitutions of some countries there is, indeed, a reference to the supernatural authority of God in the preamble (*invocatio Dei*), for example, in the German Fundamental law (*Grundgesetz*), whose legislators declared in the opening preamble that they agreed on it “conscious of (their) responsibility before God and the people.”<sup>21</sup>

## Fundamental Rights in the Ecclesiastical Legislature

State constitutions contain, above all, the foundations for the regulations of the political system as well as lists of the fundamental rights and obligations of the citizens. If the Church believes that the very core of its structure was not created by itself and thus it cannot manipulate the norms, the constitutional character of such norms—in the absence of a specific fundamental law of the Church—can be discerned from the very diction of the canon. The legislator, for example, explicitly declares the fundamentally constitutional theological thesis: “Just as by the Lord’s decision Saint Peter and the other Apostles constitute one college, so in a like manner the Roman Pontiff, the successor of Peter, and the bishops, the successors of the Apostles, are united among themselves.”<sup>22</sup> The diction allows to discern that “the bishops are the successors of the apostles by the divine dispensation through the Holy Spirit,” that is, they represent an immediate part of the constitution of the Church as given by Christ. However, “the Bishops’ Conference as a standing institution of the bishops from a particular country or a specific region” has not been instituted by Christ, and thus it is an institution of purely ecclesiastical law created mainly for practical purposes.<sup>23</sup>

<sup>20</sup> CIC/1983, Canon 976.

<sup>21</sup> Cf. Josef Blahož, *Dokumenty ke státnímu právu*, 40.

<sup>22</sup> CIC/1983, Canon 330.

<sup>23</sup> “The establishment of bishops’ conferences goes back to the positive experience the bishops had with the spontaneous encounters with their brothers from the neighbouring area. These encounters started in central Europe from the turn of the 18th and 19th centuries, i.e. in



The basis of the constitutional regulation of the ecclesiastical organism is closely linked to the problem of the fundamental rights and obligations of the faithful, because the essential guarantors of its realization are those who have been entrusted with the pastoral care for both the universal Church (i.e., the pope and the bishops) and the local churches (i.e., the individual diocesan bishops), respectively.

In the analogous concept of the fundamental rights in the ecclesiastical context, one can claim an essential overturning of their mutual sequence with the obligations. In fact, the faithful of the Catholic Church are above all the addressees of the obligations towards their Church; their fulfilment qualifies them to hold a fundamental mandate which defines the space of their freedom within the Church. The Code in the heading of Book II, can. 208–223 thus does not pinpoint “rights,” or “rights and obligations”: its title is “The Obligations and Rights of All the Christian Faithful.”<sup>24</sup> In fact, contemporary democratic rule-of-law countries gradually abandon practically all obligations of the citizens towards the state. An important turning point in this development was granting the possibility to avoid service in the military in favor of an alternative civilian service and, subsequently, a complete dissolution of any service.<sup>25</sup> In relation to the state, the citizens are therefore obliged only to pay taxes and to follow compulsory elementary education.

If the foundational connection of an individual towards the state is quite necessarily his or her own nationality, the primary relation of an individual towards the Church is baptism as the sacramental sign of God’s undeserved grace. However, it is the basis of a lifelong obligation. The Code expresses this relation as a general legal obligation of the Catholic faithful: “With great diligence they

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a period in which it was vital to agree on a joint strategy to tackle the struggle with the modern state, partially inimical to the Church.” Sabine Demel, *Handbuch Kirchenrecht. Grundbegriffe für Studium und Praxis* (Freiburg im Breisgau: Herder, 2010), 87.

<sup>24</sup> In the constitutions of countries where the main goal is to make sure the citizen has the broadest possible space for individual autonomy and thus should not be bothered with a number of obligations and sacrifices that come before the rights, since according to the supreme precept of love, all Christians are called give, rather than accept (based on the logion of Christ quoted by Paul in Acts 20,35). If it is necessary, he/she should adopt an attitude of generous self-sacrifice, whereby public good is given precedence over individual advantage in agreement with the superior precepts of brotherly solidarity.” Luigi Chiappetta, *Il Codice di Diritto Canonico. Commento giuridico-pastorale I* (Napoli: Edizioni Dehoniane, 1988), 273.

<sup>25</sup> This is, for example, the case in the Czech Republic: “Another type of service in place of the obligatory military service was the so-called civilian service for those who rejected military service on the basis of conscience and religious persuasion on the basis of a now abrogated act No. 18/1992 Coll about civilian service in relation to the fundamental right to reject military service according to art. 15 paragraph 3 of the Charter [...]. However, due to the professionalisation of the army, this provision is no longer used.” Eliška Wagnerová, Vojtěch Šimíček, Tomáš Langášek, Ivo Pospíšil, et al. *Listina základních práv a svobod. Komentář* (Praha: Wolters Kluwer, 2012), 269–270.



are to fulfil the duties which they owe to the universal Church and the particular church to which they belong according to the prescripts of the law.”<sup>26</sup> For the lay faithful, there is a special emphasis on the sacrament of confirmation,<sup>27</sup> which makes them capable of autonomous development of their individual talents in the Church: “Since, like all the Christian faithful, lay persons are designated by God for the apostolate through baptism and confirmation, they are bound by the general obligation and possess the right as individuals, or joined in associations, to work so that the divine message of salvation is made known and accepted by all persons everywhere in the world. This obligation is even more compelling in those circumstances in which only through them can people hear the gospel and know Christ.”<sup>28</sup> There is a special catalog of the obligations and rights of the lay faithful,<sup>29</sup> which goes beyond the general framework addressed to all the faithful: “In addition to those obligations and rights which are common to all the Christian faithful and those which are established in other canons, the lay Christian faithful are bound by the obligations and possess the rights which are enumerated in the canons of this title.”<sup>30</sup>

## Natural Law as the Inspiration for Some of the Rights

As regards the origin of the fundamental rights of a Catholic Christian, the canonical jurisprudence does not refer to the natural, pre-existent rights which should be enjoyed by all, as it is the case in the “rights of man and citizen” in the civil right doctrine. The basic rights of the faithful are defined by the dignity of Christians reborn in the sacrament of baptism to eternal salvation. The possibility to realize them is thus given through his or her baptism, not by the sheer fact of his or her existence.<sup>31</sup> However, this implies that some of the fundamen-

<sup>26</sup> CIC/1983, Canon 209 § 2.

<sup>27</sup> “Mark that testimony may have two forms. The first is simple presence of Christians who witness Christ where they live and fill the world with the spirit of the Gospel. The second is based on the special mission to witness Christ actively. In both cases, Christians provide their testimony using two means: their life and their words.” Benedikt Mohelník, *Pečet' daru Ducha Svatého. Teologie svátosti bířmování* (Praha: Krystal, 2012), 47–48.

<sup>28</sup> CIC/1983, Canon 225 § 1.

<sup>29</sup> CIC/1983, Canon 224–231.

<sup>30</sup> CIC/1983, Canon 224.

<sup>31</sup> “The fundamental rights of the citizens that anchor the constitutional systems of modern states are original, universal and inalienable rights that appertain to the human person on the basis of his or her very dignity and nature. Their existence precedes the state and in their essence and basic contents they are not dependent on any positive law. The specifically Christian rights

tal rights, as listed in the Code of Canon Law, are not based on natural law. Such rights find their equivalents in the constitutions and legislature of democratic rule-of-law countries, typically, for example, the right to a good reputation and privacy: “No one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy.”<sup>32</sup> This is also the case with the right to choose one’s own state in life. Of course, this right belongs to the ones inspired by natural law: “All the Christian faithful have the right to be free from any kind of coercion in choosing a state of life.”<sup>33</sup> However, the canonical legal order shows how much it differs from its realization compared to the civil law, for example, the right to conclude marriages in the Canon Law is enveloped in a sophisticated system of obstacles for marriage<sup>34</sup> that protect the sanctity of marriage as a specific quality which civil law does not recognize. The legal systems of a number of states obviously do not recognize irregularities and obstacles for a clerical state or in consecrated state of men and women religious; these are legal provisions specifically concerned with the inner structure of the Church itself.

The origin in natural law can also be seen in the principle of the legality of punishments (*nulla poena sine lege*) which the Canon Law of the Catholic Church faithfully reproduces at the level of the fundamental right of all faithful: “The Christian faithful can legitimately vindicate and defend the rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law.”<sup>35</sup> However, even in this case, there is an exception stipulated by the so-called general or penal law (*norma generalis*): “In addition to the cases established here or in other laws, the external violation of a divine or canonical law can be punished by a just penalty only when the special gravity of the violation demands punishment and there is an urgent need to prevent or repair scandals.”<sup>36</sup> This violation of the legality of imposing punishments is certainly not the expression of intentional arbitrariness. One should rather refer to the supernatural goal of canonical legislature, namely, *salus animarum*. Indeed, some unexpected or unforeseeable conduct of the offender could jeopardize on only public order, but also the very salvation of the faithful.<sup>37</sup>

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do not precede the existence of the persona but are activated in the life of the Church as mediated through baptism.” Luigi Chiappetta, *Il Codice di Diritto Canonico*, 273.

<sup>32</sup> CIC/1983, Canon 220.

<sup>33</sup> CIC/1983, Canon 219.

<sup>34</sup> Srov. CIC/1983, Canon 1083–1094.

<sup>35</sup> CIC/1983, Canon 221 § 3.

<sup>36</sup> CIC/1983, Canon 1399.

<sup>37</sup> “There exists a variety of views in relation to the significance of this exception. Some stress its legitimacy as regards the specifics of the canonical legal order, where the enforcement of the supreme law of the salvation must not be prevented. In some situations, however, this may involve the use of penal sanctions, even though the law did not stipulate the use of punishment.” – Redazione di *Quaderni di diritto ecclesiale*, *Codice di Diritto Canonico*, 1126–1127.

## The Addressees of the Obligations and Rights in the Church

The addressees of the list of obligations and rights are only the baptized Catholics: “Merely ecclesiastical laws bind those who have been baptized in the Catholic Church or received into it, possess the efficient use of reason, and, unless the law expressly provides otherwise, have completed seven years of age.”<sup>38</sup> In comparison with the previous Code of Canon Law, which extended its personal sphere of effect on all the baptized,<sup>39</sup> because it based its concept on the notion of the illegitimacy of all the other churches. The post-conciliar Code is content with the sphere of effect related only to the Catholics, with the obvious exception of natural law where the sphere is extended to include everybody.

The people of God assembled in the Catholic Church is divided into two entirely fundamental groups, that is, the clerics and the lay people. This is a constitutional division: “By divine institution, there are among the Christian faithful in the Church sacred ministers who in law are also called clerics; the other members of the Christian faithful are called lay persons.”<sup>40</sup> However, the Code postulates equality amongst all Catholic Christians as a prerequisite for the realization of their rights: “From their rebirth in Christ, there exists among all the Christian faithful a true equality regarding dignity and action by which they all cooperate in the building up of the Body of Christ according to each one’s own condition and function.”<sup>41</sup> Thus, the fundamental equality of Christians in the hierarchical community of the Church (*communio hierarchica*) does not mean that everyone has the right to do anything without any difference; it depends on the actual status of the Christian and his or her specific tasks in the Church (*condicio et munus*), which define the inner diversification of the individual groups in the people of God. For example, the Czech Charter of Fundamental Rights and Freedoms introduces the list of the rights with the following axiom: “All people are free and equal in their dignity and in their rights.”<sup>42</sup> Clearly, the legislators of the Constitution do not intend to define a mechanically understood concept of equality; above all, they are aware of the fact that a space of equality needs to be created. The concrete realization of this equality is then given in the list of the constitutionally grounded and guaranteed rights.<sup>43</sup>

<sup>38</sup> CIC/1983, Canon 11.

<sup>39</sup> Srov. CIC/1917, Canon 12.

<sup>40</sup> CIC/1983, Canon 207 § 1.

<sup>41</sup> CIC/1983, Canon 208.

<sup>42</sup> Cf. Charter of the Fundamental Rights and Freedoms of the Czech Republic, art. 1.

<sup>43</sup> “In the traditional communities, the dominant concept was the concept of honour, closely linked with inequality. In fact, honour is never enjoyed by everybody, but only by some people

The fundamental equality of Catholic Christians, however, does not guarantee only rights: in fact, the rights represent that initial state which also involves obligations. The foundation is the external attitude which goes beyond the merely civil loyalty found at the citizens of a state: “The Christian faithful, even in their own manner of acting, are always obliged to maintain communion with the Church.”<sup>44</sup> This unity is not only internal, that is, emotional. It is the basis of a community (*communio*), which is essentially a theological term: Nevertheless, in connection with the external manifestation of the life of the Church and its faithful, it acquires legal relevance. As regards sacramental life, the most profound and intense manifestation of this community is taking part on the eucharistic communion (*communio eucharistica*); in the visible manifestations of the life in the Church, any faithful can commit a delict which excludes him from the community. The actual excommunication, however, is a “medicinal” punishment (*poena medicinalis*): its goal is to move the sinner to re-enter the Church.<sup>45</sup>

This community is defined by three bonds (*tria vincula*) which tie a Catholic Christian to his or her Church: “Those baptized are fully in the communion of the Catholic Church on this earth who are joined with Christ in its visible structure by the bonds of the profession of faith, the sacraments, and ecclesiastical governance.”<sup>46</sup> In the Counter-Reformation context, this position was formulated by Cardinal Robert Bellarmine (1542–1621). It is still an essential element of the fundamentals of the legal order in the Catholic Church. The structure of these “bonds” reflect the three missions of Christ (*tria munera Christi*) performed by the mystical body of Christ: the bond of faith manifests Christ’s mission of a prophet and teacher; the bond of the sacraments is the manifestation of his sanctifying mission, the bond of the church governance manifests his kingly, ruling mission.

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according to their position on the social ladder. The modern concept of human dignity is founded on universalism and egalitarianism, since the inalienable human dignity offers membership *ex definitione* to everybody.” Eliška Wagnerová, Vojtěch Šimíček, Tomáš Langášek, Ivo Pospíšil, et al. *Listina základních práv a svobod*, 55.

<sup>44</sup> CIC/1983, Canon 209 § 1.

<sup>45</sup> “*Excommunication* is the separation of the believer from the community of the Church, especially its sacramental life, until he or she repents. The Czech translation *vyobcování* (i.e., literally being out of the community) is possible, however, it is misleading. Using the word *vyloučení* (i.e., *expulsion*) is completely wrong. No one can be expelled from the Church today, nor has it ever been possible in the past, both in terms of doctrine, but also legally. The use of the *anathema sit* (let him or her be expelled) did not entail expulsion, either.” Jiří Rajmund Tretera and Záboj Horák, *Církevní právo*, 321.

<sup>46</sup> CIC/1983, Canon 205.

## The Fundamental Obligations in an Applied Perspective

The concrete obligations and rights of the faithful are realized within the Framework of the *tria munera*. Not just the clerics, that is, church “professionals” are called to participate on fundamental obligation of the prophetic and kerygmatic mission: “All the Christian faithful have the duty and right to work so that the divine message of salvation more and more reaches all people in every age and in every land.”<sup>47</sup> In the field of sanctification, the Catholic faithful are faced with a moral imperative to make their lives conform with the sacramental gifts they participate on: “All the Christian faithful must direct their efforts to lead a holy life and to promote the growth of the Church and its continual sanctification, according to their own condition.”<sup>48</sup>

In the field of legal civilistic doctrine, the idea that any law should require or prescribe a certain way of life to its addressees is totally out of the question. Indeed, the main goal of the legal order in a particular state is to allow as much space for individual freedom as possible, that is, the *status negativus*, or *status libertatis*, respectively. However, the Canon Law of the Catholic Church is a religious law where a close link between law and morality seems appropriate. In religious systems, there is no barrier between the religious, moral, and legal provisions. Thus, the thesis about law as the “minimum of morality”<sup>49</sup> can here be tested in a more complex and variegated form without losing the regard to the legal character of norms whose observation in the Canon Law of the Catholic Church is required as obligatory.<sup>50</sup>

Christ’s *munus regendi*, that is, the mission of governance and leadership in the Church, is realized by legitimately established pastors who cannot per-

<sup>47</sup> CIC/1983, Canon 211.

<sup>48</sup> CIC/1983, Canon 210.

<sup>49</sup> “In terms of the contents, the norms often correspond to the other norms regulating behavior. In this regard, the closest norms seem to be the moral ones. Law is often identified with the “minimum of morality.” Not all the norms corresponding with the dominant moral consciousness are expressed in the form of law and are thus legally binding. Indeed, law may be more strict than morality as it concerns the consequences of the breaking of the law (enforcement by the power of the state, esp. the legal sanctions). Therefore, it must be at the same time less strict than morality as regards the demands put on the human behavior.” Jiří Boguszak, Jiří Čapek, and Aleš Gerloch, *Teorie práva* (Praha: ASPI Publishing, 2004), 36.

<sup>50</sup> “However, this is not in contradiction to the obvious fact that the Canon Law *ex sua natura* uses—in contrast to secular law non-legal categories like *conscience, sin, remorse, mercy*, etc. However, if judging the human behavior reaches the form of an individual legal act (i.e., a court sentence or administrative decision), it seems necessary to distance oneself from these moral categories and base the judgement solely on legally relevant issues.” Ignác Antonín Hrdina and Miloš Szabo, *Teorie kanonického práva*, 347.

form this duty without the appropriate obedience of the faithful. This obedience is placed on the Catholic faithful as an obligation: “Conscious of their own responsibility, the Christian faithful are bound to follow with Christian obedience those things which the sacred pastors, inasmuch as they represent Christ, declare as teachers of the faith or establish as rulers of the Church.”<sup>51</sup> Obedience is not just an obligation of the clerics and consecrated persons, it is the basic principle of the harmonious coexistence in the ecclesiastical community: “Be subordinate to one another out of reverence for Christ.”<sup>52</sup> However, the pastors represent Christ (*Christum repraesentantes*) and so they are to be properly obeyed, as it is stated directly in the Gospel.<sup>53</sup> Nevertheless, it is clear that the legislator neither refers to nor requires a blind form of obedience, but a truly “Christian” obedience (*christiana oboedientia*) based on a conscience formed by morality, that is, a conscience which does not exclude activity on the part of the obligated addressee.<sup>54</sup> The legislator confirms this concept of obligations in relation to Christian obedience by the inclusion of other rights of the Christians, that is, the petitionary right and the right to openly express one’s opinion:

The Christian faithful are free to make known to the pastors of the Church their needs, especially spiritual ones, and their desires. According to the knowledge, competence, and prestige which they possess, they have the right and even at times the duty to manifest to the sacred pastors their opinion on matters which pertain to the good of the Church and to make their opinion known to the rest of the Christian faithful, without prejudice to the integrity of faith and morals, with reverence toward their pastors, and attentive to common advantage and the dignity of persons.<sup>55</sup>

These rights of the faithful may be understood as a kind of opening of the Church in the direction of modern democracies, in which the broadest possible space of free discussion is guaranteed and the right to voice one’s opinion across the board is a matter of course. However, the right to sacramental life and keeping the liturgical order are rights specific to the internal life of the Church:

The Christian faithful have the right to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the word of God and the sacraments. The Christian faithful have the right to worship God

<sup>51</sup> CIC/1983, Canon 212 § 1.

<sup>52</sup> Eph 5:21.

<sup>53</sup> Lk 10:16: “The one who hears you hears me, and the one who rejects you rejects me, and the one who rejects me rejects him who sent me.”

<sup>54</sup> “The subordinates have the right to express their dissenting opinions; in fact, their responsibility may bind them do so, however, only with the due respect. The final decision may, however, belong to the one and only, namely, to the right and obligations of the superior.” Karl-Heinz Peschke, *Křestánská etika* (Praha: Vyšehrad, 1999), 475–476.

<sup>55</sup> CIC/1983, Canon 212 § 2 and 3.

according to the prescripts of their own rite approved by the legitimate pastors of the Church and to follow their own form of spiritual life so long as it is consonant with the doctrine of the Church.<sup>56</sup>

The means used to secure such typically internal rights to the faithful are also specific. The period after Vatican II was, for example, often marked by an excessive creativity on the part of the celebrants of the liturgy.<sup>57</sup> The effort of the Apostolic See was thus to create such a disciplinary framework in which the rite is celebrated in conformity with the missal and other liturgical regulations. This is the way the faithful exercise their right for their own rite: “[...] it is the right of all of Christ’s faithful that the Liturgy, and in particular the celebration of Holy Mass, should truly be as the Church wishes, according to her stipulations as prescribed in the liturgical books and in the other laws and norms. Likewise, the Catholic people have the right that the Sacrifice of the Holy Mass should be celebrated for them in an integral manner, according to the entire doctrine of the Church’s Magisterium.”<sup>58</sup> Ruleless improvisation or unregulated liturgical creativity robs the faithful of this right.<sup>59</sup>

Using the optics of the right of association and assembly as formulated in the constitutions of modern states, the Code of Canon Law talks about the everyday manifestations of ecclesiastical life: “The Christian faithful are at liberty freely to found and direct associations for purposes of charity or piety or for the promotion of the Christian vocation in the world and to hold meetings for the common pursuit of these purposes.”<sup>60</sup> In this context, it is necessary to clarify the claim that prior to Vatican II, the faithful apparently did not enjoy any rights. Indeed, the Code of 1917 did not explicitly contain a catalog of obligations and rights, however, this by no means suggests they were not subject of rights as stipulated in the Code: “By baptism a person becomes a subject of the Church of Christ, with all the rights and duties of a Christian, unless as far as rights are concerned there is some obstacle impeding the bond of communion with the Church, or a censure inflicted by the Church.”<sup>61</sup>

<sup>56</sup> CIC/1983, Canon 213 and Canon 214.

<sup>57</sup> “I believe the time in which priests in some countries made their own eucharistic prayers, sometimes for every Sunday, is over. In Belgium or Holland at that time, there were sometimes tens or hundreds of them! I personally believe that such a number of eucharistic prayers generates verbosity, since it is hard to imagine how the same theme can be rearticulated so many times to make it always new and not to touch upon orthodoxy.” Ladislav Pokorný, *Prostřený stůl* (Praha: Ústřední církevní nakladatelství, 1990), 119.

<sup>58</sup> *Redemptionis Sacramentum*, art. 12.

<sup>59</sup> “This union with the one and only subject of the Church allows a multiplicity of forms and involves a living development. However, it also excludes arbitrariness. This is true for individuals, for the community, for the hierarchy as well as the lay faithful.” Josef Ratzinger (Benedikt XVI), *Duch liturgie* (Brno: Barrister & Principal, 2006), 146.

<sup>60</sup> CIC/1983, Canon 215.

<sup>61</sup> CIC/1917, Canon 87; cf. CIC/1983, Canon 96.



With all its openness to free initiatives of the faithful, the Catholic Church protects its own “trademark,” that is, the attribute “Catholic”: “Since they participate in the mission of the Church, all the Christian faithful have the right to promote or sustain apostolic action even by their own undertakings, according to their own state and condition. Nevertheless, no undertaking is to claim the name Catholic without the consent of competent ecclesiastical authority.”<sup>62</sup> This special regulation balances the tension between the freedom of Christians and their authentication on the part of hierarchy of the Church; all Catholic faithful without any difference are free in their activities and initiative, however, if it is to be called “Catholic,” it needs to be acknowledged by Church authority.<sup>63</sup> It is clear that a democratic rule-of-law state does not recognize such a guarantee of authenticity: indeed, its goal is to distinguish the sphere of public law and private law. In the private sphere of the citizen, there should be maximum of free space: “The power of the State may be asserted only in cases and within the limits set by law and in a manner determined by law. Everybody may do what is not prohibited by law and nobody may be forced to do what the law does not command.”<sup>64</sup>

The fundamental right to education in the Canon Law has a broader perspective, because it is a right to Catholic education: “Since they are called by baptism to lead a life in keeping with the teaching of the gospel, the Christian faithful have the right to a Christian education by which they are to be instructed properly to strive for the maturity of the human person and, at the same time, to know and live the mystery of salvation.”<sup>65</sup> This implies that such a complex form of education must include the family, but also the responsible persons and institutional elements in the Church. As regards the individual lay faithful in family life, the Code is more concrete: “Since they have given life to their children, parents have a most grave obligation and possess the right to educate them. Therefore, it is for Christian parents particularly to take care of the Christian education of their children according to the doctrine handed on by

<sup>62</sup> CIC/1983, Canon 216.

<sup>63</sup> “The Christian apostolate is not a monopoly of sacred servants of men religious; if the faithful have the duty to cooperate with the hierarchical apostolate, carried out by the bishops and priests, they also have the right to pursue the apostolate on the basis of their own initiatives (publication activities, educational and sport facilities, health advisory centres, radio and television transmitters, etc.). It is an ordinary right, because it does not depend on the approval or authorization of Church authority, but it belongs to the faithful through the power of the baptism and confirmation which make them ‘participate in the mission of the Church’ [...]. The initiatives may be a matter of associations, but also individuals, however, the hierarchy obviously has the right to lead them and watch over them. One should avoid harmful confusions and upheavals; thus, the canon stipulates that no work is to be deemed ‘Catholic’ unless not approved of by the relevant authority of the Church.” Luigi Chiappetta, *Il Codice di Diritto Canonico*, 280.

<sup>64</sup> *The Charter of Fundamental Rights and Freedoms*, art. 2, paragraphs 2 a 3.

<sup>65</sup> CIC/1983, Canon 217.

the Church.”<sup>66</sup> The Code in its third book pays special attention to the catechetical education<sup>67</sup> and Catholic schools,<sup>68</sup> however, it is important to emphasize that the good will of the legislator can clash with the limited space as defined by the situation in the given country. The constitutional grounding of the fundamental rights cannot cover the lived experience by verbosity. Let us refer to the grounding of the right to education in the constitution of the USSR from 1977, which wanted to postulate—in contrast to the constitutions of “bourgeois” countries—not just the individual rights, but also list their concrete guarantee:

The citizens of the USSR have the right to education. This right is ensured by free provision of all forms of education, by the institution of universal, compulsory secondary education, and broad development of vocational, specialized secondary, and higher education, in which instruction is oriented toward practical activity and production; by the development of extramural, correspondence and evening courses, by the provision of state scholarships and grants and privileges for students; by the free issue of school textbooks; by the opportunity to attend a school where teaching is in the native language; and by the provision of facilities for self-education.<sup>69</sup>

In the guarantees of the right to education, the Soviet legislator never mentions the monopoly of the Marxist-Leninist ideology which served as the prerequisite of all the alleged advantages of the Soviet educational system. In the case of the Catholic Church, the faithful should have the right to a truly Catholic and also accessible education in terms of its contents and spirit. The realization of this right should not be passive:

Parents must possess a true freedom in choosing schools; therefore, the Christian faithful must be concerned that civil society recognizes this freedom for parents and even supports it with subsidies; distributive justice is to be observed. Parents are to entrust their children to those schools which provide a Catholic education. If they are unable to do this, they are obliged to take care that suitable Catholic education is provided for their children outside the schools.<sup>70</sup>

An analogy of the constitutionally grounded freedoms of thought and expression in the Catholic Church is the freedom of theological enquiry, which, however, cannot be unlimited: “Those engaged in the sacred disciplines have

<sup>66</sup> CIC/1983, Canon 226 § 2.

<sup>67</sup> Cf. CIC/1983, Canon 773–780.

<sup>68</sup> Cf. CIC/1983, Canon 796–821.

<sup>69</sup> Sofia Svobodová et al. *Ústavy evropských socialistických států* (Praha: Státní pedagogické nakladatelství, 1984), 16.

<sup>70</sup> CIC/1983, Canon 798 and Canon 799.

a just freedom of inquiry and of expressing their opinion prudently on those matters in which they possess expertise, while observing the submission due to the Magisterium of the Church.”<sup>71</sup> Clearly, the Magisterium is not primarily a repressive instance and the incidental administrative or penal sanctions of those who abuse the listed freedoms today are rather the ultimate means (*extrema ratio*).<sup>72</sup> However, the faithful have the right to demand that the instruction and the theological science be in conformity with the teaching of the Church, whereas the mission of a democratic state was to provide as broad a space for the plurality of opinions as possible without any ideological limitations, indeed with the exception of the extremist views calling for violence and thus endangering the very foundations of a free society.

## The Problem of Unforceable Duties

The citizens’ tax duty also finds an analogy in the Canon Law: “The Christian faithful are obliged to assist with the needs of the Church so that the Church has what is necessary for divine worship, for the works of the apostolate and of charity, and for the decent support of ministers.”<sup>73</sup> In contrast to the sanction mechanism of a contemporary state against those who do not comply with the prescribed regulations, the Church has no practical opportunity to force the faithful to fulfil this duty; the fulfilment of this duty thus has the form of a moral obligation. The Canon Law thus transforms the so-called fifth Commandment of the Church whose binding authority is expressed in the Catechism of the Catholic Church: “The faithful also have the duty of providing for the material needs of the Church, each according to his abilities.”<sup>74</sup>

Another practically unenforceable duty is the obligation to give to charity programs: “They are also obliged to promote social justice and, mindful of the precept of the Lord, to assist the poor from their own resources.”<sup>75</sup> The effort to establish social justice and help the poor in a form of a canonical norm refers

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<sup>71</sup> CIC/1983, Canon 218.

<sup>72</sup> “The practice of the Church Magisterium must be oriented towards a conformity with its pastoral character. Its mission, that is, to witness the truth of Jesus Christ, belongs to the broader mission of the care for souls (*cura animarum*). [...] A society characterized by pluralism and the Church community with major differences, the Magisterium fulfils its own mission via presenting an argument.” Ctírad Václav Pospíšil, *Hermeneutika mystéria. Struktury myšlení v dogmatické teologii* (Praha: Krystal – Kostelní Vydří: Karmelitánské nakladatelství, 2005), 184–185.

<sup>73</sup> CIC/1983, Canon 222 § 1.

<sup>74</sup> *Catechism*, n. 2043.

<sup>75</sup> CIC/1983, Canon 222 § 2.

to the commandment of the Lord Himself, especially in the following logion: “This is my commandment: love one another as I love you.”<sup>76</sup> The duty of the faithful to serve the needy is a precept of natural law involving the whole of the human family which in Christianity is stressed by the new commandment of love. This aspect of the activity of the Church and their member was aptly characterized in the encyclical of Pope John Paul II *Sollicitudo Rei Socialis*: “Thus, part of the teaching and most ancient practice of the Church is her conviction that she is obliged by her vocation—she herself, her ministers and each of her members—to relieve the misery of the suffering, both far and near, not only out of her ‘abundance’ but also out of her ‘necessities.’”<sup>77</sup> Not surprisingly, therefore, there arose the idea that the original owners of all the goods of the Church are the poor.<sup>78</sup> Legally speaking, it is impossible to hold, however, it expresses an ideal aspiration for the life of the Church.

The addressees of the canonical norms in the Catholic Church also have the right to have their rights protected at the court: “The Christian faithful can legitimately vindicate and defend the rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law. If they are summoned to a trial by a competent authority, the Christian faithful also have the right to be judged according to the prescripts of the law applied with equity.”<sup>79</sup> The canonical equity (*aequitas canonica*) is a key principle in the application of Canon Law which takes into account also those whose right is to be respected and those who are responsible.<sup>80</sup> It also influenced the legal civilistic doctrine in the system of English and later Anglo-American law, whose basic source are court precedents, which, however, were mitigated by a parallel institutionalized judicial system of the Lord Chancellor who judged according to the principle of *equity*.<sup>81</sup>

<sup>76</sup> John 15:12.

<sup>77</sup> *Sollicitudo Rei Socialis*, 31.

<sup>78</sup> “The efforts to see the poor as those to whom belongs the property of the Church have a rather antiquarian interest.” Hans Heimerl, Helmuth Pree, and Bruno Primetshofer, *Handbuch des Vermögensrechts der katholischen Kirche* (Regensburg: Pustet Verlag, 1993), 61.

<sup>79</sup> CIC/1983, Canon 221 § 1 a § 2.

<sup>80</sup> “This principle demands that the application of Canon Law should respect its addressees as much as possible. It is applied in a number of fields, mainly in penal law (without the need to be mentioned explicitly). It is broadly used also in relation to the dispensation from purely ecclesiastical laws and, according to the tradition, it reaches to *epikia* in which the principle *lex non obligat cum gravi incommodo* (No positive law obliges where there is grave inconvenience.)” Ignác Antonín Hrdina and Miloš Szabo, *Teorie kanonického práva*, 45.

<sup>81</sup> “The creation of this term and the connected layers of English law go back to the beginning of the 14th century. At that time, there was an increasing number of people who could not use an analogical writ and thus found justice with authorized courts. Some inconsistencies of common law became manifest, especially too much formalism and the slowness of the decision-making process.” Jan Kulklík and Radim Seltenreich, *Dějiny amerického práva* [The History of American Law] (Praha: Linde, 2007), 63.

## Conclusion

The concept of the Church as a hierarchical community of all faithful (*communio hierarchica*) is the prerequisite for proper understanding of their fundamental obligations and rights. When defining the obligations, the law is rather vague and respects the apostolic principle “Don’t command more than necessary.”<sup>82</sup> There is a space of legitimate freedom in the Church, which, however, does not entail infinite toleration of limitless spontaneous initiatives. Contemporary mentality, characterized by a tendency towards limitless freedom is at odds with the precedence of the obligations of the faithful over their rights, or the call to take into account the common good in the act of exercising their rights: “In exercising their rights, the Christian faithful, both as individuals and gathered together in associations, must take into account the common good of the Church, the rights of others, and their own duties toward others.”<sup>83</sup> Nevertheless, it is also true that a democratic state is not valueless and that the citizens are pushed to exercise their rights with the boundaries set by the existing legal regulations. A democratic state, based on the rule of law, should not impose a concrete ideological system, as it can be found in the Czech Charter of the Fundamental Rights and Freedoms: “The State is founded on democratic values and must not be bound either by and exclusive ideology or by a particular religion.”<sup>84</sup> If, however, the Church is founded on Christ’s doctrine and on his love commandment, then the fulfilment of duties and the use of their rights is to be understood as an active contribution to the building of Christ’s mysterious body. The difference between obligations and rights has become smaller. Indeed, exercising his or her rights should be primarily seen as the fulfilment of his or her duties and obligations to God and his or her neighbor.

*Translated by Tomáš Jajtner*

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<sup>82</sup> Acts 15:28: “It seemed good to the Holy Spirit and to us not to burden you with anything beyond the following requirements.”

<sup>83</sup> CIC/1983, Canon 223 § 1.

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## Lois fondamentales : les perspectives du droit canonique et celles du droit civil à comparer

### Résumé

Le Code de droit canonique de 1983 a dressé une liste de devoirs et de droits propres aux fidèles laïcs. Elle est analogue aux listes de droits et libertés fondamentaux contenus dans les documents de droit international et dans les constitutions des pays démocratiques. Le fait que l'Église se soit inspirée du droit civil est une réalité qui remonte aux origines du droit canonique : tout d'abord à travers le droit romain, puis, dans le monde moderne, à travers des codifications complexes du droit civil, et après le Concile Vatican II, à travers les idées de droits humains universels. Une caractéristique spécifique de l'Église catholique par rapport à l'État démocratique est l'incorporation du sujet de droit dans l'Église par le baptême, qui entraîne tous un ensemble de droits et obligations. De cette manière, ce catalogue des droits et obligations qui existe désormais dans le code comprend principalement la liste de ces dernières. Ce sont au contraire les droits qui sont mis en évidence par l'État moderne. En fait, l'État moderne impose peu d'obligations à ses citoyens; souvent, il ne s'agit que de payer ses impôts et de suivre l'enseignement obligatoire. L'article traite des obligations et droits individuels contenus dans le Code du droit canon et les compare aux obligations et droits correspondants contenus dans les constitutions. Les concepts de normes civiles et de normes canoniques sont comparables, notamment parce que toutes deux s'inspirent du droit naturel. Les devoirs des fidèles, en revanche, représentent un objectif spécifique de l'Église et, dans ce cas, il est difficile d'établir une analogie avec le droit civil. Par-dessus tout, la loi majeure de l'Église reste le salut des âmes, alors que l'État ne poursuit pas un but surnaturel de ce type.

Mots-clés : droit ecclésial, droit civil, droit naturel, droits de l'homme, droits et libertés fondamentaux, obligations et droits des fidèles, constitution, Code de droit canonique, salut, droit, élaboration des lois, chrétiens, Église catholique, État de droit

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## Leggi fondamentali: confronto di prospettive del diritto canonico e del diritto civile

### Sommario

Il Codice di Diritto Canonico del 1983 ha introdotto un elenco di doveri e diritti dei fedeli laici. È analogo agli elenchi caratteristici dei diritti e delle libertà fondamentali contenuti nei documenti di diritto internazionale e nelle costituzioni dei paesi democratici. L'ispirazione della Chiesa al diritto civile è stata una realtà sin dall'inizio del diritto canonico: prima attraverso il diritto romano, poi, nel mondo moderno, attraverso complesse codificazioni del diritto civile, e dopo il Concilio Vaticano II, attraverso le idee dei diritti umani universali. Una caratteristica specifica della Chiesa cattolica rispetto a uno Stato democratico è l'incorporazione del soggetto di diritto nella Chiesa attraverso il battesimo, ciò che porta con sé tutti i diritti e gli obblighi. In questo



modo, il catalogo dei diritti e degli obblighi, che ora esiste nel codice, include principalmente un elenco di questi ultimi. I diritti sono invece messi in evidenza dallo Stato moderno. In effetti, lo Stato moderno impone pochi obblighi ai suoi cittadini; spesso si tratta solo di pagare le tasse e di obbedire alla costrizione dell'istruzione obbligatoria. Il presente articolo tratta dei singoli obblighi e diritti contenuti nel Codice di Diritto Canonico e li confronta con i corrispondenti obblighi e diritti contenuti nelle costituzioni. Il concetto di norme civili e canoniche è simile, soprattutto se ispirato alla legge naturale. I doveri dei fedeli, invece, rappresentano fini ecclesiastici specifici, e in questo caso è difficile stabilire un'analogia con il diritto civile. Soprattutto, la legge suprema della Chiesa è la salvezza delle anime, e lo Stato non ha un obiettivo così soprannaturale.

Parole chiave: diritto ecclesiastico, diritto civile, diritto naturale, diritti umani, diritti e libertà fondamentali, obblighi e diritti dei fedeli, costituzione, codice di diritto canonico, salvezza, diritto, processo legislativo, cristiani, chiesa cattolica, stato di diritto