



**Stanislav Příbyl**

<https://orcid.org/0000-0002-2470-1405>

University in České Budějovice, Czech Republic

## Human Person in the Code of Canon Law of John Paul II

**Abstract:** The Code of Canon Law, promulgated by John Paul II in 1983, is a synthesis of the earlier 1917 Code and the doctrine of the Second Vatican Council. The Code contains norms which go well beyond a reform of the inner legal relations within the Catholic Church. A lot of them deal with the value and dignity of the human person, which shows a clear impact of the pontificate of John Paul II, who put a lot of emphasis on the given issue. The article discusses the fields of legal regulations in the Code which touch upon the issue of the human person, esp. freedom of religion, protection of unborn life, social rights, legal standing of women and the education of future generations. It points out the main difference between civil law (which also serves the dignity of the human person) and canon law, namely, the latter aims at the salvation of souls.

**Keywords:** human person, John Paul II, Code of Canon Law, dignity, women, marriage, family, education

## The Need For a New Code of Canon Law

The value and dignity of the human person was one of the central issues of Pope John Paul II's pontificate. As a representative of the Catholic Church, he followed the doctrinal line of the Second Vatican Council (where he himself was present), however, he also had his own philosophical and theological inspirations, which led him to this viewpoint. Even though he was firmly rooted in the legacy of the traditional philosophy and theology pursued in the Church, he was also influenced by newer philosophical movements of personalism and

existentialism. Moreover, the situation of a world divided into two irreconcilable power blocs, as well as acquaintance with communist ideology, contributed to the formation of the pope's distinctive viewpoint.<sup>1</sup>

His private and public discussions, statements and many official documents of his magisterium made it possible to directly formulate a philosophically formed notion of the human person. For example, in his encyclical letter *Veritatis splendor* on the basis of the moral doctrine of the Church (1993), the pope makes the following statement: "It is in the light of the dignity of the human person—a dignity which must be affirmed for its own sake—that reason grasps the specific moral value of certain goods towards which the person is naturally inclined."<sup>2</sup> However, the collection of legal norms, that is, the Code of Canon Law, works in a different way. The legal language is different from the language of philosophy and theology, and different is also the specifically legal treatment of reality. The concept of the human person does exist in law, however, what makes it different is its projection into the legally defined *natural person*, who has his/her rights and obligations, or even *legal/artificial person*, which from a philosophical point of view is not a real person at all.<sup>3</sup>

Nevertheless, the Code of the Canon Law is a source of law for the Catholic Church. The pope called the document promulgated in 1983—somewhat hyperbolically—"the last document of Vatican II" although 18 years have passed since between the last approved document of the Council. However, the Code is also not the result of collective voting, as it was with the documents of the Council. It is, above all, a primatial act of the pope himself, even though a number of cardinals, bishops and other specialists/canonists took part in the genesis of the code, as it is emphasized in the promulgatory apostolic constitution of John Paul II:

For this reason, therefore, the bishops and the episcopates were invited to collaborate in the preparation of the new Code, so that by means of such a long process, by a method as far as possible collegial, there should gradually mature the juridical formulas which would later serve for the use of the entire Church. In all these phases of the work, there also took part experts, namely,

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<sup>1</sup> This is also proved by the Pope's first visit to Poland in 1979: "Although during his stay in his native land John Paul II behaved in a correct, if not friendly, manner towards its rulers, uttered no word against the regime and avoided political topics, what he said about human rights and human dignity based on the Christian faith sufficed to shatter the régime." František X. Hałas, *Fenomén Vatikán* (Brno: Centrum pro studium demokracie a kultury, 2004), 445.

<sup>2</sup> John Paul II, *Veritatis Splendor*, 48, in AAS 85 (1989): 1172.

<sup>3</sup> "The addressees [of the legal norms] are defined by the law itself and the law specifies their eligibility to be subjects of law and of the obligations which arise from the legal norm (or on the basis of the legal norm, respectively), their eligibility to establish such rights and obligations, or their eligibility for illegal conduct—this determines their *legal subjectivity*." Ignác Antonín Hrdina and Miloš Szabo, *Teorie kanonického práva* (Praha: Karolinum, 2018), 155.

specialists in theology, history, and especially in canon law, who were chosen from all over the world.<sup>4</sup>

Alongside the documents of Vatican II, the second most important source used in the preparation of John Paul II's Code is its predecessor, the Code of Canon Law promulgated in 1917, also known as the Pio-Benedictine Code, on the basis of the two popes who were instrumental in creating the code, namely Pius X and Benedict XV. The concept of the code constituted a real breakthrough in the whole history of the Canon Law; and in terms of the legislative and technical aspects it can be considered a masterpiece.<sup>5</sup> However, at the time of its promulgation, there had not been enough reflection on the necessity of canon law as such, and the legislator focused more on the need to have a single code for the whole church.

Nevertheless, the period after Vatican II also brought waves of theological and disciplinary dissent, including calling into question the very existence and necessity of canon law. Within the Catholic Church, there was also a belated and uncritical reception of overthrown theses of liberal Protestantism, including the Rudolph Sohm's thesis about the incompatibility of the church with canon law.<sup>6</sup> John Paul II knew about the turmoil caused by the critique—which sometimes went to self-destructive extremes—and reflected on it in his first encyclical letter *Redemptor Hominis*:

This growing criticism was certainly due to various causes and we are furthermore sure that it was not always without sincere love for the Church. Undoubtedly one of the tendencies it displayed was to overcome what has been called triumphalism, about which there was frequent discussion during the Council. While it is right that, in accordance with the example of her Master, who is “humble in heart,” the Church also should have humility as her foundation, that she should have a critical sense with regard to all that goes to make up her human character and activity, and that she should always be very demanding on herself, nevertheless criticism, too, should have its just limits. Otherwise, it ceases to be constructive and does not reveal truth, love

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<sup>4</sup> John Paul II, *Sacrae disciplinae leges*, IX, in AAS 75, Pars II (1983): IX.

<sup>5</sup> “In terms of the general perspective, the Code of Canon Law of 1917 represented an official, authentic, unified, universal and exclusive code used in the Latin Church which was in force for 66 years. With the advantage of hindsight, we may state that this code made a great and profound difference in the life of the church and that his scientific and legal merits are still generally acknowledged.” Vojtech Vladár, *Dejiny cirkevného práva* (Praha: Leges, 2017), 504.

<sup>6</sup> “For Sohm, there is no law in the church to be found in formal documents. Sohm rejects the concept of a visible church, which disposes of the external institutional notion of a confessing church to which an individual can be joined by an act of external confession, as well as a notion of a visible church which serves the invisible church [...] For Sohm, the church—following a profoundly Lutheran notion—is an invisible entity to be to be grasped by faith alone.” Carlo Frantapiè, *Ecclesiologia e canonistica* (Venezia: Marcianum Press, 2015), 83–84.

and thankfulness for the grace in which we become sharers principally and fully in and through the Church.<sup>7</sup>

The need to defend the very reason for the existence of canon law in the Church led John Paul II to provide reasons for normative legal regulation in the life of the Church which can be found in the promulgation constitution of the code. The code is needed in the service to the Church, because it brings about a necessary order (*ordo*) in its multilayered organism:

This being so, it appears sufficiently clear that the Code is in no way intended as a substitute for faith, grace and the charisms 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 (*ordinem in ecclesiali societate*) that, while assigning the primacy to faith, grace and the charisms, it at the same time renders easier their organic development in the life both of the ecclesial society and of the individual persons who belong to it.<sup>8</sup>

The very ending of the extract from the promulgation constitution makes clear that the focus of attention is not just the church as a community, but also every individual alike who belongs to the church. This is not just the direct addressee of the code, that is, *christifidelis* “ecclesiastical laws bind those who have been baptized in the Catholic Church or received into it.”<sup>9</sup>

## The Freedom and Dignity of the Human Person

In fact, the regard to human dignity is even more visible in places, where the code goes beyond the circle of its immediate addressees and addresses everybody:

All persons (*omnes homines*) are bound to seek the truth in those things which regard God and his Church and by virtue of divine law are bound by the obligation and possess the right of embracing and observing the truth which they have come to know.<sup>10</sup>

<sup>7</sup> John Paul II, *Redemptor Hominis*, Encyclical Letter from 4 March 1979, Art. 4, in AAS 71 (1979): 262–263.

<sup>8</sup> John Paul II, *Sacrae disciplinae leges*, XI, in AAS 75, Pars II (1983): XI.

<sup>9</sup> Cf. Canon 11 CIC/1983.

<sup>10</sup> Canon 748 § 1 CIC/1983.

Fully in the line of Vatican II, John Paul II turns his attention to the human person who is not generally bound to be “a member of the Catholic Church,” or—to use the words of the 1917 Code “be duly taught the doctrine of the Gospel.”<sup>11</sup> If the earlier concept focused on the *truth* of Christ and his church, which has solely the *right to truth*, John Paul II Code proceeds from “down up”: it stands on the side of man who has *the right to truth* and thus also the obligation to seek it and observing the truth.<sup>12</sup> External conditions that are necessary for a human person to seek and find the truth are nothing more than the conditions of religious freedom as understood by the declaration *Dignitatis Humanae*:

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, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits.<sup>13</sup>

The church itself rejects any form of coercion in relation to accepting its faith, as it is clear from the transposition of the requirements of the declaration into the language of the canonical norm: “No one is ever permitted to coerce persons to embrace the Catholic faith against their conscience.”<sup>14</sup> This means not just external physical coercion, as in some regrettable cases in the past, but also freedom from all psychological coercion which would prevent the individual from being able to make his/her own choice and from the responsibility for such a decision. In fact, the requirement of religious freedom has a biblical ground which cannot be missed out, based on the personal example set by Jesus himself who expected personal decision for his discipleship<sup>15</sup> and also conceded the possibility of disciples would leave voluntarily.<sup>16</sup>

In fact, the idea of basic human rights and their embedding in international legal documents and in constitutions made the church act accordingly in relation to its faithful.<sup>17</sup> The 1917 Code was clearly issued in a situation in which

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<sup>11</sup> Cf. Canon 1322 CIC/1917.

<sup>12</sup> “A century old tradition that error has no right was replaced with an idea based on the right of the human person: his/her dignity was violated, if the person was denied freedom of religion.” Helmut Weber, *Všeobecná morální teologie [General Moral Theology]* (Praha: Zvon–Vyšehrad, 1998), 153.

<sup>13</sup> Concilium Vaticanum II, *Dignitatis Humanae*, 2, in AAS 58 (1966): 930.

<sup>14</sup> Canon 748 § 2 CIC/1983.

<sup>15</sup> “If you want to be perfect...”: Cf. Mt 19:21.

<sup>16</sup> “You do not want to leave too, do you?” Cf. John 6:67.

<sup>17</sup> “In the meantime – in the last decades – an international codification of human and civil rights has been undertaken (cf. esp. *International Pact on Civil and Political Rights* and *International Pact on Economic, Social and Cultural Rights*, passed in 1966), which contributed a great deal to making the legal defence of these rights a unifying element of constitutions

such a need had not yet arisen. At that point the Church drew from two legal inspirations. The first was Roman law—as it is demonstrated by the structure of the Code *personae—res—actiones*, which is known from Gaius’s textbook. The presence of persons is also visible here, but these are natural and legal persons in the legal sense of the word. The second inspiration were the big codifications of civil law: we can only point out the time proximity of the German General Civil Code (*Bürgerliches Gesetzbuch*) which came into force in 1900 and the issuing of Pius X’s *motu proprio Arduum sane munus* in 1904, where the pope commands the preparations of an ecclesiastical code. This inspiration has no direct bearing on the concept of human dignity, however, the 1917 Code introduces its second book “On Persons” (*De personis*) with a general formulation acknowledging the right of legal persons in the Church:

By baptism a person is constituted a person in the Church of Christ with all the rights and duties of Christians, unless if what applies to rights, some bar (*obex*) obstructs, impeding the bond of ecclesiastical communion, or there is a censure laid down by the Church.<sup>18</sup>

This introductory norm is basically reproduced in the Code of John Paul II:

By baptism one is incorporated into the Church of Christ and is constituted a person in it with the duties and rights which are proper to Christians in keeping with their condition, insofar as they are in ecclesiastical communion and unless a legitimately issued sanction stands in the way.<sup>19</sup>

The 1983 Code emphasizes the difference in status, while also stressing the fundamental equality of all faithful, as it can be found in the canon introducing the catalogue of the obligations and rights of Christians:

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>20</sup>

This basic programmatic norm is intended for Christians/Catholics, whereas a wider universalistic focus as regards human person is taken by the social doctrine of the church, developed by important papal encyclical letters, including *Laborem exercens* (1981), *Sollicitudo rei socialis* (1987) and *Centesimus annus*

of civilized countries.” Viktor Knapp, *Velké právní systémy. Úvod do srovnávací právní vědy* (Praha: C. H. Beck, 1996), 88.

<sup>18</sup> Canon 87 CIC/1917.

<sup>19</sup> Canon 96 CIC/1983.

<sup>20</sup> Canon 208 CIC/1983.

(1991), where equality of people is based on the value of the human person. Following the teaching of the Council,<sup>21</sup> the *Compendium of the Social Doctrine of the Church*, published at the end of John Paul II's pontificate, in Art. 144, says the following:

Since something of the glory of God shines on the face of every person, the dignity of every person before God is the basis of the dignity of man before other men. Moreover, this is the ultimate foundation of the radical equality and brotherhood among all people, regardless of their race, nation, sex, origin, culture, or class.<sup>22</sup>

Such an all-embracing concept of the human person corresponds to the theological and anthropological concept to be found in the Sermon on the Mount, namely, the image of God as Father who “causes his sun to rise on the evil and the good, and sends rain on the righteous and the unrighteous.”<sup>23</sup> However, the force of the Code of Canon Law is, given its addressees, limited to the community of the church, where a basic equality of all its members is a prerequisite. A common feature in the church is not a generally understood human dignity, but the reality of a new life founded on Christ via baptism. Such a concept is matched more by a postulate of all the faithful, expressed most aptly in Paul's letter to the Galatians. “There is neither Jew nor Gentile, neither slave nor free, nor is there male and female, for you are all one in Christ Jesus.”<sup>24</sup> However, John Paul II's Code of Canon Law makes clear that the Church has a mandate to announce its message not only to the faithful, but to all people: “It belongs to the Church always and everywhere to announce moral principles, even about the social order, and to render judgment concerning any human affairs insofar as the fundamental rights of the human person or the salvation of souls requires it.”<sup>25</sup>

## The Specifics of Penal Canon Law

In fact, the focus of John Paul II's pontificate in the field of human rights was a practical application of this norm of the Code. The dignity of the human per-

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<sup>21</sup> Concilium Vaticanum II, *Gaudium et Spes*, 29, in AAS 58 (1966): 1048–1049.

<sup>22</sup> *Compendio della dottrina sociale della Chiesa* (Città del Vaticano, Libreria Editrice Vaticana, 2004), 101.

<sup>23</sup> Cf. Mt 5:45.

<sup>24</sup> Gal 3:28.

<sup>25</sup> Canon 747 § 2 CIC/1983.

son may be seen as the common denominator of this engagement in the field of human rights, rights of workers, women, but also in the important field of protecting unborn life. In the latter case, it is clear that the moral sensitivity of majoritarian society has been breached, as John Paul II says in his encyclical letter *Evangelium Vitae* on life as an inviolable good:

At the same time a new cultural climate is developing and taking hold, which gives crimes against life a *new and-if possible-even more sinister character*, giving rise to further grave concern: broad sectors of public opinion justify certain crimes against life in the name of the rights of individual freedom, and on this basis they claim not only exemption from punishment but even authorization by the State, so that these things can be done with total freedom and indeed with the free assistance of health-care systems.<sup>26</sup>

Canon law was, therefore, to remain the pillar of the conscience of the faithful (although John Paul II's Code reduced penal sanctions significantly,<sup>27</sup>) and the sanction for the crime of abortion was not mitigated in relation to the 1917 Code: "A person who procures a completed abortion incurs a *latae sententiae* excommunication."<sup>28</sup> Canon law cannot be expected to provide a speculative explanation of the penal norm. In fact, the threat of punishment serves only as an *ultima ratio*, ultimate form of regulation, once all the other have failed. John Paul II in his encyclical, however, gives a detailed and urgent explanation for prohibiting abortion:

This doctrine, based upon that unwritten law which man, in the light of reason, finds in his own heart (cf. Rom 2:14–15), is reaffirmed by Sacred Scripture, transmitted by the Tradition of the Church and taught by the ordinary and universal Magisterium. The deliberate decision to deprive an innocent human being of his life is always morally evil and can never be licit either as an end in itself or as a means to a good end.<sup>29</sup>

Nevertheless, the penal law of the Code has already adopted basic standards characteristic to the guarantees given by modern democratic rule-of-law states.

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<sup>26</sup> John Paul II, *Evangelium vitae*, 4, in AAS 87 (1995): 401.

<sup>27</sup> "The new penal law underwent a major change, both in terms of its contents, but also in its spirit. The preceding penal regulation was valued highly for its extraordinary technical and scientific perfection, however, it seemed inappropriate for some time and, in the end, was not applied very much, either. A true reform took place which animated the penal law with pastoral spirit which had penetrated all new canonical law-making." Luigi Chiappetta, *Il Codice di Diritto Canonico. Commento giuridico-pastorale II* (Napoli: Edizioni Dehoniane, 1988), 421.

<sup>28</sup> Canon 1398 CIC/1983.

<sup>29</sup> John Paul II, *Evangelium vitae*, 57, in AAS 87 (1995): 465.



The principle of legality of the court proceedings as well as the punishments (*nullum crimen sine lege, nulla poena sine lege*) is here extended with the obligation to apply a specifically canonical principle of canonical equity (*aequitas canonica*).<sup>30</sup>

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. The Christian faithful have the right not to be punished with canonical penalties except according to the norm of law.<sup>31</sup>

In the law of democratic countries, the legality of a punishment is exceptionless,<sup>32</sup> however, the canon law in its flexibility must allow that this legality be breached. Nevertheless, this must not be applied arbitrarily at the expense of the perpetrator. In the sixth book of the Code containing penal law, this principle is stated in a lonely “general norm” (*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>33</sup>

The very text of the norm defines the circumstances which mark the specific character of canon law. Its goal is not to be found in organizing legal relations within an earthly ecclesial community where the church is constituted and organized as a society (*ut societas constituta et ordinata*).<sup>34</sup> The law also represents the means to help the faithful attain the eternal goal: “the salvation of souls (*salus animarum*), which must always be the supreme law in the Church, is to be kept before one’s eyes.”<sup>35</sup> The penal norm, the *norma generalis*, thus seems

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<sup>30</sup> “The application of the legal principles has to be accompanied by canonical equity, i.e. love and mercy, which do not concern the interpretation, but the application of the law, and must not be in contradiction with justice, but—rather—mitigate it.” Julio García Martín, *Le norme generali del Codex Iuris Canonici* (Roma: Edizioni Queriniana, 1996), 24.

<sup>31</sup> Canon 221 § 2 and § 3 CIC/1983.

<sup>32</sup> “The consequence of the principle *nullum crimen sine lege scripta* is that the source of penal law can only be written law found in actual acts of law or in international treaties, respectively [...] The source of penal law is neither the custom, nor an administrative or court decision, a revolutionary decree, or unwritten law. The conditions and the degree of penal responsibility must be regulated by law.” Jiří Jelínek, *Trestní právo hmotné. Obecná část. Zvláštní část* (Praha: Leges, 2019), 34.

<sup>33</sup> Canon 1399 CIC/1983.

<sup>34</sup> Cf. Canon 204 § 2 CIC/1983.

<sup>35</sup> Cf. Canon 1752 CIC/1983.

more justifiable.<sup>36</sup> The canon law with its *instrumentarium* differs in many aspects from civil law, which does not recognize a supernatural goal.<sup>37</sup>

## The Theological Basis for Legal Norms

The preferential orientation of canon law on *salus animarum* proves its “divine-human” character, which is typical for the very mystery of the Incarnation. One could say that canon law is not just an assembly of legal norms, it is also an applied ecclesiology. It shares the main features with civil law; however, the goal of eternal salvation elevates it to a theological level. In John Paul II’s Code, this is especially clear in comparison with the Pio-Benedictine Code which emphasized its strictly juridical character. The new code, however, introduces individual, thematically defined groups of legal norms in relation to their respective gravity and necessity with more general norms which often have a theological focus.

For example, the canon introducing the thematic field of the sacraments consists of three parts separated by semicolons. The first part is Christological, the second is ecclesiological, and only the third part represents a run-up to the actual legal regulation whose meaning is clarified with theological qualification given beforehand:

The sacraments of the New Testament were instituted by Christ the Lord and entrusted to the Church. As actions of Christ and the Church, they are signs and means which express and strengthen the faith, render worship to God, and effect the sanctification of humanity and thus contribute in the greatest way to establish, strengthen, and manifest ecclesiastical communion. Accordingly, in the celebration of the sacraments the sacred ministers and the other members of the Christian faithful must use the greatest veneration and necessary diligence.<sup>38</sup>

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<sup>36</sup> “Unlike the secular systems which adhere strictly to the principle of legality, the Church sometimes needs the discipline of canon 1399 to address an especially grave violation of a divine or canonical law to which no penalty is attached when there is an urgent need to prevent or repair scandals. Such ‘weakening’ of the strict principle of legality intends to assure the ultimate purpose of Church, the *salus animarum*.” John A. Renken, *The Penal Law of the Roman Catholic Church* (Ottawa: Faculty of Canon Law, Saint Paul University, 2015), 378–379.

<sup>37</sup> “Canon law is a *religious* law which foreshadows its goal: it is not (just) the regulation of ‘horizontal’ relations within the church in accordance with the will of ecclesial authority, but also (and above all) the formation of Christians in their existential, ‘vertical’ (or transcendental) orientation to God, on the basis of the main principle of canon law, namely *suprema lex salus animarum*.” Antonín Hrdina, *Kanonické právo* (Plzeň: Aleš Čeněk, 2011), 60.

<sup>38</sup> Canon 840, CIC/1983

The canon talks about “sanctifying humanity” and the focus again is the human person, who is, however, drawn into the process of salvation. In fact, John Paul II expresses this profound reality already in the first encyclical letter *Redemptor Hominis*, which represents the program of his pontificate:

In reality, the name for that deep amazement at man’s worth and dignity is the Gospel, that is to say: the Good News. It is also called Christianity. This amazement determines the Church’s mission in the world and, perhaps even more so, “in the modern world.” This amazement, which is also a conviction and a certitude—at its deepest root it is the certainty of faith, but in a hidden and mysterious way it vivifies every aspect of authentic humanism—is closely connected with Christ.<sup>39</sup>

Canon law has its own specific instruments to work with the existential problem of human salvation, especially with the problem of eternal life. This is true, for example, in the danger of death (*periculum mortis*), where the problem of eternal salvation finds its specific urgency. If the code gives conditions and rules for legal acts in ordinary situations, the situation of grave need leads to major easing of the discipline and the danger of death reduces the mentioned conditions and rules only to a necessary minimum. This is the case of baptism, that is, with a sacrament necessary for salvation “by actual reception or at least by desire” (*in re vel saltem in voto*),<sup>40</sup> where danger of death makes it impossible to complete the whole process of the catechumenate:

An adult in danger of death can be baptized if, having some knowledge of the principal truths of the faith, the person has manifested in any way at all the intention to receive baptism and promises to observe the commandments of the Christian religion.<sup>41</sup>

## Social Aspects of Canon Law

John Paul II focused his attention on justice in the layout of the society, that is, how to organize economic relations in a way that serves the good of the human person, for example, as it is expressed in his first social encyclical *Laborem Exercens* in relation to human labour:

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<sup>39</sup> John Paul II, *Redemptor Hominis*, 10, in AAS 71 (1979): 275.

<sup>40</sup> Cf. Canon 849 CIC/1983

<sup>41</sup> Canon 865 § 2.

It only means that *the primary basis of the value of work is man himself*, who is its subject. This leads immediately to a very important conclusion of an ethical nature: however true it may be that man is destined for work and called to it, in the first place work is “for man” and not man “for work.”<sup>42</sup>

The struggle for social justice is to be not just an ideal, but an obligation: the Code thus lays down a key norm, whose immediate addressees are Catholic Christians, but its impact goes beyond the Catholic community and has a universal human appeal: “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>43</sup> Reference to the very commandment of the Lord evokes a statement from the Gospel of St John: “My command is this: Love each other as I have loved you.”<sup>44</sup> This aspect of the mission of the church and its members is aptly characterized by John Paul II in his encyclical *Sollicitudo rei socialis* from 1987:

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>45</sup>

It is thus no surprise to find out the concept that the owners of all the possessions of the church are the poor is very old. Legally speaking, it is untenable,<sup>46</sup> however, it points out an ideal how to deal with material wealth in the church.

In the Code of John Paul II, the Church has the obligation to treat its ordained and un-ordained employees who are entrusted with a particular form of service in the Church in accordance with the same principles which it demands from other subjects, that is, based on its own social doctrine. These servants of the Church, labourers and employees have “the right to decent remuneration appropriate to their condition so that they are able to provide decently for their own needs and those of their family. They also have a right for their social provision, social security, and health benefits to be duly provided.”<sup>47</sup> The administrators of goods within the Church’s legal persons “are to pay a just and decent wage to employees so that they are able to provide fittingly for their own needs and those of their dependents.”<sup>48</sup>

<sup>42</sup> John Paul II, *Laborem Exercens*, 6, in AAS 73 (1981): 589–590.

<sup>43</sup> Canon 222 § 2 CIC/1983.

<sup>44</sup> John 15,12.

<sup>45</sup> John Paul II, *Sollicitudo rei socialis*, 31.

<sup>46</sup> “The efforts to view the poor as the owners of church wealth, as if this was determined by law, have a rather historical value.” Hans Heimerl, Helmuth Pree, and Bruno Primetshofer, *Handbuch des Vermögensrechts der katholischen Kirche* (Regensburg: Pustet Verlag, 1993), 61.

<sup>47</sup> Cf. Canon 231 § 2 CIC/1983.

<sup>48</sup> Cf. Canon 1286 2° CIC/1983.

## The Position of Women and Lay Faithful in the Code of Canon Law

John Paul II focused also on the position of women in the society and in the Church. His apostolic letter *Mulieris Dignitatem* on the dignity and vocation of women, promulgated on the occasion of the Marian year of 1988, is a first document of this kind in the history of the Magisterium. In relation to women, the pope takes the anthropological viewpoint focused on the human person: “In this broad and diversified context, a woman represents a particular value by the fact that she is a human person, and, at the same time, this particular person, by the fact of her femininity. This concerns each and every woman, independently of the cultural context in which she lives, and independently of her spiritual, psychological and physical characteristics, as for example, age, education, health, work, and whether she is married or single.”<sup>49</sup> The Code promulgated by John Paul II no longer contains numerous norms which may now seem discriminating for women in the Church, for example, the discipline of the sacrament of penance:

Confessions of female penitents should never be heard outside a confessional, except in the case of illness or some other real necessity, and observing then such precautionary measures as the local Ordinary deems opportune. Confessions of men, however, may be heard even in a private home.<sup>50</sup>

The new code, whenever talking about lay Christian faithful, almost always addresses both men and women. The only exception is to do with the permanent access to liturgical services:

Lay men who possess the age and qualifications established by decree of the conference of bishops can be admitted on a stable basis through the prescribed liturgical rite to the ministries of lector and acolyte.<sup>51</sup>

There is, in fact, a separate catalogue of obligations and rights in the Code in which the equality of *all* Christians in the Church is emphasized:

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

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<sup>49</sup> John Paul II, *Mulieris Dignitatem*, 29, in AAS 80 (1988): 1723.

<sup>50</sup> Canon 910 § 1 a § 2 CIC/1917.

<sup>51</sup> Cf. Canon 230 § 1. CIC/1983.

work so that the divine message of salvation is made known and accepted by all persons everywhere in the world.<sup>52</sup>

It is worth noting that the church—contrary to the constitutions of democratic countries and international documents on human rights—puts the obligations before the rights.<sup>53</sup> The legal regulation of the position of the lay Christian faithful in the code represents a disciplinary basis of the multiple possibilities they have to participate on the life of the church. This was debated on the bishops' synod of 1987 which became the basis of the post-synodal apostolic exhortation *Christifideles Laici*. In the spirit of continuity with the preceding pontificates, the pope points out that even prior to Vatican II the lay faithful were not an “oppressed majority” as it is often falsely claimed:

Pius XII once stated: “The Faithful, more precisely the lay faithful, find themselves on the front lines of the Church’s life; for them the Church is the animating principle for human society. Therefore, they in particular, ought to have an ever-clearer consciousness *not only of belonging to the Church, but of being the Church*, that is to say, the community of the faithful on earth under the leadership of the Pope, the head of all, and of the Bishops in communion with him. These *are the Church* [...]”<sup>54</sup>

In the same exhortation, John Paul II again emphasizes his doctrine on the dignity of the human person:

*To rediscover and make others rediscover the inviolable dignity of every human person* makes up an essential task, in a certain sense, the central and unifying task of the service which the Church, and the lay faithful in her, are called to render to the human family. Among all other earthly beings, *only a man or a woman is a “person,” a conscious and free being* and, precisely for this reason, the “center and summit” of all that exists on the earth.<sup>55</sup>

However, it is certainly not at the expense of the dignity of the lay Christian faithful, if the offices in the hierarchical organism of the church are given on the

<sup>52</sup> Cf. Canon 225 § 1 CIC/1983.

<sup>53</sup> “The enumeration of the obligations may be explained with a reference to the fact that each given right presupposes also a corresponding obligation. A specific approach, in which the enumeration favours obligation and these obligations often pass to the rights can be explained by the specific character of these obligations. In the diverse forms, they focus on the general good in the community of the church.” Sabine Demel, *Handbuch Kirchenrecht. Grundbegriffe für Studium und Praxis* (Freiburg im Breisgau, 2010), 401.

<sup>54</sup> John Paul II, *Christifideles Laici*, 9, in AAS 81 (1989): 406, quoted in the *Discourse to the New Cardinals*, Feb. 20, 1946, in AAS 38, 149.

<sup>55</sup> John Paul II, *Christifideles Laici*, 37, in AAS 81 (1989): 460–461.

basis of the criteria for the administration of the power of governance reserved for the clerics, as it was confirmed by the Code of John Paul II: “[...] the power of governance, which exists in the Church by divine institution and is also called the power of jurisdiction. Lay members of the Christian faithful can cooperate (*cooperari possunt*) in the exercise of this same power according to the norm of law.”<sup>56</sup> The pope was thus forced to disprove a number of widespread misconceptions which would only seemingly place the lay faithful into a position suggesting their greater dignity:

In the same Synod Assembly, however, a critical judgment was voiced along with these positive elements, about a too-indiscriminate use of the word “ministry,” the confusion and the equating of the common priesthood and the ministerial priesthood, the lack of observance of ecclesiastical laws and norms, the arbitrary interpretation of the concept of “supply,” the tendency towards a “clericalization” of the lay faithful and the risk of creating, in reality, an ecclesial structure of parallel service to that founded on the Sacrament of Orders.<sup>57</sup>

## Marriage and Family in the Code of Canon Law

John Paul II’s attention to issues related to marriage, family and children can also be traced back to his strictly Christocentric focus connected with the respect to the dignity of the human person. The code he promulgated obviously abandoned the earlier definition of the secondary goal of marriage as *remedium concupiscentiae*, which would indicate that a partner in marriage could be used as a “means to remedy physical concupiscence.”<sup>58</sup> This rather objectifying conception, remote from the personalistic conception of John Paul II, was connected with another goal, namely “mutual assistance of the spouses” (*mutuum adiutorium*).<sup>59</sup> In John Paul II’s Code, both these goals were replaced by a broadly conceived goal of the mutual “good of the spouses” (*bonum coniugum*).<sup>60</sup> Moreover, this widely conceived good of the spouses became an equal goal of marriage together with procreation and education of the offspring. In fact,

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<sup>56</sup> Canon 129 § 1 and § 2 CIC/1983.

<sup>57</sup> John Paul II, *Christifideles Laici*, 23, in AAS 81 (1989): 431.

<sup>58</sup> Cf. Canon 1013 § 1 CIC/1917.

<sup>59</sup> *Ibid.*

<sup>60</sup> Cf. Canon 1055 § 1 CIC/1983.

the former comes first in the new Code: “The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses (*bonum coniugum*) and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized.”<sup>61</sup> The turning point was clearly the doctrine of Vatican II on marriage, as given in the constitution *Gaudium et Spes*,<sup>62</sup> which also points to the personalistic approach so dear to John Paul II.<sup>63</sup> Clearly, this does not mean that education of new generations are beyond the pope’s focus, in fact, quite the contrary. It can be proved by a general norm of the code, defining the goals of education. The emphasis again is put on the holistic development of the human person:

Since true education must strive for complete formation of the human person that looks to his or her final end as well as to the common good of societies, children and youth are to be nurtured in such a way that they are able to develop their physical, moral, and intellectual talents harmoniously, acquire a more perfect sense of responsibility and right use of freedom, and are formed to participate actively in social life.<sup>64</sup>

This is how the code characterizes “Catholic” education,<sup>65</sup> although it is clear that what is meant is not just religious education, but a holistic, integral form of education, focused on the unity of the human person.

Catholics also have a generally formulated “constitutional” 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.

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<sup>61</sup> Canon 1055 § 1 CIC/1983.

<sup>62</sup> Cf. *Gaudium et Spes*, 47–52.

<sup>63</sup> “The gradual rise of personalism refused to view marriage as just a means in which the society makes use of men and women to its own reproduction. One should also bear in mind the biological changes, esp. longer life expectancy. The main goal of marriage, lasting often for decades after the female menopause, can no longer be just procreation and education of children.” Dominik Opatrný, “Dobro manželů v kontextu biblické etiky” [The Good of the Spouses in the Context of Biblical Ethics], *Revue církevního práva* [Canon Law Revue], vol. 57, no. 1(2014): 50.

<sup>64</sup> Canon 795 CIC/1983.

<sup>65</sup> “Education is *Catholic*, i.e. not just Christian, as it was given in the *Schema* canonum, published in 1977. This title suggests that it contains norms for Catholics, i.e. for those who are members of the Catholic Church and are bound by its laws (Canon 11). However, it also means that it is education based on and inspired by Catholic anthropology.” Agostino Montan, *L’educazione cattolica (cann. 793–821)*, in Gruppo italiano docenti di diritto canonico, *La funzione di insegnare della Chiesa* (Milano: Glossa, 1994), 76.



The education here is not viewed only as the doctrine of the faith, the center of gravity is yet again the human person in its integrity. Even seminarians preparing for priesthood are to be led to such an approach:

Through their spiritual formation, students are to become equipped to exercise the pastoral ministry fruitfully and are to be formed in a missionary spirit; they are to learn that ministry always carried out in living faith and charity fosters their own sanctification. They also are to learn to cultivate those virtues which are valued highly in human relations so that they are able to achieve an appropriate integration between human and supernatural goods.<sup>66</sup>

## Conclusion

The code promulgated by John Paul II is clearly a purely legal document, that is, it is not a philosophical treatise on the value and uniqueness of the human person. Its immediate addressees are Catholic Christians, but it contains norms with a widespread radiation. Numerous norms of the code clearly show that it was not only inspired by the doctrine of Vatican II, but it was issued in the period of the reception of the Council doctrine during the pontificate of John Paul II. This pontificate paid extraordinary attention to the human person and, as a result, this reality found its imprint in the individual norms of the code and its overall conception. The human person in the code is understood as a basic reference point in human society and in the life of the church and has an intrinsic value. The church is the actual locus where it is sanctified by the salvific action of Christ Himself.

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<sup>66</sup> Canon 245 § 1 CIC/1983.

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Stanislav Příbyl

## La personne humaine dans le droit canonique de Jean-Paul II

### Résumé

Le Code de droit canonique promulgué par Jean-Paul II en 1983 est une synthèse du Code antérieur de 1917 et de la doctrine du Concile Vatican II. Le Code contient des normes qui vont au-delà de la réforme des relations juridiques internes à l'Église catholique. Beaucoup d'entre

elles concernent la question de la valeur et de la dignité de la personne humaine, ce qui indique la forte influence du pontificat de Jean-Paul II, qui attachait une grande importance à la question susmentionnée. Cet article examine les champs d'application des réglementations juridiques du Code concernant la personne humaine, en particulier la liberté de religion, la protection de la vie conçue, les droits sociaux, le statut juridique de la femme et l'éducation des générations futures. Les principales différences entre le droit civil (qui sert aussi à la dignité de la personne humaine) et le droit canon, dont le but est de sauver les âmes, sont également y mentionnés.

Mots-clés: personne humaine, Jean-Paul II, Code de droit canonique, dignité, femme, mariage, famille, éducation

Stanislav Přibyl

## La persona umana nel diritto canonico di Giovanni Paolo II

### Sommario

Il Codice di diritto canonico promulgato da Giovanni Paolo II nel 1983 è una sintesi del precedente Codice del 1917 e della dottrina del Concilio Vaticano II. Il Codice contiene norme che vanno oltre la riforma dei rapporti giuridici interni alla Chiesa cattolica. Molte di esse riguardano la questione del valore e della dignità della persona umana, il che indica la forte influenza del pontificato di Giovanni Paolo II, che attribuiva grande importanza alla suddetta questione. L'articolo esamina i campi di applicazione delle norme giuridiche del Codice concernenti la persona umana, in particolare la libertà di religione, la tutela del concepito, i diritti sociali, la condizione giuridica della donna e l'educazione delle generazioni future. Vi si accenna anche alle principali differenze tra il diritto civile (che serve anche alla dignità della persona umana) e il diritto canonico, il cui scopo è salvare le anime.

Parole chiave: persona umana, Giovanni Paolo II, Codice di Diritto Canonico, dignità, donna, matrimonio, famiglia, educazione