



Tomasz Galkowski

University of Cardinal Stefan Wyszyński, Warsaw, Poland

<https://orcid.org/0000-0001-9166-9516>

Theology of Canon Law According to Professor Remigiusz Sobański

Abstract: Remigiusz Sobański (†2010) was highly appreciated in the world of post-Council canon law studies. His research was published in many languages. Most of his scientific achievements were presented in the Polish language. For this reason, I reach for studies unknown to a wider community of canonists in order to present Professor Sobański's views on theology of canon law, whose subject matter was a predominant topic of his scientific interests. I present the thematic scope of theology of canon law, its role in reference to fundamental issues of canon law, but also its inadequacy. Sobański thought that in order to fully illustrate the basic issues of canon law, theological approach should coexist with the legal one within one theory of canon law.

Key words: Remigiusz Sobański, theology of canon law, theory of canon law, canon law studies

Introduction

Theology of canon law, as an official discipline existing at the faculties of canon law as part of canon law studies since 2002, has not concluded its hitherto discussion on its epistemological status and a clear definition of the subject of scientific study.¹ Undoubtedly, this fact contributed to the consolidation of the very definition of certain characteristic approach to the studies of canon law, which approximately since the mid-last century has had a permanent place

¹ Congregatio de Institutione Catholica, "Decretum quo ordo studiorum in Facultatibus Iuris canonici innovatur" (September 2, 2002), *Acta Apostolicae Sedis* 95 (2003): 281–285.

among significant ways of practicing canon law. However, the existence of the term does not mean clarity of the definition of referents. In terms of scientific studies it might result in both positive and negative influence on the verifiability of statements or scientific theories. The pros certainly include an expanding range of the undertaken research, which over time can lead to the separation of new scientific disciplines.

On the other hand, various ways of understanding the concept and fragmentation of the conducted research may contribute to the disappearance of the discipline itself due to the decreasing possibilities of verification of the achieved results having the same research subject at the starting point.

Giving a common name to a wide range of research is a long process. In case of theology of canon law, we dealt with to some extent spontaneous appearance of this term. It was provoked by the necessity of justification of canon law as a phenomenon applicable to the Church. The previous attempts of its justification in the context of the Catholic Church, in opposition to its negation in Protestant Churches, did not stand the test of time.

The defense of canon law on grounds relating to philosophical, social, political, or legal premises turned out to be not so much insufficient but rather inadequate to the accusations made against it and increasing ecclesial consciousness. The evidence of insufficiency of the hitherto arguments provided by the Catholic side based on *Ius Publicum Ecclesiasticum* theses were the attempts of polemical discussions with the thesis of Rudolph Sohm about the contradiction between the nature of the Church law and the nature of the Church. Juridical nature of the Church expressed in the *societas perfecta* category proved to be insufficient when confronted with Sohm's statements about the nature of the Church. The defense of canon law called for new argumentation. Theology, as well as ecclesiology as its part, became the area of in-depth studies on the Church law. The term theology of canon law started to be used very quickly to describe this area of studies on canon law, including a multitude of issues aiming to show the relationship between law and the Church in its efficient and final cause (ontological issues) and the possibility of discovering law adequately to its essence (epistemological issues).

Determined in this way, the task of harmonizing the "Church of law" with the "Church of love" and correcting the "unfortunate error," as Pius XII wrote, became the subject of interest of both canonists and ecclesiologists, whereby the canonist should remain the canonist and the theologian should remain the theologian. From this viewpoint, one can see the difficulty of providing an adequate definition of the theology of canon law and its objective. Arising on the spur of the moment, theology of canon law did not have to face these problems from the beginning. The concept was provoked by the aim, which was justification of the connection between the Church and law and by the choice of appropriate exploration area for verifiable argumentation. It was supposed to

be the Church itself as a divine-human community revealed in the Revelation. The way to discovering such Church is theology, therefore, the way to learning its law is determined also by theology, thereafter, described as theology of the Church law.

Over time, the attempts to appropriately define theology of canon law have been made. The issues connected with its identity, subject, determining its aim, method, relationship, and correlation with the studies on canon law are open to discussion. A big number of possible solutions, which were gathered and characterized by Paolo Gherri in his monograph dealing with this subject matter, have been formulated.² In accordance with the monograph's title, Gherri made a critical analysis of the presented solutions and, on the basis of his own research, presented a concept of theology of canon law. To a large extent, the reference point for the elaboration was the decree introducing theology of canon law as a lecture subject during canon law university course. The requirements of the Congregation are binding for the faculties and lectures of this subject. The range of discussed issues may vary in faculties of different universities, but the discipline within which they are covered should give an epistemological and methodological direction to the conducted research. Thus, it requires mostly methodological definition, since the subject such as canon law and its objective, which is showing its relationship with the Church, are unchanging. However, a particular method can lead to different solutions within the same discipline.³ Understanding theology of law and its role within practicing canon law will take a different form in various approaches—legal-cultural, dogmatic-legal, pastoral or historico-redemptive one.⁴

The study of Gherri contributed to the presentation of the approach to theology of canon law by a canonist professor Remigiusz Sobański, whose scientific achievements and presence in the world of canon law studies are undeniable. The presentation of his thought can be a kind of supplement to the aforementioned deliberations and an inspiration for younger canonists to reach out for his solutions and publications. I have referred to and presented the problem of theology of canon law according to Sobański⁵ multiple times and in different

² Paolo Gherri, *Introduzione critica alla Teologia del diritto canonico* (Torino: G. Giappichelli Editore, 2019).

³ Zygmunt Hajduk, *Ogólna metodologia nauk* (Lublin: Wydawnictwo KUL, 2012), 146.

⁴ Remigiusz Sobański, *Nauki podstawowe prawa kanonicznego. II. Teologia prawa kościelnego* (Warszawa: Wydawnictwo UKSW, 2001), 25–26.

⁵ Tomasz Gałkowski, "Theology of Canon Law from the perspective of Remigiusz Sobański," *Annuario Iuris Canonici* 1 (2014): 5–17, accessed April 17, 2021, <https://annuario.uksw.edu.pl/sites/default/files/Annuario-1-2014%20popr%2006-2014.pdf>; "Teologiczny wymiar prawa kościelnego w myśli ks. prof. Remigiusza Sobańskiego," in *Wkład Księdza Profesora Remigiusza Sobańskiego w rozwój kanonistyki*, ed. Tomasz Gałkowski (Warszawa–Kraków: Wydawnictwo Scriptum, 2014), 43–67; "Linie przewodnie kanonistyki w ujęciu Księdza Profesora Remigiusza Sobańskiego," in *Ars boni et aequi. Księga pamiątkowa dedykowana*

aspects. For this reason, I feel obliged to present his scientific achievements from yet another perspective. Hence the approach to the subject will focus on the context of gnoseological choices made by Sobański and their epistemological consequences. Other issues presented earlier will be reminded where necessary for the discourse.

Another reference to the issue of theology of canon law in Sobański's thought is associated with the conference dedicated to two great academics—canonist Remigiusz Sobański and philosopher Józef Tischner. It also corresponds to the ongoing discussion about understanding theology of canon law, which was presented and summarized by Gherri in his book. He mentions the person of Sobański only twice, but he does not present his ideas and studies.⁶ A few of Sobański's publications have been translated into foreign languages.⁷ The thought of Sobański has also been presented in a few studies.⁸ For those who do not know Polish, I will present the ones which appeared in this language and give a broader view of Sobański's thought.

The beginnings of academic activity in the form of public presentation of Sobański's views date back to the year 1961, when he published his first article entitled "Modern Tendencies in Canon Law."⁹ From the very beginning, his interests focus on the topic of canon law as an intra-ecclesial phenomenon. Here appears a gnoseological problem of choosing the right path of getting knowledge, that is, deciding whether previous solutions are sufficient or whether the new ones have to be found. The fundamental issue concerns the background and context of questions about law. He notices that the concept of law is characteristic of a religious language. However, this does not mean that every religion has its own law or that it results from the form of the religion.

Księdzu Profesorowi Remigiuszowi Sobańskiemu z okazji osiemdziesiątej rocznicy urodzin, ed. Józef Wroceński and Helena Pietrzak (Warszawa: Wydawnictwo UKSW, 2010), 65–82.

⁶ Gherri, *Introduzione critica alla Teologia del diritto canonico*, 66, 177.

⁷ A big number of deliberations on theology of canon law was published under the common title: *La Chiesa e il suo diritto. Realtà teologica e giuridica del diritto ecclesiale* (Torino: G. Giappichelli Editore, 1993).

⁸ Hermann Kahler and Josef Schmitz-Wienke, "Le droit canonique en Pologne (Aspects essentielles de la théorie de R. Sobański)," *Praxis Juridique et Religion* 4 (1987) 1: 77–87; Ludger Müller, *Kirchenrecht-analoges Recht? Über den Rechtscharakter der kirchlichen Rechtsordnung* (St. Ottilien: EOS Verlag Erzabtei, 1991), 61–94; Carlo R. M. Redaelli, *Il concetto di diritto della Chiesa nella riflessione canonistica tra Concilio e Codice* (Milano: Glossa, 1991), 110–130.

⁹ Remigiusz Sobański, "Współczesne tendencje w prawie kanonicznym," *Ateneum Kapłańskie* 53 (1961) 2: 175–192.

The Context of the Question about Canon Law

The beginnings of Sobański's academic work are lectures on canon law delivered for the clerics of his home diocese in Katowice in 1958. During classes, he noticed that students' interest in canon law decreased. It resulted from the dislike towards the way canon law was presented at the time, as it was based on analytical and methodical lectures on the code's norms together with historical introduction to the Church's institutions. A concurrent announcement of calling a common council and the reform of the current Code of Canon Law made by John XXIII in 1959 also had a significant influence on the negative approach to canon law in his way of lecturing. The announcement of changes and the actual changes of the existing norms which were made during the council and afterwards caused students' mistrust towards canon law. Canon law stopped enjoying authority among students. A large number of constantly changing regulations made the impression that canon law was not important. However, Sobański was not indifferent to his students' opinions. Therefore, Professor Sobański directed his academic research aiming to clarify not as much the discussed norms but to explain the Church law itself, its place and role in the Church, its sense and purpose.¹⁰ Prospective clergymen were supposed not so much to know as to understand the Church law. In order to achieve this, Sobański dedicated his academic interests and research to fundamental issues of the Church law, which finally bore fruit in terms of original solutions and a considerable number of academic publications, as well as his recognition in the world of canon law studies.

A stimulus for Sobański's studies was the guideline of the council to bear in mind the mystery of the Church during the lecture on canon law, as it was presented by the Vatican Council II (*Optatam totius*, 16). What results from this statement is the fact that the appropriate reference point for canon law cannot be the achievements of legal sciences but taking into account the mystery of the Church. Such an approach at the same time gives a new direction to research and provides a broader dimension to the current lecture on canon law. Presented in the first place so far, a dogmatic lecture on norms must give way to the mystery of the Church. A canonist is interested not only in Church regulations but the Church itself. The subject matter of canon law studies is the Church in its mystery. In the lecture on canon law the mystery of the Church had to be connected with law. The effect of such a relationship is understanding canon law as a fragment of the Church reality. It is associated with the necessity to

¹⁰ Remigiusz Sobański, "Prawo kościelne na tle trendów antyjurydycznych," *Collectanea Theologica* 43 (1973) 4: 37–46.

acknowledge the reasons which lie at the foundations of the Church norms and the factors which gave rise to them, and, on the other hand, appreciating the values which these norms serve. Canon norms are not independent regulations but are rooted in the tasks and life of the Church.¹¹ Therefore, the task of a canonist is to look at the Church from the perspective of a jurist. Sobański made the requirement expressed in the council decree *Optatam totius* the subject of his scientific explorations, looking for an appropriate approach to this guideline.

A gnoseological stimulus for Sobański's scientific inquiry was also the discussion which arose around the pattern of fundamental law (*lex Ecclesiae fundamentalis*), and specifically concerning divergent views on the character and purpose of this law.¹² The dispute concerned the way of taking into account the Church studies.¹³ In the comments made by bishops, three distinctive points of view were revealed despite the fact that all of them emphasized that law should originate from theological beliefs of the Church. The first of them questioned the need of codification of fundamental law, expressing the opinion that the code should be preceded by a compendium of knowledge about the Church. The second point of view led one to believe that theological principles should be included in the fundamental law. The last opinion advocated that theological rules should underlie fundamental law but they should not be clearly expressed in it.¹⁴ Finally, the willingness to codify fundamental law was not reflected in the new code. The discussion, however, gave a direction to Sobański's further research. He is of the opinion that law and theology should not be mixed. Theological rules provide foundations and inspire canon law. Fundamental law, as the name suggests, should be a law. Therefore, there was an urge to indicate its legal character, so that it could be a real legal basis, not a theological one. Ultimately, the idea to include fundamental law of the Church in the code was not put into practice. Sobański thought that the reason why it happened was lack of an appropriate method allowing to present the legal structures of the Church. It is not enough to say that theological assumptions inspire fundamental law, but, more importantly, they should be exposed and defined. It refers not only to the rules for fundamental law formulated similarly to the constitutional law, but the rules for the whole legal order of the Church. Uncovering these rules

¹¹ Remigiusz Sobański, "Wprowadzenie do zagadnień roli prawa w Kościele," *Prawo Kanoniczne* 18 (1975) 1–2: 8.

¹² Differences of opinion on this matter were revealed in bishops' comments, which were a response to the request to share their views on this subject made by the Commission for the revision of the Code of Canon Law dated 10 February 1971. Willy Onclin, "Relatio universas contrahens generales animadversiones ad Schema Legis Ecclesiae fundamentalis ab Episcopis propositas," *Communicationes* 4 (1972): 123–129.

¹³ Remigiusz Sobański, "Zagadnienia wstępu do nauki prawa kanonicznego (Uwagi na marginesie dekretu *Optatam totius* nr 16,4)," *Prawo Kanoniczne* 17 (1974) 1–2: 16.

¹⁴ Sobański, "Zagadnienia wstępu do nauki prawa kanonicznego," 17.

from the mystery which the Church represents is the first and fundamental step indicating a doctrinal foundation of the Church law binding it with the mystery of the Church.¹⁵ From this perspective, an appropriate view of the structure of the Church is presented, which a canonist should always bear in mind. There remains a question how to do it and by means of what tools which remain in the methodological competences of a canonist. What is important is exposing the legal structure of the Church, that is, legal aspects of the Church and not deliberations about the Church in a legal context.

Theology of Canon Law as an Introduction to Canon Law Studies

Existing approximately from the mid-19th century, positive-empirical approach to legal studies combining philosophical foundations with theological aspects gave rise to the issues concerning justification of law in the Church. Referring to the Enlightenment trends, religion was presented as a cultural phenomenon and the Catholic Church as a true religion. In accordance with this approach, the Church law was justified by referring to the category of an ideal community and, at the same time, analogous to a state organization.¹⁶ Italian secular canon law studies with a similar result justified the existence of canon law referring to the category of a fundamental legal order. Its representatives treated canon law as a legal phenomenon. Both attempts to justify law in the Church were not able to answer the question about the position of law in the Church. The response to this question was provoked by Sohm's theses. The polemic which arose as an attempt to provide an answer was not a suitable method of discussion and defense of canon law. Canonists realized there was a need to begin research concerning the basic issues of the Church and law which would go beyond the analogy of references or achievements of legal studies. A direct stimulus for these explorations was the statement of Pius XII expressed in the encyclical *Mistici corporis* (n. 53) about an unjustified juxtaposition of the Church of law and the Church

¹⁵ Sobański, "Zagadnienia wstępu do nauki prawa kanonicznego," 17–18.

¹⁶ Remigiusz Sobański, "Teoria prawa kościelnego wśród nauk teologicznych i prawnych," in *Rozważania o państwie i prawie. Księga jubileuszowa ofiarowana Profesorowi Józefowi Nowackiemu*, ed. Elżbieta Giszter (Katowice: Wydawnictwo Uniwersytetu Śląskiego, 1993), 179. In 1842, the first manual of the methodology of canon law was published by Franz Joseph von Buß, *Die Methodologie des Kirchenrechts* (Freiburg–Basel 1842), and afterwards by Dominique Bouix, *Tractatus de principiis iuris canonici* (Paris 1852), and Thomas Marie Gousset, *Exposition des principes du droit canonique* (Paris 1859).

of love. The above factors had an impact on a new orientation of studies on the Church law. Canonists noticed that exposing the foundations of the Church law requires research on the Church itself. It was necessary to give up the previously dominant approaches originating from the area of philosophy or social and legal studies and turn towards theology. In this way, a new approach to canon law arose, which was referred to as theology of canon law. The name preceded a detailed definition, scope, and method of conducting research. Undoubtedly, an additional stimulus for this new approach to canon law was also the simultaneous development of Evangelical theology of law.¹⁷

The name theology of canon law was created in certain opposition to the environments—especially Italian secular canon law studies—whose research concerning justification of canon law were based mainly on the general theory of law. Thus, methodological orientation of the approach to fundamental subject matter of canon law contributed to the creation of the term theology of canon law. This path was also chosen by Sobański who gave the title “Zarys teologii prawa kościelnego” [The Outline of the Church Law Theory] to the manual on fundamental issues of canon law, which was written for use by students of the Faculty of Canon Law. It was the first study including theological issues of canon law in world literature.¹⁸

Both the first manual and later studies, which resulted in book publications and research papers, allow specification of different areas of interest of what the introduction to canon law studies, commonly known as theology of canon law, included. Historical background and a new methodological orientation indicated that the appropriate reference point for canon law is the Church, and the aim of research is revealing its theological sources. In this way, the term theology of canon law was created, which was described by Sobański in the 1970s as a science dealing with the Church law as a reality rooted in the mystery of the Church. Hence, the existence and role of canon law should be highlighted.¹⁹ Fundamental issues concerning the Church law are included in the theological studies about the Church. For this reason, theology of canon law has become the science about its fundamental issues.²⁰ As such it should be treated as an introduction to canon law studies. The element which distinguishes developing theology of canon law from the previously existing introductions to canon law, both in the Church public law and in Italian secular canon law studies, is deriv-

¹⁷ Remigiusz Sobański, *Zarys teologii prawa kościelnego* (Warszawa: Wydawnictwo Akademii Teologii Katolickiej, 1973), 19–25.

¹⁸ Honorata Typańska, “Pola aktywności Księdza Oficjała Remigiusza Sobańskiego,” in *Sędzia i Pasterz. Księga pamiątkowa w 50-lecie pracy ks. Remigiusza Sobańskiego w Sądzie Metropolitalnym w Katowicach (1957–2007)*, ed. Honorata Typańska (Katowice: Księgarnia św. Jacka, 2007), 13.

¹⁹ Sobański, “Zagadnienia wstępu do nauki prawa kanonicznego,” 27.

²⁰ Sobański, *Nauki podstawowe prawa kanonicznego. II. Teologia prawa kościelnego*, 16.

ing this law from the essence of the Church. However, it requires moving away from certain image of both law and the Church treated selectively and suitably for conclusions planned in advance.

The Council decree *Optatam totius* implies that the mystery of the Church, which should be borne in mind while delivering lectures on canon law, is, above all, the Church useful to law, which in its mystery is revealed as a point of departure justifying the existence of law in it. The approach to the Church cannot be selective and limited to one specific image which reflects a chosen truth about it. A canonist is interested in legal aspects of the Church (legally tangible truths about the Church), which still include the whole ecclesial reality revealed in the current consciousness of the Church.²¹ An appropriate approach to it is understanding the Church as a sacrament. The idea of sacramentality exposes the source of the legal structure of the Church and allows to notice its ontological foundations.²² It explains the existence of law in the Church reaching its essence, since it refers to the most profound reasons of the visible dimension of the Church, which is a community and has a sacramental role for the world. It explains the existence of law in the Church reaching to its essence, because it refers to the most profound reasons of the visible dimension of the Church, which is a community and performs a sacramental function to the world. Hence, basing the justification of the existence of law in the Church on the idea of sacramentality is the first task of the introduction to the Church law. Further, specific ones include the issue of law as a structure of Church community, law as one of the constitutive elements of the Church and showing its full, ecclesial dimension. These three aspects, according to Sobański, should be the content of the introduction to the Church law. He is of the opinion that only on their basis one can draw conclusions for interpretation and application of law, as well as its continuity and variability.²³

The second issue, which should be the lecture subject of thus understood introduction to the Church law studies, is the concept of law directly connected with the concept of the Church. A canonist uses the concept of law in the same way as it functions in law studies. However, it does not concern a specific term or definition of law, but a judicial quality of the subject. Canon law is a real law and the Church law studies use methods specific to legal sciences.²⁴ The research whose aim is to justify the Church law with all its consequences cannot be based on an a priori accepted concept of law or refer to its particular criteria. The starting point is the reality, in which the phenomenon of law and the way of thinking about it arise and exist. Christians' legal awareness is the source of

²¹ Sobański, "Zagadnienia wstępu do nauki prawa kanonicznego," 20.

²² Remigiusz Sobański, "Teologia prawa kanonicznego jako nauka o ontologicznych podstawach prawa kościelnego," *Śląskie Studia Historyczno-Teologiczne* 5 (1972): 63–67.

²³ Sobański, "Zagadnienia wstępu do nauki prawa," 22–23.

²⁴ Sobański, "Wprowadzenie do zagadnień roli prawa w Kościele," 8.

knowledge of the Church law.²⁵ In case of the Church, it relates not to some law in the Church, but its law. It is the law deriving from the nature of the Church being the subject of faith. Thus, scientific explorations concern the fact of the existence of law in the Church. It is considered that the reality of the Church includes the elements which are called law therein. Therefore, the subject of interest of theology of canon law is the foundations of such a law, regardless of the fact whether this term is explicit, analogical, or ambiguous.²⁶

Another issue with regard to the introduction to legal sciences is, according to Sobański, the problem of the canonical norm. He points out that understanding law as an element of the Church structure, Church regulations should reflect the reasons which gave rise to them and led to their existence, as well as demonstrate the values which they serve. These are the values of Church community, its common good and thereby the good of its specific recipients.²⁷ It refers to constitutional regulations and norms, as well as disciplinary ones. There is a strong relationship between them, since they belong to social order, social relations within Church community based on the union with God and binding the faithful with one another. The Church law is above all the demonstration of these human relations constituting the Church, which stem from the saving will of Christ and which are realized in everyday life of Christians.²⁸ Continuously present in the Church community, its saving structure is enriched by constitutional acts whose occurrence is dependent on the theological consciousness of the Church at a certain historical moment and on the development of social life forms. Hence, the concern of the Church legislator is creating optimal conditions for the pursuit of the Church mission, the meeting of man with God in His saving will. Here appears the role of the community, whose task is to facilitate this meeting and to create favorable conditions conducive to its realization. This function is fulfilled by disciplinary acts, which point out what one should do to become a participant of Christ's humanity in the Church community, building and renewing it. Orders and prohibitions of disciplinary norms refer to the behavior of the faithful in the Church community. They do not refer to the personal devotion of believers, but—on the basis of bonds constituting an ecclesial community—they regulate the activity of the community, which is the unity of the word and sacrament. The actions of believers resulting from these two elements, controlled by regulations which may sometimes seem far from Church reality, always remain the sign of and reason for the supernatural life in the Church. Thus, they contribute to the fulfilment of its fundamental mission. The Church law defines proper ways of behavior, calls for its

²⁵ Remigiusz Sobański, *Kościół – prawo – zbawienie* (Katowice: Księgarnia św. Jacka, 1979), 15–30.

²⁶ Sobański, *Nauki podstawowe prawa kanonicznego. II. Teologia prawa kościelnego*, 32–35.

²⁷ Sobański, “Wprowadzenie do zagadnień roli prawa w Kościele,” 8.

²⁸ Sobański, “Wprowadzenie do zagadnień roli prawa w Kościele,” 8–15.

realization, which finally is supposed to lead to the development of the ecclesial community.²⁹

Three scopes of research with regard to the introduction to canon law studies indicate the connection between theology and law, but also distinct roles of a theologian and a canonist when it comes to theological interests. The development of canon law occurs on the basis of more and more profound knowledge of the Divine constitution of the Church together with reflection on its historical structures adequate for realization of the mission of the Church.

A Canonist versus a Theologian

A canonist, both in his practical activity and scientific explorations, deals with the law of the Church. Thus, he keeps before his eyes a social community, whose relations stem from the endowment and require an appropriate approach, including a legal one within the same unity of the word and sacrament. The point of reference for justifying and understanding a legal phenomenon in the social dimension of faith is in the first place the Church itself, and specifically its legal aspects. There is a difference in approach to the Church between a theologian, ecclesiologist, and a canonist. However, the law of the Church does not use a different concept of the Church than theology does. The same Church is the matter of interest for a theologian and a canonist. Nevertheless, a theologian is supposed to be a theologian and a canonist should be a canonist. On the other hand, a canonist is not a lawyer either, since his research area is determined by the law rooted in the mystery of the Church.

The approach to legal aspects of the Church distinguishes the subject of study of a canonist and a theologian. It highlights the specificity of the canonist's view of the Church. The formal subject matter in accordance with which the canonist deals with the Church is its communal, that is, social character, which results from the social character of the Christian faith. Social bonds which create the Church community have a supernatural character and are a result of the gift of grace and uniting the believers presence of Christ in each of them. Looking at the Church, the canonist notices an active community of faith connected with the system of social relations. The foundation of these typical relations manifesting in activity is a lively presence of the word and sacrament. Thus, social relationships express the relation of the faithful to God. This social reality, whose foundations were laid by Christ, becomes the matter of interest of a canonist who learns and expresses it. He draws conclusions from it, thanks

²⁹ Sobański, "Wprowadzenie do zagadnień roli prawa w Kościele," 17–20.

to which social bonds of faith are embodied in their historical shape. Defining them requires an appropriate legal apparatus available to a canonist.³⁰

A theologian's ecclesiology in a canonist's activity becomes legal ecclesiology. However, Sobański goes further in his statements about the role of a canonist and specificity of his scientific approach to law. He points out that the issue of highlighting the basics of law in the Church should be the matter of interest of ecclesiology, not necessarily the legal one. In this case, theology of canon law would not be necessary, and the role of a canonist would be reduced to dealing only with the positive side of law. Legal ecclesiology can, as a matter of fact, take advantage of the achievements of theologians, but should remain aware of the differences in justification, which result from the specificity of formal aspects of the subject of research, which is the Church. A canonist should consolidate knowledge about the Church and always keep in mind its whole mystery. The point of reference for a canonist are legal aspects of the Church, that is, the law which is a part of its reality. He strives to answer the fundamental questions which go beyond highlighting its foundations and thus exceeds a theologian's capacity. These questions concern ontological issues of canon law, such as the law of the Church as an "entity," and study its efficient and final cause, its essence and relation to other entities within one Church community.³¹ The law of the Church is not a supplementary value, external or useful for ensuring law and order, avoiding disputes or eliminating conflicts in the Church community. Being a part of the structure of the Church, it participates in its mission. It is one of the elements through which the Church fulfils its objective of a "sign and instrument of salvation." In this perspective, the task of a canonist with regard to basic issues of canon law goes beyond its justification. He should show canon law in the way that it participates in the mystery of salvation realized by the Church.³²

Together with the questions of ontological character, there appears an epistemological issue of learning about canon law adequately to its essence. This problem goes beyond the range of interest of theologians since it concerns the legal experience itself within the Church community. This area of research can be explored only by a canonist having knowledge of legal sciences, combining it with the ability to recognize legal consequences of faith in the ecclesial community. The task of a canonist is synchronizing legal thought with the ecclesial view of law. However, he should do it by first referring to the starting point and shedding light on the ecclesial law. His knowledge of legal sciences is not useless, after all canon law developed in continuous contact with the European legal culture. What is more, its communicative value results from the fact that canon

³⁰ Sobański, "Wprowadzenie do zagadnień roli prawa w Kościele," 13–14.

³¹ Sobański, *Nauki podstawowe prawa kanonicznego. II. Teologia prawa kościelnego*, 12.

³² Sobański, *Nauki podstawowe prawa kanonicznego. II. Teologia prawa kościelnego*, 30.

law is one of the signs and instruments of salvation. Communicating with the world, it must use the language understood by it. The achievements of the legal thought are not worthless for a canonist's activity.³³

The formal subject distinguishes a canonist and a theologian in their approach to the same reality of the Church. Nevertheless, a theologian can also explore a legal experience within an ecclesial community and its effects in the form of existing legal institutions. However, he will limit himself to the analysis of theological elements present in law or its norms and institutions. His approach leads to demonstrate only legal aspects of particular institutions or, if appropriate, existing norms. However, he leaves aside law itself. A canonist is interested in the law originating from the essence of the Church, and not theological elements having a legal aspect due to the fact they belong to the structure of the Church. The objective of such an approach to law in the Church would only be displaying theological dimensions present in ecclesial law. In other words, such a theology of canon law would be reduced to exposing legal-canonical elements assigned to the Church by Christ. In consequence, it would not be a theology of law since it does not make law its matter of interest or even does not reach law. It deals with theological objectives included in the legal system. The task of a canonist who deals with theology of canon law does not limit itself to drawing theological conclusions from theological structures of the Church, but should aim to display the theological aspect of legal structures.³⁴

Theology versus Canon Law Studies

In his last manual dedicated to theology of canon law, Sobański explains in what way he understands and describes this scientific discipline, theology of canon law. It is a discipline which strives to answer basic questions asked of the law of the Church, particularly its ontological and epistemological issues.³⁵ This general formulation of ontological and epistemological problems includes the issues discussed by the Author in the introduction to canon law studies, which as he himself noticed, was called theology of canon law due to *locus teologicus* of the discussed ideas. What is examined is ecclesial law, and if the Church is the subject matter of theology, then its law should also share the dimension of theological deliberations with it. Undoubtedly, this name signifies not only

³³ Remigiusz Sobański, "Epistemologiczne problemy pojęcia prawa kanonicznego," *Prawo Kanoniczne* 33 (1990): 57–58.

³⁴ Sobański, *Zarys teologii prawa kościelnego*, 16–17.

³⁵ Sobański, *Nauki podstawowe prawa kanonicznego. II. Teologia prawa kościelnego*, 12.

an appropriate approach to the issues of canon law, but also treating research achievements in this field as an introduction to canon law. What is important is drawing attention to the fact that we deal with canon law, which in the first place is the Church phenomenon, and then as such it becomes a legal phenomenon. For this reason, the study of canon law should not begin with a lecture on the existing norms but with getting to know the basis for their existence and the purposes for which they were formulated. It is not only about interim objectives. The aim which permeates them is building the Church in which and through which the faithful anticipate their salvation. Without this fundamental context, the same norms, even supported by theological references, may remain in the sphere of pure legal solutions functioning in opposition to internal structural bonds constituting an ecclesial community. Hence, theology in this meaning is the introduction to canon law studies as knowledge of its basic issues. Theology of canon law, dealing with the basics and salvific function of canon law, clearly goes beyond previously existing issues treated as the introduction to canon law studies.³⁶

The area of research determined in this way does not remain indifferent to the question about its attitude to canon law studies, which name is used to refer to the whole knowledge of canon law. Sobański points out that raising the issue in this way may lead to understanding theology of canon law as a discipline existing outside canon law studies. This view can be strengthened by treating the study of canon law as a legal discipline, if the method of legal sciences will determine its legal character. Theology of canon law would have, in this situation, the status of a discipline independent of canon law studies. As every reality, also canon law could be examined in the light of the revelation. Thus, theology of canon law would exist similarly to theology of law, and even could constitute, in the Catholic interpretation, a kind of introduction to it. An analysis of the structures of the Church law could offer law certain new categories, which would make it possible to discover a saving role of law in general.³⁷

However, theology of canon law has a common matter of interest with the study of canon law, namely, the law of the Church. This fact places it within the canon law science. Learning about canon law is inseparably associated with getting to know the Church. Theology of canon law falls into the scope of theological knowledge. It is not outside canon law study, since sharing with it one subject of knowledge it indicates its foundations, which make it possible to draw conclusions with the remaining research areas. All other aspects of discovering canon law remain secondary to the theological approach.³⁸

³⁶ Sobański, "Zagadnienia wstępu do nauki prawa kanonicznego," 27.

³⁷ Sobański, *Zarys teologii prawa kościelnego*, 14.

³⁸ Sobański, *Nauki podstawowe prawa kanonicznego. II. Teologia prawa kościelnego*, 16–17.

Within one study of canon law one can distinguish many specific scientific disciplines. The multitude of research points of reference and methodological differences make it possible to look at the study of canon law as a theological science, which does not cancel out its affiliation with other sciences, also the legal ones.³⁹ The classification of canon law as a theological science, according to Sobański, determines its subject of reference, which is ecclesial law as a religious phenomenon in the first place and then a legal one.

Theology versus Theory of Canon Law

Since the very beginning of his interest in canon law, Sobański has used the term theology of canon law to determine fundamental issues of canon law indicating its theological foundations.⁴⁰ It resulted from methodological preferences in terms of the right gnoseological choices. To develop the introduction to canon law science, one should refer to theology pointing to the ecclesial base of the law of the Church, which results from its essence. Sobański delivered lectures on such a subject for almost twenty years at the Faculty of Canon Law of the Academy of Catholic Theology in Warsaw. The name was supposed to emphasize methodological orientation not only of the lecture content, but also canon law study itself. It could suggest, however, that within ecclesial sciences, there may be two sciences of canon law—a legal one (canon law science) and a theological one (theology of canon law). Therefore, in the next manuals as well as lectures, Sobański applied the term theory of canon law.⁴¹ The change of the name was caused by the fact that with regard to basic issues theological approach to canon law did not have to be emphasized so much. The foundations of canon law were included in theological deliberations on a permanent basis. There was also no need to underline theological approach in opposition to the theory of law in its positivist origin. Apart from that, as he stated earlier, as a new discipline, it was not clearly defined and its subject matter was being discussed. What connected those approaches within theology of law were the issues of ecclesial law's existence, emphasizing its theological dimension and

³⁹ Remigiusz Sobański, *Nauki podstawowe prawa kanonicznego. I. Teoria prawa kanonicznego* (Warszawa: Wydawnictwo UKSW, 2001), 18.

⁴⁰ This is confirmed by the article published in 1972 entitled "Teologia prawa kanonicznego jako nauka o ontologicznych podstawach prawa kanonicznego," as well as in the book under the title *Zarys teologii prawa kościelnego* published by Sobański in 1973.

⁴¹ Remigiusz Sobański, *Teoria prawa kościelnego* (Warszawa: Wydawnictwo ATK, 1991).

pointing to its purpose.⁴² On the other hand, using the term theology of canon law could have suggested breaking the connection between canon law and legal sciences. Due to this fact, making further research explorations Sobański created a holistic approach to canon law by comprising its fundamental issues, which were not limited to the ones indicated earlier. Apart from the issues traditionally included in theology of canon law, such as its foundations, justification, concept, sources (the law of God), binding nature, and purpose, he added new issues discussed in the theory of law, namely, an ecclesial act, customary law, canon norm (concept, application), the dynamism of law (legal entities, application, compliance with the law, application of law, specification of a legal norm). He examined all these issues by taking advantage of the achievements of legal sciences with their appropriate reference to canon law, stressing its autonomy as a Church phenomenon.

Favoring the term theory of canon law by Sobański resulted also from the need to develop a theory which would integrate and classify research results, whose aim was to make what is called law in the Church more accessible. The law of the Church is understood as ecclesial law and as such it is present in the world and legal culture.⁴³ Similarly to law, also ecclesial law is a complex phenomenon, which is reflected in the form of organizational system, a collection of norms as a cultural phenomenon and social fact. For this reason, the approach to research on canon law can be taken on many research grounds and by means of different scientific methods. However, all these possibilities of exploration refer to ecclesial law, which in the first place is a religious phenomenon and as such becomes a cultural, social or even political occurrence.⁴⁴ The difference between the approach of theology and theory of ecclesial law concerns only the aspect-oriented interpretation of the subject, which is ecclesial law. In theology, canon law is perceived as the Church phenomenon, whereas in theory as a legal reality. The theological aspect determines the question about the law and its reference to salvation if it is an element of the Church structure and shares with it its aim as a sign and the instruments of salvation. The legal aspect is the point of view of lawyers.⁴⁵

The knowledge concerning basic issues of canon law should integrate the findings made from the theological and legal point of view. In this way, a common theory of canon law can be made. At the same time, the theory integrating basic knowledge of canon law sets aside useless discussion about the affiliation of the same canon studies with theological or legal sciences. Its place among theological studies is ensured by the subject matter, which is the law of the Church, since canonistic findings finally concern the Church. On the other hand,

⁴² Sobański, "Zagadnienia wstępu do nauki prawa kanonicznego," 26–27.

⁴³ Sobański, "Teoria prawa kościelnego wśród nauk teologicznych i prawnych," 181.

⁴⁴ Sobański, *Nauki podstawowe prawa kanonicznego. II. Teologia prawa kościelnego*, 16.

⁴⁵ Sobański, *Nauki podstawowe prawa kanonicznego. I. Teoria prawa kanonicznego*, 16–17.

one cannot deny that canon law studies belong to legal sciences. It concerns one of the areas of law which exists in a particular community.⁴⁶

* * *

The decree issued by the Congregation for Catholic Education reforming canon law studies at the Faculties of Canon Law did not change Sobański's views on theology of canon law.⁴⁷ He did not join the discussion on formulating a clearer definition of what this new discipline prevailing in the lecture of canon law is. *Ius sequitur vitam*, but knowing Sobański's scientific activity it could be said that law still falls behind. From current discussion it is difficult to draw explicit conclusions about what this discipline is from the point of view of the Congregation. In terms of all the subjects taught at the faculties of canon law I get the impression that law got misplaced somewhere in the ecclesial law. Let us hope it will not do harm to ecclesial law due to its dejuridization tendency. In order to be the law of the Church, canon law must be first of all juridical. This is what Sobański continuously cared for and emphasized in his research.

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⁴⁶ Sobański, "Teoria prawa kościelnego wśród nauk teologicznych i prawnych," 184–185.

⁴⁷ Remigiusz Sobański, "Uwagi o studiach prawa kanonicznego (na marginesie Dekretu Kongregacji Wychowania Katolickiego z 2.9.2002)," in *Semel Deo dedicatum non est ad usum humanos ulterius transferendum. Księga pamiątkowa dedykowana ks. prof. dr. hab. Julianowi Kałowskiemu MIC z okazji siedemdziesiątej rocznicy urodzin*, ed. Józef Wroceński, Bożena Szewczul, and Andrzej Orczykowski (Warszawa: Wydawnictwo ATK, 2004): 21–31.

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Tomasz Gałkowski

Théologie du droit selon le Professeur Remigiusz Sobański

Résumé

Remigiusz Sobanski (†2010) a bénéficié d'une reconnaissance dans le monde de la canonistique postconciliaire. Ses recherches scientifiques ont été publiées dans de nombreuses langues. Cependant, la plupart de ses travaux scientifiques ont été présentés en polonais. Voilà pourquoi l'Auteur du présent article s'intéresse à des études inconnues de la communauté des canonistes pour présenter les points de vue de Sobański sur la théologie du droit canonique, dont le sujet était l'objet principal de son intérêt scientifique. Il présente le champ thématique de la théologie du droit canonique, son rôle par rapport aux questions fondamentales du droit canonique, mais aussi son insuffisance. Sobański pensait que pour illustrer pleinement les questions fondamentales du droit canonique, l'approche théologique devait coexister avec l'approche juridique au sein d'une seule et même théorie du droit canonique.

Mots-clés: Remigiusz Sobański, théologie du droit canonique, théorie du droit canonique, canonistique

Tomasz Gałkowski

La teologia del diritto secondo il professor Remigiusz Sobański

Sommario

Remigiusz Sobański (†2010) ha goduto di riconoscimenti nel mondo degli studi canonici post-conciliari. La sua ricerca scientifica è stata pubblicata in molte lingue. Tuttavia, la maggior parte dei risultati scientifici sono stati presentati in polacco. Per questo motivo, l'Autore del presente lavoro si rivolge a studi sconosciuti alla maggior parte della comunità dei canonisti per presentare le opinioni di R. Sobański sulla teologia del diritto canonico, il cui argomento era l'oggetto principale dei suoi interessi scientifici. Il testo presenta la portata tematica della teologia del diritto canonico, il suo ruolo in relazione alle questioni fondamentali del diritto canonico, ma anche la sua insufficienza. R. Sobański riteneva che per illustrare pienamente le questioni fondamentali del diritto canonico, l'approccio teologico dovesse coesistere con l'approccio giuridico all'interno di una teoria del diritto canonico.

Parole chiave: Remigiusz Sobański, teologia del diritto canonico, teoria del diritto canonico, studi canonici