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Patrick Valdrini

The Canon Law of the Roman Catholic Church is contained in two Codes that legislate on the way the Church is organized and carries out its activities in the world. The Law is understood with reference to a renewed ecclesiology expressed in the texts of the Second Vatican Council, which deeply inspired its development. This renewal produced a conception of the egalitarian relationships between those baptized in the Catholic Church which must, however, take into account the role given to sacred ministers – who have received, in sacramental ordination, legal capacities for action and decision-making that underpin their hierarchical power. Canon Law therefore contains laws that regulate the exercise of authority at the universal and particular levels of the church, and organize the participation of the faithful, according to their status, in synodal institutions. The purpose of these laws is to exercise the functions entrusted to the church, which are those of Christ the priest, prophet, and king, especially in terms of teaching and sanctification. Canon Law is a complete order that deals with all aspects of community life, managing conflicts between people by establishing an internal judicial system that delivers sentences, some of which are penal.

Keywords: Roman Catholic theology, Canon Law, Second Vatican Council, Ecclesiology, Church councils, Ecclesial justice, Marriage, Clergy, Laity

Table of contents

1 A codified universal right

1.1 Two Codes of Canon Law

1.2 The principle of codification

1.3 The need for a change in legislation

2 A development in ecclesiology

2.1 The Ius Publicum ecclesiasticum

2.2 The inspiration of the Second Vatican Council

2.3 A study of the foundations of Canon Law

3 Canon Law

3.1 Hierarchy of norms

3.2 The rationale of the law

4 The subjects of Canon Law

4.1 Equality among the faithful

4.2 Clerics, laity and religious

5 Authority and government in Canon Law

5.1 Sacred ministers

5.2 The synodal exercise of authority in the Particular Churches

5.3 The supreme authority in the Catholic Church

5.4 Grouping of particular churches

6 Exercising the functions of teaching and sanctification

6.1 The function of teaching

6.2 Book on sacramental activity including the law of marriage

7 Administration of material goods

8 The judicial system

8.1 The desire for justice

8.2 Judicial and penal decisions

1 A codified universal right

Canon Law is the body of law that organizes the activity and internal life of the Catholic Church, and the exercise of its mission. It contains the equivalent of all the branches of law that govern modern societies, a fundamental law, another law that describes the status of persons and institutions, an administrative law, a law of property, procedures, and sanctions (see Law and Theology in the Western Legal Tradition). Whilst foundational, it is distinct from the law of the Vatican City state, which organizes the activity of the independent territory, located in Rome, where the main services that help the Pope in his activity of universal extension are grouped (Arrieta 2021). Canon Law is for those baptized in the Catholic Church. Present in all the countries of the world, they are diverse in terms of language, culture, history, and the social organization in which they live, but they are united by the same faith, the same liturgy, and the recognition of the same hierarchy. The canonical laws to which they are subject fall into two main categories, according to the extent of their application. If they concern the entire Catholic Church, they constitute the 'universal law' of the Catholic Church. If, on the other hand, they concern a particular territory or territories, such as a diocese or an ecclesiastical province, they form the 'particular law' of the Church. Consequently, most laws are territorial, although some (whether universal or particular) may be personal, i.e. addressed to specific groups of the Church's faithful such as clerics.

1.1 Two Codes of Canon Law

Universal law is most accessible in the two Codes promulgated by Pope John Paul II, who, as Bishop of Rome and Primate of the Catholic Church, is the supreme legislator. The first Code (*Codex iuris canonici*) concerns the Latin part of the Catholic Church, i.e. the major part of the Catholic Church spread over the five continents of the world which celebrates the liturgy in the Latin rite. The second Code (*Codex Canonum Ecclesiarum Orientalium*) concerns the Eastern part of this same church, twenty-three churches of *sui iuris* (with its own rights) mainly located in the Near East, Middle East, and Far East (Salachas 1997) and generally designated by their rite. These include the Coptic Catholic Church, the Maronite Church, the Greek Catholic Church, etc. These two Codes contain the universal law of the church, alongside which exists a particular law, emanating from various legislators such as the bishop of a diocese or a group of bishops of the same territory gathered in an episcopal conference, published in official journals. Because of the number of laws and their dispersion, they are not grouped together. Therefore, this article will be limited to codified universal law, which contains the constituent elements of the organization of the Church as a whole, in the knowledge that these can be applied and extended in particular laws according to the various cultures.

These Codes, the first promulgated on 25 January 1983, the second on 18 October 1990, are similar in many respects, at least on a formal level. Their differences appear in a list of distinct principles of revision referred to by the members of the preparatory commissions. These come from their reference to different traditions. The Latin Code is the result of the evolution of the law of the Catholic Church in the West, especially in Europe, confronted with the philosophical and political movements of secularization which have affected the ecclesiological conceptions of the churches and Christian communities. On the other hand, the Code of Canons of the Eastern Churches has its roots in the experience of the church in the East, which remained outside the European movements of thought, an experience that the Orthodox Churches in their own way have also preserved. This article will be limited to the elements of legislation common to the two codes, referring for convenience to the universal legislation codified in the Latin code and noting, where necessary, the differences with the Codes of Canon Law of the Eastern Churches.

In formal terms, the two Codes imitate the modern codes of continental legal systems. This explains why they are formally distinct from all the church's other reference texts, starting with the biblical texts, which are never cited in the Codes, unlike the canonical collections of the first millennium which referred explicitly to scriptural sources. They bring together canonical legislation by dividing it into small articles called 'canons', derived from the Greek word *kanon* meaning 'rule'. A set of these canons forms a book or title. The collection of books or titles forms a codified whole. The Latin Code contains 1732 canons, divided into seven books, which deal with all aspects of the life of the church. The Code of Canons of the Eastern Churches contains 1546 canons gathered in thirty titles. These two Codes, which are regularly updated, occupy a privileged place alongside numerous earlier texts of universal law that exist in the form of apostolic constitutions, decrees, or other texts promulgated by the Roman pontiff. They are published in the official journal of the Holy See, *Acta Apostolicae Sedis*.

1.2 The principle of codification

The need for a collection of laws has been a constant pressure in the history of the Catholic Church. After seven centuries of chronological and thematic groupings of conciliar canons, papal decisions, rescripts, and decretals, the Decree of Gratian (1140) sought to create a concordance between conflicting laws and texts (*Concordia discordantium canonum*). Subsequently, Gregory IX promulgated the *Book of Decretals* (*Liber decretalium*; 1234). Together with the collection of decretals of the subsequent popes, this formed the *Corpus iuris canonici* (1500), inspired by the renowned work of the emperor Justinian, rediscovered in the Middle Ages, the *Corpus iuris civilis* (528–533). Therefore, when the Justinian Code was taught in the nascent universities at the beginning of the second millennium – in particular in the University of Bologna – the two laws, which inspired commentaries, constituted a common Law (*ius commune*), made up of the two

scholarly laws whose categories were shared or similar (Fantappiè 2011: 110–116). This explains, on the one hand, why Canon Law is generally presented as the heir of Roman law and, on the other hand, why it appears to be linked to the civil law system.

Canon Law, however, has characteristics that bring it closer to the common law system. While it has not been affected by the secularization of the rights of states that has been progressively taking place since the sixteenth century, it has preserved traditional juridical institutes such as custom, dispensation, and equity procedures, which show that the notion of equity has been and still is Canon Law's fundamental characteristic (Colombo 2003: 13–75). The reaffirmation of these institutes' importance for Canon Law was the subject of debate among canonists towards the middle of the nineteenth century, as the desire arose to find a method that would respond to the need to facilitate the communication and knowledge of Canon Law. At that time, the Catholic Church chose the codification of its laws, thus joining in the movement that led the societies of the nineteenth century to draw up codes similar to that of Napoleon, which was a model for many state legal systems due to its practical appeal (Fantappiè 2011: 259). A similar project was carried out for the Eastern Churches, which could not be completed before the convening of the Second Vatican Council.

Previously, jurists, jurisconsults, and judges who wanted to resolve a difficult case, propose a legal solution, or produce a sentence, had to refer to numerous sources. In addition to the *Corpus iuris canonici*, these included the laws of the Council of Trent, the collections of Papal Bulls (*Bullarii*) – which were often incomplete and difficult to use – the not-very-accessible collections of the resolutions of the dicasteries of the Roman Curia, and the private collections published by canonists. When the codification of law was announced, the canonists, who were reluctant to become exegetes of the law, feared that their task would be reduced to that of commentators on the Code. Canonists wanted to save the true canonical method from a system of systematization of law or a priori theories, which could have been applied outside all laws of justice, without equity (Minelli 2015: 34). They wanted to rule out rational speculations which, in seeking a necessary legal certainty, would be subordinated to positive prescriptions by creating 'abstract law'.

1.3 The need for a change in legislation

The 1917 Code of Canon Law was designed to last a long time, but this objective was not achieved. It was soon subject to additions and showed fragility in some of its parts. Added to this was the change in the conditions in which the Catholic Church carried out its mission. At the end of World War II, there was an awareness of the de-Christianization of certain European countries, of the need to respond better to new needs for a legal framework for new situations, and in countries outside Europe the questions asked by missionaries went unanswered by the Code. This situation worsened, confirming the

idea that Canon Law no longer corresponded to the needs of a church that faced new problems, and that the juridical categories and institutes of Canon Law which were still being taught in seminaries and universities were no longer useful. Even the continuing work of a Roman commission which gave new interpretations was not enough to bridge the gap between the law and the reality experienced by the church's communities.

There followed a period of disaffection for Canon Law, of which Pope John XXIII was aware. It was he who on 25 January 1959 announced the convocation of a council and the revision of the 1917 Code of Canon Law. Work on the codification of Eastern law was halted in favour of the revision of the 1917 Code at the end of the Second Vatican Council. It was intended that the texts published by this council should inspire the new Latin and Eastern Canon Law. As with the first codification, commissions were set up to revise the whole of the 1917 Code and to prepare the new Code now in force. This work lasted twenty years (Fantappiè 2011: 299–309). Similarly, for the law of the Eastern Churches, special commissions were set up, which prepared the Code now in force. The work of these commissions, published in two specially created journals (*Communicationes* and *Nuntia*), shows the necessity of a change in legislation and the compromises that were reached on issues where there was no doctrinal unity.

2 A development in ecclesiology

2.1 The Ius Publicum ecclesiasticum

The decision to wait until the end of the council before commencing a revision was based on the fact that this assembly of bishops would have to adopt a renewed theological approach to ecclesiological questions. This would mean that the revision of legislative texts would be based on the envisioned *aggiornamento* (update). Thus, it was shown that the loss of interest in Canon Law of 1917 was explained by the stagnation of ecclesiological references upon which this Code was built, rather than by the often-hostile attitude of people towards the law as such. The 1917 Code of Canon Law was in fact dependent on the Church's struggles in the two preceding centuries. Internal discussions within the Catholic Church arose from the confrontation with the organization of modern societies in the second half of the second millennium. They were at the heart of struggles the Church waged, both against the ecclesiologies that emerged from the Reformation – which called into question its hierarchical constitution and its mediating role in the order of salvation – and the Regalist and Gallican theses that challenged the exercise of its jurisdiction over national territories. The designation of the Church as *Societas iuridice perfecta* (legally perfect society), a title that applied to states, had served as a conceptual reference for canonists (Minnerath 1982: 60–73) in order to build a societal edifice of its own, thereby affirming its sovereignty and primacy over all territories.

This ecclesiological designation had a twofold apologetic protective objective. Firstly, it was necessary to prevent the Catholic Church from being assimilated to societies whose organization was based on the socio-political and juridical concept of freedom and autonomy of individuals, a concept the states had to promote and guarantee in their forms of government. Secondly, it was intended to preserve the principle of hierarchical organization which, for this doctrine, came from the very will of Christ. It required the faithful's acceptance of the jurisdiction of ordained ministers in the magisterial and governmental order, and their essential role in the acquisition of grace through the sacraments. Accordingly, it was asserted that the church possessed an innate and sovereign right (*ius nativum*) to govern itself and to act as an organized society according to its own principles (De la Hera and Munier 1964: 32–63). As a legally perfect society, i.e. independent of any other, the church had a duty and a power, acquired by divine will (*ex ipsa ordinatione divina*), to provide all the means of salvation to its members through those who were entrusted with the task of governing this constituted society in its entirety.

The emphasis on the unique and exclusive role of the ecclesiastical hierarchy in this order, as the heart of the church's organization, led to the imbalances in the presentation of the duties and rights of categories of persons – clerics, religious, and lay – which appeared in the 1917 Code of Canon Law. The doctrine of *Ecclesia societas iuridice perfecta* (legally perfect society), stagnated ecclesiological thought by limiting it to the affirmation of juridical themes. This undermined or even dismissed the importance of the earlier traditional thought, beginning with St Augustine, that the church had developed its nature as a *Congregatio fidelium*. This was the idea of the church as a universal community that spanned the globe, the head of which is Christ, an 'organic reality' where, as successors of the apostle Peter, the popes occupy the place of visible head (Congar 1970: 12–23). The whole law concerning the organization of the church was placed in the section dedicated to clerics – since they alone could receive ecclesiastical offices – resulting in the marginalization of synodality. The Code of Canon Law was reduced to being an internal and external public ecclesiastical law (*ius publicum ecclesiasticum*), since the ecclesiastical *ordinamento* (set of rules) existed by itself and, in a certain way, for itself (Minnerath 1982: 103–110).

2.2 The inspiration of the Second Vatican Council

From the end of the nineteenth century, with Johann Adam Möhler and the Tübingen school, a new ecclesiological doctrine was developed. It flourished in the following century in studies previously marginalized, such as theology, writing, patristics, and history. Citing these transformations, Yves Congar described the renewal of the intellectual approach of the last century in the field of ecclesiology as

> an understanding of the mystery of the Church as plenitude, within the framework of God's plan and of the history of salvation, that is to say, of a history in continuity with that of Israel, centred on Christ, finalized in the eschatological consummation […] The concept of society proved insufficient to express the richness of the mystery. One could even doubt the possibility of defining the Church. (Congar 1970: 462)

From the middle of the twentieth century there was also a remarkable missionary dynamism, and a change of perspective that emphasized the individual and collective participation of the faithful. This was the expression of their status as baptized persons, giving them the duty and the right to collaborate in the functions of teaching, sanctifying, and governing the church, and to take their place in communities whose importance as places for the realization of the church's mission and the belonging of the faithful was beginning to be rediscovered.

In reference to this ecclesiological doctrine, the period surrounding the Second Vatican Council was rare a moment of intensity of doctrinal reflection for Canon Law. It introduced the juridical figure of the faithful or baptized person, who receives in baptism a constitutive participation in the functions that Christ entrusted to the church (canon 204). That person exercises a responsibility, together with those who have received a specific participation in the same functions (D'Arienzo 2012: 148–167). This was a new approach that developed, with an emphasis on the synodal dimension in the exercise of ecclesiastical offices which the Eastern Churches had retained in contrast to the Latin Church (Melloni and Scatena 2005: 1–5). Canon Law also re-emphasized the communitarian dimension of the church, a dimension stifled by the ecclesiology of the *societas iuridice perfecta* (legally perfect society). This dimension is an expression of its profound being and existence in societies where God's will for humanity is fulfilled, in reference to the ecclesiology of Vatican II. The change of perspective, which some still consider to be limited and open to further development, led to a new approach to themes on which the Catholic Church had many disputes and ideological stiffenings. These had put it in opposition to the thinking of modern societies, the relationship with states, and with entire non-Catholic communities. This general movement of thought led canonists not only to want to adapt the law in harmony with the new ecclesial discourses – as can be seen in the Code promulgated in 1983 – but also to deal with questions concerning the existence of a law in the Church and the methods it uses.

2.3 A study of the foundations of Canon Law

The Second Vatican Council did not make a statement on the question of the foundations of Canon Law. Instead, it provided elements for reflection by expressing a dynamic

approach to the church, affirming its societal character, and maintaining its specific aspects and spiritual nature:

> Christ, the one Mediator, established and continually sustains here on earth His holy Church, the community of faith, hope and charity, as an entity with visible delineation through which He communicated truth and grace to all. But the society structured with hierarchical organs and the Mystical Body of Christ, are not to be considered as two realities, nor are the visible assembly and the spiritual community, nor the earthly Church and the Church enriched with heavenly things; rather they form one complex reality which coalesces from a divine and a human element. For this reason, by no weak analogy, it is compared to the mystery of the incarnate Word. (*Lumen Gentium* [*LG*] 8)

This declaration is the foundation of Catholic Canon Law, because it recognizes the place of the ecclesial societal aspect to which a specific organization is attached. The purpose of that organization is not the mere need for organization, but that of being a reflection of the human and divine nature of the organism in which the Holy Spirit acts to vivify it and make it grow. This statement rejects the ecclesiology of the *societas iuridice perfecta* (legally perfect society) in favour of a concept of society *sui generis*, which unifies and does not separate, that leads one to speak of canon law in terms of an ecclesiastical Law.

This doctrinal perspective on the nature of the church has an impact on the nature of the law that organizes it. To this is added a reflection on the church's finality, which also has an influence on the conception of Canon Law. The dogmatic constitution *Lumen Gentium* presented the church as a 'messianic people' which, 'although it does not actually include all men, and at times may look like a small flock, is nonetheless a lasting and sure seed of unity, hope and salvation' (*LG* 9). This conception is echoed at the beginning of the same constitution: 'All men are called to this union with Christ, who is the light of the world, from whom we go forth, through whom we live, and toward whom our whole life strains' (*LG* 1). In opposition to the *Ius publicum ecclesiasticum* (ecclesiastical public law), the council links the societal nature of the church to an eschatological dimension. This allows it to take up the best of the previous ecclesiological tradition by emphasizing its role as an expression of the church's own nature as a gathering place of people who announce the meaning of history. The church is a community that embodies the face of Christ, whose body it is. Its existence is partly due to the fact that it is a *Congregatio fidelium* (gathering of the faithful), in the sense in which William of Occam used this description of the church: a social reality which gathers and adds up those who recognize themselves in Christ. But it is also a reality created to become – until the consummation of the centuries – the new community willed by God (Congar 1970: 231).

The missionary dimension of the Second Vatican Council is rooted in this concept. The vocation of the church presented by the Second Vatican Council is to gather together people who are not yet united in the new humanity, as a historical grouping of people which announces and symbolically realizes their future unity, in continuity with the mission given to the people of Israel (Valdrini 2017: 18–19). Canon Law is the law of this community. Debates have arisen within canonical doctrine on the meaning to be given to this law from a theological perspective. Is the church a canonical *ordinamento* (set of rules), equivalent to that of any society with a juridical system of its own, which arises from its purpose of salvation (*salus animarum*), its divine right (*ius divinum*), and its own notions such as canonical equity (*aequitas canonica*) and the link between justice and charity (*iustitia et caritas*; Örsy 2000: 3–8)? From a christological perspective, is Canon Law the instrument of institutional and interpersonal justice of the people of God, protecting the fundamental rights of the faithful? In order to radically distinguish Canon Law from secular rights, can a proper conception of Canon Law be constructed based on the constitutive elements of the church itself, the Word, and the sacraments (Rouco-Varela 1973: 203–227)? This movement of thought, which started with the conciliar reflections on the mystery of the church, was born from the first works of revision of the Code of 1917 after the Second Vatican Council. This is unlike the movement of thought that the Protestant churches experienced in the twentieth century, which first questioned the role of law as such, then that of a possible Canon Law of its own, and revisited the legacy received from the Reformers – in particular on the relationship between law and gospel (Corecco 1976: 1736–1738).

3 Canon Law

3.1 Hierarchy of norms

During the drafting of the 1983 Code, it was decided that a *Lex Ecclesiae fundamentalis* (fundamental Law of the Church), like the constitutions of modern states, would contain the constitutive elements of the institutional structure of the church. It was to be inspired by the major texts of the Second Vatican Council. It gave rise to many debates, particularly on its style, as the successive drafts of this Law used a language that was more theological than juridical, due to the fact that its canons more or less fully reproduced the texts of the Second Vatican Council. There was also a fear of the consequences of a juridical formalization of constitutive canonical concepts and the possible fixing of important ecclesiological categories, which would have hindered developments in discussions with the separated brethren within ecumenical commissions. The withdrawal of the project was decided by John Paul II, motivated by the number of contrary opinions (La Due 1972). This led to the late introduction into the future Code of canons prepared for this project, giving the text of 1983 a less juridical aspect. From this point onwards, the two Codes do not provide a formal means of differentiating the importance of the canons contained in them.

No official text lists the canons that form the ‘constitutive law’ of the Catholic Church (Toxé 2002). They are scattered in the two Codes without any formal element that would allow them to be distinguished. The authority is compelled to consult magisterial or disciplinary texts, as well as the reflection on the canons and their interpretation. These may be ‘authentic’, prepared by the dicastery for the legislative texts of the Roman Curia and promulgated by the legislator. They may instead be jurisdictional, prepared by the judges within the ecclesiastical tribunals or a person with the administrative power to carry out a singular act in cases of application of the law (canon 16). Doctrine, that is, expert studies of Canon Law, also helps in this. From canon 87 of the Latin Code, a general key to discernment may be extracted. It allows an authority in ecclesiastical government to dispense with the application of rules. It states: ‘Laws are not subject to dispensation to the extent that they define those things which are essentially constitutive of juridical institutes or acts’ (canon 86). If someone contested this assessment, he or she could have recourse – under the conditions defined by the Code itself – to a higher authority or to an ecclesiastical judge, in order to establish an administrative praxis or jurisprudence concerning the application of the law and thus a hierarchy between norms.

Only a few canons mention the ‘divine’ character of a prescription (canons 113, 330, 748, 1008, 1055, 1059, 1075; CIC 1983), giving it a special status. The notion of divine right and the positive expression of its normativity are elements proper to canonical science, linked to the specific nature of the church, on which doctrine focuses its reflection (Arrieta 2010: 59–60). This law, which the church distinguishes into positive divine law and natural law, is partly made up of principles. It also includes institutional elements concerning persons and the ecclesial organization which Christ willed – either explicitly (extracted from the sacred texts), or implicitly (received in tradition) – which the church has translated into juridical language and inscribed into its canonical juridical order. As the law is an expression of the will of the legislator, so divine law is an aspect of the will of God over the church, to be received, known and expressed. For this reason, it requires a work of interpretation and expression. Divine law is of transcendental origin and has an historical character, because, inserted into the canonical juridical order, it is a law that exists in history. The duty of understanding and expressing it falls, in the first place, to the ecclesiastical magisterium, and then to the sacred disciplines, the theological, historical, liturgical, exegetical, and canonical sciences.

3.2 The rationale of the law

Regarding the question of divine law and its extension, canonical doctrine considers the rational character (*rationabilis*) of the law as essential and original in relation to secular civil law. At the time of the codification of the 1917 text, canonists were concerned that the principle ‘*quod principi placuit, legis habet vigorem*’ (what pleases the prince has the force of law) might not apply to their discipline (Minelli 2015: 63–94). This was the principle upon

which the proponents of the voluntarist theory of Canon Law based their argument, against the traditional canonical understanding of law advanced by Thomas Aquinas. For the latter, the rational character of the law (*rationabilitas legis*) is the fruit of a direct or indirect fidelity to the divine will. Those in charge of the common good of the church participate in that will through reflection and interpretation. The rational character of the law is the guarantee that it corresponds to the good of the church and the people. Michiels states that the law is '*ordinatio seu dictamen rationis*' (order or dictate o reason) of the legislator, because the law is desired by the one who is responsible for guiding the actions of the addressees, but its object must have acquired an objectivity in the order of reason (Valdrini 2010: 151).

The old law, before the Code of 1917 was promulgated, was familiar with this conception of law. This was particularly expressed in Gratian's *dictum* (a saying of Gratian) that laws are instituted when they are promulgated, but he affirms that they acquire their force when they receive confirmation as they are applied (*Leges instituuntur cum promulgantur, firmantur cum moribus approbantur*; Laws are established when they are promulgated, they are confirmed with customs). Because of the affirmation of the necessity of the rational character of the law, canonical doctrine has generally considered the reception of laws as a constitutive element of the canonical conception of the juridical norm (Valdrini 2010: 153–156). This is demonstrated by the role that Canon Law gives to custom. When it arises as an application of a law (*secundum legem*), it is the best interpreter of the law (canon 27; CIC 1983). Even if, in the process of interpreting laws according to a logical order, an analysis of the 'meaning of the words in the text and their context' – as well as of the legislation applicable in 'parallel places' – is not sufficient, reference is made to the motives that led the legislator to promulgate the law (*ratio legis*; canon 17; CIC 1983). By linking the rationality of laws with their reception, those for whom the laws are made are involved: both after the promulgation of the laws is received and before, by participating in their elaboration. It is the rational character of law that explains the church's commitment to synodality.

4 The subjects of Canon Law

4.1 Equality among the faithful

Canon Law describes the status of various categories of persons, the first of which is the fundamental status of the faithful. The faithful of Christ (*Christifideles*) are those who are baptized into the Catholic Church and who receive through baptism a participation in the mission that Christ has entrusted to his church. It is to the faithful that the Codes of Canon Law are addressed, and for whom it establishes legislation. According to canon 11, '[m]erely ecclesiastical laws bind those who have been baptized in the Catholic Church or received into it'. It also gives a status to the baptized, however, who are not of the Catholic Church: Protestants, Orthodox, members of churches or ecclesial communities whose

baptism is valid. The Code considers them to be part of the Church of Christ (*Ecclesia Christi*) and, as such, certain canons concern them when they enter into relationship with the Catholic Church, such as the reception of the sacraments of marriage and the Eucharist. In addition, those who are not yet baptized and who express their desire to become Christians are given status. When this request has taken an explicit form, they become catechumens. They are 'united with the Church, which already cherishes them as its own' and 'already grants them various prerogatives which are proper to Christians' (canon 206).

The mission received in baptism is presented on the basis of the three titles of Christ that the patristic and later theological tradition gave him: priest, prophet, and king. These titles, introduced into canonical doctrine at the end of the nineteenth century, were used by the Second Vatican Council and then by the Code of Canon Law to qualify the three essential functions of the Catholic Church: sanctification (priest), teaching (prophet), and government (king). The faithful participate in these functions (canon 204; CIC 1983). It is up to them to sanctify, teach, and work towards the realization of the unity of the human race under the authority of Christ. This work of mediation, which is presented as a consequence of baptism and reinforced by the sacrament of confirmation, is incumbent on all without distinction and is the basis for the principle of equality among all the faithful, which both Codes hold to be the central element of the identity of the baptized.

It is this principle of equality that opens the list of fundamental duties and rights of the baptized, all of which are ways of exercising the duty and right to cooperate in the church's mission: participation in the mission, responsibility in adhering to the *magisterium*, choice of a state of life, freedom of opinion, duty of solidarity, right to rite, etc. This cooperation takes place in individual or collective form. Among the fundamental rights recognized to the faithful, the Code of Canon Law contains a series of canons on associative life in the church, which develop the way in which the faithful can contribute to the mission by offering them a legal framework. Recent law has considerably developed this aspect by determining categories of association offered to the faithful to make their collaboration in the mission concrete. This is a sign that the elements of participation have developed, going beyond an excessively clerical system of juridical organization, introduced especially at the time of the Catholic Counter-Reformation. This associative law also determines the relationship of associations freely created by the faithful with the holders of ecclesiastical government.

4.2 Clerics, laity and religious

The canon that deals with equality specifies that believers cooperate in the building up of the Body of Christ 'according to the condition and proper function of each' (canon 208). This incision suggests that statutory elements affect the principle of equality and, therefore,

the exercise of fundamental rights and duties. The reference underscores the hierarchical structure of the church due to the sacrament of holy orders, through which, by

> divine institution, some of the Christian faithful are marked with an indelible character and constituted as sacred ministers by the sacrament of holy orders. They are thus consecrated and deputed so that, each according to his own grade, they may serve the People of God by a new and specific title. (Canon 1008)

It is in this new capacity that they exercise the functions of teaching, sanctification, and government. It is the bishops, priests and deacons whom the Code calls ordained ministers or clerics. The first two receive in ordination the capacity to exercise the functions of pastors of communities and to act in the person of Christ. Deacons, according to tradition, are not ordained for the priesthood but for the service of the people of God.

This mention of hierarchy in canon 208 comes from the specific conception of equality in the Catholic Church. It is the subject of controversy and opposing conceptions that are expressed in debates, particularly synodal debates, in countries with a democratic tradition. In modern societies, the juridical notion of equality is constitutive of a citizen's fundamental status, making it possible for all to access public offices of varying social utility. In Canon Law, equality is understood differently. While it establishes many fundamental rights and duties – all of which are, to varying degrees, the implementation of equality in cooperation with the church's mission – it does not abolish the church's hierarchy, to which the faithful belong with specific rights and duties. The organization of the church is therefore not functional (Valdrini 2017: 372–377). In classical ecclesiastical theology, which takes up the magisterial texts, in particular those of the Second Vatican Council, it is the institutional translation of Christ's will to give, by means of the sacrament of holy orders, particular capacities of mediation to certain faithful in the three functions. They can teach, sanctify, and govern in the person of Christ, the head of the body (*in persona Christi capitis*) which is the church. This concept, which appears as essential in the magisterial texts of the Catholic Church, is discussed at ecumenical meetings and, within the Catholic Church, confronted with the expected consequences of highlighting the participation received in baptism.

Alongside the hierarchical relationships between the faithful, generally described as relationships between clerics and laity, there is another category of baptized persons which Canon Law calls 'consecrated to God'. They are consecrated through the profession of the evangelical counsels by means of vows, or other sacred bonds recognized and sanctioned by the church (cf. canon 207 section 2). Said persons are those whom Canon Law generally calls 'religious', who receive the state of consecrated life. They may be clerics or lay people, Laws are established when they are enacted, they are confirmed with customs

and they have chosen to follow Christ in a particular way. They make promises of poverty, chastity, and obedience and often live together in a stable way in institutions which the Code of Canon Law calls religious institutes or societies of apostolic life. Notwithstanding their diversity, they encompass the charismatic life of the Catholic Church, which is a way of carrying out the mission which Christ has entrusted to it in the order of sanctification, recognising particular paths of holiness.

5 Authority and government in Canon Law

5.1 Sacred ministers

An entire book of Canon Law is devoted to the organization of the church (Book II). According to one of the essential principles of this organization, the faithful are grouped in communities, Dioceses, and parishes, and placed under the authority of a pastor. These are determined on the basis of objective criteria, generally territorial. The faithful belong to them through their domicile. Additionally, there are parishes of people who speak the same language or have the same status, for example the military. This type of community, created by the church, which differs from associative communities created by the faithful themselves, achieves an ecclesiological goal. The created community must become a place that expresses the reality of the church of Christ in which all the faithful are united as members of one body. However different they may be, they become a community brought together by Christ who makes them one.

This ecclesiological purpose explains why two organizational elements appear to be indispensable in the structuring of communities. The first is the role played by ordained ministers. In the case of the diocese, this role belongs to the bishop. In the case of the parish, it is the parish priest. Both are called by the Code to be pastors and receive the pastoral care of the community. They have received in sacred ordination the capacity to preside, in the name of Christ the head of the body (*in persona Christi capitis*), over these two types of communities – dioceses and parishes – where ‘head offices’ are constituted. The second element is the place of the Eucharist in the life of communities under the authority of a pastor. In the eucharistic action, the ordained minister exercises his role of mediation between Christ and the faithful. Tradition has often insisted that the minister sanctifies the community for which he consecrates the Eucharist. He teaches it in the name of Christ – since he must comment on the Word of God – and governs it – since he has the role of presiding over the Eucharist. By organizing communities in this way, Canon Law shows that there can be no ecclesiastical organization according to canonical principles without the ordained ministry having been given this place.

This concept is at the heart of the challenge to those who see the organization of the church on the basis of baptism and not just on the basis of sacred ordination, which is a way of ruling out any distinction other than a functional one. It also explains the

denunciations of clericalism that can arise from the recognition of a sacramental separation between clerics and laity that excludes the institutional participation of lay people. This explains the interest in cases where this organization is difficult or even impossible due to the shortage of ordained ministers. This could happen in countries where mission is taking place. It was at times the case in the ancient churches. There cannot, however, be dioceses without a bishop, though there may be parishes where it is impossible to appoint a parish priest (canon 517, section 2; CIC 1983). In such instances, the Code of Canon Law provides for the appointment of a Deacon, who is ordained but cannot celebrate the Eucharist, or a person or a community of lay people, as participants in the exercise of the pastoral office. These exercise a particular office at the head of the parish, together with a Priest who is appointed moderator of the pastoral office, who usually has another office and cannot devote himself entirely to the role of pastor of the community. This juridical figure, which is exceptional in the Code, indicates that Canon Law seeks to reconcile, sometimes with difficulty, two elements: on the one hand, the reality of scarcity, which should not prevent the parish from being taken care of pastorally, and on the other hand the fact that it cannot be structured without an ordained minister exercising that ministry, especially that of celebrating the Eucharist.

5.2 The synodal exercise of authority in the Particular Churches

In Canon Law, the concept of the 'Particular Church' is fundamental, and is, in part, the basis for the conception of the organization of the Church in the Code of Canon Law. The bishops, as successors of the apostles, are placed at the head of the Particular Churches which, according to the Second Vatican Council, are the places 'in which and from which the one and only Catholic Church exists' (*LG* 23). Magisterial texts insist that the church is not a federation of Particular Churches but that the universal church and the Particular Churches exist in a relationship of 'mutual interiority' (Renken 2000: 504–506). The accomplished figure of the Particular Church is the diocese which

> is entrusted to a Bishop for him to shepherd with the cooperation of the presbyterium, so that, adhering to its pastor and gathered by him in the Holy Spirit through the Gospel and the Eucharist, it constitutes a particular church in which the one, holy, catholic, and apostolic Church of Christ is truly present and operative. (Canon 369; CIC 1983)

The Code of Canons of the Eastern Churches, which calls them *eparchies*, takes up this description but, in its definition of the rite, it insists on the cultural elements of these portions of the church, mentioning the liturgical, theological, spiritual, and disciplinary patrimony by which they are distinguished.

The authority of diocesan bishops, like that of the Pope, is exercised in three areas: teaching, sacraments, and government. They teach and administer the sacraments in their church in the name of Christ and have the right to pass diocesan laws or make individual decisions affecting persons or groups. For example, appointing persons to official offices as parish priests, hospital or prison chaplains, recognizing the statutes of associations of the faithful, etc. The exercise of their authority is personal, but in the Code the exercise of the bishop's pastoral office is linked to the synodal principle of his relationship with the priests and faithful of the diocese. This principle, whose reference point is the assembly of Jerusalem (Acts 15:1–35), has been implemented over the centuries in councils and synods, and has been revived in the wake of the Second Vatican Council with the promotion of the idea of the participation of the faithful. Pope Francis has made this a key element of his pontificate, declaring that synodality is a constitutive dimension of the church and that it offers the most appropriate framework for understanding the hierarchical ministry itself. The experience of the Eastern Churches, which have never abandoned the principle of synodality, is a reference point for what the Latin Church, which has not institutionalized this principle, could introduce into its legislation.

Thus, the bishop is obliged to create a presbyteral council which represents all the priests who share his responsibility, a college of consultors – also composed entirely of priests – to which he must submit his decisions in order to receive their opinion or consent, and a diocesan finance council for the management of goods. But the creation of a pastoral council, provided for in the Code to bring together clerics and especially lay people to propose diocesan pastoral guidelines, is not imposed on him. This shows that, despite conciliar declarations and papal exhortations, the synodal principle of government is not yet well-developed in universal law. The bishop's legislative authority may also be exercised in a diocesan synod, which brings together members of the diocese. Diocesan laws emanate from this synod and have a special status, because they do not come from the diocesan bishop alone but he alone can promulgate them within the synod with a view to respecting the duty of communion of the particular church with the whole church. They are the result of the participation of members of the diocese and the exercise of the bishop's personal responsibility, a legal constraint that is interpreted as a limit on the implementation of the synodical principle (Valdrini 2017: 85).

5.3 The supreme authority in the Catholic Church

The pope is the supreme head of the Catholic Church. He is the first subject of supreme authority over it, authority which he receives at the time of his election and exercises in the name of Christ. This authority is magisterial, exercised by means of encyclicals or solemn documents on subjects touching on the very content of the Christian faith (charity, hope, etc.), or on problems of society (development, peace, etc.). It is also disciplinary. The latter concerns the organization of the church and its internal life. This is generally expressed in

normative texts that require the adherence of the faithful of the Catholic Church and guide their actions. Most of these texts are apostolic constitutions or *Motu Proprio* (a document issued by the pope on his own initiative) who decides on their publication. The world's bishops, gathered in the College of Bishops into which they enter by virtue their episcopal ordination, form the second subject of supreme authority over the whole church. They may act collegially, either convened in an ecumenical council or dispersed throughout the world – in both cases with the approval of the pope. Bishops are the successors of the apostles and are ordained after being chosen by the pope. Apart from those who exercise administrative functions necessary for the functioning of the Catholic Church – for example in the Roman Curia, which directly assists the pope in Rome – they are heads of Particular Churches, that is, dioceses or parts of the Catholic Church. The conciliar collegial act is carried out by all bishops gathered together in one place. In contrast, the collegial act due to dispersed bishops requires consultation at the universal level. Both types of acts are rare. The most recent solemn collegial acts were those of the Second Vatican Council, held between 1962 and 1965. Since this council introduced the possibility of a collegial act, none has thus far been enacted.

While the Code of Canon Law mentions two subjects of the supreme authority, in fact only one of them is able to exercise the power he has received. No doubt it is difficult to gather 5000 bishops in one place, or to organize a collegial act with such a number. In fact, the presentation of government at the highest level reveals the Catholic Church's distrust of the conciliarist theories it condemned, which sought to subject the pope to the authority of the bishops gathered in councils. From then on, there was an imbalance in the exercise of supreme power because, in fact, the pope governed the church without the college as such exercising its power. The imbalance is corrected by the presence of synodal institutions of participation around the pope, to which bishops belong. Their function is to assist the pope, who remains free to follow or reject their advice and proposals. A synod of bishops brings together selected members of the episcopate from the various regions of the world 'to foster closer unity between the Roman Pontiff and Bishops, to assist the Roman Pontiff with their counsel' (canon 342; CIC 1983). But it does not represent the College of Bishops, which can only express itself in a council or in a collegial act (Valdrini 2019: 261–274). The synod has no power of decision unless the pope concedes it, but even then, as in the case of a council, decisions should be confirmed by the Roman Pontiff. The pope is also helped by cardinals whom he chooses himself and who, in the event of a vacancy in the See, elect a successor in a conclave. Together with the Roman Curia, or the dicasteries that act on behalf of the pope to administer the activities of the church, and the legates who represent the pope in various countries, they form a set of institutions whose action is directly linked to the will of the Roman Pontiff.

5.4 Grouping of particular churches

The Code of Canon Law recognizes a first structure for grouping Particular Churches – namely the Ecclesiastical Province – based on an experience of historical relationships between neighbouring dioceses. It has two purposes. The first is pastoral. It allows, through the convocation of a provincial council, to bring together the diocesan bishops and the faithful of the dioceses in order to establish laws that will apply in their territory. The same type of council, called a plenary council, could meet in the territory of a bishops' conference. The second purpose concerns the bishops who belong to the same episcopal college within a given province. The fact that the college can only express itself when all the bishops are together has highlighted the intermediate structures of collegiality to which the bishops belong in various territories. In the college, according to a distinction enunciated by Pope John Paul II, the collegial feeling (*collegialitas affectiva*) that unites the bishops is expressed. This is distinct from the plenary realization of collegiality (*collegialitas effectiva*) which would require that all the bishops of the world be convened in an ecumenical council or, scattered around the world, carry out a collegial act. The province does not have independence from the primate of the church, but has autonomy, insofar as the latter entrusts to it a limited power of government, to be exercised over that province. This power is given to a metropolitan, who receives from the hands of the Roman Pontiff a corresponding sign, namely the *pallium* (a white woollen band that is placed on the shoulders during the Holy Sacrifice of the Mass). The link of the provincial council to the primate appears at the end of a provincial council or a plenary council because the decisions could not be effective without the approval of the apostolic see, the pope, through a canonical act (the *recognitio*, 'review'), which authorizes him to request changes in the content of the laws.

The second structure that exists between the supreme authority and the Particular Churches is the meeting of bishops of a given territory in a conference of bishops. From the middle of the nineteenth century, before the first Code was written, some bishops had developed the habit of dealing together with pastoral problems concerning their territories. These meetings foreshadowed the creation by the Second Vatican Council of episcopal conferences which, unlike ecclesiastical provinces, do not group together dioceses but the heads of a Particular Church. The criterion for the erection of these ecclesiastical structures is territorial. The boundaries of bishops' conferences generally correspond to national territorial boundaries. The distinction between ecclesiastical provinces and bishops' conferences is profound. The former concerns the participation of institutions within dioceses, through the convocation of councils. The latter responds to the need for the bishops of a territory to exercise certain functions in common. On the other hand, both concretely realize the collegial character of the sacrament of the episcopate in an identical way. Both are manifestations of the collegial feeling (*affectio collegialis*) that must reign among the bishops. The conferences have little autonomy, because their decisions – unless taken unanimously – are subject to the *recognitio* (review) of the Holy See. Pope

Francis has sought to develop their action. He recognized in his encyclical *Evangelii Gaudium* that

> this desire has not been fully realized, since a juridical status of episcopal conferences which would see them as subjects of specific attributions, including genuine doctrinal authority, has not yet been sufficiently elaborated. Excessive centralisation, rather than proving helpful, complicates the Church's life and her missionary outreach. (Note 32)

6 Exercising the functions of teaching and sanctification

6.1 The function of teaching

The Second Vatican Council declared that, among the principal duties of bishops, the preaching of the gospel is the first (*LG* 25). In this perspective, Book III of the Code of Canon Law is dedicated to the juridical framework of teaching activities (*munus docendi*). From the first ten canons, three main categories emerge which organize the exercise of authority in teaching, used throughout the book and implemented in the exercise of the magisterial function. These are the preaching of the Word of God, catechesis, and the formation of persons in Catholic and ecclesiastical schools or universities. The first category is the explicit and certain identification (juridical certainty) of the poles of teaching authority in terms of institutional responsibilities over the whole church (the pope and the College of Bishops) and over the Particular Churches and their groupings (diocesan bishops and conferences of bishops, possibly Particular Councils). The second category concerns the exercise of the church's jurisdiction in teaching. The activities due to the exercise of *munus docendi* (solemn declarations, exhortations, reflections, mandates) require the adherence of the faithful, but they also entail the power to carry out acts of government or binding acts in the form of general and particular administrative acts (decisions addressed to individuals or groups), including the imposition of a sanction (penal law), which require obedience. The canons make it clear who has the duty and right to intervene and decide, since the authority reserves the right to attribute the Catholic character to institutions and juridical institutes or, possibly, to withdraw it. The third category concerns the activities themselves, which are qualified in different ways depending on who is acting and how they are carrying out their duties. Thus, when they emanate from the authority or the faithful, a distinction must be made between those which have a public or official character requiring greater regulation and those for whom autonomy is recognized. The exercise of the *munus docendi* is in fact a place where the initiatives of the faithful are legitimate, desired, and encouraged. The jurisdictional logic of Book III of the 1983 Code of Canon Law has become even more necessary, because of the difficulty of relating the exercise of ecclesiastical authority to networks of influence

and participation. These networks act not only outside the traditional framework of Canon Law, since they do not fall under the jurisdiction of the Church, but according to criteria and methods foreign to those mentioned.

6.2 Book on sacramental activity including the law of marriage

Part of the Code of Canon Law is devoted to establishing rules concerning the seven sacraments of the Catholic Church, i.e. the acts that ministers perform in the course of a liturgical celebration as mediators of Christ's action on persons at various times or situations in their lives. These sacraments are baptism, Eucharist, confirmation, penance, anointing of the sick, holy orders (bishop, priest, and deacon) and marriage. From a canonical perspective, the sacraments are also juridical acts which, in order to be effective, must be licit (made according to the rules defining the ability of persons) and valid (according to the rules which are constitutive of the act). This codified law is added to a so-called 'liturgical' law, promulgated at the same time as the rituals for the celebration of the sacraments and placed in the preliminary parts of the books (*praenotanda*). It also takes its place alongside law promulgated in texts emanating from the pope or the Roman Dicastery for Divine Worship and the Discipline of the Sacraments. The emanation of this category of law is reserved for the supreme authority because of its role in creating and expressing the unity of the church.

The Code of Canon Law devotes a large part of its canons to the law of canonical marriage. This contains all the rules that define the conditions for the existence and manifestation of consent between baptized spouses or, if one is not baptized, under conditions defined by law, i.e. the conditions for its realization, especially in terms of form (Beal 2000: 1234–1260). According to the council, a man and a woman constitute a lifelong community (*totius vitae consortium*). This *foedus* (covenant) is legally a contract. When it meets the conditions laid down by law, the Church says that it is a sacrament of marriage for the spouses. Canon Law establishes a list of conditions which, if not met, could prevent a person from exchanging consent (these conditions are grouped together in a list of impediments known as 'dirimants'). When they do not achieve the ends of marriage, some of these impediments can be lifted by the ecclesiastical authority, as in the case of marriage between a baptized person in the Catholic Church and a non-baptized person, or a baptized person in the Catholic Church and a member of a non-Catholic Church or community. A contracted marriage in canonical form may be declared null and void by an ecclesiastical jurisdiction.

The law sets out a list of defects that affect consent itself, particularly in relation to the freedom to contract. For example, a marriage would be declared invalid if it were proven that at the time of consent one of the partners suffered from a serious lack of discernment concerning the essential rights and duties of marriage to be given and received mutually,

or if causes of a psychological nature prevented him or her from assuming the essential obligations of marriage (canon 1095). It would be the role of ecclesiastical tribunals to establish in each case, and at the end of an adversarial procedure, whether or not the conditions for a true exchange of consent had been met. The church's jurisdiction over marriage is exercised above all over the consents exchanged between baptized persons in the Catholic Church, which it considers to be sacraments. However, the Church's conception of marriage as a 'natural act', willed by the creator and thus receiving its sacred character, raised by Christ to the rank of sacrament. This explains why, despite the evolution of secular conceptions that express their total autonomy from ecclesial conceptions, the church considers itself competent to claim a judgment on its regime in state law.

7 Administration of material goods

The 1983 Code of Canon Law devotes an entire book to the management of 'temporal goods'. This book, which is technical in nature, describes the institutions, procedures, and status of the people involved in management; in other words, all the means necessary for the church to fulfil its mission. Accordingly, canon 1254 states that the church 'may, by virtue of an innate right (*ius nativum*), acquire, conserve, administer and alienate temporal goods'. These are known as 'ecclesiastical' goods, entrusted to the management of various legal entities: the Holy See for the goods that belong to it, dioceses, provinces, conferences of bishops, religious institutes and societies of apostolic life, and institutions and associations that have public canonical status. Each institution has the right to acquire, conserve, administer, and dispose of its own goods according to the purpose of the church, respecting the will of any donors and under the direction of the supreme authority of the Roman Pontiff who is not the owner of the goods, as they are always the property of a specific institution, though he is the guarantor of their proper management.

Book V of the Code does not deal with the question of ownership of the property of *physical persons*. On the other hand, it organizes and governs the management of the property of *juridical persons*, i.e. all groupings of the faithful that have acquired a status and personality of a public canonical nature and that bring together people who live in a territory (such as most dioceses and parishes) or belong by choice to a community (such as institutes of consecrated life and public institutions or associations of the faithful). These persons are collectively the owners of goods intended to support the apostolate. The Code, which calls for reference to the civil law of each country because of its binding force and usefulness, refers to the principle of subsidiarity without naming it, in application of one of the principles for revision of the Code that was expressed by the bishops meeting in synod in 1967. While the pope has a duty and right of vigilance over the institutions of the Church as a whole, being the guarantor of the unity of the management of goods, their

pastoral destination, and their proper use, those to whom they belong are responsible for their ecclesial destination and use.

However, their responsibility is shared. Procedures exist to ensure that the way in which the Church owns, manages, and develops its assets is exemplary. Not only in application of universal moral principles such as honesty, probity, and trust in one's word, but also because of the profound nature of the church. The supreme authority can go as far as controlling the management of property. Book V of the Code mentions that, above a certain sum determined by the local Bishops' Conference or by the statutes themselves, an operation for the management of goods belonging to a juridical person must receive the consent of the supreme authority, which assesses the appropriateness of the decision submitted. In a juridical person where government is not collegial, such as in a diocese, unlike in associative structures, bodies in which the faithful – priests or lay people – participate (such as the college of consultors and the diocesan council for economic affairs) must give their opinion, sometimes their consent, before the decision of the diocesan bishop can be given legal effect. Since the goods belong to a juridical person and not to the natural person who has received the office of head (diocesan bishop or parish priest, superior of the institute, president of the association, etc.), the faithful who belong to the community established (diocese, parish, institute, association, etc.) intervene in the exercise of their management.

8 The judicial system

8.1 The desire for justice

Canon Law, in its books and titles, presents a set of procedural acts to be followed – acts that are sometimes original, sometimes identical to those found in any judicial system – with a view to guaranteeing that the person or persons pronouncing a judgement say what is right. This law is derived from ancient texts made up of conciliar, papal, and synodal legislation, enriched by works of doctrine, some of which have marked the general history of procedures. It is devoted to all types of proceedings, whether they concern conflicts that are internal within the Church, between individuals, or between the authority and the faithful, or declarations of juridical facts, such as an invalid marriage or ordination. It is the equivalent of a code of procedure for hierarchical ecclesiastical tribunals, with diverse competences, created in all the territories where the Church is present, and in Rome, where the Roman Pontiff resides, and where his primacy is also expressed.

Paul the apostle asked that problems be dealt with among Christians, because it is not good to bring disputes before pagan judges (1 Cor 6:5–6). This is why, from the earliest times of the church, bishops exercised a ministry of justice, already a jurisdiction, in institutions that had to settle conflicts. This is shown by one of the oldest canonical texts, the *Didascalia* of the apostles of the second century CE, which describes how

conflicts should be resolved, a mission given by God to the bishop as Christ's vicar. This is the beginning of the history of justice in the church, which soon became the justice *of* the church when societies relied on it. From recognized services in conflict with civil jurisdictions, history leads us to the following canon of the Code, which determines the scope of the Church's judicial activity: to hear causes concerning spiritual matters, those related to them and the violation of ecclesiastical laws (canon 1401).

The canonical system, however, seeks to develop and encourage procedures of conciliation or mediation between persons. The question of maintaining the traditional system of tribunals arose when the principles for the revision of the old 1917 Code were presented. Although the Second Vatican Council wanted to go beyond the ecclesiology that organized the church in the image of states, the bishops decided to preserve the legal security of procedures that had proved their worth in past centuries, adapting them to the needs of a changed world. It was thought that this would guarantee justice, both in the relationship between the members of the church and between those who govern and those who implement their decisions. This synod declared that it is not enough that the principle of the defence of rights prevails in Canon Law. It is also necessary to recognize genuine subjective rights, without which there can be no just organization of a society.

8.2 Judicial and penal decisions

There are several types of cases on which a court can pass judgment. Firstly, contentious cases may be presented to it by members of the diocese who claim recognition of their rights (reputation, right to a given rite, right to ownership, respect for contracts, etc.) and, possibly, reparation for damage caused. Such rights can be protected in an ecclesiastical court, but in most cases people take their cases to the civil courts. Therefore, many diocesan courts are specialized in matrimonial nullity cases. Their proceedings generally follow a previous decision in the case of a divorce, which will have defined the problems of child custody and the ownership of property following the breakdown of a relationship. A body of case law has developed in the diocesan courts, which is partly published but has no special status, unlike the regularly published case law of the Roman Rota (*Rotae Romanae decisions seu sententiae*), that papal court to which any member of the faithful can apply, which has a regulatory function (Daniel 2016) similar to that of an appeals court in the Civil Law systems.

The canonical judicial system also has a system of administrative appeals and an administrative jurisdiction similar to that of modern States. It was Pope Paul VI who introduced the present system in the Catholic Church on the occasion of the reform of the Roman Curia which he undertook in 1967 (Martens 2013: 228–235). In fact, he created an administrative tribunal that can receive complaints against singular administrative acts, i.e. intended for natural and juridical persons. Any act emanating from a person holding the

power of government, whether at the particular level, such as a bishop, or at the universal level, such as a Roman Dicastery, may be submitted to it (for example, the dismissal of a person, cleric or lay, from an official position or the suppression or even transformation of a parish). Only administrative acts brought by the pope are not subject to this jurisdiction. In the case of an act of a diocesan bishop, before applying to this tribunal, it is necessary to have first addressed the author of the act for reconsideration and then to have presented the complaint to the competent dicastery of the Roman Curia for the cases in question, by means of a hierarchical appeal.

Among the decisions affecting persons and their juridical status, the Code of Canon Law deals in a special way with those containing sanctions against the faithful, described in Book VI of the Code, reformed in 2021, which determines the consequences of certain acts on the status of the faithful within the Catholic Church, as with cases of excommunication (Austin 2021). It first declares the right of the church to impose sanctions, which is a modern form of affirmation of the *ius nativum* (innate right) to exercise jurisdiction in the states. Then, the first canon of Book VI exhorts those who preside in the church to protect and promote the good of the community itself and of each of the faithful by means of counsels, exhortations and, if necessary, by the infliction or declaration of penalties. This must be done following the precepts of the law, which must always be applied with canonical equity, and taking into account the restoration of justice, the correction of the guilty and the reparation of scandal.

The purpose of the penal law is to protect the communion of the church when, for example, it is applied in cases of heresy, apostasy, or schism, and the more contemporary case of rendering justice when people have been abused. The reform of the book is due to the multiplication and revelation of cases of sexual abuse of minors that have come to light and the slow but progressive desire to move away from this situation, as well as changes in society concerning respect for minors and personal privacy. The ecclesiastical authorities have produced legislation, which is still being perfected, the main points of which are help for victims, the protection of minors under their care, the training of clergy and canonical criminal procedures for dealing with cases that are primarily the responsibility of a country's criminal justice system.

Attributions

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Bibliography

Further reading

- Beal, John P., James A. Coriden, and Thomas J. Green (eds). 2000. *New Commentary on the Code of Canon Law*. New York/Mahwah, NJ: Paulist Press.
- Huels, John. 2017. *The Teaching Office of the Catholic Church: A Commentary on Book III of the Canon Law*. Ottawa: Saint-Paul University.
- Melloni, Alberto, and Silvia Scatena (eds). 2005. *Synod and Synodality: Theology, History, Canon Law and Ecumenism in New Contact. International Colloquium Bruges 2003*. Munich: Lit Verlag.
- Örsy, Ladislas M. 2000. 'Theology and Canon Law', in *New Commentary On The Code of Canon Law*. Edited by John P. Beal, James A. Coriden, and Thomas J. Green. New York/Mahwah, NJ: Paulist Press, 1–9.

Works cited

- Arrieta, Juan I. (ed.). 2010. *Ius divinum nella vita della Chiesa, XII Congresso Internazionale di diritto canonico (Divine Law in the Life of the Church, 12th International Congress of Canon Law)*. Venice: Marcianum Press.
- Arrieta, Juan I. 2021. *Corso di diritto Vaticano (Course in Vatican Law)*. Rome: Edizioni Santa Croce.
- Austin, Brian T. 2021. 'The Revised Book VI, Part I Selected Norms and Commentary', *The Jurist* 77: 291–334.
- Beal, John P., James A. Coriden, and Thomas J. Green (eds). 2000. *New Commentary on the Code of Canon Law*. New York/Mahwah, NJ: Paulist Press.
- Beal, John P. 2000. 'Marriage', in *New Commentary On The Code of Canon Law*. Edited by John P. Beal, James A. Coriden, and Thomas J. Green. New York/Mahwah, NJ: Paulist Press, 1234–1239.
- Colombo, Giovanna M. 2003. *Sapiens Aequitas. L'equità nella riflessione canonistica tra i due codici (Fairness in Canonical Reflection between the two Codes)*. Rome: Gregorian University Press.
- Congar, Yves. 1970. *L'Église: De saint Augustin à l'époque moderne (The Church: From Saint Augustine to the Modern Era)*. Paris: Cerf.
- Corecco, Eugenio. 1976. *Teologia del diritto canonico*. Edited by G. Barbaglio and S. Dianich. Cinisello Balsamo: Edizioni Paoline.
- Daly, Brendan. 2022. 'What Is Changed in the 2021 Revision of Penal Law?', *The Canonist* 12: 210–221.
- Daniel, William L. 2016. 'The Notion of Canonical Jurisprudence and Its Application to the Tribunal of the Roman Rota and Causes of Nullity of Marriage', *The Jurist* 76: 197–229.

- D’Arienzo, Maria. 2012. *Il concetto giuridico di responsabilità: Rilevanza e finzione nel diritto canonico (The Legal Concept of Responsibility: Relevance and Fiction in Canon Law)*. Cosenza: Luigi Pellegrini Editore.
- De la Hera, Alberto, and Charles Munier. 1964. ‘Le droit public à travers ses définitions (Public Law through its Definitions)’, *Revue de droit canonique* 14: 32–63.
- Fantappiè, Carlo. 2011. *Storia del diritto canonico e delle istituzioni della Chiesa (History of Canon Law and Church Institutions)*. Bologna: Il Mulino.
- Fermanel, Frederic. 2021. *La synodalité épiscopale dans la Province ecclésiatique latine: sa physionomie dans l’ordonnancement canonique actuel, particulièrement en France (Episcopal Synodality in the Latin Ecclesiastical Province: its Physiognomy in the current Canonical Order, particularly in France)*. Rome: Gregorian and Biblical Press.
- Huels, John. 2017. *The Teaching Office of the Catholic Church: A Commentary on Book III of the Canon Law*. Ottawa: Saint-Paul University.
- La Due, W. 1972. ‘A Written Constitution for the Church?’, *The Jurist* 32: 1–13.
- Martens, Kurt. 2010. ‘From Hierarchical Recourse to Alternative Conflict Resolution: A Blessing or a Curse?’, in *Iustitia Et Iudicium*. Edited by J. Kowal and J. Llobel. Vatican City, 228–235.
- Martens, Kurt. 2013. ‘Brief Note on the Apostolic Signatura and the Contentious–Administrative Recourse’, *The Jurist* 73: 228–235.
- Melloni, Alberto, and Silvia Scatena (eds). 2005. *Synod and Synodality: Theology, History, Canon Law and Ecumenism in New Contact. International Colloquium Bruges 2003*. Munich: Lit Verlag.
- Minelli, Chiara. 2015. *Rationabilitas e codificazione canonica. Alla ricerca di un linguaggio condiviso*. Turin: G. Giappichelli Editore.
- Minnerath, Roland. 1982. *Le droit de l’Église à la liberté. Du Syllabus à Vatican II (The Church’s Right to Freedom. From the Syllabus to Vatican II)*. Paris: Beauchesne.
- Nedungatt, George, and Georges-Henri Ruyssen. 2020. *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches*. Rome: Edizioni Orientalia Christiana.
- Örsy, Ladislas M. 2000. ‘Theology and Canon Law’, in *New Commentary On The Code of Canon Law*. Edited by John P. Beal, James A. Coriden, and Thomas J. Green. New York/Mahwah, NJ: Paulist Press, 1–9.
- Renken, John A. 2000. ‘Particular Churches and Their Groupings’, in *New Commentary on the Code of Canon Law*. Edited by John P. Beal, James A. Coriden, and Thomas J. Green. New York/Mahwah, NJ: Paulist Press, 501–565.
- Roman Catholic Church. 1983. *Codex Iuris Canonici (The Code of Canon Law)*.

◦ Rouco-Varela, Antonio. 1973. ‘Le statut ontologique et épistémologique du droit canonique. Notes pour une théologie du droit canonique (The Ontological and Epistemological Status of Canon Law. Notes for a Theology of Canon Law)’, *Revue des Sciences philosophies et théologiques* 57: 203–227.
◦ Salachas, Dimitrios. 1997. *Il diritto canonico delle Chiese orientali nel primo millennio. Confronti con il diritto canonico attuale delle Chiese orientali cattoliche CCEO (The Canon Law of the Eastern Churches in the First Millennium. Comparisons with the current Canon Law of the Eastern Catholic Churches)*. Bologna: EDB.
◦ Toxé, Philippe. 2002. ‘La hiérarchie des normes canoniques latines ou la rationabilité du droit canonique (The Hierarchy of Latin Canonical Norms or the Rationality of Canon Law)’, *L’année canonique* 44: 113–128.
◦ Valdrini, Patrick. 2010. ‘La ricezione della legge nel diritto canonico. Pertinenza e significato (The Reception of the Law in Canon Law. Relevance and Meaning)’, *Diritto e religione* 9: 141–159.
◦ Valdrini, Patrick. 2016. ‘Salus animarum in Latin canon Law: Salus animarum, Rationabilitas and Aequitas in Oikonomia, Dispensatio and Aequitas canonica’, *Kanon* XXIV: 335–344.
◦ Valdrini, Patrick. 2017. *Leçons de droit canonique. Communautés, personnes, gouvernement*. Paris: Salvator.
◦ Valdrini, Patrick. 2019. ‘La Question de La Représentation Du Collège Episcopal En Droit Canonique (The Question of Representation of the College of Bishops in Canon Law)’, in *Primacy and Synodality. Deepening Insights. Proceedings of the 23th International Congress of the Society for the Law of the Eastern Church Debrecen, September 3–8*. Edited by Péter Szabó. Nyíregyháza: Canon XXV, 261–274.