

**EXPLICIT AND IMPLICIT RIGHTS COMMON TO ALL THE FAITHFUL IN
THE CODE OF CANON LAW**

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ABSTRACT

This study identifies and analyses the explicit and implicit rights in the *Code of Canon Law* that are common to all the faithful, that is, the canonical rights of all the baptized *christifideles* and, in particular, the Catholic faithful. Excluded, therefore, is a consideration of the special rights of particular groups of the faithful such as the laity, clerics, religious, office holders, married persons, etc. Although the focus of the thesis is on the canons of the Latin Code, the counterpart canons of the *Code of Canons of the Eastern Churches* are always noted when they exist.

Explicit rights in canon law are indicated by the word *ius* or a synonym of same. An implicit right has no explicit terminology indicating a right, but the right is implied in the meaning of the law. Mostly, such rights are implied in the legal obligations of office holders and ministers. That they are obliged by law to do something for the benefit of the faithful implies a concomitant right of the faithful that it be done. Other requirements of the law may also give rise to implicit rights. These can only be known by a careful study and interpretation of the law considered in text and context. There are also certain Latin grammatical expressions commonly used in canon law for obligations or other requirements of law, and frequently these are indicators of an implied right.

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ABBREVIATIONS

| | |
|--------------------|--|
| <i>AA</i> | SECOND VATICAN COUNCIL, Decree on the Apostolate of Lay People <i>Apostolicam actuositatem</i> |
| <i>AAS</i> | <i>Acta Apostolicae Sedis, Commentarium officiale</i> |
| <i>AG</i> | SECOND VATICAN COUNCIL, Decree on the Church's Missionary Activity <i>Ad gentes</i> |
| <i>ASS</i> | <i>Acta Sanctae Sedis</i> |
| <i>c.</i> | Canon |
| <i>cc.</i> | Canons |
| <i>CCEO</i> | <i>Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione auctus</i> |
| <i>CCLA</i> | E. CAPARROS et al. (eds.), <i>Code of Canon Law Annotated</i> |
| <i>CIC/17</i> | <i>Codex iuris canonici, Pii X Pontificis Maximi iussu digestus</i> |
| <i>CIC</i> | <i>Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus</i> |
| <i>CLD</i> | <i>Canon Law Digest</i> |
| <i>CLSA</i> | Canon Law Society of America |
| <i>CLSAComm1</i> | J.A. CORIDEN, T.J. GREEN, and D.E. HEINTSCHEL (eds.), <i>The Code of Canon Law: A Text and Commentary</i> |
| <i>CLSA Comm2</i> | J.P. BEAL, J.A. CORIDEN, and T.J. GREEN (eds.), <i>New Commentary on the Code of Canon Law</i> |
| <i>CLSANZ</i> | <i>Canon Law Society of Australia and New Zealand Newsletter</i> |
| <i>CLSAP</i> | <i>Canon Law Society of America Proceedings</i> |
| <i>CLSGBI</i> | Canon Law Society of Great Britain and Ireland |
| <i>CLSGBI Comm</i> | G. SHEEHY et al. (eds.), <i>The Canon Law: Letter & Spirit</i> |
| <i>DCE</i> | BENEDICT XVI, Encyclical Letter <i>Deus caritas est</i> |
| <i>DH</i> | SECOND VATICAN COUNCIL, Declaration on Religious Liberty <i>Dignitatis humanae</i> |

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| <i>DOL</i> | <i>Documents on the Liturgy 1963-1979, Conciliar, Papal and Curial Texts</i> |
| <i>DV</i> | SECOND VATICAN COUNCIL, Dogmatic Constitution on Divine Revelation <i>Dei Verbum</i> |
| <i>Exegetical Comm</i> | A. MARZOA, J. MIRAS, and R. RODRÍGUEZ-OCAÑA (eds.) and E. CAPARROS [gen. ed. of English translation], <i>Exegetical Commentary</i> |
| <i>FLANNERY1</i> | A. FLANNERY (gen. ed.), <i>Vatican Council II: The Conciliar and Post Conciliar Documents</i> , vol. 1 |
| <i>FLANNERY2</i> | A. FLANNERY (gen. ed.), <i>Vatican Council II: More Post-Conciliar Documents</i> , vol. 2 |
| <i>GE</i> | SECOND VATICAN COUNCIL, Declaration on Christian Education <i>Gravissimum educationis</i> |
| <i>GS</i> | SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World <i>Gaudium et spes</i> |
| <i>LE</i> | JOHN PAUL II, Encyclical Letter <i>Laborem exercens</i> on the Commemoration of the Ninetieth Anniversary of <i>Rerum novarum</i> |
| <i>LG</i> | SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church <i>Lumen gentium</i> |
| NCCB | National Conference of Catholic Bishops (of the USA—prior to 1 July 2001) |
| <i>OA</i> | PAUL VI, Apostolic Letter <i>Octogesima adveniens</i> |
| <i>OE</i> | SECOND VATICAN COUNCIL, Decree on the Catholic Eastern Churches <i>Orientalium Ecclesiarum</i> |
| <i>OT</i> | SECOND VATICAN COUNCIL, Decree on the Training of Priests <i>Optatam totius</i> |
| <i>PP</i> | PAUL VI, Encyclical Letter <i>Populorum progressio</i> |
| <i>PT</i> | JOHN XXIII, Encyclical Letter on Establishing Universal Peace in Truth, Justice, Charity and Liberty <i>Pacem in terris</i> |
| <i>RH</i> | JOHN PAUL II, Encyclical Letter <i>Redemptor hominis</i> |
| <i>RN</i> | LEO XIII, Encyclical Letter <i>Rerum novarum</i> |

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| <i>SC</i> | SECOND VATICAN COUNCIL, Constitution on the Sacred Liturgy <i>Sacrosanctum concilium</i> |
| <i>SRS</i> | JOHN PAUL II, Encyclical Letter <i>Sollicitudo rei socialis</i> |
| <i>TPS</i> | <i>The Pope Speaks</i> |

GENERAL INTRODUCTION

In my experience as a priest working in India and Africa, I realized that the majority of Christian faithful do not have much, if any, knowledge of canon law. At times, even the pastors who guide these Christians do not really know the richness of the Code, and they seem scarcely aware of the existence of the canonical rights enjoyed by those in their pastoral care. The reformed *Code of Canon Law* went into effect more than three decades ago, yet it is not fully utilized or even discovered by many. The rights of the faithful can only be realized and appreciated when the faithful know what rights they have. In order to vindicate one's rights, one needs to know them. This is a considerable challenge, however, since many rights in the Code are implicit, that is, not explicitly stated to be rights, so that they may not even be recognized as rights. Here is where our study of explicit and implicit rights hopes to make a contribution not only to the science of canon law but also to its observance by the Catholic faithful and the pastors of the Church.

It is sometimes recognized by canonical authors that, whenever an officeholder or another has a legal obligation to fulfill on behalf of the community, the faithful have a corresponding right that this duty be fulfilled. This is an implicit right. Implicit means that no right is explicitly mentioned, but the right is implied and may be inferred. However, canons that impose an obligation are not the only ones that contain implicit rights, as this study will demonstrate. Indeed, we shall see below in this Introduction that there are implicit rights even in the very sections of the Code that deal explicitly with rights and obligations.

When canonists think about rights in canon law, and when authors write about canonical rights, their attention is mainly directed to one or more of the sections of the

Code that explicitly treat rights: those on the obligations and rights of all the faithful in general (cc. 208-223), of the lay faithful (cc. 224-231), of clerics (cc. 273-289), and of religious institutes and their members (cc. 662-672). Attention is also given to the obligations and rights of parents, which are mentioned in a number of the canons (cc. 226, §2; 747; 774, §2; 793, §1; 796, §1; 796, §2; 798; 1136). However, it has been our observation that rights run throughout the Code of Canon Law in all seven books. These are sometimes explicit, even if some other terminology besides “right” is used in the law. For the most part, however, these rights are implicit and only knowable as rights by fully grasping the meaning of the canon. The goal of our thesis is to discover these rights of the *christifideles* in the Code, both those that are explicit and those that are implicit.

Methodology

Canon 17 provides the fundamental rules for the correct interpretation of canon law. “Ecclesiastical laws must be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse must be made to parallel places, if there are such, to the purpose and circumstances of the law, and to the mind of the legislator.” Canon 17, then, is the guidepost for this thesis, in particular in chapters 2-4. We look first to the text of the law to identify explicit or implicit rights. For the explicit rights, this textual analysis usually suffices. For the implicit rights, moreover, we shall seek to present the meaning of each canon under consideration. Thus, for each canon with an implicit right, the text of the canon will be given followed by a brief explanation of it based on the canonical doctrine in standard commentaries on the Code and in specialized books and articles. These explanations will be helpful, and at times even necessary, in identifying the existence of an implicit right.

As noted, four sections of the Code of Canon Law treat rights in both text and context, those on the rights of all the faithful, of the laity, of clergy, and of religious. For the most part, the canons in these sections explicitly state the rights of persons. A sizeable number of canons, however, do so only implicitly. We shall now briefly analyze the canons of these four sections of the Code to identify and distinguish explicit and implicit rights. By so doing, we believe that a proper methodology will emerge that will enable us to identify explicit and implicit rights elsewhere in canons of the Code where these other canons lack the specific context of “obligations and rights.”

All the faithful. Part I of Book II of the Code, in Title I, treats the fundamental rights and obligations that are common to all the baptized faithful. In addition to the obligations, this Title names sixteen distinct rights. Thirteen of these are explicitly stated. Ten of these thirteen use the exact word “right” in different ways: *habent ius* or *ius habent* (cc. 211, 215, 216, 217), *ius est* (cc. 213, 214, 221, §2, 221, §3), *iure gaudent* (c. 219), or simply *ius* (c. 220). Three canons use an expression other than *ius* which, nevertheless, explicitly indicate a right in that the legislator could have used *ius* in their stead and the meaning would be the same. One of these expressions is *integrum est* (cc. 212, §2, 215), as in *integrum est christifidelibus*. This may be translated as “the Christian faithful are at liberty,” or “the Christian faithful are free.” If the law says the faithful are at liberty or free to do something, it means that they have the right to do it. The other expression in this Title that explicitly indicates a right is *libertate fruuntur* (c. 218), which may be translated as “have the liberty” or “enjoy the freedom.” Again, if the law says that the faithful are at liberty or enjoy the freedom to do something, the legislator is explicitly giving them the right to do it.

Three of the canons in this Title on rights and obligations have rights that are only indicated implicitly. Canon 220 begins by saying, “no one is permitted to harm illegitimately the good reputation which a person possesses.” The canon is worded negatively; it is a blanket prohibition against every illegitimate violation of a person’s good reputation. Implicit in this prohibition, however, is the affirmation of the positive right of the Christian faithful to the protection of their good name.

Another implicit right is seen in c. 221, §1: “The Christian faithful have the competence (*Christifideles competit*) to vindicate legitimately their rights” The word *competit* may indicate just a capability or competence to do something, but here a right is implied. The canon does not explicitly state that this competence is a right, but it is implicit both from the context of Title I and from the text itself. In saying that the faithful have the competence to vindicate their rights, the canon implies that they have the right to do so.

A third instance in this Title of an implicit right is seen in c. 208: “From their rebirth in Christ, there exists among all the Christian faithful a true equality regarding dignity and action by which they all cooperate in the building up of the Body of Christ according to each one’s own condition and function.” Clearly, no right is explicitly stated in this canon. However, a right is implied in saying that “there exists among all the Christian faithful a true equality regarding dignity and action.” Implicit in this affirmation of a *vera aequalitas* common to all the faithful is their right to equal treatment under the law, always “according to each one’s own condition and function.

The lay faithful. Part I, Title II of Book II of the Code treats the Obligations and Rights of the Lay Christian Faithful (cc. 224-231). In addition to the obligations, this Title names fourteen distinct rights. Seven of these are explicitly stated by using the exact word

“right” in different ways: *iure gaudent* (cc. 225, §1, 226, §2, 229, §1, 229, §2), *ius est* (c. 227), *ius habet* and *ius competit* (both in c. 231, §2).

The other seven rights in this Title are only implicit. None of these is a strict right as such, but rather they are capabilities that imply a right. For example, c. 228, §1 begins by saying, “lay persons who are found suitable are qualified (*sunt habiles*) to be admitted by the sacred pastors to those ecclesiastical offices and functions which they are able to exercise according to the precepts of the law.” To be qualified for an office or other task does not mean that one has a right to it. The implicit right, rather, is for fair consideration, all things being equal. If a lay person is qualified for a certain office or function, he or she may not lawfully be passed over in favour of a cleric solely because of being lay.¹ That would be blatant clericalism and contrary to the right of this canon. There would have to be some just reason to prefer the cleric instead of the lay person if both are equally competent. The other implied rights like this one are in cc. 228, §§ 2, 3 (twice: *habiles sunt*); 230, §1 (*assumi possunt*); 230, §2 (*implere possunt*); 230, §2 (*fungi possunt*); and 230, §3 (*possunt supplere*).

Clerics. Part I, Title III of Book II of the Code treats the Obligations and Rights of Clergy (cc. 273-289). In addition to the obligations, this Title names six rights but only once uses the word “right” (*ius est* in c. 278, §1). In two instances, this section of the Code addresses the issue of the remuneration of clerics in general (c. 281, §1) and of married deacons in particular (c. 281, §3). In both instances, the law says that the clerics in question deserve remuneration (*remunerationem merentur*). If the clergy are deserving of remuneration, they have a right to it. Thus, we conclude that this is an explicit right not

¹ Cf., however, c. 274, §1, discussed below.

only from the context but also from the text itself. To say one is deserving of remuneration is simply another way of saying one has a right to remuneration.

Canon 283, § 2 literally says that clerics are qualified to enjoy (*competit ut gaudeant*) an annual vacation. The CLSA translation renders this as being “entitled to” a vacation, that is, they have a right to it. So, this is another way of explicitly indicating a right.

In the other two canons in question, the rights are implicit. Canon 274, §1 states: “Only clerics can obtain offices for whose exercise the power of orders or the power of ecclesiastical governance is required.” The canon uses the term *obtinere possunt*, that is, it is a capability to obtain such offices. Since lay persons are by divine law excluded from offices requiring the power of order, the implied right of the canon is that, all things being equal, a cleric has preference over a lay person for an office entailing the exercise of the power of governance.² For example, if there are two equally qualified applicants for the office of judge, one a permanent deacon and the other a lay person, the deacon has the right to be appointed. This is an exception to the general rule discussed above concerning c. 228, §1.

Canon 281, §2 says, “provision must also be made (*item providendum est*) so that [clerics] possess (*gaudeant*) that social assistance which provides for their needs suitably if they suffer from illness, incapacity, or old age.” Here a right is implied in the *obligation* of the ecclesiastical authority to provide the necessary social benefits for the clergy of his jurisdiction. We shall see, in subsequent chapters of this thesis, that this kind of right, implied in a concomitant obligation, is the most frequent kind of right in the Code.

² This right, however, in no way excludes lay persons from all offices entailing the exercise of the power of governance (c. 129, §2; cf. e.g. c. 1421, §2).

Religious. Part III of Book II of the Code, in Title II, treats the Obligations and Rights of Institutes and Their Members (cc. 662-672). Most of the canons in this section fall under obligations. There are no explicit rights, but two of the eleven canons imply rights. Firstly, c. 668, §1 says in part, “Before first profession, members are to cede the administration of their goods to whomever they prefer and, unless the constitutions state otherwise, are to make disposition freely for their use and revenue.” This law is an obligation, but two rights are implied, namely, the right of novices to cede the administration of their goods *to whomever they prefer* and, unless the constitutions state otherwise, the right *to make disposition freely* of their use and revenue.

Canon 670 states: “An institute must supply (*debet suppeditare*) the members with all those things which are necessary to achieve the purpose of their vocation, according to the norm of the constitutions.” Again, we see a right implied in an obligation. Since the institute is strictly obliged to supply everything necessary for one’s religious vocation, each member has a strict right to all those things (*omnia*) necessary for their vocation, *ad normam constitutionem*.

Conclusions. This analysis of the sections of the Code which treat rights of all the faithful, the laity, the clergy, and religious lead to several conclusions that can be the methodological basis for the investigation to be undertaken in this thesis. From this exercise, we have seen that the canonical legislator does not restrict himself to using the word *ius* when he wishes to declare or constitute a right in the law. A total of thirty-eight rights are acknowledged in these four sections of the Code. Of these, twenty-four are explicitly stated, eighteen times actually using the word *ius* while in another six instances substituting a different expression that has the same meaning in the context. These other

words are *integrum est* (occurring twice), *iusta libertate fruuntur*, *remunerationem merentur* (occurring twice), and *competit ut gaudeant*. So, the first conclusion is that rights in canon law are explicitly recognized not only by using the word *ius* but also by using other terminology which may be substituted for *ius*. If the substituted word or expression may be changed to *ius* with no change in the meaning of the law, the right in question is explicit.

The second conclusion is that rights in canon law may be accorded implicitly, that is, with no words in the law that has a meaning equivalent to *ius*. In these four sections of the Code that explicitly treat rights, the legislator nevertheless declares or accords many of them only implicitly in the wording of the canons without any explicit mention of a right. Of the total of thirty-eight rights in these four sections, fourteen are implicit, that is, 37% of the total. We have seen rights implied in a prohibition, in various obligations, in several competencies and capabilities, and by the divine law in the baptismal dignity of all the faithful. We will show in this thesis that implicit rights are found throughout the Code, not just in these four sections explicitly devoted to rights and obligations.

Structure

Our study is divided into four chapters. In Chapter One, the focus will chiefly be on the fundamental rights of the faithful, that is, the “constitutional” rights of the faithful in Title I of Book II of the Code. In Chapter Two, we continue our survey of the rights of all the *christifideles*, both explicit and implicit rights, which are found in the *Code of Canon Law*. The concern of this second chapter is the rights of the faithful in the canons on the Church’s teaching office in Book III of the Code, entitled *De Ecclesiae munere docendi*.

In Chapter Three, we will focus on the rights of the faithful in Book IV of the Code, “The Sanctifying Office of the Church” (*De Ecclesiae munere sanctificandi*).

Chapter Four discusses canons related to the governing office of the Church (*munus regendi*) from Books II and V of the Code. In Book II, entitled “The People of God” (*De Populo Dei*, cc. 204-746), our concern will be with Part I, “The Christian Faithful” (the *christifideles*, cc. 204–329), and Part II, “The Hierarchical Constitution of the Church” (cc. 330–572). The other sections of Book II do not fall within the parameters of this study since they do not contain rights common to *all* the Christian faithful. Book V, on “The Temporal Goods of the Church” (*De bonis Ecclesiae temporalibus*, cc. 1254-1310), contains a number of rights common to all the faithful.

In the first two appendices, we list the explicit and implicit rights common to all the faithful contained in Books I, VI, and VII of the Code. Although these are equally rights of the *munus regendi*, there is no need to comment on all of them since, after four chapters, a solid basis will have been established to yield general conclusions about explicit and implicit rights. The third appendix is very important to this thesis. It gives grammatical indicators for identifying implicit rights in canon law and assessing their weight. This appendix is explained in the general conclusions.

Exclusions

One limit of this study is its object, namely, the *Code of Canon Law*. The Latin Catholic Church knows many other sources of universal and particular law. There are also many thousands of particular and common laws of the Eastern Catholic Churches *sui iuris*, most importantly the *Code of Canons of the Eastern Churches*. However, it is both impractical and unnecessary to consider all of this, for we are convinced that the results of

our thesis can readily be applied to all other sources of Church law dealing with subjective rights. All these rights are contained in laws that comprise one and the same system of Roman Catholic canon law.

Second, our study is only concerned with *express* rights in the canons, be they explicit or implicit in the wording of the law. We believe, however, that there are also some *tacit* rights in canon law, that is, rights which cannot be identified from the text or immediate context of the law but can only be known after a profound study of the manifold contexts of the law. For instance, James Conn maintains that the faithful have a right to know the names of the professors who have the *mandatum* to teach theological disciplines (c. 812). No such right is discernible from the text or context of the canon, not even implicitly, but Conn offers good arguments in favour of the existence of the right.³

Third, the focus of our study is on the rights that are common to the Christian faithful in general, that is, only to baptized Christians (c. 204, §1) and, in particular, those who are in the full communion of the Catholic Church (cf. cc. 11, 204, §2). This excludes large areas of the Code in which rights may be found, especially procedural rights, because these rights are equally enjoyed by the unbaptized who may access the Church's canonical system, especially its tribunals and curias.⁴ Moreover, we will not consider rights that are

³ Conn states that the purpose of the mandate of c. 812 "is to assure the community that someone teaching theology is doing so in communion with the Church, that he is faithful to the Magisterium, and that he is not proposing doctrine that is opposed to it. The Catholic faithful and the parents of Catholic youth have a right to this assurance in choosing institutions of higher education. This right is enshrined in the law in a variety of places and is derivative of other guaranteed rights...." He mentions the rights in cc. 213, 217, 226 § 2, 793, §1 and 797. J.J. CONN, "The Mandate of Can. 812 Revisited," in James J. CONN and Luigi SABBARESE (eds.), *Iustitia in caritate. Miscellanea di studi in onore di Velasio de Paolis*, Vatican City, Urbaniana University, 2005, 227-248, at 246-247.

⁴ Canon 1476 makes it clear that the unbaptized may approach the judicial forum. There is no comparable canon with respect to administrative recourse, but two key canons do not mention *christifideles* and so are open to any person (cc. 128, 1733, §1). The essential condition would be that the person could claim a real grievance, and this presupposes that the person has some right. For example, an unbaptized employee is fired by the ecclesiastical authority contrary to a provision/procedure in her employment contract. She could take recourse (cf. c. 1290). This matter was treated in a decision of the Apostolic

particular to any ecclesiastical office, dignity, or juridical status (cleric, cardinal, religious, lay, married, parents, minors). There are several reasons for this choice. The first is that there are already fairly abundant studies on the rights of distinct groups of the faithful. Few have been concerned with the rights of *all* the faithful, apart from those studies on the several canons at the beginning of Book II of the Code that are devoted to this matter (cc. 208-223). Second, it is necessary for practical reasons to limit the scope of the thesis lest it become unwieldy. Third, and more positively, we see our focus on the rights common to all the faithful as a concrete expression of the fundamental teaching of the Second Vatican Council that the Church is the People of God – all the *christifideles* – not just the hierarchy, or the clergy, or officeholders, or any other particular group. Instead of concentrating on what differentiates the clergy from the laity, what separates those in powers and from those in the pews, our thesis is devoted to the rights they all share in virtue of their baptismal dignity and in Church law.

Signatura, where the principal concern was the ability to approach an administrative *tribunal*, i.e., for contentious-administrative recourse before the *Signatura*. However, that is not possible if one has not first made administrative recourse. See William DANIEL, *Ministerium Iustitiae: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, Montreal, Wilson & Lafleur, 2011, document 20b.

CHAPTER ONE

FUNDAMENTAL RIGHTS OF THE FAITHFUL

The 1983 Code of Canon Law⁵ made significant contributions to the recognition of the rights of all faithful with the inclusion of canons on the fundamental rights and duties of the faithful at the beginning of Book II. The subject of rights is a particular interest of canonists. The Code of 1983 was promulgated three decades ago, but still the word “right” is a topic of interest and contention especially in today’s postmodern world.⁶

Rights denote an expression of freedom. The Christian freedom as envisaged by our Lord in the gospels is central to those who believe in him: “If you continue in my word, you are truly my disciples; and you will know the truth, and the truth will make you free” (John 8:31-32). This is fundamental to all who believe in Jesus, and therefore rights must be viewed in the context of our Christian freedom. The fundamental rights are parameters for the faithful, and they also empower the faithful to live out their Christian vocation. Freedom enables them to fulfill their calling.⁷

⁵ *Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus fontium, annotatione et indice analytico-alphabetico auctus*, Libreria editrice Vaticana, 1989, English translation *Code of Canon Law: Latin-English Edition, New English Translation*, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 1999. All references to the canons of the 1983 Code will be styled “c.” for canon and “cc.” for canons, followed by the canon number(s).

⁶ See J. TINOKO, “The Fundamental Rights and Obligations of the Faithful,” in *Philippiniana Sacra*, 18 (1983), 392 (=TINOKO, “The Fundamental Rights and Obligations of the Faithful”). See also J.A. CORIDEN, “A Challenge to Make Rights Real,” in *The Jurist*, 45 (1985), 1-23 (=CORIDEN, “A Challenge to Make Rights Real”); F.G. MORRISEY, “The Rights and Duties of the Faithful according to the Code of Canon Law,” in *Studies in Church Law*, 1 (2005), 25-48 (=MORRISEY, “The Rights and Duties of the Faithful”); J. KINNEY, “Rights and Duties of the Faithful in the Schema ‘People of God’: An Encouragement to Exercise Them,” in *CLASP*, 42 (1980), 107-114 (=KINNEY, “Rights and Duties of the Faithful in the Schema ‘People of God’”).

⁷ See J.A. CORIDEN, *The Rights of Catholics in the Church*, New York/Mahwah, NJ, Paulist Press, 2007, 4 (=CORIDEN, *The Rights of Catholics in the Church*).

This initial chapter surveys the Church's teaching and canon law on the fundamental rights of the faithful as this is developed in papal teachings, the documents of Vatican II, and in cc. 208-223 of the 1983 Code of Canon Law. It has six major sections: (1) the notion of rights, (2) modern papal teachings on fundamental rights prior to Vatican II, (3) fundamental ecclesial rights of the faithful as presented in the documents of the Second Vatican Council, (4) papal teachings on the subject after Vatican II, (5) fundamental rights in canon law before the 1983 Code, and (6) the rights of the faithful as treated in cc. 208-223 of the 1983 Code (Book II, Part I, Title I).

1.1 The Notion of Rights

This opening section deals with some basic preliminary matters related to rights. These are treated in four subsections: (1) the meaning of rights in the Church, (2) the classification of different kinds of rights, (3) the *christifideles*⁸ who are the subjects of rights in the Church, and (4) the relation of rights to obligations in canon law.

1.1.1 The meaning of rights in the Church

What is a right? There are different ways the question of the exercise of rights in the Church and its expression of right can be understood. It has different meanings, and there is no one single meaning to give.⁹ G.J. Robinson points out that “in some societies it seems to be easy to ascertain these values; however, in the pluralist and changing societies

⁸ *Christifideles* is the technical word in the 1983 Code for a member of the Church. See c. 204.

⁹ See R.J. BARRETT, “The Rights of the Faithful: Some Signs of Progress,” in *The Irish Theological Quarterly*, 61 (1995), 256 (=BARRETT, “The Rights of the Faithful: Some Signs of Progress”). See also A. MENDONÇA, “Promotion and Protection of Rights in the Church,” in *Philippiniana Sacra*, 33 (1998), 435-466 (=MENDONÇA, “Promotion and Protection of Rights in the Church”).

of today it is often challenging and difficult. In the absence of an agreed basis for rights, it is quite often difficult to find a common ground for discussion with many people.”¹⁰

The term “right” from the etymological point of view derives from the Latin word *ius*, and it is ambiguous on account of its own differing origins in the Roman legal tradition.¹¹ The Romans were more likely to refer to one’s own duty (*officium*) rather than the other person’s right.¹² From Thomas Aquinas’ point of view, right is seen as objectively a just thing itself,¹³ whereas Thomas Hobbes considers right as a liberty to exercise a subjective power.¹⁴ Antonio Rosmini, dealing with the subjective element of a right, defines right in inter-subjective terms. He points out that rights are not present in individuals irrespective of relationships with other people. Rights actually form part of our existence only when others, in attempting to deprive us of what is ours, injure us at the core of our being. On the spiritual sphere of influence, which totally belongs to the faithful and never can be violated interiorly, others have the duty to respect rights. Rosmini then points out that this moral respect should be at the heart of all rights as their sanction and support.¹⁵

In a legal sense, a right is often defined as “a power, privilege, faculty or demand, inherent in one person and incident upon another.” It is a power to dispose one’s estate. A

¹⁰ See G.J. ROBINSON, “The Challenge of Justice,” in *CLSA Proceedings*, 55 (1993), 3 (=ROBINSON, “The Challenge of Justice”).

¹¹ See A. BERGER, v. *ius*, in *Encyclopaedic Dictionary of Roman Law*, Philadelphia, The American Philosophical Society, 1991, 525 (=BERGER, *Encyclopaedic Dictionary of Roman Law*). See also B. TIERNEY, “*Ius and Metonymy in Ruinus*,” in R. CASTILLO LARA (ed.), *Studia in honorem Eminentissimi Cardinalis Alphonsi M. Stickler*, Rome, Libreria Ateneo Salesiano, 1992, 552; and V.G. D’SOUZA, The Juridic Condition and Status of Minors according to the Code of Canon Law, JCD diss., Ottawa, Saint Paul University, 1994, 4-5 (=D’SOUZA, The Juridic Condition and Status of Minors according to the Code of Canon Law).

¹² See A.R. WHITE, *Rights*, Oxford, Clarendon Press, 1984, 21 (=WHITE, *Rights*).

¹³ See AQUINAS, *Summa theologica*, IIa-IIae, q. 57, art. 1; I-II, q. 90, art 4(=AQUINAS, *Summa theologica*). See also F. SUAREZ, *De legibus*, 1, 2. 22. (=SUAREZ, *De legibus*); J. FINNIS, *Natural Law and Natural Rights*, Oxford, Clarendon Press, 1980, 206 (=FINNIS, *Natural Law and Natural Rights*).

¹⁴ See T. HOBBS, *Leviathan*, in C.B. MCPHERSON (ed.), London, A. Crooke, 1651; reprint, Harmondsworth, Penguin Books, 1968, 189; (=HOBBS, *Leviathan*).

¹⁵ See A. ROSIMINI, *The Philosophy of Right*, in D. Cleary and T. Watson (trans.), Durham, Rosimini House, 1993, 125-136 (=ROSIMINI, *The Philosophy of Right*).

right is that which is applicable under law, morality or ethic as “knowing something right from wrong.” It is also something that is “due to a person by a just claim or a legal guarantee.”¹⁶ Therefore, a right (*ius*) is “what is always just and fair.”¹⁷

The Latin word *ius* is also used of an objective norm, and then it is usually translated as “law” in English. There is a difference between *ius* and *lex*. A *lex* is a norm of legislative power promulgated on the authority of a competent legislator. The concern of this thesis, however, is “right” in its subjective sense, contra-distinguished from its normative or objective sense. In this sense, “right is a legitimate and inviolable power whereby one vindicates something for himself as his own. It is power, that is, a faculty or capacity in virtue of which a person can do something in contradiction to duty in virtue of which a person ought to do something or owes something. Where duty constricts human freedom, right confirms or enlarges it.”¹⁸

Wojciech Kowal nicely summarizes the three meanings of *ius* as the word is used in legal systems, including canon law. (1) The first meaning is that of an absolute objective right (*ius/right*)—the object of justice, what is due, what is just. (2) The second is a causal or normative objective right (*ius/law*)—the norm in view of which the object of justice, that which is due, is determined and measured, the *ius sum* (what was decided). It is the corpus which says what the objective right is. (3) The third meaning of *ius* is that of a subjective right (*ius/right*)—the power or inviolable moral or legal faculty of doing,

¹⁶ See H.C. BLACK, *Black's Law Dictionary*, 7th ed., St. Paul, MN, West Publishing Co., 1999, 1322 (=BLACK, *Black's Law Dictionary*).

¹⁷ See BERGER, *Encyclopedic Dictionary of Roman Law*, 525.

¹⁸ See T.J. HIGGINS, *Man as Man: The Science and Arts of Ethics*, Milwaukee, Bruce, 1949, 225 (=HIGGINS, *Man as Man: The Science and Arts of Ethics*).

possessing, omitting or exacting something.¹⁹ It is the third meaning of *ius* that is the subject of this thesis.

1.1.2 Different types of rights in the Church

Rights in the Church, as in civil society, differ in nature and type. Rights may be categorized in the Church on the basis of their source or *fundamentum*.²⁰ Canon law recognizes six different kinds of rights: human or natural rights with their source being the human dignity, ecclesial rights rooted in the sacrament of baptism, ecclesiastical rights derived from having or holding an ecclesiastical office, communal or religious rights originating from the religious profession of an individual, civil rights that come with citizenship, and contractual rights that come with a contract.²¹

a) Human or natural rights are derived from the nature and the dignity of the human person. These should be guaranteed by any government or state. These basic rights include the right to life, liberty, equality, privacy, movement, marriage and family, freedom of thought, conscience and religion, opinion and expression, assembly and association, work, ownership of property, and education. Since these are natural, human rights, they do not all need to find expression in the ecclesiastical law; they are rights of the divine natural law which exist independently of the Church's canon law.²²

¹⁹ See W. KOWAL., *Philosophy of Law, Canon Law Class Notes*, Ottawa, Saint Paul University, 2018, 18.

²⁰ See MENDONÇA, "Promotion and Protection of Rights in the Church," 441.

²¹ See J.P. MCINTYRE, "*Lineamenta* for a Christian Anthropology: cc. 208-223," in *Periodica*, 85 (1996), 249-276, 264 (=MCINTYRE, "*Lineamenta* for a Christian Anthropology: Canons 208-223").

²² See CORIDEN, *The Rights of Catholics in the Church*, 8; cf. W. FERNANDES, "The Church and Human Rights," in *Vidyajyoti*, 42 (1978), 455-462, 500-512; C. DWYER, "Human Rights: Values for a Godless Age," in *Law and Justice*, 146 (2001), 28-37; A. AN-NA'IM (ed.), *Human Rights and Religious Values*, Grand Rapids, Michigan, 1995; T. DRAPER, *Human Rights*, New York, H.W. Wilson, 1982; R. DWORKIN, *Taking Rights Seriously*, Cambridge, Harvard University Press, 1978; J. FINNIS, *Natural Law and Natural Rights*, Oxford, Clarendon Press, 1980; M.A. GLENDON, *Catholicism and Human Rights*, Dayton, University of Dayton, 2001; H. KANGER, *Human Rights in the UN Declaration*, Uppsala, University of

That being said, we see some of these rights explicitly affirmed in the Church's law as well: the right to voice one's opinion (c. 212, §3),²³ the right to association and assembly (c. 215),²⁴ the freedom from coercion in choosing one's state in life (c. 219),²⁵ the right to reputation and privacy (c. 220),²⁶ the right to vindicate one's rights in the proper forum and due process of law when using tribunals (c. 221).²⁷ These are human and natural rights enshrined in the Code, but certainly they are not a creation of any positive law because they pre-exist the law itself.²⁸ They are of divine law which derives from the precepts of the natural law or the commandments of the gospel.²⁹ Unlike human law which can be reformed or adapted, the divine law is immutable and binds everyone, baptized and unbaptized.³⁰

b) Ecclesial rights are the result of the baptism of an individual in the Church. Some of these rights include: the right to holiness of life (c. 210),³¹ the right to participate in spreading the gospel (c. 211),³² the right to share in the sacramental life of the Church (c.

Uppsala Press, 1984; R. TUCK, *Natural Rights Theories: Their Origin and Development*, Cambridge, Cambridge University Press, 1979; A.R. WHITE, *Rights*, Oxford, Clarendon Press, 1984.

²³ See *Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP. II promulgatus*, Typis Polyglottis Vaticanis, 1990, English translation *Code of Canons of the Eastern Churches, Latin-English Edition, New English Translation*, prepared under the auspices of the Canon Law Society of America, Washington, DC, CLSA, 2001 (=CCEO), c. 15, §3. All references to the canons of the 1990 Code will be styled "CCEO, c." for canon and "CCEO, cc." for canons, followed by the canon number(s).

²⁴ Cf. CCEO, c. 18.

²⁵ Cf. CCEO, c. 22.

²⁶ Cf. CCEO, c. 23.

²⁷ Cf. CCEO, c. 25.

²⁸ See J. PROVOST, "Introduction to cc. 208-223," in *CLSA Comm1*, 139 (=PROVOST, "Introduction to Canons 208-223").

²⁹ See L. ÖRSY, *Marriage in Canon Law: Texts and Comments, Reflections and Questions*, Wilmington, Delaware, Michael Glazier, 1986, 65 (=ÖRSY, *Marriage in Canon Law: Texts and Comments, Reflections and Questions*).

³⁰ See J. HERVADA, *Introduction to the Study of Canon Law*, Montreal, Wilson & Lafleur, 2007, 34 (=HERVADA, *Introduction to the Study of Canon Law*).

³¹ Cf. CCEO, c. 13.

³² Cf. CCEO, c. 14.

213),³³ the right to initiate and promote apostolic action (c. 216),³⁴ and the right to Christian education (c. 217).³⁵ These rights are granted by Christ himself through baptism; however, the Church's legislators have the power to moderate them for the common good of the Church (c. 223, §2).³⁶

c) Ecclesiastical rights are those based on Church law and apply only to those who hold public office in the Church.³⁷ This law of the Church binds only Catholics (c. 11).³⁸ When compared to natural and ecclesial rights, ecclesiastical rights transcend every positive legal system. Ecclesiastical rights (like civil rights) are acquired through the canonical provision of an office (c. 147).³⁹ For instance, the rights and obligations of the bishop, vicar general, episcopal vicars, auxiliary bishop, pastors, and parochial vicars are rights proper to their office. Similar to these officials are the finance officer, chancellor, tribunal officials, Catholic school superintendent, director of religious education, etc.

d) Communal or religious rights derive by virtue of one's membership in a religious institute through profession of vows, especially by perpetual profession of religious vows. By profession of vows in a religious institute, these members are recognized in their institutes and they begin to enjoy a certain level of rights beyond those of a novice. These rights are based on the proper law of the institute lawfully approved by the legitimate authority of the Church. The Code has several canons on the obligations and rights of religious (cc. 662-672),⁴⁰ although there are considerably more obligations than rights.

³³ Cf. *CCEO*, c. 16.

³⁴ Cf. *CCEO*, c. 19.

³⁵ Cf. *CCEO*, c. 20.

³⁶ See MENDONÇA, "Promotion and Protection of Rights in the Church," 443.

³⁷ See CORIDEN, *The Rights of Catholics in the Church*, 10; see also J.H. PROVOST, "Ecclesial Rights," in *CLSAProceedings*, 44 (1982), 41-62.

³⁸ Cf. *CCEO*, c. 1490.

³⁹ See MENDONÇA, "Promotion and Protection of Rights in the Church," 443.

⁴⁰ Not all the canons of *CIC/83* listed here have their parallel in *CCEO*.

Certainly, religious have rights corresponding to their state in life such as the right to live community life (c. 607, §2),⁴¹ the right to privacy in their religious state (c. 667),⁴² the right to the means to fulfill their obligations (c. 670), the right to live consecrated life according to the charisms of the founder (c. 578), etc.⁴³

e) Civil rights are acquired by being citizens of a country. Canon 22 (c. 1504 of *CCEO*) in effect recognizes the importance of civil law in some canonical matters. In fact, the Code upholds civil law about forty times in various instances, for example, concerning financial matters (c. 492),⁴⁴ property law (c. 1259),⁴⁵ wages and benefits (cc. 231, §2; 1286, 2°).⁴⁶

The Church should respect and protect civil rights acquired by Catholics from the state. These include entitlement programs, health care, retirement and other benefits, running for a public office, and the right and duty to vote to elect one's leaders. The individual must fulfill the norm of the civil law, and the Church must respect the acquired civil rights of the individual (c. 36, §1).⁴⁷ Civil rights lawfully acquired are protected in canon law (c. 4),⁴⁸ provided always that the civil law is not in conflict with the divine law.⁴⁹

⁴¹ Cf. *CCEO*, c. 410.

⁴² Cf. *CCEO*, c. 477.

⁴³ See E. MCDONOUGH, "The Protection of Rights in Religious Institutes," in *The Jurist*, 46 (1986), 168 (=MCDONOUGH, "The Protection of Rights in Religious Institutes").

⁴⁴ Cf. *CCEO*, c. 263.

⁴⁵ Cf. *CCEO*, c. 1010.

⁴⁶ Cf. *CCEO*, c. 409, §2; 1030, 2°.

⁴⁷ Cf. *CCEO*, c. 1512, §2.

⁴⁸ Cf. *CCEO*, c. 5. See MCINTYRE, "The Acquired Right: A New Context," 32.

⁴⁹ The divine law is a category of laws in the canonical system which consists of laws directly connected to Church doctrine and thus not subject to dispensation or revocation. This does not necessarily exclude the possibility of doctrinal development with respect to certain teachings. See J.H. NEWMAN, *An Essay on the Development of the Christian Doctrine*, Longmans, Green and Co., London, 1909.

f) Contractual rights are those arising from an individual or representative of an institution signing a legally binding contract.⁵⁰ Canon 1290⁵¹ obliges everyone to observe the provisions of civil law for contracts and their disposition, as long as the civil law is not contrary to divine law and insofar as canon law does not provide otherwise.⁵² The focus of c. 1290 is an application to contracts of the more general provision of c. 22 on the canonization of civil law.⁵³ In employing personnel for diocesan offices, for example, the Code recommends agreements according to the stipulations of civil law to protect laity (c. 231, §2)⁵⁴ and religious (c. 681, §2),⁵⁵ respectively.⁵⁶ Not only are violations of contracts actionable in the legal domain, breach of contract can also bring the local Church into disrepute in the moral realm. Particularly, civil law and canon law increasingly interact, especially in the area of contracts. Therefore, the Church follows the requirements of civil law concerning both contracts and agreements.⁵⁷

1.1.3 The meaning of “Christian faithful”

Who are the Christian faithful (*christifideles*) intended in canon law? This question certainly draws much attention in the canonical world and has a wide range of answers and interpretations. James Provost observes that the fundamental obligations and rights listed in the Code arise variously from human nature, baptism, and positive Church law. Thus,

⁵⁰ “Contract” is also mentioned in c. 1284, §2, 1° regarding insurance policies. Obviously, contracts may be involved in several other issues treated in Book V, e.g., employment (c. 1286), pious wills (cc. 1299-1301), trusts (c. 1302), foundations (cc. 1303-1307), etc.

⁵¹ Cf. *CCEO*, c. 1034.

⁵² In the Code, there are a number of canons on temporal goods which make reference to careful adherence to civil law: in c. 1268 (referring to c. 197); 1274, §1; 1284, §2, 2°; 1284, §2, 3°; 1286, 1°; and 1299, §2.

⁵³ See J. RENKEN, *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, New York, Alba House, 2009, 243 (=RENKEN, *Church Property: A Commentary on Canon Law Governing Temporal Goods*).

⁵⁴ Cf. *CCEO*, c. 409.

⁵⁵ Cf. *CCEO*, c. 415, §3.

⁵⁶ See MENDONÇA, “Promotion and Protection of Rights in the Church,” 444.

⁵⁷ See MCINTYRE, “The Acquired Rights: A New Context,” 34.

this observation raises an objection as to who are specifically the Christian faithful. This objection was brought to the Code Commission, especially the wording of c. 204, namely, that in itself it includes all the baptized and not just those in full communion with the Catholic Church. In its response, the Code Commission admitted the broad meaning of “Christian faithful” but claimed that, in the Code, it always means Catholics since this is, after all, the Code for the Catholic Church; non-Catholics are not bound by merely ecclesiastical laws⁵⁸ (c. 11).⁵⁹

Pedro Lombardía, commenting on the fundamental rights, stresses the aspect of *Lumen gentium* no. 32 which speaks of the “radical equality of all” that derives from their common condition. The fundamental rights are those belonging to every single one of the faithful, simply by virtue of their belonging in the Church through baptism.⁶⁰ In his commentary on the Christian faithful, Robert Kaslyn says that the term “Christian faithful” applies to the baptized who are in full communion with the Catholic Church (c. 205).⁶¹ The implication of full communion pertains to Catholics only, for example, the obligation and right to preserve communion (c. 209), to obey the sacred pastors and participate in the Church (c. 212), to receive sacraments without restriction when properly disposed (c. 213),

⁵⁸ A merely ecclesiastical law is one which contains precepts concerning a certain matter which is not prescribed by divine law, natural or positive, but purely by ecclesiastical authority. For example, disciplinary laws (cc. 1108-1123: on the form of marriage) or penal laws (cc.1311-1399) contained in the new Code. Merely ecclesiastical law is distinguished from natural and divine positive law by reason of its source, which, in the case of merely ecclesiastical law, is the will of the ecclesiastical authority enacting laws, acting in harmony with the divine law, both natural and positive. However, laws that interpret or declare divine law should be classified as divine law, and these oblige even the unbaptized or those baptized in other Christian communities, e.g., canon 1057,§1 on the requirement of consent to enter into marriage. Persons who have the use of reason are bound by natural and divine positive laws. Canon 11 deals only with merely ecclesiastical laws. See E. REGATILLO, *Institutiones iuris canonici*, 6th ed., Santander, Sal Terrae, 1961, 50.

⁵⁹ See PROVOST, “Introduction to cc. 208-223,” 139.

⁶⁰ See P. LOMBARDÍA, “The Fundamental Rights of the Faithful,” in *Concilium*, 8 (1969), 42 (=LOMBARDÍA, “The Fundamental Rights of the Faithful”).

⁶¹ See R. J. KASLYN, “The Christian Faithful cc. 204-231,” in *CLSA Comm2*, 246 (=KASLYN, “The Christian Faithful cc. 204-231”).

to worship God according to one's approved rite (c. 214), to engage in the apostolate as a Catholic (c. 216), to assist the needs of the Church (c. 222), and to be regulated in the exercise of one's rights by Church authorities (c. 223, §2).⁶² Cardinal Castillo Lara is of the same view that the major part of the rights listed in Book II, Title I of the Code are specifically Christian rights. They certainly belong to the faithful as Christians.⁶³

There are rights that are expressed in the Code that arise purely from human nature, and these belong to all people, for example, the right to association and assembly (c. 215), the right to freedom of inquiry and expression (c. 218), the right of freedom from coercion in choosing a state in life (c. 219), the right to good reputation and privacy (c. 220), the right of vindication of rights in proper forum and due process (c. 221), and the right to respect for the common good (c. 223, §1). These are not granted by law but rather preexist the law, because they arise from human nature itself. This raises the crucial question of whether the non-baptized and baptized non-Catholics can claim the full exercise of rights with regard to those matters pertaining to human dignity or baptism. Our understanding of the "common good of the Church" may call for limitations to be imposed on this.⁶⁴

Canon law specifically acknowledges the rights of non-Catholics in a number of areas. These include sacramental sharing (c. 844), mixed marriages (cc. 1124-1129), and presenting a case before an ecclesiastical tribunal (c. 1476), including a trial for the

⁶² See PROVOST, "Introduction to cc. 208-223," 139.

⁶³ See CASTILLO LARA, "Some General Reflections on the Rights and Duties of the Christian Faithful," in *Studia canonica*, 20 (1986), 20 (=CASTILLO LARA, "Some General Reflections on the Rights and Duties of the Christian Faithful").

⁶⁴ See PROVOST, "Introduction to cc. 208-223," 139; see also CASTILLO LARA, "Some General Reflections on the Rights and Duties of the Christian Faithful," 20.

vindication of rights (c. 1400, §1, 1°). The work of evangelization also is not restricted to Catholics (e.g., cc. 211, 747, 781).⁶⁵

1.1.4 Relation of rights to obligations in canon law

The Titles in the revised Code of 1983 consistently use the ordering of obligations before rights, whereas the 1917 Code used rights and obligations.⁶⁶ James Provost observes that rights are derived from duties such as the duty to maintain communion and that this duty is primary before the right. In this sense, certain rights can be seen as secondary insofar as they are derived from obligations; Christians primarily have duties, and rights arise from these duties.⁶⁷ According to Cardinal Castillo Lara, the ordering of obligations and rights does raise the question of priority, but the duty and right relationship taken together must be considered. Each is essential and inseparable. For every right there is a corresponding obligation or duty, and vice versa. They are like two sides of the same coin. The right of an individual imposes an obligation on others to respect and uphold it. Similarly, an individual must fulfill his obligations lest the rights of others suffer.⁶⁸ James Provost agrees that the relationship of rights and duties is one of complementarity, not of exclusive priority of the one over the other. He goes on to caution that an overly individualistic reading of rights can cause harm, as if to say that there is no social responsibility imbedded in the rights and therefore obligations or duties could be viewed as less important than rights.

⁶⁵ See KASLYN, “The Christian Faithful cc. 204-329,” 247; see also PROVOST, “Introduction to cc. 208-223,” 139.

⁶⁶ See PROVOST, “Introduction to cc. 208-223,” 137.

⁶⁷ See ID., “The Nature of Rights in the Church,” in *CLSA Proceedings*, 53 (1991), 4-5.

⁶⁸ See CASTILLO LARA, “Some General Reflections on the Rights and Duties of the Christian Faithful,” 21.

This can lead to losing sight of the social and communal dimension of our Christian communion which is central to our baptism.⁶⁹

The question of the priority of the obligations vs. rights issue was raised during the revision process, and the Code Commission replied that the ordering or the title or the term of one over the other is not that significant since both rights and obligations in the Church come from the sacraments.⁷⁰ Furthermore, the Eastern Code in fact consistently uses the phrase “rights and obligations.”⁷¹

1.2 Modern Papal Teachings on Rights before Vatican II

The last hundred years of Church history has shaped the Church’s approach toward a teaching on rights. This was a historical process, a process which eventually led the Church to take a strong stand on the rights of the human person. This teaching on rights has attempted to identify the requirements of human dignity and uphold respect for them. Over the decades through various popes, this teaching has taken strong root in the Church’s doctrine.⁷² In this section we will attempt to see how different popes and their writings in the modern era up to Vatican II have contributed to the development of rights in the Church. There are four subsections covering significant teachings of Popes Leo XIII, Pius XI, Pius XII, and John XXIII.

⁶⁹ See PROVOST, “The Nature of Rights in the Church,” in *CLSAProceedings*, 4-5.

⁷⁰ PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, *Relatio*, Typis polyglottis Vaticanis, 1981, 62. “Loco ‘de obligationibus e iuribus’ dicatur ‘de iuribus et obligationibus’, quia est locutio traditionalis ... et melius fundata in ipsa constitutione sacramentali Ecclesiae. R. *Potest recipere*, sed non videtur necessarium: reversa ex sacramentis profluunt sive iura sive obligationes.”

⁷¹ Cf. *CCEO*, cc. 7-26 with the title “The Rights and Obligations of All the Christian Faithful;” cc. 78-101 with the title: “The Rights and Obligations of Patriarchs;” cc. 190-211 titled “The Rights and Obligations of Clerics;” and cc. 399-409 on lay persons with no title as in the Latin Code, but still all the obligations and rights listed in cc. 224-231, pertaining to lay Christian faithful, are included in these canons.

⁷² See JOHN PAUL II, Encyclical Letter *Centesimus annus*, 1 May 1991(= *CA*), no. 4, in *AAS*, 83 (1991), 796-798, English translation in *Origins*, 21 (1991-1992), 3-4.

1.2.1 Pope Leo XIII

The modern social teaching of the Church began with the pontificate of Pope Leo XIII (1878-1903). He began to move from the Church's rigid position to the modern political and social developments. In Hollenbach's words:

Leo's encyclicals laid the ground work for the modern Catholic theory of human rights. Human dignity is the foundation of this theory. The defense of dignity was the source of his objections to the liberal theory of the state and its overriding concern with the preservation of liberty negatively understood. It was also the foundation of this strong affirmation of the basic economic rights to food, clothing, shelter, organization, and a living wage. In both the political and the economic spheres, the demands of human dignity were interpreted with the help of an analysis of the impact of social, economic and political institutions on human persons.⁷³

Pope Leo's most significant encyclical, *Rerum novarum* (1891), was dedicated to the condition of labor.⁷⁴ "Human dignity was the foundation of Leo XIII's theory in both the political and economic spheres."⁷⁵ The pope intended his encyclical to be a major intervention in defense of the poor. He solemnly and firmly proposed his teaching to be the remedy for the social problems of the time.⁷⁶ For Pope Leo, the main issue was the misery and wretchedness pressing so unjustly on the majority of the working class.⁷⁷ He saw such intervention as necessary in view of the fact that "a small number of rich people have been able to lay upon the teeming masses of the laboring poor a yoke little better than that of slavery itself."⁷⁸ *Rerum novarum* defends the rights of labor, the right to adequate remuneration for one's labor and the right to retain the results of labor in the form of private property. The encyclical further calls for property ownership by as many people as

⁷³ See D. HOLLENBACH, *Claims in Conflict: Retrieving and Renewing the Catholic Human Rights Tradition*, Paulist Press, New York, 1979, 49 (=HOLLENBACH, *Claims in Conflict*).

⁷⁴ See LEO XIII, Encyclical Letter *Rerum novarum*, 15 May 1891(= *RN*), in *AAS*, 23 (1891), 641-670, English translation in C. CARLEN (ed.), *Papal Encyclicals: 1878-1903*, vol. 2, Raleigh, NC, McGrath, 1981, 241-261 (= CARLEN (ed.), *Papal Encyclicals*, vol. 2).

⁷⁵ See CORIDEN, "A Challenge: Make the Rights Real," 16.

⁷⁶ See *RN*, no. 13 in *AAS*, 23 (1891), 641-670, *CARLENII*, 244.

⁷⁷ See *RN*, no. 2 in *AAS*, 23 (1891), 641-670, *CARLENII*, 241.

⁷⁸ See *ibid.*

possible. In a sense, all have a right to have these needs fulfilled at least minimally. Thus, the encyclical affirms the rights to adequate food, clothing, and shelter as fundamental.⁷⁹ The encyclical also emphasizes the right to a just wage.⁸⁰ Employers are under an obligation to recognize and protect each of these rights, and workers have the further right to organize associations or unions to defend their just claims. This right to a just wage gives workers the freedom of self-expression and self-determination as social beings.⁸¹ The state has a special obligation to defend the rights of the poor and the marginalized.

Rights must be rigorously respected wherever they exist, and it is the duty of public authority to prevent and to punish injury, and to protect everyone in the possession of his own. Still, when there is question of defending the rights of individuals, the poor have a claim to special consideration. The richer classes have many ways of shielding themselves and stand less in need of help from the State, whereas the mass of the poor have no resources of their own to fall back upon and must chiefly depend upon assistance of the State. And it is for this reason that wage earners, since they mostly belong to that class, should be specially cared for and protected by the Government.⁸²

1.2.2 Pope Pius XI

The first half of the twentieth century was dominated economically by the great depression and politically by the rise of communism in Russia and the emergence of dictatorships, particularly those in Italy and Germany. All these had worsening and tragic consequences for the world. The Church's understanding of human rights developed rapidly during this period under the pressure of these events.⁸³ The fortieth anniversary of the promulgation of the encyclical *Rerum novarum* was an opportunity for Pope Pius XI to publish a new encyclical, *Quadragesimo anno*,⁸⁴ to reflect on current events and to reaffirm

⁷⁹ See *RN*, no. 34 in *AAS*, 23 (1891), 641-670, *CARLENI*, 249-250.

⁸⁰ See *RN*, nos. 43-45, in *AAS*, 23 (1891), 641-670, *CARLENI*, 252-253.

⁸¹ See *RN*, nos. 49-51, in *AAS*, 23 (1891), 641-670, *CARLENI*, 253-254.

⁸² See *RN*, no. 37, 153-154, in *AAS*, 23 (1891), 641-670, *CARLENI*, 251.

⁸³ See HOLLENBACH, *Claims in Conflict*, 50.

⁸⁴ See PIUS XI, Encyclical Letter *Quadragesimo anno*, 15 May 1931(= *QA*), in *AAS*, 23 (1931), 177-228, English translation in C. CARLEN (ed.), *Papal Encyclicals: 1939-1958*, vol. 3, Raleigh, NC, McGrath, 1981, 415-443 (= CARLEN (ed.), *Papal Encyclicals*, vol. 3).

and add new considerations to the social teaching of the Church. The encyclical *Quadragesimo anno* is a worthy successor to *Rerum novarum*.⁸⁵

In his encyclical *Non abbiamobisogno* (1931), Pius XI accused the Fascist government in Italy of following a policy based on ‘statolatry’ in its demands that all education be under state supervision.⁸⁶ His encyclical *Mitbrennender Sorge* (1937) similarly denounced the Nazi government in Germany for glorifying the state, race, and structures of power and for subordinating the worth of the person to these “divinized reifications.”⁸⁷ Pope Pius XI addressed both issues of socialism and communism in his encyclical *Divini Redemptoris*, expressing that these two theories “rob human personality of all its dignity” and reduce the person to “a mere cogwheel” in the social system.⁸⁸ Thus the major issue that Pope Pius XI grappled with is that of human rights and human dignity while at the same time not forgetting the concept of social justice in shaping the rights of man. Hollenbach states:

In *Quadragesimo anno* Pius XI reaffirmed the rights stated in *Rerum novarum* but with a new sensitivity to their social conditions and limits. In *Divini Redemptoris* he provided a list of rights which, though incomplete and unsystematic, reveals the continuity with Leo XIII: the right to life, to bodily integrity, to the necessary means of existence; the right to tend toward one’s ultimate goal in the path marked out by God; the right of association and the right to possess and use property. These rights can be realized only in society. They make demands on the kinds of social order which should exist and are limited by the fact of their social interrelation. This general perspective was especially operative

⁸⁵ Donal Dorr expresses the view that in many ways Pope Pius, like his predecessor, rejected social evils and denounced them in his encyclical and went on to look at some of the current social issues in a radical way. He wanted to ensure that the Church’s social teaching was fully up to date and relevant to his times. See D. DORR, *Option for the Poor: A Hundred Years of Vatican Social Teaching*, Gill and Macmillan, Dublin, 1992, 76.

⁸⁶ See PIUS XI, *Non abbiamo bisogno*, 49 and 57, Encyclical on Catholic Action in Italy, 29 June 1931 (= *NAB*), Italian text in *AAS*, 23 (1931), 285-312; English translation in CARLEN (ed.), *Papal Encyclicals*, vol. 3, 445-458.

⁸⁷ See PIUS XI, *Mit brennender Sorge*, 12, Encyclical on the Church and the German Reich, 14 March 1937 (= *MBS*), German text in *AAS*, 23 (1937), 145-167; English translation in CARLEN (ed.), *Papal Encyclicals*, vol. 3, 525-535.

⁸⁸ See PIUS XI, Encyclical Letter *Divini Redemptoris*, 19 March 1937 (= *DR*), in *AAS* 29 (1937), 65-106; English translation in CARLEN (ed.), *Papal Encyclicals*, vol. 3, 537-554.

in Pius XI's arguments concerning the right to a just wage, the right to organize and the economic role of government.⁸⁹

1.2.3 Pope Pius XII

The pontificate of Pope Pius XII (1939-1958) was marked by World War II, repression in the Soviet Union, and the Church's challenging position in Eastern Europe after the war. In spite of all this, Pope Pius XII continued to affirm, even more systematically, the moral roots of social, political and economic order than had any of his predecessors. Pope Pius XII moved human dignity "from the level of a basic but frequently implicit first principle of Roman Catholic social morality to the level of explicit and formal concern."⁹⁰ In his Christmas address of 1942, Pope Pius XII, speaking of the dignity of the human person, stressed respect for rights.

Uphold respect for and the practical realization of the following fundamental personal rights: the right to maintain and develop one's corporal, intellectual and moral life and especially the right to religious formation and education; the right to worship God in private and public and carry on religious works of charity; the right to marry and to achieve the aim of married life; the right to conjugal and domestic society; the right to work, as the indispensable means of life, and hence, too, of the priesthood or religious life; the right to the use of material goods in keeping with one's duties and social limitations.⁹¹

In the same address, he affirmed that every person has a right to a governmental and juridical system which in turn protects all of these personal rights from being attacked.⁹² Several years later he continued with the same theme. "The right to existence, the right to respect from others and to one's good name, the right to one's own culture and national character, the right to develop oneself, the right to demand observance of international treaties, and other like rights, are demanded by the law of nations, dictated by nature

⁸⁹ See HOLLENBACH, *Claims in Conflict*, 56.

⁹⁰ Ibid.

⁹¹ See PIUS XII, Christmas Address of 1942, in YZERMANS (ed.), *The Major Addresses of Pope Pius XII*, vol. 2, 60-61.

⁹² See HOLLENBACH, *Claims in Conflict*, 60.

itself.”⁹³ Thus, through the writings of Pope Pius, we can see the upholding and defending of human rights and dignity. Certainly, he set the tone for the supreme magisterium of the future to carry on with this strong concern for human and civil rights.

1.2.4 Pope John XXIII

Pope John XXIII (1958-1963), in his encyclical, *Mater et magistra* (1961),⁹⁴ continued the social teaching of his predecessors by asserting the notion of human dignity. However, he added a new definition of human dignity within the context of socialization and structural relationships.

The encyclical *Pacem in terris* of John XIII is one of the greatest papal documents in history; it was addressed not only to the members of the Catholic Church but to all humanity. In *Pacem in terris*, the pope noted that the protection of human rights was the basis for world peace. The encyclical begins with an affirmation of the central Catholic social teaching of the dignity of the person.

Any human society, if it is to be well ordered and productive, must lay down as a foundation this principle, namely, that every human being is a person, that is, his nature is endowed with intelligence and free will. Indeed, precisely because he is a person he has rights and obligations flowing directly and simultaneously from his very nature. And as these rights are universal and inviolable, they cannot in any way be surrendered.⁹⁵

The encyclical reaffirms Pius XII’s assertion that respect for human dignity is possible only within a “community of morally responsible citizens.” The emphasis in *Mater et magistra* is on human interdependence in the world. “The rights which protect human dignity, therefore, are the rights of persons in community. They are neither

⁹³ See POPE PIUS XII, Address of 6 December 1953, in YZERMANS (ed.), *The Major Addresses*, vol. 1, St. Paul, North Central Publishing Company, 1961, 270-271.

⁹⁴ See JOHN XXIII, Encyclical Letter on Christianity and Social Progress *Mater et magistra*, 15 May 1961 (= *MM*), in *AAS*, 53 (1961), 401-464, English translation in *TPS*, 7 (1962), 295-343.

⁹⁵ See JOHN XXIII, Encyclical Letter on Establishing Universal Peace in Truth, Justice, Charity and Liberty *Pacem in terris*, 11 April 1963 (= *PT*), no. 9, in *AAS*, 55 (1963), 257- 304, English translation, in *TPS*, 9 (1963), 15.

exclusively the rights of individuals against the community nor are they the rights of the community against the individual.”⁹⁶

Pacem in terris gives a most complete list of these human rights, which includes both those rights stressed in the liberal democratic tradition and those emphasized by socialists.⁹⁷

Rights related to life and an adequate standard of living are the rights to life, bodily integrity, food, clothing, shelter, rest, medical care, necessary social services, security in case of sickness, unemployment, widowhood, old age or unemployment.

As rights concerning moral and cultural values, the encyclical lists the rights to respect for one’s person, to one’s good reputation, to freedom of communication, to the pursuit of art, to be informed truthfully; the rights to share in the benefits of culture, to a basic education and to higher education in keeping with the level of development of one’s country.

Rights in the area of religious activity include the rights to honor God in accord with one’s conscience, to practice religion publicly and privately.

In the area of family life are the rights to choose one’s state of life, that is, to set up a family, with equal rights for men and women, or to choose not to found a family. Also included are the rights to the economic, social, cultural and moral conditions that are necessary for the support of family life, and the prior right of parents to educate their children.

Economic rights include the right to work; the rights to humane working conditions, to appropriate participation in the management of an economic enterprise, to a just wage, and to own property within the limits established by social duties.

The encyclical also affirms the rights of assembly and association, the right to organize societies according to the aims of the members, and the right to organize groups for the purpose of securing goods which the individual cannot attain alone.

All persons have the rights of freedom of movement and residence and to internal and external migration when there is just reason for it.

Political rights include the rights to participate in public affairs and to juridical protection of all one’s human rights.⁹⁸

The papal teachings on rights from Leo XIII to John XXIII show continual development and enrichment. For the purpose of this thesis, however, it is glaringly evident that the concern of these popes was with the political and natural rights of all human beings, not with the rights of the *christifideles* that flow from baptism. Assuredly, the dignity and rights of human beings, which were being abused by governments, needed to be addressed,

⁹⁶ See HOLLENBACH, *Claims in Conflict*, 65.

⁹⁷ See *ibid.*, 66.

⁹⁸ See *PT*, no. 11-27, in *AAS*, 55 (1963), 257- 304, *TPS*, 9 (1963), 15-19.

but seemingly there was no interest in or recognition of the rights of the faithful in the Church. Certainly, such rights existed in canon law, as will be seen in the fifth section of this chapter. These rights were not, however, a concern of the supreme magisterium. This approach would change in dramatic fashion at Vatican II, which declared a host of rights common to the Christian faithful flowing from their baptism.

1.3 Teachings of the Second Vatican Council on Fundamental Ecclesial Rights

The Second Vatican Council addressed the issue of rights numerous times in various documents and different contexts. In this respect, Vatican II reemphasized many of the teachings on rights of the supreme magisterium from Popes Leo XIII to John XXIII. Of primary interest to this thesis, however, is the Council's enunciation of the ecclesial rights of the baptized Christian faithful (*christifideles*), in particular, the Catholic faithful. The focus of this thesis is on the fundamental rights that are particular to the *christifidelis*, which originate from Christian baptism and canon law. These rights, as treated at Vatican II, are aptly categorized as follows.

- the right to fair and equal treatment under the law based on the fundamental equality of all the faithful;
- the right and duty to pursue holiness of life;
- the right and duty to announce the good news of salvation to the whole world;
- the right and duty to make known one's needs to ecclesiastical authority;
- the right and duty to state freely one's opinions;
- the right to receive the spiritual goods of the Church;
- the right to one's own spirituality;
- the right to observe one's own rite;
- the right and duty to support the ministers and works of the Church;
- the right to associate freely in the Church;
- the right to free inquiry in the sacred disciplines;
- the right to undertake works on one's own initiative;

- the right of preserving, professing and defending the faith.⁹⁹

For purposes of this study, this schema of rights may be more suitably grouped together in three categories: spiritual rights, rights to participate in the Church's mission, and personal rights.

1.3.1 Spiritual rights

There are four spiritual rights of the Christian faithful addressed by the Fathers of the Second Vatican Council. These are the right and duty to pursue holiness of life, the right to receive the spiritual goods of the Church, the right to one's own spirituality, and the right to observe one's own rite.

1.3.1.1 The right to pursue holiness of life

The Dogmatic Constitution on the Church *Lumen gentium*¹⁰⁰ has several themes, especially in chapters two and four, with extremely valuable doctrinal foundations for the development of the rights of the faithful in the Church.¹⁰¹ However, chapter five of *Lumen gentium*, which is on the universal call to holiness (no. 40), states that Jesus Christ taught

⁹⁹ This list is based on one prepared originally by Jean Beyer, but it has been shortened here to focus on rights specific to the Christian faithful. Cf. J. BEYER, "De statuto iuridico Christifidelium iuxta vota Synodi Episcoporum in novo Codice Iuris condendo," in *Periodica*, 57 (1968), 550-581 (=Beyer, "De statuto iuridico christifidelium iuxta vota Synodi Episcoporum in novo Codice Iuris condendo"). For an analysis comparing rights in the Church to the individual articles of the U.N. Declaration on Human Rights, see also J. BEYER, "De iuribus humanis fundamentalibus in statuto iuridico Christifidelium assumendis," in *Periodica*, 58 (1969), 27-58 (=BEYER, "De iuribus humanis fundamentalibus in statuto iuridico Christifidelium assumendis"). See also T.J. PAPROCKI, *Vindication of Defense of the Rights of the Christian Faithful through Administrative Recourse in the Local Church*, JCD dissertation, Universitas Gregoriana, Rome, 1991, 178-180 (=PAPROCKI, *Vindication of Defense of the Rights of the Christian Faithful*).

Moreover, another fundamental right mentioned at Vatican II did not find its way into the Code, namely, the right to objective information from the news media. See SECOND VATICAN COUNCIL, Decree on the Means of Social Communication *Inter mirifica*, 4 December 1963 (=IM), in *AAS*, 56 (1964), 145-153, English translation in *FLANNERY1*, 283-292, particularly IM, no. 5 in *AAS*, 56 (1964), 47, *FLANNERY1*, 285-286. See also SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World *Gaudium et spes*, 7 December 1965 (=GS), in *AAS*, 58 (1966), 1025-1120, English translation in *FLANNERY1*, 903-1001, particularly GS, no. 26 in *AAS*, 58 (1966), 1046-1047, *FLANNERY1*, 927-928.

¹⁰⁰ See SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church *Lumen gentium*, 21 November, 1964 (=LG), in *AAS*, 57 (1965), 5-75, English translation in *FLANNERY1*, 350-426.

¹⁰¹ See LOMBARDIA, "The Fundamental Rights of the Faithful," 43.

His disciples to be holy no matter what their condition of life.¹⁰² *Lumen gentium* no. 41 emphasizes that holiness is one; it has no subjective qualification and is the same for everyone. Every person must walk according to one's own personal gifts and path of living in order to devote their lives to works of mercy and charity. Therefore, all are called to holiness and perfection, modeled after the Lord Jesus, divine teacher and model of perfection.¹⁰³ In understanding *Lumen gentium* no. 41 as the right to holiness, we find the usage of the word *debet* which means "must." (*Unusquisque vero secundum propria dona et munera per viam fidei vivae, quae spem excitat et per caritatem operatur, incunctanter incedere debet.*) Here the usage of the word *debet* is a strong word connoting more than an obligation. It also could signify an implicit right as well, that is to say, if holiness is an obligation of the faithful, the whole Church must assist all the faithful with the means of striving for holiness. In order to achieve this holiness, one has to spend time before God in participating in the Eucharist, the sacred liturgy, and prayer (*LG*, no. 42).¹⁰⁴ The common pursuit of holiness among all the faithful contributes to the transformation of the world according to God's salvific will (*LG*, no. 40).¹⁰⁵

1.3.1.2 The right to receive the spiritual goods of the Church

Lumen gentium points out that the faithful are incorporated into the Church by baptism and appointed by their baptismal character to Christian worship and professing their faith.¹⁰⁶ This incorporation is therefore *sacramentum et res* in this sacrament of

¹⁰² See *LG*, no. 40, in *AAS*, 57 (1965), 44-45, *FLANNERY I*, 396-398.

¹⁰³ See *LG*, no. 41, in *AAS*, 57 (1965), 45-47, *FLANNERY I*, 398-400.

¹⁰⁴ See *LG*, no. 42, in *AAS*, 57 (1965), 47-49, *FLANNERY I*, 400-402.

¹⁰⁵ See *LG*, no. 40, in *AAS*, 57 (1965), 44-45, *FLANNERY I*, 396-398.

¹⁰⁶ See *ibid.*, 361-362.

Christian initiation.¹⁰⁷ *Lumen gentium* no. 37 explicitly expresses that the faithful have the right to receive from their pastors the spiritual goods of the Church, especially the word of God and the sacraments.¹⁰⁸

1.3.1.3 The right to one's own spirituality

The faithful have the right to have the spirituality of their choice, provided it is in keeping with the teaching of the Church. This right recognizes that there are various spiritualities. No single document of Vatican II is the source of this right, but it is based on several conciliar texts.¹⁰⁹ In the Constitution on the Sacred Liturgy *Sacrosanctum concilium*,¹¹⁰ the Council declares that holy Mother Church holds every lawfully acknowledged rite to be of equal right and dignity.¹¹¹ The Decree on the Eastern Churches *Orientalium Ecclesiarum*¹¹² speaks of the Churches, both Eastern and Western, which have some significant differences among them. However, the Churches are of equal rank even if differing in their liturgical, ecclesiastical and spiritual traditions.¹¹³

1.3.1.4 The right to observe one's own rite

The faithful have the right to observe their own particular rite. This is a right to worship in one's own liturgical rite and to belong to one's own ritual Church, later to be called a Church *sui iuris*. This basic right is guaranteed by some conciliar documents. As already noted, *Sacrosanctum concilium* no. 4 says that the Sacred Council declares that the

¹⁰⁷ See K. RAHNER, *The Church and the Sacraments*, Freiburg, Herder, 1963, 88 (=RAHNER, *The Church and the Sacraments*).

¹⁰⁸ See LG, no. 37, in *AAS*, 57 (1965), 42-43, *FLANNERY I*, 394-395.

¹⁰⁹ See PROVOST, "Introduction to cc. 208-223," 148.

¹¹⁰ See SECOND VATICAN COUNCIL, Constitution on the Sacred Liturgy *Sacrosanctum concilium*, 4 December, 1963 (=SC), in *AAS*, 56 (1964), 97-138, English translation in *FLANNERY I*, 1-36.

¹¹¹ See SC, no. 4, in *AAS*, 56 (1964), 98, *FLANNERY I*, 2.

¹¹² See SECOND VATICAN COUNCIL, Decree on the Catholic Eastern Churches *Orientalium Ecclesiarum*, 21 November, 1964 (=OE), in *AAS*, 57 (1965), 76-85, English translation in *FLANNERY I*, 441-451.

¹¹³ See OE, no. 3, in *AAS*, 57 (1965), 77, *FLANNERY I*, 442.

Church holds every lawfully recognized rite to be of equal right and dignity.¹¹⁴ Commenting on this, Jungmann says that the Council employed the phrase *legitime agnitos*, which embraces the present and the future, that is, that new Churches *sui iuris* and even new rites could still be recognized.¹¹⁵

1.3.2 Rights to participate in the Church's mission

Three additional rights of the faithful enunciated at Vatican II pertain to their participation in the mission of the Church entrusted to it by its divine founder. These are the right and duty to announce the good news of salvation to the whole world; the right of preserving, professing and defending the faith; and the right to undertake works on one's own initiative.

1.3.2.1 The right to announce the good news of salvation

Lumen gentium no. 33 explicitly mentions the right and duty of the lay Christian faithful to announce the good news of salvation to the whole world, but this right and duty applies equally to all the faithful, not just to the laity. The conciliar text emphasizes the responsibility to cooperate in this mission and also the capacity to be appointed to some ecclesiastical offices (*munera*) with a view to a spiritual end.¹¹⁶ There is a strong emphasis with regard to the obligation of spreading the faith according to each one's ability.¹¹⁷ The duty that the faithful have to be apostles implicitly gives them a corresponding right to participate in the redemptive work of the Church in so far as they are able according to their circumstances. However, pastors of the Church must acknowledge this right by

¹¹⁴ See *SC*, no. 4, in *AAS*, 56 (1964), 98, *FLANNERY I*, 2.

¹¹⁵ See J. JUNGSMANN, "Constitution on the Sacred Liturgy," in VORGRIMMER, H. (ed.), *Commentary on the Documents of Vatican II*, Freiburg, Herder and Herder, 1967-1979, 5 vols., vol. 1, 9 (=JUNGSMANN, "Constitution on the Sacred Liturgy").

¹¹⁶ See *LG*, no. 33, in *AAS*, 57 (1965), 39, *FLANNERY I*, 390-391.

¹¹⁷ See *LG*, no. 17, in *AAS*, 57 (1965), 20-21, *FLANNERY I*, 368-369.

clearing the way in every respect (*undequaue*) for the mission of announcing the good news of salvation to the whole world. For this purpose, the faithful need not have to wait for a mandate but may do it on their own initiative.¹¹⁸

Ad gentes divinitus, the Decree on the Church's Missionary Activity,¹¹⁹ lays emphasis on the faithful becoming missionaries and working for the missions of the Church as their true right and obligation. Evangelization is the fundamental task of the people of God by way of witness to and cooperation in the Church's mission in the world.¹²⁰

1.3.2.2 The right of preserving, professing and defending the faith

Lumen gentium no. 11 points out that the faithful are incorporated into the Church by baptism and appointed by their baptismal character to Christian worship and professing their faith.¹²¹ Klostermann refers to the baptism of the faithful as the source of their apostolic vocation and apostolic life. All are called (*vocantur*) without exception by virtue of their incorporation in the People of God, in the one body of Christ, under the one Head, Christ. This nature, dignity and right are common to all faithful.¹²² The faithful have the duty of working for the ever greater extension of the divine plan of salvation to all people of every time and every place. Thus, this explicit duty of the faithful gives them the implicit right of preserving, professing and defending the faith.¹²³

¹¹⁸ See F. KLOSTERMANN, "The Laity," in *Commentary on the Documents of Vatican II*, vol. 1, 243 (=KLOSTERMANN, "The Laity").

¹¹⁹ See SECOND VATICAN COUNCIL, Decree on the Church's Missionary Activity *Ad gentes divinitus*, 7 December, 1965 (= *AG*), in *AAS*, 58 (1966), 947-990, English translation in *FLANNERY I*, 813-856.

¹²⁰ See *AG*, nos. 35-37, in *AAS*, 58 (1965), 983-984, *FLANNERY I*, 849-851.

¹²¹ See *LG*, no. 11, in *AAS*, 57 (1965), 15-16, *FLANNERY I*, 361-362.

¹²² See KLOSTERMANN, "The Laity," 240.

¹²³ See *LG*, no. 33, in *AAS*, 57 (1965), 39, *FLANNERY I*, 390-391.

1.3.2.3 The right to undertake works on one's own initiative

Lumen gentium no. 37 begins by saying, "Like all the Christians," and then goes on to speak about the lay faithful's right to undertake apostolic works on their own initiative in virtue of their baptism and confirmation. An emphasis is laid on the pastors with regard to assisting and guiding the laity in realizing this right. The pastors should give them the courage to undertake works on their own initiative.¹²⁴ The council certainly turns to the sacred pastors in reminding them of their duty to acknowledge and foster dignity and the co-responsibility of faithful in the Church, not just taking their advice but giving them freedom of action which will encourage their initiative and not hinder it.¹²⁵

1.3.3 Personal rights

The rights in this third category of rights addressed at the Second Vatican Council may be classified as individual or personal ecclesial rights. These are the right and duty to make known one's needs to ecclesiastical authority, the right and duty to state freely one's opinions, the right to associate freely in the Church, and the right to instruction and free inquiry in the sacred disciplines.

1.3.3.1 The right to express one's needs

Lumen gentium no. 37 says the lay faithful should freely disclose their needs and desires to their pastors. Implied here is a right to do so, which right applies equally to the clergy as it does to the laity. The document continues, saying that by reason of the knowledge, competence or pre-eminence which they have, the laity are empowered—indeed sometimes obliged—to manifest their opinion on those things which pertain to the good of the Church. The faithful also show obedience to their sacred pastors in matters of

¹²⁴ See *LG*, no. 37, in *AAS*, 57 (1965), 42-43, *FLANNERY I*, 394-395.

¹²⁵ See KLOSTERMANN, "The Laity," 251.

faith, and the pastors indeed should recognize and promote the dignity and responsibility of the laity.¹²⁶ The relationship between the faithful and the pastors is not simply passive or dependent; they have an active role to play which involves giving their views, in keeping with their knowledge, professional qualifications, and positions in the civil society. Thus, they should make a positive contribution to the Church and build the Church for tomorrow along with the pastors.¹²⁷ Everything said of the laity in this context equally applies to the clergy as well.

1.3.3.2 The right to freedom of research

*Gaudium et spes*¹²⁸ no. 62 concerns the integration of Christian faith in modern culture. In its treatment of those who engage in theological studies, it states: "... the faithful, both clerical and lay, should be accorded a lawful freedom of inquiry, of thought, and of expression, tempered by humility and courage in whatever branch of study they have specialized."¹²⁹ Commenting on this, Roberto Tucci points out that the duty of Christians is to learn how to bring out the harmony between science and doctrine, infusing new discoveries with morality and Christian thought.¹³⁰

1.3.3.3 The right to associate freely in the Church

Gaudium et spes no. 68 emphasizes that the faithful have the right to form associations and participate in them to serve the mission of the Church in the world. Due recognition and support is to be given by the pastors to these associations of the Christian

¹²⁶ See *LG*, no. 37, in *AAS*, 57 (1965), 42-43, *FLANNERY I*, 394-395.

¹²⁷ See KLOSTERMANN, "The Laity," 250.

¹²⁸ See SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World *Gaudium et spes*, 7 December, 1965 (=GS), in *AAS*, 58 (1966), 1025-1120, English translation in *FLANNERY I*, 903-1001.

¹²⁹ See *GS*, no. 62, in *AAS*, 58 (1966), 1082-1084, *FLANNERY I*, 968.

¹³⁰ See R. TUCCI, "The Proper Development of Culture," in *Commentary on the Documents of Vatican II*, vol. 5, 279 (=TUCCI, "The Proper Development of Culture").

faithful.¹³¹ *Apostolicam actuositatem* no. 21 clearly calls for the promotion and support of associations among the faithful.¹³² Implicit here is a right to associate, a right which equally pertains to clerics. Commenting on *Apostolicam actuositatem* no.21, Klostermann says that the hierarchy should see associations as appropriate, valued and favored for the people.¹³³

1.3.3.4 The right to instruction and free inquiry in the sacred disciplines

Gravissimum educationis, the Declaration on Christian Education,¹³⁴ stresses the value and role of such education in the life of Christian faithful. *Gravissimum educationis* no. 10 says that every person has a right to an education, including religious formation. The Catholic universities have a responsibility to provide means to advance the faithful's knowledge of the sacred sciences. This investigation should be particular to higher scientific studies; special attention should be given primarily to the development of scientific inquiry.¹³⁵ *Gravissimum educationis* no. 2 identifies specifically the right to a Christian education. Since all Christians have become children of God by rebirth of water and the Holy Spirit, they have a right to a Christian education. This education helps the person to maturity in the Christian life and in the knowledge of the mystery of salvation.¹³⁶ Tucci also expresses that this freedom enshrined here should always be exercised with due respect for the dignity of human person, and to this there also belongs the liberty of inquiry which is acknowledged to be the right of the faithful.¹³⁷ The Council's attention is on the integration of specialized branches of knowledge into a wider and more comprehensive

¹³¹ See *GS*, no. 68, in *AAS*, 58 (1965), 1089-1090, *FLANNERY I*, 974.

¹³² See *AA*, no. 21, in *AAS*, 58 (1966), 855, *FLANNERY I*, 788.

¹³³ See F. KLOSTERMANN, "Decree on the Apostolate of the Laity," in *Commentary on the Documents of Vatican II*, vol. 3, 366 (=KLOSTERMANN, "Decree on the Apostolate of the Laity").

¹³⁴ See SECOND VATICAN COUNCIL, Declaration on Christian Education *Gravissimum educationis*, 28 October 1965 (= *GE*), in *AAS*, 58 (1966), 728-756, *FLANNERY I*, 725-737.

¹³⁵ See *GE*, no. 10, in *AAS*, 58 (1966), 736-738, *FLANNERY I*, 735-736.

¹³⁶ See *GE*, no. 2, in *AAS*, 58 (1966), 730-731; *TANNER 2*, 959-968.

¹³⁷ See TUCCI, "The Proper Development of Culture," 286.

view of reality. Thus, this opens to the bigger picture, the meaning and reality of the world.¹³⁸

1.4 Papal Teachings on Rights after Vatican II

The popes after Vatican II maintained the practice of teaching about the fundamental rights of persons. This section treats key teachings of Popes Paul VI, John Paul II, Benedict XVI, and Francis. We shall see that these popes continued in the tradition of their predecessors, stressing the important natural, human rights applicable to all people, not the unique rights of the *christifidelis* flowing from baptism and protected in canon law.

1.4.1 Pope Paul VI

Pope Paul VI (1963-1978) contributed two major statements on social morality, the encyclical *Populorum progressio* (1967)¹³⁹ and *Octogesima adveniens* (1971),¹⁴⁰ the latter being an apostolic letter commemorating the eightieth anniversary of *Rerum novarum*.¹⁴¹ *Populorum progressio* emphasizes that the beginning, the subject and the goal of all social institutions must be the human person. Development and growth must be integral; it must clearly provide for the progress of each individual and of the whole person.¹⁴² Quentin Lauer point outs that *Populorum progressio* makes a noteworthy advancement in the way the tradition affirms the importance of material well-being for the realization of human dignity.¹⁴³ It also states that development is only possible through mutual respect and

¹³⁸ See *ibid.*, 276.

¹³⁹ See PAUL VI, Encyclical Letter *Populorum progressio*, 26 March 1967 (=PP), in *AAS*, 59 (1967), 257-299, English translation in *TPS*, 12 (1967), 144-172.

¹⁴⁰ See PAUL VI, Apostolic Letter *Octogesima adveniens*, 14 May 1971 (=OA), in *AAS*, 63 (1971), 401-441, English translation, in *TPS*, 16 (1971), 137-164.

¹⁴¹ See HOLLENBACH, *Claims in Conflict*, 78.

¹⁴² See PP, no. 14, in *AAS*, 59 (1967), 264, *TPS*, 12 (1967), 149.

¹⁴³ See HOLLENBACH, *Claims in Conflict*, 79.

mutual effort by which the development of the individual and the human race progresses.¹⁴⁴

Hollenbach remarks:

Development of persons must simultaneously include progress on the material level and greater realization of the higher values of human existence. Human dignity can only be respected and realized within a society when the essentially moral call to mutual interdependence is heeded. This does not imply that all the desires and freedoms of all people will be realized in an unlimited way in such a society. Rather, *Populorum progressio* argues that when human dignity is treated with mutual respect, a society, which is morally developed, will be realized.¹⁴⁵

Octagesima adveniēsis addressed to Cardinal Maurice Roy, president of the Pontifical Commission on Justice and Peace, which was established by Paul VI. It is likely that *Octagesima adveniēsis* was intended to give prominence to that body. Pope Paul VI begins this letter by urging greater efforts for justice and inviting the local Churches to respond to specific situations. The pope then discusses a wide variety of new social problems which stem from urbanization. These issues include women, youth, and the “new poor.” Sections 8 through 21 address specific social concerns. The topic receiving the most attention in these sections is the impact of urbanization. Paul VI decries large urban areas with vast numbers of poor people living in substandard conditions. He expresses a vision whereby Christians can bring “a message of hope” to the city and states that “this can be done by brotherhood which is lived and by concrete justice.”¹⁴⁶ The pope then goes on to stress that equality and participation need to be ensured in the everyday lives of people. Legislation for justice is necessary, and the gospel always invites us to charity and special love for the poor. Preferential respect for the poor is important, and in that way the common good is upheld.¹⁴⁷ Pope Paul VI truly understood the importance of human dignity and

¹⁴⁴ See *PP*, no. 43, in *AAS*, 59 (1967), 278-279, *TPS*, 12 (1967), 158.

¹⁴⁵ See HOLLENBACH, *Claims in Conflict*, 82.

¹⁴⁶ See *OA*, nos. 8-21, in *AAS*, 63 (1971), 406-417, *TPS*, 16 (1971), 141-148.

¹⁴⁷ See *ibid.*, 148-149.

rights as evidenced by his stress on the equality and the right of all people to participate in society.

1.4.2 Pope John Paul II

The pastoral ministry of Pope John Paul II (1978-2005) was centered on the dignity and well-being of the human person.¹⁴⁸ The pope was a passionate apostle of human dignity and rights. He repeatedly stressed that the human person must be treated with respect and dignity in all circumstances. In his address to the United Nations in 1979, he emphasized human rights, including some of the most important human rights that are universally recognized.

... the right to life, liberty and security of person; the right to food, clothing, housing, sufficient health care, rest and leisure; the right to freedom of expression, education and culture; the right to freedom of thought, conscience and religion; and the right to manifest one's religion either individually or in community, in public or private; the right to choose a state of life, to found a family and to enjoy all conditions necessary for family life; the right to property and work, to adequate working conditions and a just wage; the right of assembly and association; the right to freedom of movement, to internal and external migration; the right to nationality and residence; the right to political participation and the right to participate in the free choice of the political system of people to which one belongs.”¹⁴⁹

This dignity includes “the imitation and following of Christ, communion with one another and the missionary mandate.”¹⁵⁰ In order to implement the Second Vatican Council in his diocese, the then Cardinal Karol Wojtyla wrote a book called *Sources of Renewal*. In that book, he insisted that the dignity of all the faithful is “at one and the same time

¹⁴⁸For a collection of Pope John Paul II's statements and addresses on the promotion of human dignity and rights, see A. DUPUY, *Words That Matter: The Holy See in Multilateral Diplomacy: Anthology (1970-2000)*, Vatican City, The Pontifical Council for Justice and Peace, New York, The Path to Peace Foundation, 2003 (=DUPUY, *Words That Matter*); ID., *Pope John Paul II and the Challenges of Papal Diplomacy: Anthology (1978-2003)*, The Pontifical Council for Justice and Peace, New York, The Path to Peace Foundation, 2004 (=DUPUY, *Pope John Paul II and the Challenges of Papal Diplomacy*).

¹⁴⁹ See JOHN PAUL II, Address to the United Nations General Assembly, On Pilgrimage, 2 October 1979, no. 13, in *Origins*, 9 (1979-1980), 257-266, 262.

¹⁵⁰ See JOHN PAUL II, Apostolic Exhortation *Ecclesia in America*, 22 January 1999, no. 44, English translation in *Origins*, 28 (1998-1999), 565-592, 579.

human dignity, which belongs to each man as an individual, and Christian dignity in the order of grace.”¹⁵¹ The dignity of the human person, created in the image and likeness of God, and redeemed by the death and resurrection of the Son of God, is a biblical idea that unifies his theology, especially his social teachings. The human being “must always be an end and not a means, a subject and not an object.”¹⁵²

In John Paul’s numerous writings and speeches, he continually restated the gospel’s emphasis on the dignity of every human life and emphasized that the Church has the duty to proclaim its message of justice and denounce any individual, program or system that neglects or exploits the human rights that are integral to human dignity.¹⁵³ These emphases are seen in his first encyclical *Redemptor hominis* (1979)¹⁵⁴ and in the subsequent encyclicals *Laborem exercens* (1981),¹⁵⁵ *Sollicitudo rei socialis* (1987),¹⁵⁶ *Redemptoris*

¹⁵¹ See K. WOJTYLA, *Sources of Renewal: The Implementation of the Second Vatican Council*, translated by P.S. Falla, London, Collins, 1980, 143 (=WOJTYLA, *Sources of Renewal*).

¹⁵² See JOHN PAUL II, “Towards a Common Ethical Code for Humankind: Address to the Pontifical Academy of Social Sciences 2001,” in *Concilium*, 4 (2001), 13.

¹⁵³ Avery DULLES points out that *Redemptor hominis*, a predominantly Christological encyclical, “sounds a number of themes that will be pursued in other documents and shows how these are connected with the central idea of human dignity founded upon the gifts of creation and redemption. It presents human dignity and liberation as the central focus of the Church’s proclamation;” in *The Splendor of Faith: The Theological Vision of Pope John Paul II*, New York, Crossroad, 1999, 10. HOLLENBACH argues that human rights are based on human dignity which is the source of all moral principles, not a moral principle itself; in *Claims in Conflict*, 90.

¹⁵⁴ See JOHN PAUL II, Encyclical Letter *Redemptor hominis*, 4 March 1979 (= *RH*), in *AAS*, 71 (1979), 257- 324, English translation in *Origins*, 8 (1978-1979), 625-644.

¹⁵⁵ See JOHN PAUL II, Encyclical Letter *Laborem exercens* on the Commemoration of the Ninetieth Anniversary of *Rerum novarum*, 14 September 1981 (= *LE*), in *AAS*, 73 (1981), 577-647, English translation in *TPS*, 26 (1981), 289-336.

¹⁵⁶ See JOHN PAUL II, Encyclical Letter *Sollicitudo rei socialis*, 30 December 1987 (= *SRS*), in *AAS*, 80 (1988), 513-586, English translation in *TPS*, 33 (1988), 122-155.

missio (1990),¹⁵⁷ *Centesimus annus* (1991),¹⁵⁸ *Veritatis splendor* (1993),¹⁵⁹ as well as in his longest encyclical *Evangelium vitae* (1995).¹⁶⁰

The encyclical letter *Redemptor hominis* stresses that human dignity is based on the doctrines of creation and redemption. In this encyclical, the pope insists that individuals and communities should “set a rigorous respect” for the moral, spiritual and cultural values on the basis of the dignity of the person. From the Catholic viewpoint, the ultimate source of human rights is one’s relationship with the person of Jesus Christ who redeemed all humanity from their sins and restored them to their original dignity.¹⁶¹ The pope quotes the words of Christ, “You will know the truth, and the truth will make you free.” These words remind us of our fundamental freedom,¹⁶² that all citizens have the right and duty to seek the truth about God and profess their faith. The state must safeguard this right and not impose atheism or discriminate against citizens with regard to their faith. The Pope’s teaching on the human right to religious freedom was greatly influenced by the Vatican II

¹⁵⁷ The Encyclical Letter *Redemptoris missio* emphasizes that, on her part, the Church addresses people with full respect for their freedom; her mission does not restrict freedom but promotes it. See JOHN PAUL II, Encyclical Letter *Redemptoris missio*, 7 December 1990 (= *RM*), in *AAS*, 83 (1991), 249-340, no. 39, English translation in *Origins*, 20 (1990-1991), 543-568.

¹⁵⁸ In the Encyclical Letter *Centesimus annus*, the Pope declares very clearly that today’s democratic state needs “an authentic and solid foundation through the explicit recognition of rights” and that the Church’s position and role are not simply based on natural law or simple humanitarian concern but on the Christological vision. In defending her own freedom, the Church defends the dignity of the human person. See JOHN PAUL II, Encyclical Letter for the 100 years of *Rerum novarum*, “*Centesimus annus*,” 1 May 1991 (= *CA*), in *AAS*, 83 (1991), 793-867, nos. 47, 45; English translation, in O’ BRIEN, *Catholic Social Thought*, 437-488.

¹⁵⁹ In the Encyclical Letter *Veritatis splendor*, the Pope brings out the relationship between freedom and truth, and he insists that freedom is bound to the truth. This is a strict moral obligation to seek the truth and to adhere to it once it is known. See JOHN PAUL II, Encyclical Letter *Veritatis splendor*, 6 August 1993 (= *VS*), in *AAS*, 85 (1993), 1133-1228, no. 34, English translation, in *Origins*, 23 (1993-1994) 297-334.

¹⁶⁰ The Encyclical Letter *Evangelium vitae* is a vigorous response to scientifically and systematically programmed threats against life (*EV* 17). Of all the rights that we cherish, the right to life stands as the central and key right of everyone. The main theme of *Evangelium vitae* is life; the Pope condemns the two main moral evils of our time, abortion and euthanasia. See JOHN PAUL II, Encyclical Letter *Evangelium vitae*, 25 March 1995 (= *EV*), in *AAS*, 87 (1995), 401-522, no. 63, English translation in *TPS*, 40 (1995), 199-281.

¹⁶¹ See *RH*, no. 10, in *AAS*, 63 (1971), 274-275, *Origins*, 8 (1978-1979), 631.

¹⁶² See *RH*, no. 12, in *AAS*, 63 (1971), 278-281, *Origins*, 8 (1978-1979), 632-633.

Declaration on Religious Liberty *Dignitatis humanae*.¹⁶³ John Paul II forcefully stated that the “curtailment of the religious freedom of individuals and communities is not only a painful experience, but it is above all an attack on man’s very dignity, independently of the religion professed or of the concept of the world which these individuals and communities have. The curtailment and violation of religious freedom are in contrast with man’s dignity and his objective rights” (*RH*, no. 17).¹⁶⁴

The encyclical letter *Laborem exercens* stresses the Church’s role always to protect the dignity and rights of those who work.¹⁶⁵ A great emphasis has been placed on the issues of the right of workers to employment and a just wage, the right to form unions, and the rights and responsibilities of management towards all workers.¹⁶⁶ In this encyclical, John Paul II points out that one’s labor is an expression of human dignity. He comes out strongly for the conviction that capital cannot be the sole measure of human labor. Through work, human beings achieve a deeper realization of their personhood and affirm their membership in the state.¹⁶⁷

The encyclical letter *Sollicitudo rei socialis* focuses on the issue of human development and points out the false and harmful dimensions of development. The encyclical offers principles for reflection, action and criteria for judgment.¹⁶⁸ The pope expresses concern about various kinds of oppression towards workers in the name of

¹⁶³ See SECOND VATICAN COUNCIL, Declaration on Religious Liberty *Dignitatis humanae*, 7 December 1965 (=DH), in *AAS*, 58 (1966), 929-946, English translation in *Flannery*1, 799-812.

The thought of the American theologian, John Courtney MURRAY, had a profound impact on the drafting of *DH*. See especially his book, *We Hold These Truths: Catholic Reflections on the American Proposition*, New York, Sheed and Ward, 1960. For some critical observations, see John T. PAWLIKOWSKI, “Walking with, and beyond, John Courtney Murray,” in *New Theology Review*, 9 (August 1996), 20-40.

¹⁶⁴ See *RH*, no. 17 in *AAS*, 63 (1971), 295-300, *Origins*, 8 (1978-1979), 636-637.

¹⁶⁵ See *LE*, no. 1, in *AAS*, 73 (1981), 578-580, *TPS*, 26 (1981), 289-291.

¹⁶⁶ See *LE*, nos. 16-23, in *AAS*, 73 (1981), 618-637, *TPS*, 26 (1981), 316-328.

¹⁶⁷ See *LE*, nos. 24-27, in *AAS*, 73 (1981), 637-647, *TPS*, 26 (1981), 328-336.

¹⁶⁸ See *SRS* no. 8, in *AAS*, 80 (1988), 519-520, *TPS*, 33 (1988), 125.

development. The right of economic initiative is often suppressed, and the worker's passive submission to management and authority takes away their creativity and freedom, thereby destroying the creative subjectivity of the citizen.¹⁶⁹ John Paul II points out the duty of the Church towards the workers because human dignity and human rights are not a secondary but rather integral part of her mission.¹⁷⁰

1.4.3 Pope Benedict XVI

Pope Benedict XVI (2005-2013), in the inaugural encyclical of his pontificate, *Deus caritas est*,¹⁷¹ makes a distinction with regard to the Church's commitment to the ministry of charity and justice and points out that justice belongs to the state and the Church respectively. "A just society must be the achievement of politics, not of the Church. Yet the promotion of justice through efforts to bring about openness of mind and will to the demands of the common good is something which concerns the whole Church."¹⁷² Benedict stresses that the Church, through her charitable work worldwide, should protect the dignity and well-being of human beings living in poverty and suffering, and this is the indispensable expression of her very being.¹⁷³ The pope places the ministry of charity as an important element because, undoubtedly, justice always springs forth from charity. Reflecting on the encyclical *Deus caritas est*, Charles M. Murphy argues that the pope places charity, not justice, as the constitutive element of the Church's mission.¹⁷⁴

¹⁶⁹ See *SRS* no. 15, in *AAS*, 80 (1988), 528-530, *TPS*, 33 (1988), 129-130.

¹⁷⁰ See *SRS* no. 47, in *AAS*, 80 (1988), 579-582, *TPS*, 33 (1988), 152-154.

¹⁷¹ See BENEDICT XVI, Encyclical Letter *Deus caritas est*, 25 December 2005 (= *DCE*), in *AAS* 98 (2006), 217-252, English translation in *Origins*, 35 (2005-2006), 541-557.

¹⁷² See *DCE*, no. 28, in *AAS* 98 (2006), 238-240, *Origins*, 35 (2005-2006), 550-551.

¹⁷³ See *DCE*, no. 25, in *AAS* 98 (2006), 236-237, *Origins*, 35 (2005-2006), 550.

¹⁷⁴ See C.M. Murphy, "Charity, Not Justice as Constitutive of the Church's Mission," in *Theological Studies*, 68 (2007), 274-286 (=Murphy, "Charity, Not Justice as Constitutive of the Church's Mission").

In 2008, Pope Benedict XVI spoke to the United Nations General Assembly on the sixtieth anniversary of the Universal Declaration of Human Rights. In his address, Benedict stressed the significance of human rights and the accompanying responsibilities to safeguard and enable their exercise.¹⁷⁵

1.4.4 Pope Francis

From the beginning of his pontificate, Pope Francis (2013-) has stressed human dignity and human rights, especially of the poor and suffering. Particularly in his writings *Laudato si'*¹⁷⁶ and *Amoris laetitia*,¹⁷⁷ we see his concern for all God's people.

During his papal visit to Albania, the pontiff emphasized the rights of people by saying, "May no one use religion as a pretext for actions against human dignity and against the fundamental rights of every man and woman, above all to the right to life and the right of everyone to religious freedom."¹⁷⁸ During his weekly general audience on 7 December 2016, the pontiff drew the attention of the people to two upcoming important days promoted by the United Nations: one against corruption on 9 December and the other in favor of human rights on 10 December. The pope said, "these are two closely linked

¹⁷⁵ See BENEDICT XVI, Address to the United Nations General Assembly, 18 April 2008, in *L'Osservatore Romano*, English ed., 23 April 2008, 12-13.

¹⁷⁶ Encyclical Letter on Care for Our Common Home *Laudato si'*, 4 May 2015, Libreria editrice Vaticana, 2015, English translation *Encyclical on Climate Change and Inequality: on Care for Our Common Home*, London, Melville House, 2015.

¹⁷⁷ Post-synodal Apostolic Exhortation on love in the family *Amoris laetitia*, 19 March 2016, Vatican English version *Amoris laetitia: On Love in the Family*, New York, Mahwah, NJ, Paulist Press, 2016. See also F.G. MORRISEY, "Outline for a Spirituality of the Family in the Light of the Apostolic Exhortation *Amoris laetitia*," in *The Canon Law Society of Great Britain and Ireland Newsletter*, 188 (2016), 31-45 (=MORRISEY, "Outline for a Spirituality of the Family"); ID., "Some Pastoral Implications Arising from Chapter VIII of the Apostolic Exhortation *Amoris laetitia*," in *The Canon Law Society of Great Britain and Ireland*, 186 (2016), 53-80 (=MORRISEY, "Some Pastoral Implications Arising from Chapter VIII"); G.P. DI NICOLA and A. DANESE, "Notes on *Amoris laetitia*," in *INTAMS Review*, 22 (2016), 3-14 (=DI NICOLA, "Notes on *Amoris laetitia*"); L. MAGESA, "The Conscience of the African Church in the Synod on the Family and *Amoris laetitia*," in *INTAMS Review*, 22 (2016), 154-168 (=MAGESA, "The Conscience of the African Church").

¹⁷⁸ FRANCIS, Speech during the Papal Visit to Albania, 21 September 2014, "There can be peace among different religions," in *L'Osservatore Romano*, English ed., 26 September, 2014, 7.

realities: corruption is the negative aspect to be fought against, beginning with personal conscience and monitoring the spheres of civil life, especially those most at risk; human rights are the positive aspect, to advance with ever renewed determination, so that no one may be excluded from the effective recognition of the fundamental rights of the human person. May the Lord support us in this twofold tasks.”¹⁷⁹

In his apostolic exhortation *Amoris laetitia*, Francis affirms that the dignity of all people should be respected, regardless of sexual orientation, and that any form of discrimination or aggression is to be avoided (*AL*, no. 250). He points out that the equal dignity of men and women makes us rejoice to see the old forms of discrimination disappear and there is growing reciprocity (*AL*, no. 54).¹⁸⁰ He also mentions the wise use of freedom in the family (*AL*, no. 274).¹⁸¹ When addressing the various pastoral situations of couples, Pope Francis states that the Church does not disregard the constitutive elements of marriage in these situations; but he wishes the Church to offer “pastoral care that is merciful and helpful” (*AL*, nos. 292-293).¹⁸²

1.5 The Universal Law on the Rights of the Faithful 1917 Code to 1983 Code

In this section we turn from papal and conciliar teachings on rights to the universal laws on rights, moving from the supreme magisterium to the supreme legislator. We begin

¹⁷⁹ ID., Hope and virtues of the little ones, during the General Audience, 7 December 2016, in *L'Osservatore Romano*, English ed., 9 December, 2016, 3.

¹⁸⁰ See *ibid.*, 37.

¹⁸¹ See *ibid.*, 193.

¹⁸² See *ibid.*, 208-209.

with the first *Code of Canon Law* of 1917.¹⁸³ We then take up the process of the revision of this first Code with respect to fundamental rights.

1.5.1 Rights of the faithful in the 1917 Code

Unlike the 1983 Code, the first Code of 1917 did not have an explicit listing of rights of all the faithful. In the 1917 Code, it was indicated that baptism constituted one a person in the Church with all the rights and duties proper to Christians (CIC/17, c. 87). It did not list what these rights might be; however, it made a passing reference to an implied right in saying that lay persons were not to be denied sacraments without cause (CIC/17, c. 682).¹⁸⁴ The 1917 Code concentrated on the rights and duties of specific groups within the Church, especially clerics (CIC/17, cc.118-144), religious (CIC/17, cc. 592-631) and specific office holders. These were mixed with various lists of privileges, which may help to understand the perspective of the 1917 Code.¹⁸⁵ If it were to be understood as part of an absolute monarchical system of governance, then these rights were considered a concession of the sovereign and in this sense were privileges granted to certain persons but not to others.¹⁸⁶

This legislation of the Church gave explicit recognition to the rights of the faithful in only one canon, but it only refers to the lay faithful. The laity were said to have the right to receive from the clergy the spiritual goods of the Church, especially the means necessary for salvation (CIC/17, c. 682).¹⁸⁷ Oddly, the clergy themselves were not acknowledged as

¹⁸³*Codex iuris canonici, Pii X Pontificis Maximii iussudigestus, Benedicti Papae XV auctoritate promulgatus*, Typis polyglottis Vaticanis, 1917, English translation E.N. PETERS, *The 1917 Pio-Benedictine Code of Canon Law*, San Francisco, Ignatius Press, 2001. All references to the canons of the 1917 Code will be styled “CIC/17, c.” for canon and “CIC/17, cc.” for canons, followed by the canon numbers(s).

¹⁸⁴ See PROVOST, “Introduction to cc. 208-223,” 134.

¹⁸⁵ See *ibid.*

¹⁸⁶ See *ibid.*

¹⁸⁷ Canon 682. Laici ius habent recipiendi a clero, ad normam ecclesiasticae disciplinae, spiritualia bona et potissimum adiumenta ad salutem necessaria.

having this right, despite the fact that clerics included those in tonsure and the minor orders who also would need these spiritual aids. However, there is a general acknowledgement of the rights of all the faithful in c. 87, which highlights the implications of baptism. By baptism, it says, a human being is constituted a person in the Church of Christ with all of the rights and duties of Christians unless, in what applies to rights, some bar obstructs, impeding the bond of ecclesiastical communion, or there is a censure laid down by the Church.¹⁸⁸

1.5.2 Implicit rights in the 1917 Code

There were a number of implicit rights of the faithful in the 1917 Code. The faithful had the implicit right to go for the exercise of divine cult in sacred buildings dedicated for worship (CIC/17, c. 1161).¹⁸⁹ This canon actually coined the term ‘all the Christian faithful’. The faithful had an implicit right to just wages and fair treatment for Church workers (CIC/17, c. 1524).¹⁹⁰ A canon on the interpretation of laws pointed out the positive canonical attitude toward rights. It said that any law that restricts the free exercise of rights must be interpreted strictly or narrowly (CIC/17, c. 19). In the canonical tradition, it was understood that the principle of human liberty should be minimally restricted.¹⁹¹ Also in the 1917 Code were many procedural rights common to all the faithful, especially in Book IV, *De processibus*. Procedures were laid down for the defense and vindication of rights

¹⁸⁸ Canon 87. Baptismate homo constituitur in Ecclesia Christi persona cum omnibus christianorum iuribus et officiis, nisi, ad iura quod attinet, obstet obex, ecclesiasticae communionis vinculum impediens, vel lata ab Ecclesia censura.

¹⁸⁹ Canon 1161. Ecclesiae nomine intelligitur aedes sacra divino cultui dedicata eum potissimum in finem ut omnibus Christifidelibus usui sit ad divinum cultum publice exercendum.

¹⁹⁰ Canon 1524. Omnes, et praesertim clerici, religiosi ac rerum ecclesiasticarum administratores, in operum locatione debent assignare operariis honestam iustamque mercedem; curare ut iidem pietati, idoneo temporis spatio, vacent; nullo pacto eos abducere a domestica cura parsimoniaeque studio, neque plus eisdem imponere operis quam vires ferre queant neque id genus quod cum aetate sexuque dissideat.

¹⁹¹ See CORIDEN, *The Rights of Catholics in the Church*, 5.

(CIC/17, cc. 1646 ff.),¹⁹² even if these procedures often were not accessible in actual practice.

1.5.3 The revision of the 1917 Code

While there was the beginning of a change in attitude about rights even at the time of the promulgation of the 1917 Code, the law did not yet express that change. “The dichotomy between Church teaching on human rights in society and the provisions of Church law did not at first raise serious problems for canonists.”¹⁹³ With the effects of World War II, both Church and civil leaders began to look more and more at the question of rights as being innate to human nature. “The magisterium spoke forcefully in defense of human rights and in the promotion of human dignity.”¹⁹⁴ We have seen that Vatican Council II brought about the greatest change in the awareness of rights within the Church. “The basic paradigm of the Church as a sovereign state, i.e., the paradigm on which the 1917 Code was based, was shifted to a more biblical and theological understanding of the Church as the people of God.”¹⁹⁵ This dignity as People of God comes about through sharing in baptism and consequently in the work of Christ. “From the act of their union with Christ the head flows the laymen’s right and duty to be apostles,”¹⁹⁶ which is indeed the right and duty of all the faithful, not just of the laity. Thus, taking part in the work of the Church or having the right to do so is no longer seen as a privilege but rather as a right flowing from one’s relationship to Christ. The social teachings of the Church’s magisterium sparked a greater awareness and recognition of rights, not just verbalizing the

¹⁹² Canon 1646. Quilibet potest in iudicio agere, nisi a sacris canonibus prohibetur; reus autem legitime conventus respondere debet.

¹⁹³ See CORIDEN, *The Rights of Catholics in the Church*, 5.

¹⁹⁴ See *ibid.*

¹⁹⁵ See *ibid.*

¹⁹⁶ See *AA*, no. 3, in *AAS*, 58 (1966), 839-840, *FLANNERY I*, 768.

rights but also the Church desiring to set an example itself.¹⁹⁷ Though the Catholic social teachings always upheld the rights of the faithful, real consciousness of the Christian faithful within the Church itself emerged with the Second Vatican Council.¹⁹⁸

Following the Council, there were numerous attempts to list what kinds of rights were proper to all members of the Church. The sixth principle governing the revision of the Code, *De tutela iurium personarum*, stated that “it is expedient that the rights of persons be appropriately defined and safeguarded.”¹⁹⁹ Many attempts were made to define what these rights are so that they could be protected. In presenting these lists of rights, the various authors kept in mind that they were not dealing with the same kind of situation that they would be in listing civil rights.²⁰⁰ The Church is different from civil society because it is a society of belief and love; there is diversity in the Church but not the same diversity as in a civil society. Still, the freedoms characteristic of civil society also have existential relevance to freedom within the Church.²⁰¹

There was a consciousness among authors that, in speaking of rights within the Church, one is speaking of more than simply natural rights but also of baptized believers

¹⁹⁷ See W. KASPER, “The Theological Foundations of Human Rights,” in *The Jurist*, 50 (1990), 166 (=KASPER, “The Theological Foundations of Human Rights”).

¹⁹⁸ See CASTILLO LARA, “Some General Reflections on the Rights and Duties of the Christian Faithful,” 9.

¹⁹⁹ See PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, Principles Which Direct the Revision of the Code of Canon Law, in *Communicationes*, 1 (1969), 82-83. “Et quoniam non omnes eandem functionem in Ecclesia habent, neque idem statutum omnibus convenit, merito proponitur ut in future Codice ob radicalem aequalitatem quae inter omnes christifideles vigere, tum ob humanam dignitatem tum ob receptum baptismum, statutum iuridicum omnibus commune condatur, antequam iura et officia recenseantur quae ad diversas ecclesiasticas functiones pertinent.”

²⁰⁰ See J. BEYER, “De iuribus humanis fundamentalibus in Statuto iuridico Christifidelium assumendis,” in *Periodica*, 58 (1969), 27-58; see also ID., “De statuto iuridico christifidelium iuxta vota Synodi Episcoporum in novo Codice Iuris condendo,” in *Periodica*, 58 (1968), 550-581.

²⁰¹ See B.F. DEUTSCH, “Towards a Declaration of Christian Freedoms,” in *The Jurist*, 29 (1969), 5 (=DEUTSCH, “Towards a Declaration of Christian Freedoms”).

who share in the life of Christ.²⁰² There are, then, unique rights of the faithful grounded in baptism and acknowledged in canon law whether explicitly or implicitly.

1.5.3.1 Attempts to list the rights of the faithful

Anyone attempting to formulate a list of the rights of the faithful had to take into account not only of natural, human rights but also of ecclesial rights arising in virtue of one's baptism. There were a variety of approaches to the question. Some turned to recognized statements such as the United Nations' Universal Declaration of Human Rights (1948), and they analyzed the Council's documents to see how these rights are found within the Church as well. Others used the conciliar statements directly, developing lists of rights as these were mentioned here and there through the various texts.²⁰³ Besides these approaches, some developed lists of rights depending on their own personal interests or those of people they represented. "This latter experience is an important reminder that any listing of rights that has been developed in modern times bears the marks of its historical setting."²⁰⁴

In 1969, an ad hoc Committee on Due Process of the Canon Law Society of America presented a list of rights they considered as common rights and freedoms. The list is placed in the Preamble of the text, as follows:

The right and freedom to hear the Word of God and to participate in the sacramental and liturgical life of the Church.

The right and freedom to exercise the apostolate and share in the mission of the Church.

The right and freedom to speak and be heard and to receive objective information regarding the pastoral needs and affairs of the Church.

The right to education, to freedom of inquiry and to freedom of expression in the sacred sciences.

²⁰² See LOMBARDÍA, "The Fundamental Rights of the Faithful," 43.

²⁰³ See PROVOST, "Introduction to cc. 208-223," 135.

²⁰⁴ See *ibid.*

The right to free assembly and association in the Church.

And such inviolable and universal rights of the human person as the right to the protection of one's reputation, to respect of one's person, to activity in accord with the upright norm of one's conscience, to protection of privacy.²⁰⁵

This is an example of an early attempt to define the rights of people in the Church in order to set up a means of protecting those rights.²⁰⁶

1.5.3.2 Rights in the Code revision process

It was on 2 November 1965 that Pope Paul VI took the initiative and instructed the consultants of the Code Commission to draft a schema on the fundamental law outlining constitutional principles that would provide a common basis for both Codes of the Latin and the Eastern Churches.²⁰⁷ Two *coetus* independently took up the task of applying the principles of revision to the formulation of canons to express these values.²⁰⁸ The *coetus* which worked on the laity and associations of the faithful developed a list of rights and duties common to all the faithful before developing a list applicable specifically to lay persons. Eventually this work was taken over into the 1977 Schema *De Populo Dei*, cc. 16-38.²⁰⁹ How to go about doing this work presented challenges in the process of organization.

²⁰⁵ Report of the Ad Hoc Committee on Due Process to the Canon Law Society of America, 21 October 1969, Cleveland, Ohio, 1.

²⁰⁶ For other examples of lists of rights that have been proposed, see also A. DEL PORTILLO, *Faithful and Laity in the Church, The Bases of Their Juridical Status*, Second English Edition, Montréal, Wilson & Lafleur, 2014; J. KINNEY, *The Juridic Condition of the People of God*, Rome, Catholic Book Agency, 1972 (=KINNEY, *The Juridic Condition of the People of God*); B.F. DEUTSCH, "Towards a Declaration of Christian Freedoms," in *The Jurist*, 29 (1969), 8-9 (=DEUTSCH, "Towards a Declaration of Christian Freedoms").

²⁰⁷ See *AAS*, 57 (1965), 985. For the developments of the texts of the *LEF*, see also D'SOUZA, *The Juridic Condition and Status of Minors according to the Code of Canon Law*, 33-35; CORIDEN, "A Challenge: Make the Rights Real," 4-6.

²⁰⁸ See *Communicaciones*, 6 (1974), 50-51. It is significant that this *coetus* undertook such a task, for many of the rights now stated in the Code for all the Christian faithful are found in the documents of Vatican II in specific application to lay persons. Two major breakthroughs have occurred. One is the distinction between *Christifideles* and *laici* (i.e., "faithful" includes more than "lay persons"). The second is a recognition that rights long taken for granted relative to clergy and religious are shared in common with lay persons and can therefore be considered part of the common juridic condition of all the Christian faithful.

²⁰⁹ See PROVOST, "Introduction to cc. 208-223," 135.

This *coetus* adopted a sophisticated organization for listing rights and duties in the Church and those the Church proclaims for Christians in the world. Inner Church rights and duties were distributed according to a theological system. Rights and duties of communion came first, and those related to the three functions of teaching, sanctifying, and ruling followed. A series of rights relative to one's person was included as was a creative approach to the protection of rights that included redress against administrative excess, a listing of key procedural rights, and provision for legality of penalties. Rights and duties in the world focused on the promotion of human rights and of justice and peace in keeping with the Church's teaching.²¹⁰

Thomas Green lists five problems in the approach of the commission of the original schema. First was a tendency on the part of the commission to overemphasize the obligations and underemphasize the sacramentally grounded rights of believers. "For the commission, rights are rooted in the duties flowing from one's state in life; rights are not so much absolute claims but rather relative claims connected with the fulfillment of one's social duties."²¹¹ Those who criticized this perspective saw the rights more basically rooted in the dignity of the human persons created and redeemed by God. "Rights according to this latter view are not an absolute claim but are relative to the common good, i.e., the cluster of conditions required for each person to achieve personal fulfillment in a relatively thorough and orderly fashion."²¹² A second problem in the approach of the schema was the tendency to condition the formulations of rights so that the limitations appeared to be on the rights themselves rather than on the exercise of them. A third criticism was not highlighting the sacramental grounding of the fundamental Christian rights as well as possible. Fourthly, the original schema tended to view the laity as enjoying the right to share in the Church's mission only from a derivative point of view, that is, it was still the duty of the hierarchy to perform the mission of the Church and the laity simply to cooperate

²¹⁰ See *ibid.*

²¹¹ See T.J. GREEN, "Persons and Structures in the Church," in *The Jurist*, 45 (1985), 65 (=GREEN, "Persons and Structures in the Church").

²¹² See *ibid.*, 65-66.

with the hierarchy. “This issue was discussed by the special *coetus* on the *Lex*. It was proposed that a canon state the right to exercise charisms in a free and orderly fashion with due regard for the exigencies of charity.”²¹³ The fifth and final criticism is not significantly different from those listed above. “Some critics judged that the schema inadequately reflected the *communio* binding clergy and laity in the Church’s life and mission.”²¹⁴

As the process of development of the revised Code progressed, many of the specifications of rights that were in the schema *De Populo Dei* were dropped in favor of the format that had been developed by the parallel *coetus* working on the *Lex Ecclesiae fundamentalis*.²¹⁵ This group was given the task of drawing up a fundamental law of the Church. The listing of rights was seen to be more properly a part of the fundamental law or constitution of the Church than a part of the code of law, and thus the listing of rights and duties was dropped from Book II of the proposed Code by the *coetus* working on *De Populo Dei*.²¹⁶ The draft of the fundamental law of the Church had eleven canons on the fundamental rights and obligations of all the faithful (cc. 10-25). These draft canons express the equality of the faithful; the right to share in the mission of the Church; the rights of inquiry, expression, and association; the right to participate in the governance of the Church; and procedural and remedial rights.²¹⁷ Albert Gauthier describes the efforts of the *coetus* working on the *Lex Ecclesiae fundamentalis* as follows.

The commission for Revision’s efforts to formulate a *Lex Ecclesiae fundamentalis* can be described as an attempt to present the fundamental structures of the Church viewed as a juridical community—the *iusconstitutionale* of the entire Catholic Church—in a text that would contain the higher principles and major rules, both of divine and of ecclesiastical right, by which the constitutional law of the Church could be defined. This

²¹³ See GREEN, “Persons and Structures in the Church,” 72.

²¹⁴ See *ibid.*, 72.

²¹⁵ See KINNEY, “Rights and Duties of the Faithful in the Schema ‘People of God’,” 108.

²¹⁶ See PROVOST, “Introduction to cc. 208-223,” 136.

²¹⁷ See *Communicationes*, 16 (1984), 92-94; See J.A. CORIDEN, “Human Rights in the Church,” in *Concilium*, 124 (1979), 72 (=CORIDEN, “Human Rights in the Church”).

iusconstitutionale concerns mainly: 1° the fundamental rights and duties of the faithful and, 2° the basic norms that regulate the activity of pastors at the service of the mission of the Church....²¹⁸

The *coetus* working on the *Lex Ecclesiae fundamentalis* was dealing with its own difficulties in expressing the rights and duties of the laity. There was a certain objection among a portion of the members with regard to an overly hierarchical treatment of the Church in which laity were portrayed as passive subjects rather than full and responsible members. Some feared that the proposed insertion of fundamental rights of the Christian faithful was dangerous. They argued that *Gaudium et spes* promotes rights primarily with regard to civil society, but their inclusion in the *Lex* could lead to abuse.²¹⁹ There was also a concern about a claim of freedom of conscience relating to a doctrinal teaching or if statements regarding the rights of the laity to preach the gospel may lead to confusion of the roles of laity and clergy.²²⁰

In 1981, the whole *Lex* project came to an end, without any explanation, after it had been approved by a specially convened international *coetus* earlier in the year. The canons on the rights and duties of the faithful were transferred to a schema for the body of the code along with some elements from a set of rights which had been developed by the *coetus* working on the *Schema de Populo Dei*.²²¹ Thus, most of the principal norms on fundamental rights and obligations of the Christian faithful from the *LEF* became an integral part of the present Code.²²²

²¹⁸ See A. GAUTHIER, "The Progress of the *Lex Ecclesiae fundamentalis*," in *Studia canonica*, 12 (1978), 378 (=GAUTHIER, "The Progress of the *Lex Ecclesiae fundamentalis*").

²¹⁹ See S. HOLLAND, "Equality, Dignity, and Rights of the Laity," in *The Jurist*, 47 (1987), 112 (=HOLLAND, "Equality, Dignity, and Rights of the Laity").

²²⁰ See *ibid.*

²²¹ See CORIDEN, "A Challenge: Make the Rights Real," 5.

²²² See *Communicationes*, 12 (1980), 79-91; see also PROVOST, "Ecclesial Rights," 53. Castillo Lara is of the opinion that because the *LEF* was deficient on some doctrinal issues from an ecumenical point of

These developments led to the present listing of “The Obligations and Rights of All the Christian Faithful” in Title I of Book II, “The People of God.” Various other rights and obligations are also listed in scattered places throughout the Code, each dealing with specific situations. The listing of the rights for all the Christian faithful are separate from the listing of the rights of the laity, with the first canon in the section for the laity alluding also to the rights common to all the faithful as well as to rights given in other canons.²²³

1.6 Fundamental Rights of the Faithful in the Revised Code (cc. 208-223)

The canons of Title I of Book Two of the Code declare and promote the rights of all the baptized faithful in the Church (cc. 208–223).²²⁴ As seen above in the Introduction, the Code contains three other lists of rights and duties pertaining to specific groups: the obligations and rights of the lay Christian faithful (cc. 224–231),²²⁵ the obligations and

view, Pope John Paul II decided not to promulgate it as a separate book. See CASTILLO LARA, “Some General Reflections on the Rights and Duties of the Christian Faithful,” 12.

²²³ See c. 224.

²²⁴ Referring to these canons, Pope John Paul II said: “The Church has always affirmed and promoted the rights of the faithful, and in the new Code, indeed, she has promulgated them as a *fundamental charter* (cf. cc. 208-223). She thus offers opportune juridical guarantees for protecting and safeguarding adequately the desired reciprocity between the rights and duties inscribed in the dignity of the person of the *Christian faithful (christifidelis)*.” See JOHN PAUL II, Allocution to the Roman Rota, 26 February 1983, in *AAS*, 75 (1983), 544-559, English translation in W.H. WOESTMAN (ed.), *Papal Allocutions to the Roman Rota, 1939-1994*, Ottawa, Saint Paul University, 1994, 176-180. For an analysis of the canons in the light of the Council, see J. HERRANZ, “The Juridical Status of the Laity: The Contribution of the Conciliar Documents and the 1983 Code of Canon Law,” in *Communicationes*, 17 (1985), 287-315. For an authoritative history of Title I, see J.C. CASTILLO LARA, “Some General Reflections on the Rights and Duties of the Christian Faithful,” in *Studia canonica*, 20 (1986), 7-32. For a philosophical analysis of this “breakthrough of great importance,” see J. MCINTYRE, “*Lineamenta* for a Christian Anthropology: cc. 208-223,” in *Periodica*, 85 (1996), 249-276. See also L. ÖRSY, *From Vision to Legislation: From the Council to a Code of Laws*, Milwaukee, Marquette University Press, 1985, 16, 54. For “an essentially negative response” to this Title, see J.A. CORIDEN, “What Became of the Bill of Rights?” in *CLASP*, 52 (1990), 47-60. For a general analysis of these canons on the fundamental rights and obligations of the faithful, see J.M. TINOKO, “The Fundamental Rights and Obligations of the Faithful,” in *Philippiniana Sacra*, 54 (1983), 392-416.

²²⁵ Outside the Code, the Church also recognizes distinct rights of families in HOLY SEE, *Charter of Rights of the Family*, 22 October 1983, Rome, Polyglot Press, 1983. See D.J. DILLABOUGH, *The Vatican Charter of the Family 1983: A Study of the Charter and the Historical Social Tradition of Family Rights*, Rome, Academia Alfonsiana, 1987.

rights of clerics (cc. 273–289), and the obligations and rights of institutes of consecrated life²²⁶ and their members (cc. 662–672).²²⁷ In this section, we shall briefly discuss each of the rights common to all the Christian faithful enunciated in Book II, Title I of the Code. For completeness, we shall also include the canons of this Title that only impose an obligation without any right implied. The focus will not, however, be on distinguishing explicit and implicit rights, as this was already covered in the methodology section of the Introduction.

1.6.1 True equality of dignity and action

Canon 208. From their rebirth in Christ, there exists among all the Christian faithful a true equality regarding dignity and action by which they all cooperate in the building up of the Body of Christ according to each one's own condition and function.²²⁸

This canon enunciates a general principle and its application to the Church's life.²²⁹ The canon is foundational in expressing explicitly the radical equality of the Christian faithful. It views the Church as a communion.²³⁰ By reason of baptism, there

²²⁶ Religious institutes are governed by general norms on consecrated life (cc. 573-602) and their particular norms (cc. 607-709). There are also secular institutes (cc. 710-730) and societies of apostolic life (cc. 731-746), hermits (c. 603), and the order of virgins (c. 604). For commentaries, see E. GAMBARI, *Renewal in Religious Life: General Principles, Constitutions, Formation*, Boston, St. Paul Editions, 1967; 57; and J. BEYER, "Religious Life or Secular Institutes," in *The Way Supplement*, 7 (1969), 112-132. See also E. McDONOUGH, "Categories of Consecrated Life," in *Review for Religious*, 50 (1991), 301, where the author notes: "From a technical perspective, the canons list only four forms of consecrated life strictly so called and add the separate category of societies of apostolic life. However, the initial canon describing these societies compares them immediately to the institutes of consecrated life treated in the previous canons. Thus, for all practical purposes, there are really five identifiable and juridically specified forms under the umbrella category of 'consecrated life' in the revised Code."

²²⁷ See KASLYN, "The Christian Faithful cc. 204-223," 254.

²²⁸ Cf. *CCEO*, c. 11; *CIC*, c. 208. Inter christifideles omnes, ex eorum quidem in Christo regeneratione, vera viget quoad dignitatem et actionem aequalitas, qua cuncti, secundum propriam cuiusque condicionem et munus, ad aedificationem Corporis Christi cooperantur.

²²⁹ See KASLYN, Commentary on c. 208, 258; cf. R.J. BARRET, "The Rights of the Faithful: Some Signs of Progress," in *The Irish Theological Quarterly*, 61 (1995), 250-264; J. GONZÁLEZ, "Rights and Participation of the Laity in the Life of the Church," in *Boletín Eclesiástico de las Filipinas*, 77 (2001), 662-708; F.G. MORRISSEY, "The Rights and Duties of the Faithful according to the Code of Canon Law," in *Studies in Church Law*, 1 (2005), 25-48.

²³⁰ See A. MCGRATH, Commentary on c. 208, in *CLSGBI Comm*, 118, (=MCGRATH, Commentary on c. 208).

exists a true equality among all Christians. They are reborn in Christ; they share a common dignity and responsibility as children of God. This is carried out according to one's condition and function in one's life.²³¹ This statement refers to the diversity concretely existing among the people of God. Differences exist in the means by which particular individuals participate in the Church's mission, and thus different levels of responsibility exist. All Christian faithful share in one baptism, but their participation in the triple functions (*munera*) of the Church differs according to the diversity of vocations and charisms as well as an individual's specific condition.²³² Despite this diversity of participation, the principle of equality in dignity and action implies that the rights of the faithful flowing from baptism apply equally to all.

1.6.2 Obligation to maintain communion

Canon 209 §1. The Christian faithful, even in their own manner of acting, are always obliged to maintain communion with the Church.

§2. With great diligence they are to fulfill the duties which they owe to the universal Church and the particular Church to which they belong according to the prescripts of the law.²³³

This canon lays emphasis on maintaining communion by the faithful in one's manner and condition. The first part of this canon basically focuses on the obligation of the faithful to maintain communion with the Church. This obligation to maintain communion with the Church is considered as the most important duty of the faithful. This obligation derives from their baptism in the Church (c. 96) and to a lesser extent also from their confirmation which "binds them more perfectly to the Church"

²³¹ See PROVOST, Commentary on c. 208, 140.

²³² See KASLYN, Commentary on c. 208, 259.

²³³ Cf. *CCEO*, c. 12; *CIC*, c. 209, §1. *Christifideles obligatione adstringuntur, sua quoque ipsorum agendi ratione, ad communionem semper servandam cum Ecclesia.*

§2. *Magna cum diligentia officia adimpleant, quibus tenentur erga Ecclesiam tum universam, tum particularem ad quam, secundum iuris praescripta, pertinent.*

(c. 879).²³⁴ This obligation refers to two dimensions of an individual's life: the internal, personal response to the divine invitation to enter into a relationship with God and the external expression of that personal response within the community of faith.²³⁵ In the Eastern Code, the same obligation is laid out in c. 12.

The second paragraph of c. 209 encourages the faithful to fulfill their duties towards the universal and particular Church. The exercise of such duties occurs within the particular Church and parish to which they belong by reason of domicile or quasi-domicile. This communion requires the active participation of the faithful in all aspects.²³⁶

1.6.3 Obligation to live a holy life

Canon 210. All the Christian faithful must direct their efforts to lead a holy life and to promote the growth of the Church and its continual sanctification, according to their own condition.²³⁷

This canon resonates with a fundamental teaching of the Second Vatican Council's doctrine on the universal call to holiness. The call to holiness arises from a personal relationship involving a communion with God. The faithful must strive constantly to deepen their communion with God and the Church.²³⁸ The mention of the phrase in the canon, "each according to his or her own condition," should not be interpreted to mean that there actually exist various degrees of sanctity depending on

²³⁴ See D. CENALMOR, "Commentary on c. 209," in A. MARZOA, J. MIRAS, and R. RODRÍGUEZ-OCAÑA (eds.), *Exegetical Commentary on the Code of Canon Law*, prepared under the responsibility of the Martin De Azpilcueta Institute, Faculty of Canon Law, University of Navarra, E. CAPARROS (gen. ed.), English edition, vol. II/1, Wilson and Lafleur, Montreal, 2004, 48 (=CENALMOR, Commentary on c. 209).

²³⁵ See KASLYN, Commentary on c. 209, 259; cf. ID., "The Value underlying the Law: A Foundational Analysis of Canon 209 §1," in *Studia canonica*, 29 (1995), 7-28.

²³⁶ See *ibid.*, 261.

²³⁷ Cf. *CCEO*, c. 13; *CIC*, c. 210. Omnes christifideles, secundum propriam condicionem, ad sanctam vitam ducendam atque ad Ecclesiae incrementum eiusque iugem sanctificationem promovendam vires suas conferre debent.

²³⁸ See KASLYN, Commentary on c. 210, 261; cf. M. CASEY, "The Evolution of New Forms of Consecrated Life," in *Studia canonica*, 36 (2002), 463-486.

diverse conditions of people. Rather, the teaching of the Council means that, even though many different conditions and classes of persons exist, holiness is one and the same. We are all called to holiness. This obligation to strive for holiness is, above all, a religious duty, which is the primary duty of the faithful.²³⁹

1.6.4 Right to proclaim the gospel

Canon 211. All the Christian faithful have the duty and right to work so that the divine message of salvation more and more reaches all people in every age and in every land.²⁴⁰

This canon is on the obligation and right of each and every Christian faithful to spread the gospel. This is a universal right and obligation pertaining to all of Christ's faithful.²⁴¹ It is a right and obligation of the divine positive law, based on the command of Christ to make disciples of all the nations (Mt 28:18-20). This is an authentic right that does not come from the merely ecclesiastical law. The right to spread the good news is rooted in one's divine vocation that comes from one's baptism and confirmation.²⁴²

The Code presents evangelization in two ways—in a broad and narrow sense. Canons 211 and 781 express the broader understanding in which all Church activity is missionary. With a different perspective, c. 786 pertains to mission action properly so called (*actio proprie missionalis*) as the proclamation of the Christian message in areas where it is not yet known. All the faithful can have a role in this proclamation. Both senses of evangelization are intimately related since specific “mission action” reflects the

²³⁹ See CENALMOR, Commentary on c. 210, 60.

²⁴⁰ Cf. *CCEO*, c. 14; *CIC*, c. 211. *Omnes christifideles officium habent et ius allaborandi ut divinum salutis nuntium ad universos homines omnium temporum ac totius orbis magis magisque perveniat.*

²⁴¹ See PROVOST, Commentary on c. 211, 143; cf. S. RECCHI, “L'impegno a diffondere l'annuncio della salvezza (canon 211),” in *Quaderni di Diritto Ecclesiale*, 8 (1995), 419-423.

²⁴² See CENALMOR, Commentary on c. 211, 61.

Church's fundamental mission in the world. The important criterion is to maintain communion with the Church (c. 209) and to foster the common good of all (c. 223).²⁴³

1.6.5 Right to express needs, desires and opinions

Canon 212 §1. Conscious of their own responsibility, the Christian faithful are bound to follow with Christian obedience those things which the sacred pastors, inasmuch as they represent Christ, declare as teachers of the faith or establish as rulers of the Church.

§2. The Christian faithful are free to make known to the pastors of the Church their needs, especially spiritual ones, and their desires.

§3. According to the knowledge, competence, and prestige which they possess, they have the right and even at times the duty to manifest to the sacred pastors their opinion on matters which pertain to the good of the Church and to make their opinion known to the rest of the Christian faithful, without prejudice to the integrity of faith and morals, with reverence toward their pastors, and attentive to common advantage and the dignity of persons.²⁴⁴

The first paragraph of this canon establishes the duty of obedience of the faithful to their sacred pastors as representatives of Christ in two specific areas: in that which pastors declare either as teachers of the faith or as rulers of the Church.²⁴⁵ This obedience is requested and given within one's freedom; it is not simply mechanical or passive but given out of personal and ecclesial responsibility. If that which is being ordered is legitimate, then it must be obeyed in a spirit of collaboration. In order to make it easier for the faithful, the authorities should not place undue burdens on them in their obedience.²⁴⁶

²⁴³ See KASLYN, Commentary on c. 211, 263.

²⁴⁴ Cf. *CCEO*, c. 15; *CIC*, c. 212, §1. Quae sacri Pastores, utpote Christum repraesentantes, tamquam fidei magistri declarant aut tamquam Ecclesiae rectores statuunt, christifideles, propriae responsabilitatis conscii, christiana oboedientia prosequi tenentur.

§2. Christifidelibus integrum est, ut necessitates suas, praesertim spirituales, suaque optata Ecclesiae Pastoribus patefaciant.

§3. Pro scientia, competentia et praestantia quibus pollent, ipsis ius est, immo et aliquando officium, ut sententiam suam de his quae ad bonum Ecclesiae pertinent sacris Pastoribus manifestent eamque, salva fidei morumque integritate ac reverentia erga Pastores, attentisque communi utilitate et personarum dignitate, ceteris christifidelibus notam faciant.

²⁴⁵ See KASLYN, Commentary on c. 212, 264.

²⁴⁶ See CENALMOR, Commentary on c. 212, 67.

The expression “sacred pastors” (*sacri Pastores*) refers primarily to the pope and the bishops who comprise the authentic magisterium and who have the power of governance to rule the Church. To a lesser extent, it also applies to others who exercise pastoral authority in the Church such as pastors, vicars, chaplains.²⁴⁷

The second paragraph of c. 212 acknowledges the right of all the faithful to express their needs and their wishes to the sacred pastors, with special emphasis given to spiritual needs.²⁴⁸ The expression *integrument* appearing at the beginning of the second paragraph indicates that the obligation of the pastors to attend to the request of the faithful is truly one of justice. Here we see the right of the faithful to petition. The faithful have the right not only to express their spiritual needs but also have the right to petition the ecclesiastical authorities and to require a concrete response to their petition.²⁴⁹ This right to petition is an individual and collective right of the people, which can be oral or written in the way they raise their concerns in the Church. This right pertains to all the Christian faithful, although it may have a greater impact with respect to lay faithful because oftentimes they remain a voiceless group in the Church.²⁵⁰ The substance of the petition should be within the competence of the sacred pastors or ecclesiastical authority to respond and grant within his discretion. Therefore, when properly exercised, this right

²⁴⁷ See J.A. CORIDEN, “Freedom of Expression in the Church in the Light of Canon 212 (*CIC*),” in *CLSAP*, 57 (1995), 153 (=CORIDEN, “Freedom of Expression in the Church”); cf. J.M. WACHS, “Obsequium: Why and How It Is Still Possible to Demand and to Offer,” in *Periodica*, 103 (2014), 417-445; ID., *Obsequium in the Church: Sacred Tradition, Second Vatican Council, 1983 Code and Sacred Liturgy*, Gratianus Series, Wilson & Lafleur, Montreal, 2014; R. TORFS, “L’affaire Gaillot et la liberté d’expression,” in *Revue de Droit Canonique*, 45 (1995), 83-89.

²⁴⁸ See KASLYN, Commentary on c. 212, 265.

²⁴⁹ See CENALMOR, Commentary on c. 212, 71.

²⁵⁰ See CORIDEN, “Freedom of Expression in the Church,” 153.

should bring about a definitive response, whether affirmative or negative, and with the motives stated so that the petitioner has a chance of taking hierarchical recourse.²⁵¹

The third paragraph of canon 212 explicitly acknowledges the right and obligation on the part of the Christian faithful to share with the sacred pastors and with other Christian faithful their opinions on matters concerning the good of the Church.²⁵² This right and duty certainly pertains to all matters other than Church doctrine, including unsettled disciplinary issues such as the ordination of married men. On such questions, the faithful are free to express their opinions in a thoughtful and respectful manner “with reverence toward their pastors, and attentive to the common advantage and the dignity of persons.” With respect to matters of doctrine, the canon implies that expressing one’s opinion may freely be done as long as it is “without prejudice to the integrity of faith and morals.”

A crucial question arises with respect to the extent that the Christian faithful may “dissent” from a teaching of the Church.²⁵³ For example, the Church’s teaching on abortion is morally binding on everyone; this is clear from the definitive teaching of St. John Paul II expressed in *Evangelium vitae*, so dissent from it is not permissible. But, it is possible to question whether the faithful may legitimately have differing views from the Church’s teaching on the use of artificial birth control methods, as this teaching has not been solemnly defined.²⁵⁴ In every case, however, all the conditions of the canon

²⁵¹ Cf. cc. 50-51. See A.D. PORTILLO, *Faithful and Laity in the Church*, Shannon, Ecclesia Press, 1972, 76 (=PORTILLO, *Faithful and Laity in the Church*).

²⁵² See KASLYN, Commentary on c. 212, 266.

²⁵³ See CORIDEN, “Freedom of Expression in the Church,” 153.

²⁵⁴ On this issue, Huels states: “Some theologians raise the question of whether it is possible to dissent from teachings of the ordinary magisterium, since these teachings have not been declared definitively. In large measure, the answer to this question depends on what is meant by ‘dissent.’ If it implies a public defiance of the Church’s legitimate authority, such dissent could be contrary to the divine and/ or ecclesiastical law (cf. cc. 209, 212 § 1, 1371). However, there is no foreseeable canonical or moral objection

come into play. (1) The faithful may express their opinion to the sacred pastors in keeping with their “knowledge, competence, and prestige;” (2) the issue must in some way “pertain to the good of the Church;” (3) in stating their views, they must be “attentive to the common advantage and the dignity of persons;” and (4) they may not act with “prejudice to the integrity of faith and morals.”

1.6.6 Right to spiritual assistance

Canon 213. The Christian faithful have the right to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the word of God and the sacraments.²⁵⁵

The right to the word of God and the sacraments is one of the most radical and basic rights of the faithful. This right yields a corresponding obligation on the sacred pastors to take care that the Christian faithful receive this assistance.²⁵⁶ This right is further supported by the obligation placed on sacred ministers not to deny the sacraments to those who seek them opportunely, are properly disposed, and are not impeded by law (c. 843, §1). They are also to give proper preparation for the sacraments (c. 843, §2), to preach the word of God (cc. 756-757), and to call others who can help provide this good for the faithful (cc. 758-759). The duty also falls to pastors to prepare proper liturgical celebrations, preach good homilies, and offer spiritual help (cf. cc. 386-387).

if an individual Catholic, after making a serious attempt to study a given teaching and to understand the magisterium’s position, is unable in conscience to give intellectual assent to it. Such a response is more likely to occur when the reasons given for a particular teaching fail to convince a large number of the faithful.” J.M. HUELS, *The Teaching Office of the Catholic Church: A Commentary on Book III of the Code of Canon Law*, Ottawa, Saint Paul University Faculty of Canon Law, 2017, 34-35 (=HUELS, *The Teaching Office of the Catholic Church*). See also F.A. SULLIVAN, “Magisterium: Teaching Authority in the Catholic Church, Dublin, Gill and MacMillan, 1983, 166.

²⁵⁵ Cf. *CCEO*, c. 16; *CIC*, c. 213. Ius est christifidelibus ut ex spiritualibus Ecclesiae bonis, praesertim ex verbo Dei et sacramentis, adiumenta a sacris Pastoribus accipiant.

²⁵⁶ See CENALMOR, Commentary on c. 213, 77; cf. D.L. TOURNEAU, “Le canon 213 sur le droit aux biens spirituels et ses conséquences sur les droits et les devoirs fondamentaux dans l’Église,” in *Studia canonica*, 47 (2013), 407-466; ID., *La dimension juridique du sacré*, Montreal, Wilson & Lafleur, 2012; B. DALY, “Refusing Sacraments”: Another Name for Driving People away from the Church,” in *Australasian Catholic Record*, 80 (2003), 39-50.

Regarding the right to the sacraments, sacramental access may not be denied to someone in full communion without a serious cause and due process of law. Even those who are not in full communion with the Church can in certain situations seek and receive the sacraments in the Catholic Church (c. 844, §§ 3, 4). Furthermore, Catholics may seek the sacraments from non-Catholic ministers in Churches where they are validly celebrated provided the conditions of the law are met (c. 844, §2).²⁵⁷

1.6.7 Right to worship God according to one's rite and spirituality

Canon 214. The Christian faithful have the right to worship God according to the precepts of their own rite approved by the legitimate pastors of the Church and to follow their own form of spiritual life so long as it is consonant with the doctrine of the Church.²⁵⁸

The canon indicates two rights of the faithful: the right to worship according to a particular rite and the right to follow a particular spirituality. The canon makes three distinctions with respect to ritual Churches, liturgical rites, and a variety of spiritualities in the Church.²⁵⁹ In the understanding of the Latin Church, the word “rite”²⁶⁰ is used in a variety of contexts: the celebration of a sacrament (e.g., the rite of infant baptism) or of a sacramental (e.g., the rite of blessing for the site of a new church building) or, more broadly, the way in which liturgy is celebrated (e.g., the Roman, Tridentine, or

²⁵⁷ See PROVOST, Commentary on c. 214, 148.

²⁵⁸ Cf. *CCEO*, c. 17; *CIC*, c. 214. *Ius est christifidelibus, ut cultum Deo persolvant iuxta praescripta proprii ritus a legitimis Ecclesiae Pastoribus approbati, utque propriam vitae spiritualis formam sequantur, doctrinae quidem Ecclesiae consentaneam.*

²⁵⁹ See PROVOST, Commentary on c. 214, 148; cf. J. ABBASS, “Latin Bishops’ Duty of Care towards Eastern Catholics,” in *Studia canonica*, 35 (2001), 7-31; P. ERDO, “Questioni interrituali del diritto dei sacramenti,” in *Periodica*, 74 (1995), 315-353.

²⁶⁰ The term “rites” mentioned in c. 2, in its general connotation, stands for any religious function, but in its more restricted sense it means prayers and formulas required to be recited in a liturgical function. In c. 2 of the 1917 Code, the term “rites” was combined with “ceremonies.” The latter signified external acts and gestures which accompany the prayers and the public exercise of divine worship. See J.A. ABBO and J.D. HANNAN, *The Sacred Canons: A Concise Presentation of the Norms of the Church*, rev. ed., St. Louis, B. Herder Co., 1957, vol. 1, 6. The new Code does not mention the term “ceremonies”; it could mean that whatever was signified by it is subsumed under the term “rites.”

Ambrosian rite). According to c. 28, §1 of the Eastern Code, “rite “in the broad sense encompasses “the liturgical, theological, spiritual and disciplinary patrimony, culture and circumstances of history of a distinct people.”²⁶¹

The Code recognizes the right to spirituality because it enhances the holy life of the faithful according to one’s condition (c. 210). The call to holiness and sanctity is rooted in one’s baptism.²⁶² A person has the right to live one’s spirituality, but always keeping one’s practice of spirituality according to the sound teachings and doctrines of the Church. In other words, this right of one’s spirituality also demands the obligation to adhere to the teaching of the Church (c. 209, §1).²⁶³ However, no Christian is to impose upon others any specific form of spiritual life or create obstacles to one’s spirituality. The sacred pastors themselves have the responsibility to respect this right of the faithful and not to influence or impose their authority on one’s own spirituality.²⁶⁴ One particular difficulty expressed in this canon is, even though the faithful are granted a right freely to choose their own form of spiritual life, the legislation lays no responsibility on the part of the sacred pastors to teach them or guide them to a genuine Catholic spirituality.²⁶⁵

1.6.8 Right to find and direct associations

Canon 215. The Christian faithful are at liberty freely to found and direct associations for purposes of charity or piety or for the promotion of the Christian vocation in the world and to hold meetings for the common pursuit of these purposes.²⁶⁶

²⁶¹ See KASLYN, Commentary on c. 214, 269.

²⁶² See CENALMOR, Commentary on c. 214, 89.

²⁶³ See MCGRATH, “The Christian Faithful,” 120.

²⁶⁴ See CENALMOR, Commentary on c. 214, 91.

²⁶⁵ See V.S. FINN, “Canon 214: The Right of the Christian Faithful to Follow Their Own Form of Spiritual Life,” in *CLSAP*, 54 (1992), 98-109, 106 (=FINN, “Canon 214: The Right of the Christian Faithful to Follow Their Own Form of Spiritual Life”).

²⁶⁶ See *CCEO*, c. 18; *CIC*, c. 215. *Integrum est christifidelibus, ut libere condant atque moderentur consociationes ad fines caritatis vel pietatis, aut ad vocationem christianam in mundo fovendam, utque conventus habeant ad eosdem fines in communi perseguendos.*

The right to association and the right to hold meetings are part of the rights recognized by most secular governments in today's world. In many cases it is granted by the supreme law of one's nation, the Constitution. The ecclesiastical legislator has included these rights among the rights and obligations of the Christian faithful so as to grant them these rights within the Church, not so much in a generic sense, but in the context of the ecclesial nature of the Church and as part of the rights of the baptized.²⁶⁷

The law puts forth three purposes for the associations: a charitable purpose, a pious purpose (understood as religious purpose), and for the purpose of promoting the Christian vocation in the world. There are distinct canons in the Code which govern associations (cc. 298-329).

There are few challenges with regard to this canon. There are associations which do not want recognition from the Church and yet they function within the Church free from ecclesial authority to achieve their aims, whether or not they recognize that they are always subject to the vigilance of competent ecclesiastical authority (c. 305). Such situations with a lack of direction may cause damage. However, there are norms to suppress an association if it is not in accordance with ecclesiastical doctrine or discipline or it causes scandal to the faithful (cc. 320 and 326).²⁶⁸

1.6.9 Right to participate in the mission of the Church

Canon 216. Since they participate in the mission of the Church, all the Christian faithful have the right to promote or sustain apostolic action even by their own undertakings, according to their own state and condition.

²⁶⁷ See CENALMOR, Commentary on c. 215, 96; cf. M. CASEY, "Associations of Christ's Faithful: Possibilities for the Future," in *Studia canonica*, 41 (2007), 65-90; M.D. GALINDO, "Asociaciones internacionales de fieles," in *Ius Canonicum*, 50 (2010), 9-29; R. PAGÉ, "Associations of Christ's Faithful: Selected Issues," in *The Jurist*, 62 (2002), 294-311.

²⁶⁸ See F.G. MORRISEY, "The Rights and Duties of the Faithful according to the Code of Canon Law," in *Studies in Church Law*, 1 (2005), 25-48, 42 (=MORRISEY, "The Rights and Duties of the Faithful according to the Code of Canon Law").

Nevertheless, no undertaking is to claim the name Catholic without the consent of competent ecclesiastical authority.²⁶⁹

This canon is on the right of the Christian faithful to exercise the apostolate. In virtue of baptism, every Christian faithful participates in the mission of the Church. This is expressed first and foremost in the apostolic action proper to each person. This activity is rooted in Christ's action in the life of the baptized and so may be initiated by each individual without waiting for further authorization (c. 205).²⁷⁰ Canon 211 affirms that the faithful have the duty and right to proclaim the gospel. Canon 216 further defines this duty and right by stating explicitly the right to “promote or sustain apostolic action even by their own undertakings.”²⁷¹ This right to promote apostolic activity is closely related to the right of association (c. 215), though evangelization can be done by an individual. By this right of apostolic activity, the faithful have the right to undertake new apostolic initiatives and the right to join those which are already in existence.²⁷²

Finally, the use of the name “Catholic” for an apostolic endeavor needs to have the consent of the competent ecclesiastical authority, which could be permission or approval.²⁷³ Here the ecclesiastical authority would examine the initiative and grant the

²⁶⁹ Cf. *CCEO*, c. 19; *CIC*, c. 216. *Christifideles cuncti, quippe qui Ecclesiae missionem participant, ius habent ut propriis quoque inceptis, secundum suum quisque statum et condicionem, apostolicam actionem promoveant vel sustineant; nullum tamen inceptum nomen catholicum sibi vindicet, nisi consensus accesserit competentis auctoritatis ecclesiasticae.*

²⁷⁰ See PROVOST, Commentary on c. 216, 150; cf. E.A. RINERE, “Catholic Identity and the Use of the Name ‘Catholic’,” in *The Jurist*, 62 (2002), 131-158; M. VISIOLI, “Quando una organizzazione caritativa può dirsi ‘cattolica’? Considerazioni sul motu proprio *Intima Ecclesiae natura*,” in *Ephemerides Iuris Canonici*, 54 (2014), 311-337; A. ANADARAYAR, “Participation of the Laity in the Governing, Teaching and Sanctifying Office of the Church,” in *Indian Theological Studies*, 31 (1994), 218-252.

²⁷¹ See KASLYN, Commentary on c. 216, 271.

²⁷² See CENALMOR, Commentary on c. 216, 107.

²⁷³ A permission (*licentia*) is a faculty or concession foreseen in law and granted according to the law (c. 59 §2). Although permissions may sometimes grant favours, the permission to use the word “Catholic” for an apostolic initiative, strictly speaking, is not a favour but a provision (c. 48). It is an administrative condition which enables a person to act according to the norms of law and in subordination to duly constituted authority. It must always be given in advance; an approval could be given before or afterward. Thus, e.g., an

appropriate approval on the subject of associations (cc. 300 and 312), schools (c. 803 §3) and Catholic universities (c. 808).²⁷⁴ By calling the work “Catholic,” it is no longer a work of an individual or group of individuals, but it represents the public face of the Church (although only the public juridical person acts *nomine Ecclesiae* in the juridical sense as per c. 313).

1.6.10 Right to Christian education

Canon 217. Since they are called by baptism to lead a life in keeping with the teaching of the gospel, the Christian faithful have the right to a Christian education by which they are to be instructed properly to strive for the maturity of the human person and at the same time to know and live the mystery of salvation.²⁷⁵

This canon is on the right to a Christian education and the fulfillment of this right within the Christian community, namely, the right to a Christian education. The two goals of this canon are: the maturity of the human person and the knowledge and living out of the mystery of salvation. In order to achieve this goal, one needs a Christian education.²⁷⁶ This requires the teaching of Catholic-Christian doctrine at all levels—catechetical instruction, preaching, and imparting the truths of the message of the gospel (cf. c. 795). By this formation, the Christian faithful will have fuller knowledge of divine truths which will enhance their efforts to lead a holy life (c. 210) and live completely in communion

association that neglects to get advance approval to call itself Catholic could nevertheless be granted such approval later.

²⁷⁴ See KASLYN, Commentary on c. 216, 272.

²⁷⁵ Cf. *CCEO*, c. 20; *CIC*, c. 217. *Christifideles, quippe qui baptismo ad vitam doctrinae evangelicae congruentem ducendam vocentur, ius habent ad educationem christianam, qua ad maturitatem humanae personae prosequendam atque simul ad mysterium salutis cognoscendum et vivendum rite instruantur.*

²⁷⁶ See KASLYN, Commentary on c. 217, 273; R.J. BARRETT, “The Right to Integral Catechesis as a Fundamental Right of the Christian Faithful,” in *Apollinaris*, 67(1994), 179-206; ID., “The Rights to Adequate Catechesis as a Fundamental Right of the Faithful,” in *Apollinaris*, 70 (1997), 185-223; J.P. DOSS, *Freedom of Enquiry and Expression in the Catholic Church: A Canonical Theological Study*, KristuJyoti, Bangalore, 2007; ID., *The Right to Education in Church Law*, Chennai, Don Bosco Publications, 2011.

with the Church (c. 209, §1). By this Catholic education, the faithful also may acquire that fuller knowledge of the sacred sciences which are taught in the universities or in other ecclesiastical faculties (c. 229, §2).²⁷⁷

The Church lays an obligation on every Catholic parent to educate their children. For example, c. 226, §2 states that parents have a most grave obligation and possess the right to educate their children according to the doctrine of the Church. The seriousness of this obligation is reinforced in c. 1366 which requires a censure or any other just penalty for parents or those who take the place of parents if they hand over their children to be baptized or educated in a non-Catholic religion and education. More specifically, the arrangements for such education are expressed in cc. 773–780 which concern catechetical instruction, in cc. 793–821 on Catholic education, and in cc. 807–814 on Catholic universities and other institutes of higher studies.²⁷⁸

1.6.11 Right to freedom in pursuit of sacred sciences

Canon 218. Those engaged in the sacred disciplines have a just freedom of inquiry and of expressing their opinion prudently on those matters in which they possess expertise, while observing the submission due to the magisterium of the Church.²⁷⁹

This canon is on the just freedom of inquiry and expression of views for those who are involved in the sacred sciences. The exercise of this freedom demands a corresponding obligation to maintain due respect for, or submission (*obsequium*) to, the magisterium of the Church. The magisterium is to be respected because it serves the

²⁷⁷ See CENALMOR, Commentary on c. 217, 110.

²⁷⁸ See KASLYN, Commentary on c. 217, 273.

²⁷⁹ Cf. *CCEO*, c. 21; *CIC*, c. 218. Qui disciplinis sacris incumbunt iusta libertate fruuntur inquirendi necnon mentem suam prudenter in iis aperiendi, in quibus peritia gaudent, servato debito erga Ecclesiae magisterium obsequio.

highest revealed truth.²⁸⁰ The canon expresses that all the faithful possess this right, including those who teach the theological disciplines in an institute of higher learning (cc. 812, 818), as well as those otherwise engaged in critical, systematic study and research. Even those who err in their search for truth must be treated respectfully because of this right, allowing them opportunity to correct their error or clarify their position in accord with the norm of law.²⁸¹ The exercise of their right to religious liberty can be impeded only when it goes against a doctrine proposed by the ordinary or extraordinary magisterium of the Church.²⁸² Due acknowledgement and respect for the ecclesiastical magisterium is necessary for the public order of the Church, and ultimately the doctrine of the authentic magisterium must be upheld. However, there is room for “dissent” against doctrines on faith or morals that have not been definitively proposed (c. 750), always bearing in mind the obligation of due respect (*obsequium*) towards the magisterium (cc. 752, 753).²⁸³

1.6.12 Right to choice of state in life

Canon 219. All the Christian faithful have the right to be free from any kind of coercion in choosing a state of life.²⁸⁴

The right to be free from coercion is a natural right, but in this canon, it is a specific right of the Christian faithful to be free from coercion in choosing a state of life. This right does not imply the unconditional possibility of attaining whatever state in life

²⁸⁰ See PROVOST, Commentary on c. 218, 151; cf. J.P. DOSS, “Freedom of Inquiry and Expression of Christifideles? Some Juridical Considerations Starting from Canon 218,” in *Studia canonica*, 44 (2010), 53-98.

²⁸¹ See cc. 221, 749-754; CONGREGATION FOR THE DOCTRINE OF THE FAITH, Regulations for the Investigation of Teachings (*Agendi ratio in doctrinarum examine*), 29 June 1997, in *AAS*, 89 (1997), 830-835; *CLD*, vol. 14, 786-792.

²⁸² See CENALMOR, Commentary on c. 218, 119.

²⁸³ See PROVOST, Commentary on c. 218, 152.

²⁸⁴ Cf. *CCEO*, c. 22; *CIC*, c. 219. Christifideles omnes iure gaudent ut a quacumque coactione sint immunes in statu vitae eligendo.

one wishes. Rather, it is the right to be free from coercion in selecting a state in life. It is immunity rather than an entitlement.²⁸⁵ The principle here is that every one of Christ's faithful has the positive right not be subjected to any kind of coercion or pressure in making his or her choice of a state in life. It would also be equally a violation of the right if one were to be coerced into not choosing a preferred state in life.²⁸⁶

1.6.13 Right to good reputation and privacy

Canon 220. No one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy.²⁸⁷

This canon addresses two fundamental rights. As noted in the Introduction, the first right, to a good reputation, is implicit in saying that no one may harm illegitimately a person's good reputation. The second right is explicit—the right to protect one's own privacy (*ius ad propriam intimitatem tuendam*). The right to enjoy a good reputation and the right of the person to protect his or her privacy are natural rights. The rights are based on natural law and rooted in human dignity.²⁸⁸ As Javier Hervada remarks:

It must be borne in mind that this unquestionable obligation does not proceed from baptism but from natural law. The obligation and the right are human and, therefore, of natural order. The canon uses “unlawfully” because it is licit and ethical to bring to light a person's defects and offences and thus damage his or her good reputation in this respect, when the superior good of the individuals, of society, and of the Church is at stake. Although penal actions may involve publicity, it is lawful to start penal actions when the right to this action exists and it is exercised correctly. Calumny, denunciation, insults, slander, and the spreading of rumors are all contrary to this right.²⁸⁹

²⁸⁵ See CENALMOR, Commentary on c. 219, 122.

²⁸⁶ See MCGRATH, “The Christian Faithful,” 124.

²⁸⁷ Cf. *CCEO*, c. 23; *CIC*, c. 220. *Nemini licet bonam famam, qua quis gaudet, illegitime laedere, nec ius cuiusque personae ad propriam intimitatem tuendam violare.*

²⁸⁸ See KASLYN, Commentary on c. 220, 277; cf. M. BRADLEY, “The Evolution of the Right to Privacy in the 1983 Code: Canon 220,” in *Studia canonica*, 38 (2004), 301-328; R.J. BARRETT, “The Right to Privacy,” in *Law and Justice*, 136 (1998), 39-57; D.L. TOURNEAU, “Le canon 220 et les droits fondamentaux à la bonne réputation et à l'intimité,” in *Ius Ecclesiae*, 26 (2014), 127-148; R.E. JENKINS, “Defamation of Character in Canonical Doctrine and Jurisprudence,” in *Studia canonica*, 36 (2002), 419-462.

²⁸⁹ See J. HERVADA, Commentary on c. 219, in E. CAPARROS, H. AUBE, and J. THORN (eds.), *The Code of Canon Law Annotated*, 2nd ed. rev., Montreal, Wilson and Lafleur, 2004, 177 (=HERVADA, Commentary on c. 219).

The canon says that no one (*nemini*) may illegitimately harm the good name which someone else enjoys or injure their right of privacy. Since these are natural rights, *nemini* applies to all human beings, baptized or not, but in the context of this Title on the obligations and rights of the *christifideles*, it has special application to the baptized, including the clergy and ecclesiastical authorities. All members of the faithful and indeed every human being should respect the good reputation and privacy of others. One's reputation can be harmed only when there is a legitimate claim in doing so.²⁹⁰

The Code contains a few references to privacy in specific contexts. Seminarians have the privacy and freedom to choose any confessor (c. 240, §1); a prohibition is placed on the part of seminary authorities to take the opinion from the confessor and spiritual director in the seminary while promoting or demoting a seminarian (c. 240, §2). Similar rules are expressed for promoting the candidates in religious institutes (c. 630, §1); also it is forbidden for a superior to induce his subjects to make a manifestation of conscience (c. 630, §5). The Code presents various options to safeguard reputations and to ensure that penalties are inflicted only as a last resort. In reference to the preliminary investigation process concerning delicts, c. 1717, §2 requires "care" to ensure the protection of a person's good name. Canon 1341 suggests diverse "means of pastoral solicitude" be utilized by an ordinary before beginning a judicial or administrative penal process, which is always a measure of last resort in dealing with a problematic situation. Canon 1455, §3 gives judges in specific cases the freedom to bind participants to observe secrecy if the danger of damaging the reputation of others is present.²⁹¹

²⁹⁰ See CENALMOR, Commentary on c. 220, 128.

²⁹¹ See KASLYN, Commentary on c. 220, 278.

1.6.14 Right to protection and vindication of rights

Canon 221 §1. The Christian faithful can legitimately vindicate and defend the rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law.

§2. If they are summoned to a trial by a competent authority, the Christian faithful also have the right to be judged according to the prescripts of the law applied with equity.

§3. The Christian faithful have the right not to be punished with canonical penalties except according to the norm of law.²⁹²

This canon points out three principles necessary to ensure that rights are not only recognized but also vindicated with the purpose of guaranteeing that rights do not become meaningless. The three principles are the right to vindicate and defend rights in a competent Church forum, i.e., the appropriate ecclesiastical tribunal (§1); the right of due process according to the prescripts of the law “applied with equity” (§2); and the right (rephrased in positive terms) that sanctions only be imposed only according to the due process of the law (§3).²⁹³

The first paragraph of the canon deals with the right of the faithful to the lawful defense of their own rights. This includes the right that the case should be brought before a legitimate ecclesiastical authority and then, if needed, through the corresponding recourse to the competent forum. Even though the faithful have the right to defend and vindicate their rights, in the canonical tradition it is preferable to try to settle conflicts

²⁹² Cf. *CCEO*, c. 24; *CIC*, c. 221, §1. *Christifidelibus competit ut iura, quibus in Ecclesia gaudent, legitime vindicent atque defendant in foro competenti ecclesiastico ad normam iuris.*

§2. *Christifidelibus ius quoque est ut, si ad iudicium ab auctoritate competenti vocentur, iudicentur servatis iuris praescriptis, cum aequitate applicandis.*

§3. *Christifidelibus ius est, ne poenis canonicis nisi ad normam legis plectantur.*

²⁹³ See KASLYN, Commentary on c. 221, 279; cf. Z. GROCHOLEWSKI, “The Basis of the Right of Defence,” in *Forum*, (2006), 339-360; V.R. UY, “The Principle of Equity in the Code of Canon Law,” in *Philippine Canonical Forum*, 8 (2006), 65-106; M.P. DUGAN (ed.), *The Penal Process and the Protection of Rights in Canon Law*, Montreal, Wilson & Lafleur, 2005; W.L. DANIEL, *Ministerium Iustitiae. Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, Montreal, Wilson & Lafleur, 2011.

peacefully and harmoniously.²⁹⁴ Expressing an important fundamental principle, the Code urges all the Christian faithful “to strive diligently to avoid litigation” (c. 1446), and this exhortation is for all. Book VII of the Code specifically deals with all processes pertaining to the defense and vindication of rights. Canons 1732–1739 provide the procedure for taking recourse against administrative decrees. Canons 1400, §2 and 149, §2 refer to administrative tribunals. The possibility also exists of recourse to the second section of the Apostolic Signatura against a decision by one of the Roman dicasteries. According to c. 1445, §2, the Signatura “deals with conflicts which have arisen from an act of ecclesiastical administrative power.”

In its second paragraph, this canon deals with the right to be judged according to the procedural law. This involves due process with equity. This right is applicable to both judicial and administrative processes and would include specific rights such as the right to a good reputation and the right to protect one’s privacy (c. 220).²⁹⁵

The term “equity” refers to softening the rigor of law through charity so that the ideal of justice may be achieved even when the law lacks it in itself (c. 19). This essential principle in canonical and Catholic tradition is related to the Aristotelian idea of *epieikeia*.²⁹⁶ This canonical equity is rooted in the biblical teaching of the demands of justice and mercy, which are inseparable. One always needs to keep in mind that every right is also related to being just; *ius* alludes to justice.²⁹⁷

²⁹⁴ See CENALMOR, Commentary on c. 221, 135.

²⁹⁵ See KASLYN, Commentary on c. 221, 280.

²⁹⁶ This Greek word is spelled variously by writers in English, mostly *epieikeia* or *epikeia*. *Epieikeia* is used directly by the subject of the law on his or her own behalf. *Epieikeia* is a virtue by which the subject of the law does not observe the law when, in particular circumstances, a greater good is at stake. See J.A. CORIDEN, “Rules for Interpreters,” in *The Art of Interpretation*, Washington, D.C., CLSA, 1982, 5-6. See L.J. RILEY, *The History, Nature and Use of Epikia in Moral Theology*, Washington, D.C., Catholic University of America, 1948.

²⁹⁷ See CENALMOR, Commentary on c. 221, 138.

The third paragraph of the canon deals with the right of the Christian faithful not to have canonical penalties inflicted upon them except in accordance with the norm of law. Nevertheless, the Church has the innate right to constrain those who commit offences with penal sanctions (c. 1311), and these penal sanctions can restrict the free exercise of rights (c. 96).²⁹⁸ The Church upholds the spirit of the gospel in dealing with particular, subjective situations by always observing canonical equity and keeping in mind the salvation of souls, which in the Church must always be the supreme law (c. 1752).²⁹⁹ However, the Code gives some discretion in the use of coercive power on the part of the authority.³⁰⁰ The law recognizes the need for sanctions, but it also recognizes that sanctions should be applied only as a last resort in order to protect the Church and its mission in the world (c. 1341).³⁰¹

1.6.15 Obligation to support the Church

Canon 222 §1. The Christian faithful are obliged to assist with the needs of the Church so that the Church has what is necessary for divine worship, for the works of the apostolate and of charity, and for the decent support of ministers.

§2. They are also obliged to promote social justice and, mindful of the precept of the Lord, to assist the poor from their own resources.³⁰²

The canon does not treat of rights but of two obligations. The first paragraph of the canon expresses that the Christian faithful have the obligation to help provide for the needs of the Church in keeping with the basic purposes for which the Church acquires earthly

²⁹⁸ See *ibid.*, 139.

²⁹⁹ See E. LABANDEIRA, Commentary on c. 1752, in *CCLA*, 1374 (=LABANDEIRA, Commentary on Canon 1752).

³⁰⁰ See CENALMOR, Commentary on c. 221, 140.

³⁰¹ See KASLYN, Commentary on c. 221, 282.

³⁰² Cf. *CCEO*, c. 25; *CIC*, c. 222, §1. *Christifideles obligatione tenentur necessitatibus subveniendi Ecclesiae, ut eidem praesto sint quae ad cultum divinum, ad opera apostolatus et caritatis atque ad honestam ministrorum sustentationem necessaria sunt.*

§2. *Obligatione quoque tenentur iustitiam sociale promovendi necnon, praecepti Domini memores, ex propriis redditibus pauperibus subveniendi.*

goods. These are to provide what is needed for divine worship, to carry on apostolic and charitable works, and to provide for the honest support of ministers of the Church (c. 1254, §2). This obligation binds all the Christian faithful irrespective of their juridical status, whether laity, religious, or clergy. However, the obligation falls particularly on those who are not directly engaged in the ministry.³⁰³

The obligation to support the Church's mission rests on everyone. Even when the faithful do not have adequate means of financial support, they still are obliged to show their support through their various talents and also to pursue holiness of life and participate in the mission of the Church (cc. 210-211). Book V of the Code on temporal goods gives sufficient legitimacy for the Church to acquire temporal goods "by every just means" (c. 1259). It speaks of the Church's right to require the faithful to give financial support (c. 1260), and c. 1261, §2 obliges the bishop to remind the faithful of this obligation and to urge its observance. There are also rules governing the competence of the diocesan bishop to impose a moderate tax on both physical and juridic persons (c. 1263).

The second paragraph of the canon deals with a double obligation of the faithful to promote social justice and to care and provide for the poor from their own resources. Examples of such are underlined in many places in the Code, such as in the Church's mission to proclaim the gospel (c. 211), in the role of associations through their exercise of charitable works and imbuing the temporal order with a Christian spirit (c. 298), in c. 287, § 1 which urges clerics "to foster peace and harmony based on justice," and in c. 528, §1 which obliges pastors to promote works of social justice. The Code also

³⁰³ See PROVOST, Commentary on c. 222, 156; cf. S. LOURDUSAMY, "Canonical Perspectives on Social Justice and Charity," in *Studia canonica*, 49 (2015), 483-500; S.J. JEYASEELAN, "The Poor and the Priest in the Code of Canon Law - I," in *Vidyajyoti*, 63 (1999), 925-932; ID., "The Poor and the Priest in the Code of Canon Law - II," in *Vidyajyoti*, 64 (2000), 48-57.

recognizes that other just demands are placed on the faithful. For example, c. 231, §2 states the right of lay persons who work for the Church to have decent remuneration so that they are able to provide decently for their own needs and those of their family.³⁰⁴

1.6.16 Obligation to consider the common good and rights of others

Canon 223 §1. In exercising their rights, the Christian faithful, both as individuals and gathered together in associations, must take into account the common good of the Church, the rights of others, and their own duties toward others.

§2. In view of the common good, ecclesiastical authority can direct the exercise of rights which are proper to the Christian faithful.³⁰⁵

This last canon of Title I does not declare or establish any right but treats the exercise of rights. It provides a necessary corrective to an overly individualistic understanding of obligations and rights, a tendency which is often prevalent in civil society.

The first paragraph expresses three factors to be considered in the exercise of rights by the faithful: the common good of the Church, the rights of others, and specific duties owed toward other faithful. The exercise of rights entails a dual responsibility towards personal and social responsibility. Both individuals and society as a whole must have regard for the rights of others, their own duties towards others, and the common good of all.³⁰⁶ The common good of the Church is not restricted only to those factors that

³⁰⁴ See KASLYN, Commentary on c. 222, 284.

³⁰⁵ Cf. *CCEO*, c. 26; *CIC*, c. 223, §1. In iuribus suis exercendis christifideles tum singuli tum in consociationibus adunati rationem habere debent boni communis Ecclesiae necnon iurium aliorum atque suorum erga alios officiorum.

§2. Ecclesiasticae auctoritati competit, intuitu boni communis, exercitium iurium, quae christifidelibus sunt propria, moderari.

³⁰⁶ See KASLYN, Commentary on c. 223, 285; J.B. DÍAZ, “El favor libertatis como clave hermenéutica del canon 223,” in *Ius Canonicum*, 53 (2013), 517-546; J.A. CORIDEN, “The Right of Catholics to Hold Meetings on Church Property: Canonical and Pastoral Issues,” in *The Jurist*, 62 (2002), 76-91; R.T. GO, “Administrative Tribunals in the Particular Church,” in *Philippine Canonical Forum*, 9 (2007), 51-92; R. MCCORQUODALE, “Contemporary Human Rights and Christianity,” in *Law and Justice*, 154(2005), 6-26.

affect communion with the Church but also includes, in general, all that transcends the good of the individual and the interest of the ecclesial community.³⁰⁷

Conflicts between individuals and between individuals and the institution can and do arise. Canon 221 expresses the necessity of ensuring a proper protection of rights. That is why the Code lays down a criterion that, prior to the issuance of a decree, the issuing authority should “hear those whose rights can be injured” (c. 50).³⁰⁸ Finally, laws which curtail the free exercise of rights are to be interpreted strictly (c. 18), and the same rule applies to administrative acts (c. 36, §1).

The second paragraph allows Church authorities to direct, or moderate (*moderari*), the exercise of the rights of the Christian faithful, without however forgetting to protect and promote the Church’s mission in view of the common good. The paragraph does not allow an arbitrary exercise of authority. Rather, its purpose is to ensure that individuals in exercising their rights are mindful of the Church as a communion in which all the faithful are equal in dignity and in action (c. 208) and are called to participate in the proclamation of the gospel (c. 211).

In 2010, the Pontifical Council for Legislative Texts issued an Explanatory Note clarifying the application of c. 223, §2. The document says that the moderation of rights pertains to their regulation by norms of a *general* character, especially by legislation.³⁰⁹ It does not apply to a restriction on the exercise of the rights of persons in individual cases. This can only be done according to the proper procedures as set forth in the law.

³⁰⁷ See CENALMOR, Commentary on c. 223, 149.

³⁰⁸ See KASLYN, Commentary on c. 223, 286.

³⁰⁹ PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Explanatory Note concerning the application of c. 223, §2 CIC, 8 December 2010, in *Communicationes*, 43 (2010), 280-281.

Conclusion

In the first section of this initial chapter of our study, we examined some foundational matters pertaining to the fundamental rights of the faithful: the notion of rights, the meaning of the Christian faithful (*christifideles*), the differences between obligations and rights, and the subjects who enjoy rights in the Church. The following three sections of the chapter subsequently explored the Church's doctrine on fundamental rights in modern papal teachings prior to Vatican II, in the documents of the Second Vatican Council with respect to fundamental ecclesial rights, and in papal teachings after Vatican II. The final two sections of the chapter switched the focus from the supreme magisterium (*munus docendi*) to the supreme legislator (*munus regendi*), considering fundamental rights in canon law before the 1983 Code followed by the rights of the faithful as treated in cc. 208-223 of the 1983 Code.

The popes of the modern era prior to Vatican II uniformly grounded their teachings on rights on the basis of the fundamental values of the dignity of persons and their lawful freedom in the personal and social arenas. A host of rights were articulated as flowing from these most basic of rights. Some fundamental rights are related to the *right to life*: rights to bodily integrity, food, clothing, shelter, rest, health care and other social benefits. Some of these may be categorized as *economic rights* such as the right to property ownership and the right to the legitimate use one's material goods. Some are the *rights of workers*: the right to work, to adequate remuneration for one's work, to organize and belong to labor associations or unions, to have a safe work environment. Other rights pertain to each individual's own *personal life* and choices, such as the right to choose one's status in life (marriage and family, ordination, religious profession), the right to respect from others, the

right to one's good name, the right to develop oneself. Still others are the rights of persons *in society* especially with respect to the state: the right to a governmental system that protects the rights of persons; the right to participate in political processes; the right to demand observance of international treaties; freedom of communication, residence, movement, assembly and association; right to an education. Other rights pertain to *religious freedoms*: the freedom to follow one's conscience, to worship God, to practice one's religion; and the right to have a religious education. Noteworthy is the fact that none of the rights articulated in modern papal teaching is unique to the *christifidelis*. All are natural rights rooted in the dignity and freedom of the human person; they are not rights that emanate from baptism or canon law.

The Second Vatican Council reemphasized many of the teachings of the supreme magisterium on rights from Popes Leo XIII to John XXIII. It addressed the issue of rights numerous times in various documents and different contexts. Like the popes, the Council Fathers affirmed the rights of all people (*homines*), including their civil rights. In addition, the Council addressed rights particular to the Christian faithful, which is the principal interest of this study. These ecclesial rights affirmed by the Council may be divided into three categories: spiritual rights, rights to participate in the Church's mission, and personal rights.

There are four *spiritual rights* which concern the faithful's right to participate in the Church's life. These are the right to pursue holiness of life; the right of the faithful to receive from their pastors the spiritual goods of the Church, especially the word of God and the sacraments; the right to one's own spirituality (which acknowledges the existence

of various spiritualities); and the right to observe one's own rite (in view of the conciliar teaching that every lawfully recognized rite is of equal right and dignity).

The Council enunciated three rights of the faithful involving a *participation in the Church's mission*. These are the right (and duty) to announce the good news of salvation to the whole world, a right applicable to all Christ's faithful without any discrimination; the right of preserving, professing and defending the faith; and the right to undertake apostolic works on one's own initiative.

Four of the rights of the faithful affirmed by the Council may be categorized as *personal rights*. These are the right (and duty) to make known one's needs to ecclesiastical authority; the right (and duty) to state freely one's opinions; the right to associate freely, to form associations and participate in them to serve the mission of the Church in the world; and the right to a Christian formation, including formal religious instruction.

The popes after Vatican II continued to teach about the fundamental rights of persons. The teachings of Popes Paul VI, John Paul II, Benedict XVI, and Francis remained in the tradition of their predecessors, stressing the important natural, human rights applicable to all people, but their magisterial documents by and large do not address the unique rights of the *christifidelis* flowing from baptism and protected in canon law.

Pope Paul VI truly understood the importance of human dignity and rights, as evidenced by his repeated stress on the equality of all people and their right to participate in society. Pope John Paul II's pastoral ministry was centered on the dignity of human persons and their well-being. He was a passionate apostle of human dignity and rights, insisting on the Church's duty to proclaim its message of justice and denounce any individual, program or system that neglects or exploits human rights and dignity. Pope

Benedict XVI emphasized the significance of the virtue of charity in reference to justice and rights. As for Pope Francis (2013-), from the beginning of his pontificate he has stressed human dignity and human rights, and he has shown particular concern for the poor and suffering. Francis affirms that the dignity of all people should be respected, regardless of sexual orientation, and that any form of discrimination or aggression is to be avoided.

The final section of this first chapter treated the fundamental rights and obligations of the faithful in Book II, Title I of the revised Code (cc. 208-223). Most of these canons have the documents of Vatican II as their direct or principal source. With respect to the fundamental rights of the Christian faithful, these canons treat: the radical equality in dignity and action of the Christian faithful; the right to be involved in the spreading of the divine message of salvation to all people and every land; the right to engage in apostolic activity; the rights of association and assembly; the right to the spiritual goods of the Church, especially the word of God and the sacraments; the right of the faithful to worship God according to their proper rite and follow their own form of spiritual life; the right to choose their own state in life; the right to a Christian education; the right to make known to the pastors of the Church their needs, especially spiritual needs, and their desires; the right to manifest their opinion on matters regarding the good of the Church; the rights to a good reputation and to privacy; the rights to defend and vindicate their proper rights before the competent ecclesiastical tribunal and to be judged according to the norm of law. One of the rights in this Title is directed at the Christian faithful engaged in the study of the sacred disciplines; they have a just freedom of inquiry and of prudently expressing their opinion on matters in which they are expert.

In the following chapters, we shall see that the canonical rights of the faithful are not limited to these fundamental rights in Title I of Book II. There are many other rights given in various canons of every Book of the Code, but most of these are implicit in the text of the law rather than explicitly stated to be rights. To begin this investigation, our focus will be on the rights of the faithful in the canons of Books III on the *munus Ecclesiae docendi*.

CHAPTER TWO

RIGHTS OF THE FAITHFUL IN THE *MUNUS DOCENDI*

This chapter begins our survey of the rights of all the *christifideles*, both explicit and implicit rights, which are found in the *Code of Canon Law*, in addition to the fundamental rights of the faithful treated in Chapter One. The concern of this chapter is the rights of the faithful in the canons of Book III of the *Code of Canon Law* entitled, *De Ecclesiae munere docendi*. The word for the teaching “office” in Latin is *munus*, which can be translated variously: office, duty, responsibility, task, function, position, etc. All these meanings come into play in the canons of Book III. The word *docendi* means to teach, to instruct, etc.

Book III is organized into five Titles. Following several foundational canons of major importance (cc. 747-755), Book III establishes basic canonical discipline for a variety of juridical institutes that are a part of, or closely related to, the *munus docendi*: the ministry of the divine word, especially preaching and catechetical instruction (cc. 756-780); the mission action of the Church (cc. 781-792); Catholic education, especially schools, Catholic universities and other institutes of higher studies, and ecclesiastical universities and faculties (cc. 793-821); instruments of social communication and books in particular (cc. 822-832); and the profession of faith (c. 833). However, our concern in this study are only canons dealing with the explicit or implicit rights common to all the faithful.

Various explicit and implicit rights can be identified in several categories: rights related to the ministry of the divine word, especially the rights to preaching and catechetical formation; rights with respect to Catholic education; and rights with respect to the publication of books by Catholic authors on topics of faith and morals. There are also a

few rights in Book III that do not fall into these categories. These are in the introductory canons of Book III and in Title II on the mission action of the Church.

In the introductory canons of Book III, one finds two explicit rights and one implicit right, each rooted in the divine law. The first of these is the right and duty of the “Church” to preach the gospel to all nations (c. 747, §1).³¹⁰ This is a right and duty of the divine positive law and is binding not just on the institutional Church but all baptized Christians (cf. c. 211). The second is a right of the divine natural law belonging to all persons (*homines*), baptized and unbaptized. This is the obligation and explicit right of all people to follow their own consciences in the discernment of truth about God and religion (c. 748, §1).³¹¹ In its Declaration on Religious Liberty, the Second Vatican Council taught that God has made known to man the way in which He is to be worshiped, thus saved by Christ, and these teachings subsist in the Catholic and Apostolic Church. Religious freedom is necessary to worship God, and this entails immunity from coercion in civil society.³¹² The human person has a right to religious freedom, and no one is to be forced to act in a manner

³¹⁰ Cf. *CCEO*, c. 595, §1; *CIC*, c. 747, §1. *Ecclesiae, cui Christus Dominus fidei depositum concredidit ut ipsa, Spiritu Sancto assistente, veritatem revelatam sancte custodiret, intimius perscrutaretur, fideliter annuntiaret atque exponeret, officium est et ius nativum, etiam mediis communicationis socialis sibi propriis adhibitis, a qualibet humana potestate independens, omnibus gentibus Evangelium praedicandi.*

Cf. J. ARRIETA, “The Active Subject of the Church’s Teaching Office (Canons 747-748),” in *Studia canonica*, 23 (1989), 243-256; J. BOYLE, *Church Teaching Authority: Historical and Theological Studies*, University of Notre Dame Press, 1995; ID., “Church Teaching Authority in the 1983 Code,” in *The Jurist*, 45 (1985), 136-170; R. ENO, *Teaching Authority in the Early Church*, Wilmington, Glazier, 1984; L.Z. LEGASPI, “The Teaching Office of the Church,” in *Philippiniana sacra*, 18 (1983), 417-446.

³¹¹ Cf. *CIC*, c. 748, §1. *Omnes homines veritatem in iis, quae Deum eiusque Ecclesiam respiciunt, quaerere tenentur eamque cognitam amplectendi ac servandi obligatione vi legis divinae adstringuntur et iure gaudent.*

Cf. L. BLYSKAL, “*Obsequium*: A Case Study,” in *The Jurist*, 48 (1988), 559-589; J. BURKHARD, “*Sensus fidei*: Meaning, Role, and Future of a Teaching of Vatican II,” in *Louvain Studies*, 17 (1992), 18-34; T.J. GREEN, “The Teaching Function of the Church: A Comparison of Selected Canons in the Latin and Eastern Codes,” in *The Jurist*, 55 (1995), 93-140.

³¹² See *DH*, no. 1, in *AAS*, 58 (1966), 929-930, *Flannery I*, 799-800. On the importance of *DH* for Catholic teaching on religious freedom, see John T. PAWLIKOWSKI, “Catholicism and Human Rights in Light of the Shoah,” in C. RITTNER (ed.), *Learn, Teach, Prevent: Holocaust Education in the 21st Century*, Greensburg, PA, National Catholic Center for Holocaust Education, Seton Hill University, 2010, 72-73.

contrary to his own beliefs, whether privately or publicly. This right has a foundation in the very dignity of the human person.³¹³ Following from this is the implicit right not to be coerced to embrace the Catholic faith against one's own conscience (c. 748, §2).³¹⁴ These latter two rights, since they are not specific rights of *christifideles* but rights of all people, are not directly pertinent to this thesis.

In Title II of Book III, one finds an implicit right related to the divine law duty and right of the faithful to preach the gospel to all peoples. This is the “fundamental duty” of the faithful to “assume their own role in the mission work” of the Church (c. 781).³¹⁵ This duty likewise implies a right: that the faithful have the right to participate in the Church's mission effort. Thus, ecclesiastical authorities must have an annual collection for the missions (cf. c. 791, 4^o) to enable the faithful minimally to exercise this right by contributing financially to the Church's missions.

Canon 781 is the only canon of Title II of Book III (On the Mission Action of the Church) that has an implicit right pertaining to all the faithful. There is none in the final Title V (On the Profession of Faith). Implicit rights and some explicit rights are, however, found in Titles I, III, and IV—which treat the ministry of the divine word, Catholic education, and the means of social communication.

³¹³ See *DH*, no. 2, in *AAS*, 58 (1966), 930-931, *Flannery*1, 800-801.

³¹⁴ Cf. *CCEO*, c. 586; *CIC*, c. 748, §2. *Homines ad amplectendam fidem catholicam contra ipsorum conscientiam per coactionem adducere nemini umquam fas est.*

³¹⁵ Cf. *CCEO*, c. 584, §1; *CIC*, c. 781. *Cum tota Ecclesia natura sua sit missionaria et opus evangelizationis habendum sit fundamentale officium populi Dei, christifideles omnes, propriae responsabilitatis conscii, partem suam in opere missionali assumant.*

Cf. A. REUTER, “The Missionary Activity of the Church (Canons 781-792),” in *Studia canonica* 23, (1989), 387-407; F.J. URRUTIA, *De Ecclesiae munere docendi*, Rome, Universitas Gregoriana, 1983.

2.1 Rights to the Ministry of the Divine Word

“The Ministry of the Divine Word” is the heading of Title I of Book III of the Code (cc. 756-780). Canon 761 speaks directly to the various means that are to be employed in proclaiming Christian teaching.³¹⁶ The canon urges that all available means are to be used in proclaiming the message of Christ. Preaching and catechetical formation are primary; they always hold the first place.³¹⁷ This ministry broadly consists of all the Church’s means of teaching and evangelizing. In the structure of Book III of the Code, however, it mainly refers to “the Preaching of the Word of God” and “Catechetical Formation,” which comprise the two chapters of Title I. Subsequent canons of Book III—on mission action, Catholic education, and the means of social communication—are also part of this ministry, but they are treated in separate titles under their own headings.

2.1.1 The right to receive preaching from ordained ministers

Preaching is the proclamation of the good news of salvation. The purpose of preaching is to arouse a faith response and conversion among the faithful. The primary concern of the Church towards the word of God is that it be preached effectively.³¹⁸ There is one canon that deals directly with an explicit right to preach. Bishops have the right³¹⁹

³¹⁶ Cf. *CIC*, c. 761. *Varia media ad doctrinam christianam annuntiandam adhibeantur quae praesto sunt, imprimis praedicatio atque catechetica institutio, quae quidem semper principem locum tenent, sed et propositio doctrinae in scholis, in academiis, conferentiis et coadunationibus omnis generis, necnon eiusdem diffusio per declarationes publicas a legitima auctoritate occasione quorundam eventuum factas prelo aliisque instrumentis communicationis socialis.*

³¹⁷ In *Evangelii gaudium*, the apostolic exhortation issued in 2013 after the synod on the new evangelization, Pope Francis dedicates the third chapter to the proclamation of the Gospel. Above all, he calls for preachers to take the task seriously by devoting significant time for the duty of preaching. See POPE FRANCIS, Apostolic Exhortation on the Proclamation of the Gospel in Today’s World *Evangelii gaudium*, (=EG) in *AAS*, 105 (2013), 1019–1137, English translation FRANCIS, *The Joy of the Gospel Evangelii gaudium: Apostolic Exhortation*, Washington, DC, United States Conference of Catholic Bishops, 2013.

³¹⁸ See J. A. CORIDEN, Commentary on cc. 762-772, in *CLSA Comm2*, 924.

³¹⁹ In the 1917 Code, all bishops had the “privilege” of preaching everywhere (c. 349, §1, 1°; cf. c. 239, §§1, 3). Under the law of the 1983 Code, a privilege is only accorded by a singular administrative act (c. 76), not by law. What formerly were called privileges of the law are now rights granted by law.

to preach everywhere by the law itself in accord with c. 763.³²⁰ This right of c. 763 does not depend just on having an office such as diocesan bishop or auxiliary bishop. The right is obtained *ipso iure* at the moment of episcopal ordination. Presbyters who have offices which are equivalent in law to the diocesan bishop do not have this right. The right is the result of the fact that “ordination as a bishop itself entails a special relationship with the word and the bishop’s responsibilities for the entire Church.”³²¹

In the remainder of this section we will be dealing with seven canons with implicit rights to preaching. The legislator implicitly acknowledges in these canons that the faithful have the right to hear homilies and other forms of preaching from their ordained ministers. There is also one explicit right in c. 762 using the word *fas* as a synonym for *ius*.

Right to the ministry of the word

Canon 757. It is proper for presbyters, who are co-workers of the bishops, to proclaim the gospel of God; this duty binds especially pastors and others to whom the care of souls is entrusted with respect to the people committed to them. It is also for deacons to serve the people of God in the ministry of the word in communion with the bishop and his *presbyterium*.³²²

The canon strongly upholds the responsibility of presbyters and deacons “to proclaim the gospel of God” and “to serve the people of God in the ministry of the word.” This duty is particularly binding on priests and deacons who serve in pastoral ministry for

³²⁰ Cf. *CCEO*, c. 610 §1; *CIC*, c. 763. *Episcopis ius est ubique, non exclusis ecclesiis et oratoriis institutorum religiosorum iuris pontificii, Dei verbum praedicare, nisi Episcopus loci in casibus particularibus expresse renuerit.*

³²¹ See J.A. FUENTES, Commentary on c. 763, in *Exegetical Comm*, vol. 3/1, 80. For his part, the *diocesan bishop* has the obligation to preach frequently in person (c. 386, §1), which implies a right of the faithful to have such preaching by their bishop. Cf. J.A. CORIDEN, “The Teaching Ministry of the Diocesan Bishop and Its Collaborative Exercise,” in *The Jurist*, 68 (2008), 382-407; T.J. GREEN, “Rights and Duties of Diocesan Bishops,” in *CLSAP*, 45 (1983), 18-36; F.G. THOMAS, “The Bishop in His Teaching Office and Those Who Assist Him,” in *Studia canonica*, 21 (1987), 229-238.

³²² Cf. *CIC*, c. 757. *Presbyterorum, qui quidem Episcoporum cooperatores sunt, proprium est Evangelium Dei annuntiare; praesertim hoc officio tenentur, quoad populum sibi commissum, parochi alii quibus cura animarum concreditur; diaconorum etiam est in ministerio verbi populo Dei, in communione cum Episcopo eiusque presbyterio, inservire.*

a community of the faithful entrusted to them. In all three grades of holy orders, clerics have this basic duty regarding the proclamation of the word. Therefore, it is “proper” (*proprium*) for bishops, priests and deacons to announce the gospel of God and serve the people in the ministry of the word.³²³ This obligation on the part of the pastors and deacons implicitly grants the faithful a right to hear the word of God from those entrusted with the *cura animarum*.³²⁴

Right to the preaching by the ordained

Canon 762. Sacred ministers, among whose principal duties is the proclamation of the gospel of God to all, are to hold the function of preaching in esteem since the people of God are first brought together by the word of the living God, which it is certainly right to require from the mouth of priests.³²⁵

This canon precisely declares the right of the faithful to receive the word of God and the duty and obligation on the part of the pastors to preach the gospel to everyone.³²⁶ The canon says that the faithful utterly have the right (*omnino fas est*) to require preaching from the mouth of *sacerdotes*, that is, from bishops and presbyters. The Latin word *fas* may be taken as a synonym for *ius* in this and many other instances in canon law, so this is an explicit right. Deacons are not included, but it does not seem correct to conclude that the faithful have no such right to require preaching from deacons who have the faculty to preach and a pastoral charge that includes the duty to preach.³²⁷ The right to have preaching

³²³ See CORIDEN, Commentary on c. 757, in *CLSA Comm2*, 921; J.M. HUELS, “The Ministry of the Divine Word (Canons 756-761),” in *Studia canonica*, 23 (1989), 325-344; J.H. PROVOST, “Brought Together by the Word of the Living God (cc. 762-772),” in *Studia canonica*, 23 (1989), 345-371.

³²⁴ See FUENTES, Commentary on c. 757, in *Exegetical Comm*, vol. 3/1, 62.

³²⁵ Cf. *CIC*, c. 762. Cum Dei populus primum coadunetur verbo Dei vivi, quod ex ore sacerdotum omnino fas est recipere, munus praedicationis magni habeant sacri ministri, inter quorum praecipua officia sit Evangelium Dei omnibus annuntiare.

³²⁶ See FUENTES, Commentary on c. 762, in *Exegetical Comm*, vol. 3/1, 77; see also C. SOLER, “El derecho fundamental a la palabra y los contenidos de la predicación,” in *Fidelium Iura*, 2 (1992), 305-331.

³²⁷ This clause of the canon inexplicably overlooks deacons, who are *ministri sacri* and who have the faculty to preach by law in accord with c. 764. This omission is probably due to the canon’s reliance on

from deacons is implicit in the first part of the canon referring to “sacred ministers,” which includes deacons, “among whose principal duty is the proclamation of the gospel of God to all.”

Right to have preaching by presbyters and deacons

Canon 764. Without prejudice to the prescript of can. 765, presbyters and deacons possess the faculty of preaching everywhere; this faculty is to be exercised with at least the presumed consent of the rector of the church, unless the competent ordinary has restricted or taken away the faculty or particular law requires express permission.³²⁸

According to this c. 764, presbyters and deacons have the faculty to preach by their very ordination. The law itself grants to the ordained, at the moment of their ordination to the diaconate, the faculty to preach everywhere, “to be exercised with at least the presumed consent of the rector of the Church, unless the competent ordinary has restricted or taken away the faculty or particular law requires express permission.” A grave cause would be necessary to remove a faculty that the law itself has provided for the benefit of the faithful.³²⁹ The faculty by law for presbyters and deacons to preach everywhere coincides with their duty to preach and thereby facilitates the right of the faithful to the preaching of their ordained ministers.

Right to the homily

Canon 767 §2. A homily must be given at all Masses on Sundays and holy days of obligation which are celebrated with a congregation, and it cannot be omitted except for a grave cause.

conciliar sources which deal with preaching the Gospel by bishops (*LG* 25) and by presbyters (*PO* 4); there was no comparable treatment at Vatican II of preaching by deacons. Rather than *sacerdotes*, the legislator should have said *ministri sacri*, which would also be consistent with the main clause of the canon.

³²⁸ Cf. *CCEO*, c. 610, §2-§3; *CIC*, c. 764. Salvo praescripto can. 765, facultate ubique praedicandi, de consensu saltem praesumpto rectoris ecclesiae exercendae, gaudent presbyteri et diaconi, nisi ab Ordinario competenti eadem facultas restricta fuerit aut sublata, aut lege particulari licentia expressa requiratur.

³²⁹ See CORIDEN, Commentary on c. 764, in *CLSA Comm2*, 926; see also D. SALACHAS, “Problemi interrituali nei due Codici orientale e latino,” in *Apollinaris*, 67 (1994), 660-661; ID., *Il magistero e l’evangelizzazione dei popoli nei Codici latino e oriental: Studio teologico-giuridico comparativo*, Bologna, Centro Editoriale Dehoniano, 2001.

§4. It is for the pastor or rector of a church to take care that these prescripts are observed conscientiously.³³⁰

The second paragraph of this canon imposes the canonical obligation to preach the homily, which must be given (*homilia habenda est*) at all Masses on Sundays and holy days of obligation that are celebrated with a gathering of people. It may only be omitted for a grave cause (*nisigravi de causa*). Since this is a law containing an exception, the exception must be strictly interpreted (c. 18). Strict interpretation in this instance means that the cause for omitting the homily must be truly grave and not be merely a just cause. Given the gravity of this obligation; the faithful implicitly have an equally important right to have the homily preached to them at Masses on Sundays and holy days of obligation.

The fourth paragraph determines the competence and duty of those who, besides the Holy See and diocesan bishop, are responsible for enforcing the above norms on the homily, that is, the norms of paragraphs 1-3 of c. 767. It is the responsibility of the pastor or the rector of a church to ensure that these norms are faithfully observed. The same competency and duty may be attributed to the religious superior, chaplain, or other priest who has charge of a church (cf. c. 19).³³¹ Since these priests have the duty to ensure that a homily is preached at all Masses on Sundays and holy days, it follows that the faithful who attend their churches have the right to such preaching.

³³⁰ Cf. *CCEO*, c. 614, §2; §4 *CIC*, c. 767, §2. In omnibus Missis diebus dominicis et festis de praecepto, quae concursu populi celebrantur, homilia habenda est nec omitti potest nisi gravi de causa.

§4. Parochi aut ecclesiae rectoris est curare ut haec praescripta religiose servantur.

³³¹ See FUENTES, Commentary on c. 767, in *Exegetical Comm*, vol. 3/1, 93; see also L.ROBITAILLE, “An Examination of Various Forms of Preaching: Toward an Understanding of the Homily and Canons 766-767,” in *CLSAP*, 58 (1996), 308-325; J. FOX, “The Homily and the Authentic Interpretation of Canon 767, §1,” in *Apollinaris*, 62 (1989), 123-169; J.C. ERRÁZURIZ M., *Il “munus docendi”*: *diritti e doveri dei fedeli*, Ateneo Romano della Santa Croce Monografie Giuridiche 4, Milan, Dott. A. Giuffrè Editore, 1991; L. WRENN, *Authentic Interpretations on the 1983 Code*, Washington, DC, Canon Law Society of America, 1993.

Right to preaching based on Church teachings

Canon 768 §1. Those who proclaim the divine word are to propose first of all to the Christian faithful those things which one must believe and do for the glory of God and the salvation of humanity.

§2. They are also to impart to the faithful the doctrine which the magisterium of the Church sets forth concerning the dignity and freedom of the human person, the unity and stability of the family and its duties, the obligations which people have from being joined together in society, and the ordering of temporal affairs according to the plan established by God.³³²

This canon is concerned with the content of preaching. The canon demonstrates the practical meaning of the ministry of the word. Both paragraphs of the canon stress that preaching should center on the basic and primary aspects of our faith: that which we must do and believe for the glory of God, that is, the necessary relationship of the word with the morals and teachings of the Church.³³³ Since those who preach are obliged to include these matters in their preaching, it follows that the faithful have an implicit right to have homilies and other forms of preaching that incorporate these values.

Right to meaningful preaching

Canon 769. Christian doctrine is to be set forth in a way accommodated to the condition of the listeners and in a manner adapted to the needs of the times.³³⁴

Canon 769 is an exhortation on the manner of preaching. The Christian teaching that is the content of preaching must be adapted to the listeners, according to their condition and times. The canon grants the faithful an implicit right to have homilies and other forms

³³² Cf. *CCEO*, c. 616; *CIC*, c. 768 §1. Divini verbi praecones christifidelibus imprimis proponant, quae ad Dei gloriam hominumque salutem credere et facere oportet.

§2. Impertiant quoque fidelibus doctrinam, quam Ecclesiae magisterium proponit de personae humanae dignitate et libertate, de familiae unitate et stabilitate eiusque muniis, de obligationibus quae ad homines in societate coniunctos pertinent, necnon de rebus temporalibus iuxta ordinem a Deo statutum componendis.

³³³ See FUENTES, Commentary on c. 763, in *Exegetical Comm*, vol. 3/1, 97.

³³⁴ Cf. *CCEO*, c. 626; *CIC*, c. 769. Doctrina christiana proponatur modo auditorum condicioni accomodato atque ratione temporum necessitatibus aptata.

of preaching be made meaningful for them in keeping with their own condition and life circumstances. In the post-synodal apostolic exhortation *Evangelii gaudium*, Pope Francis calls on preachers to know the heart of their community (EG, no. 137).³³⁵ He tells them to preach homilies that are neither entertainment nor a lecture (EG, no. 138),³³⁶ to prefer images to the use of examples (EG, no. 157),³³⁷ to give full attention to the biblical texts (EG, nos. 146 and 152),³³⁸ and to relate the texts to the lived, experienced of the listeners (EG, no. 154).³³⁹ He also calls on preachers to develop good delivery skills which, he says, is “a profoundly spiritual concern” (EG, no. 156).³⁴⁰

Right in diocesan law to spiritual exercises and sacred missions

Canon 770. At certain times according to the prescripts of the diocesan bishop, pastors are to arrange for those types of preaching which are called spiritual exercises and sacred missions or for other forms of preaching adapted to needs.³⁴¹

According to c. 770, the faithful may also have an implicit right, depending on particular law, to have preaching in the form of spiritual exercises or sacred missions. The canon is an exhortation, leaving it to diocesan law (*iuxta Episcopi dioecisani praescripta*) to regulate this matter. If the bishop decrees that parishes are to offer either or both of these forms of preaching, then the faithful have the implicit right to it in accord with the terms of the diocesan law.

³³⁵ See EG, no. 137, in AAS, 105 (2013), 1077, *The Joy of the Gospel*, 68-69.

³³⁶ See EG, no. 138, in AAS, 105 (2013), 1077, *The Joy of the Gospel*, 69.

³³⁷ See EG, no. 157, in AAS, 105 (2013), 1086, *The Joy of the Gospel*, 79-80.

³³⁸ See EG, no. 146; 152, in AAS, 105 (2013), 1080-1080; 1083-1084, *The Joy of the Gospel*, 73; 77.

³³⁹ See EG, no. 154, in AAS, 105 (2013), 1084-1085, *The Joy of the Gospel*, 78.

³⁴⁰ See EG, no. 156, in AAS, 105 (2013), 1085-1086, *The Joy of the Gospel*, 79.

³⁴¹ Cf. CCEO, c. 615; CIC, c. 770. Parochi certis temporibus, iuxta Episcopi dioecisani praescripta, illas ordinent praedicationes, quas exercitia spiritualia et sacras missiones vocant, vel alias formas necessitatibus aptatas.

Cf. J. WALLACE, “Reconsidering the Parish Mission,” in *Worship*, 67 (1993), 340-351.

2.1.2 The right to catechetical formation

Catechetics, or catechetical formation (*catechetica institutio*), is an important aspect in the formation in faith of the Christian faithful. It is a principal form of the ministry of the divine word along with preaching. This formation includes both teaching of Christian doctrine in a systematic way and the experience of Christian living.³⁴² Here we will consider those canons on catechetical formation that imply a right of the faithful to this formation or some aspect of it.³⁴³

The Church has issued several major documents since the Second Vatican Council that have shaped and promoted catechetical formation, among these the General Catechetical Directory (1971),³⁴⁴ which was revised as the General Directory for Catechesis (1997),³⁴⁵ and the *praenotanda* of the Rite of Christian Initiation of Adults (RCIA),³⁴⁶ which is a major source of universal law for the Latin Church. Another important source, magisterial rather than juridical, is the *Catechism of the Catholic Church*,³⁴⁷ which is complemented by catechisms prepared under the auspices of the conferences of bishops and diocesan bishops. Also noteworthy is the Apostolic Letter of Pope John Paul II on catechesis, *Catechesi tradendae (CT)*.³⁴⁸

³⁴² See CORIDEN, Commentary on cc. 773-780, in *CLSA Comm2*, 933.

³⁴³ See R. BARRETT, "The Rights to Adequate Catechesis as a Fundamental Right of the Faithful," in *Apollinaris*, 70 (1997), 185-223, 200 (=BARRETT, "The Rights to Adequate Catechesis as a Fundamental Right of the Faithful").

³⁴⁴ SACRED CONGREGATION FOR THE CLERGY, *Directorium catechisticum generale Ad normam decreti*, 11 April 1971, in *AAS*, 64 (1972), 97-176; *General Catechetical Directory*, Washington, USCC, 1971.

³⁴⁵ CONGREGATION FOR THE CLERGY, *Directorium generale pro catechesi*, 15 August 1997, Libreria Editrice Vaticana, 1997; *General Directory for Catechesis*, Washington, USCC, 1998.

³⁴⁶ See *Ordo Initiationis christianae adultorum*, editio typica, 6 January 1972, Typis Polyglottis Vaticanis, 1972 [*OICA*]; adapted English version *Rite of Christian Initiation of Adults*, Washington, International Committee on English in the Liturgy (=ICEL), 1985.

³⁴⁷ See *Catechismus Ecclesiae catholicae*, editio typica, Libreria Editrice Vaticana, 1997.

³⁴⁸ See JOHN PAUL II, Apostolic Letter *Catechesi tradendae*, 16 October 1979, in *AAS*, 71 (1979), 1277-1340, *FLANNERY2*, 762-814 (=CT).

Right to catechetical formation

Canon 773. It is a proper and grave duty especially of pastors of souls to take care of the catechesis of the Christian people so that the living faith of the faithful becomes manifest and active through doctrinal instruction and the experience of Christian life.³⁴⁹

Canon 773 speaks of the aim of catechetical formation: “that the living faith of the faithful becomes manifest and active through doctrinal instruction and the experience of Christian life.”³⁵⁰ The canon makes clear that especially the pastors of souls (*pastores animarum*) have a proper and grave duty to provide catechetical formation for their faithful.³⁵¹ The pastors have this primary duty to supervise the catechetical endeavour. They have a duty *exiustitia* to see that catechesis is offered to the faithful entrusted to their care.³⁵² Pastors of souls are bishops, pastors of parishes, vicars, chaplains, and others to whom a community of the faithful is entrusted.³⁵³ Implied in this duty of the pastors is the right of the faithful to catechetical formation.

Right to catechism and other instruments of catechesis

Canon 775 §1. Having observed the prescripts issued by the Apostolic See, it is for the diocesan bishop to issue norms for catechetics, to make provision that suitable instruments of catechesis are available, even by preparing a catechism if it seems opportune, and to foster and coordinate catechetical endeavors.

³⁴⁹ Cf. *CCEO*, c. 617; *CIC*, c. 773. *Proprium et grave officium pastorum praesertim animarum est catechesim populi christiani curare, ut fidelium fides, per doctrinae institutionem et vitae christianae experientiam, viva fiat explicita atque operosa.*

³⁵⁰ See FUENTES, Commentary on c. 773, in *Exegetical Comm*, vol. 3/1, 108; see also M.T. HAGARTY, “The Code, Catechesis, and the Concept ‘Experience’: A Commentary on Canon 773,” in *The Jurist*, 61 (2001), 239-256; R.J. BARRETT, “The Normative Status of the Catechism,” in *Periodica*, 85 (1996), 9-34; E.C. EUSEBIO, Jr., “Integrated Catechesis: The Redaction History of Canons 773 and 779 of the 1983 Code of Canon Law,” in *Philippiniana Sacra*, 143 (2013), 53-76.

³⁵¹ See CORIDEN, Commentary on c. 773, in *CLSA Comm1*, 555.

³⁵² See M. CONTE A CORONATA, *Institutiones iuris canonici*, vol. 2, Turin, 1931, 253 (=CONTE A CORONATA, *Institutiones iuris canonici*). See also FUENTES, Commentary on c. 773, in *Exegetical Comm*, vol. 3/1, 110.

³⁵³ See CORIDEN, Commentary on c. 773, in *CLSA Comm1*, 555.

§2. If it seems useful, it is for the conference of bishops to take care that catechisms are issued for its territory, with the previous approval of the Apostolic See.³⁵⁴

This canon deals with the responsibilities of the Apostolic See,³⁵⁵ diocesan bishops and bishops' conference for the ministry of catechesis and preparing catechisms. For the purpose of this thesis, the relevant part of the canon is that which says the diocesan bishop is to make provision that suitable instruments of catechesis are available. Since the bishop has this obligation, it follows that the faithful have the right to suitable catechetical materials. One sees this implicit obligation also in the following canon.

Rights of parishioners to catechesis

Canon 776. By virtue of his function, a pastor is bound to take care of the catechetical formation of adults, youth, and children, to which purpose he is to use the help of the clerics attached to the parish, of members of institutes of consecrated life and of societies of apostolic life, taking into account the character of each institute, and of lay members of the Christian faithful, especially of catechists. None of these are to refuse to offer their help willingly unless they are legitimately impeded. The pastor is to promote and foster the function of parents in the family catechesis mentioned in can. 774, §2.³⁵⁶

³⁵⁴ Cf. *CCEO*, c. 622, §3; 622, §2; *CIC*, c. 775, §1. *Servatis praescriptis ab Apostolica Sede latis, Episcopi dioecesanum est normam de re catechetica edicere itemque prospicere ut apta catechesis instrumenta praesto sint, catechismus etiam parando, si opportunum id videatur, necnon incepta catechetica fovere atque coordinare.*

§2. *Episcoporum conferentiae est, si utile videatur, curare ut catechismi pro suo territorio, praevia Sedis Apostolicae approbatione, edantur.*

³⁵⁵ Regarding the responsibilities of the Roman Pontiff and the bishops, cf. COUNCIL OF TRENT, *Sess. 24, de ref.*, Ch. 7, *Sess. 25, de indice et catechismo*, MANSI, *Sacrorum conciliorum nova et amplissima collectio*, v. 33, Graz, 1961, cols. 160 and 194. See also FUENTES, Commentary on c. 775, in *Exegetical Comm*, vol. 3/1, 117; M. SIMON, "Le catéchisme de Jean-Paul II. Une élaboration de douze années," in *Revue Théologique de Louvain*, 33 (2002), 211-238; J. PASSICOS, "Le statut des instruments de catéchèse dans le Code, in *Année Canonique*, 31 (1988), 147-156; and J. TOBIN, "The Diocesan Bishop as Catechist," in *Studia canonica*, 18 (1984), 365-414.

³⁵⁶ Cf. *CCEO*, c. 624; *CIC*, c. 776. *Parochus, vi sui muneris, catecheticae efformationem aduulorum, iuuenum et puerorum curare tenetur, quem in finem sociam sibi operam adhibeat clericorum paroeciae addictorum, sodalium institutorum vitae consecratae necnon societatum vitae apostolicae, habita ratione indolis uniuscuiusque instituti, necnon christifidelium laicorum, praesertim catechistarum; hi omnes, nisi legitime impediti, operam suam libenter praestare ne renuant. Munus parentum, in catechesi familiari, de quo in can. 774, § 2, promoveat et foveat.*

This canon specifies one of the most important duties of the pastor (*parochus*), which is to see to the catechetical formation of the flock in his parish (cf. c. 528, §1).³⁵⁷ There is a moral and legal obligation on the pastor, in virtue of his office (*munus*), to offer parish catechesis.³⁵⁸ The pastor need not be directly involved with the catechesis; this responsibility can be shared with others who are willing to assist and collaborate with him. Three categories of people are mentioned whose assistance can be sought by the pastor. These are the clerics attached to the parish, both presbyters and deacons; men and women religious and members of secular institutes and societies of apostolic life in accord with the character of each institute or society; and finally lay persons, especially trained catechists. The law says that all of these should not refuse to offer their help willingly unless they are legitimately impeded (*omnes, nisi legitime impediti, operam suam libenter praestare ne renuant*). From the strong obligations mentioned in this canon, there clearly is implied the right of all parishioners to have catechetical formation in their parish, be they adults, youth, or children.

Right to different forms of catechesis

Canon 777. Attentive to the norms established by the diocesan bishop, a pastor is to take care in a special way:

- 1° that suitable catechesis is imparted for the celebration of the sacraments;
- 2° that through catechetical instruction imparted for an appropriate period of time children are prepared properly for the first reception of the sacraments of penance and the Most Holy Eucharist and for the sacrament of confirmation;
- 3° that having received first communion, these children are enriched more fully and deeply through catechetical formation;
- 4° that catechetical instruction is given also to those who are physically or mentally impeded, insofar as their condition permits;

³⁵⁷ See F.G. MORRISEY, “The Teaching Office of the Church,” in *CLSGBI Comm*, 429 (=MORRISEY, “The Teaching Office of the Church”).

³⁵⁸ See FUENTES, Commentary on c. 776, in *Exegetical Comm*, vol. 3, 122; M. BALAM MEDINA, “La función de enseñar del párroco,” in *Revista Mexicana de Derecho Canónico*, 9 (2003), 63-91; J.P. DOSS, “Giovani e scelte nella vita cristiana: alcune considerazioni canoniche,” in *Salesianum*, 79 (2017), 377-403.

5° that the faith of youth and adults is strengthened, enlightened, and developed through various means and endeavors.³⁵⁹

Like cc. 766, §4 and 771 with respect to preaching, c. 777 lays emphasis on particular duties of the pastor in the ministry of the divine word with respect to catechetical formation in the parish. The pastor is exhorted to see to these matters, observing any diocesan norms that may exist. The first two duties pertain to preparation for the sacraments. A third duty of the pastor is to see to the continuing catechetical formation of children after first Communion so that their knowledge and faith can grow and deepen. A fourth duty of pastors is to see to the catechetical formation of persons with physical or mental disabilities as far as their condition permits. Finally, the pastor must take care to offer faith formation to youth and adults by various means and endeavors so that their faith be strengthened, enlightened, and developed. From all these duties arises the implicit right of parishioners to these specific dimensions of catechetical formation.³⁶⁰

Right to catechesis in the works of institutes and societies

Canon 778. Religious superiors and superiors of societies of apostolic life are to take care that catechetical instruction is imparted diligently in their churches, schools, and other works entrusted to them in any way.³⁶¹

³⁵⁹ Cf. *CIC* c. 777. Peculiari modo parochus, attentis normis ab Episcopo dioecesano statutis, curet: 1° ut apta catechesis impertiatur pro sacramentorum celebratione; 2° ut pueri, ope catecheticae institutionis per congruum tempus impertitae, rite praeparentur ad primam receptionem sacramentorum paenitentiae et sanctissimae Eucharistiae necnon ad sacramentum confirmationis; 3° ut iidem, prima communione recepta, uberius ac profundius catechetica efformatione excolantur; 4° ut catechetica institutio iis etiam tradatur, quantum eorum condicio sinat, qui corpore vel mente sint praepediti; 5° ut iuvenum et adutorum fides, variis formis et inceptis, muniatur, illuminetur atque evolvatur.

³⁶⁰ See CORIDEN, Commentary on c. 777, in *CLSA Comm2*, 936; A. PERLASCA, "La prima confessione dei fanciulli nel dinamismo dell'iniziazione cristiana," in *Quaderni di Diritto Ecclesiale*, 18 (2005), 79-102.

³⁶¹ Cf. *CIC* c. 778. Curent Superiores religiosi et societatum vitae apostolicae ut in suis ecclesiis, scholis aliisque operibus sibi quoquo modo concreditis, catechetica institutio sedulo impertiatur.

Canon 778 places a responsibility on religious superiors and superiors of societies of apostolic life. Their obligation is to take care that catechetical formation is a part of their institute's or society's ministry, be it in their churches, schools, or other works that are entrusted to them in any way. From this obligation follows an implicit right to catechesis enjoyed by the faithful who attend the churches, schools, and other works of these institutes and societies. The obligation does not apply when members of these institutes or societies are simply working for a parish, school, or other institution in the charge of the diocese or another public juridic person.³⁶²

Right to suitable catechetical aids

Canon 779. Catechetical instruction is to be given by using all helps, teaching aids, and instruments of social communication which seem more effective so that the faithful, in a manner adapted to their character, capabilities and age, and conditions of life, are able to learn Catholic doctrine more fully and put it into practice more suitably.³⁶³

As part of the right to catechesis, there is also an implied right in the law to suitable or adequate materials for catechesis. This canon is a wise pastoral encouragement about the means to be used in the catechetical ministry that includes necessary adaptation of modern methods in achieving these goals.³⁶⁴ The canon furthermore sets forth the duty of persons responsible for catechesis to use tools of all kinds, stipulating that they are to be adapted to the needs (and to the rights) of the faithful.³⁶⁵ The aim of utilizing these different means is so that the faithful may more fully learn Catholic teaching and in return put it into

³⁶² See CORIDEN, Commentary on c. 778, in *CLSA Comm2*, 937; see also J. FUENTES, "The Active Participants in Catechesis and Their Dependence on the Magisterium (Canons 773-780)," in *Studia canonica*, 23 (1989), 373-386.

³⁶³ Cf. *CICc. 779*. Institutio catechetica tradatur omnibus adhibitibus auxiliis, subsidiis didacticis et communicationis socialis instrumentis, quae efficaciora videantur ut fideles, ratione eorum indoli facultatibus et aetati necnon vitae condicionibus aptata, plenius catholicam doctrinam ediscere eamque aptius in praxim deducere valeant.

³⁶⁴ See CORIDEN, Commentary on c. 779, in *CLSA Comm1*, 559.

³⁶⁵ See FUENTES, Commentary on c. 779, in *Exegetical Comm*, vol. 3/1, 131.

practice. This canon should be read in conjunction with the canons on the instruments of social communication, especially 827 §§1 and 2 on catechisms and books used for religious instruction.³⁶⁶

2.2 Rights Pertaining to Catholic Education

In this section we deal with rights that are related to Catholic education, which is the subject of Title III of Book III of the Code.³⁶⁷ The canons of this Title clearly reflect the teachings of Vatican II's Declaration on Christian Education, *Gravissimum educationis*, in asserting the rights and responsibilities of the various Christian faithful in this area.³⁶⁸ The canons of concern to this study, those containing rights of the faithful, treat the following matters: the right and duty of the Church of educating and the responsibility of the pastors to provide a Catholic education (c. 794), the establishment and promotion of Catholic schools (c. 800, §1), schools patronised by the diocesan bishop (c. 802), vigilance over Catholic religious formation and education (c. 804, §2), vigilance over Catholic instruction (c. 806, §2), the right to establish and govern universities (c. 807),

³⁶⁶ See J.M. HUELS, *The Teaching Office of the Catholic Church: A Commentary on Book III of the Code of Canon Law*, Ottawa, Saint Paul University Faculty of Canon Law, 2017, 131 (=HUELS, *The Teaching Office of the Catholic Church*).

³⁶⁷ The Church has the duty and right to educate people because of its divinely given mission to help them attain the fullness of their Christian lives. The Church seeks to vindicate its rights against sometimes hostile governments. Pastors have the responsibility to see that all of the faithful enjoy some form of Catholic education (c. 794); parents have the duty and the right to educate their children. This includes the right and obligation to choose the most suitable means for the Catholic education of their offspring. The state should assist parents in providing for this religious formation (c. 793). Parents' prerogatives loom large in the Code. It refers to Catholic schools as well as other means of education, e.g., public and private schools and programmes of religious instruction. For a detailed study on Catholic education with the duties and obligations of parents, see P. BAILLARGEON, *The Canonical Rights and Duties of Parents in the Education of their Children*, JCD dissertation, Saint Paul University, Ottawa, 1986 (=BAILLARGEON, *The Canonical Rights and Duties of Parents*).

³⁶⁸ See S.A. EUART, Commentary on cc. 793-821, in *CLSA Comm2*, 953.

the responsibility for appointing teachers in universities (c. 810, §1), provision for theological studies (c. 811, §1), and the mandate to teach in Catholic colleges and ecclesiastical universities.

Commenting on this section on Catholic Education, John Huels emphasizes that the Latin word *educatio* not only means formal or classroom education but has the broader meaning of the ‘upbringing’ of a child. This broader meaning actually lays the emphasis on the parents³⁶⁹ and on their obligation and right to provide Catholic education and formation for their children.³⁷⁰

Right to educate and right to a Catholic education

Canons 794 §1. The duty and right of educating belongs in a special way to the Church, to which has been divinely entrusted the mission of assisting persons so that they are able to reach the fullness of the Christian life.

§2. Pastors of souls have the duty of arranging everything so that all the faithful have a Catholic education.³⁷¹

³⁶⁹ The basic rights and obligations of parents in the matter of the religious education of their children is a concern of the Code in several places. Canon 226, §2 makes a reference to the “right” of parents to educate their children, while the conciliar passage at this point referred only to the obligation. In some of the canons in Book III, the law refers to “Christian” education, but more often it will speak of “Catholic” education. When the law, however, speaks of “Christian” education, it can usually be assumed from the context that, in fact, it means “Catholic.” For instance, in c. 226, §2, it is stated that Christian education is to be provided in accordance with the teaching of the Church. For Catholic education, see cc. 793; 794; 798; and 801, and compare with cc. 226; 802; and 835, §4.

In some instances, we must recognize that parents are not available to carry out the fundamental obligation of educating the children. This can be because of death or other unfortunate circumstances. For this reason, the canons often refer to those who take their place: cc. 774; 793; 868; 914. Among other canons referring to rights and obligations of parents relative to education, we could note c. 799 on the right to education in conformity with the religious and moral convictions of the parents; c. 1055, § 1, on the nature of Christian marriage; cc. 1125; 1154; 1366; 1689; and so forth.

As general background on this theme, see BAILLARGEON, *The Canonical Rights and Duties of Parents*. See also F.G. MORRISEY, “The Rights of Parents in the Education of their Children (Canons 796-806),” in *Studia canonica*, 23 (1989), 429-444 (= MORRISEY, “The Rights of Parents in the Education of their Children”); and M.T. CERDÁ DONAT, “Educación católica y sociedad civil,” in *Anuario de Derecho Canónico*, 5 (2016), 165-187.

³⁷⁰ See HUELS, *The Teaching Office of the Catholic Church*, 178.

³⁷¹ Cf. *CCEO*, c. 628; *CIC*, c. 794, §1. *Singulari ratione officium et ius educandi spectat ad Ecclesiam, cui divinitus missio concredita est homines adiuvandi, ut ad christianae vitae plenitudinem pervenire valeant.*

§2. *Animarum pastoribus officium est omnia disponendi, ut educatione catholica omnes fideles fruuntur.*

This canon concerns a right and duty with respect to educating and a right to a Catholic education. The first paragraph of the canon establishes explicitly the duty and right of the Church of educating. Since the Church is the people of God, this duty and right pertains to all the *christifideles*. It is a duty and right of the divine law, entrusted to the Church by Christ (cf. cc. 204, §1, 211, 216, 225).³⁷² By fulfilling this duty and right of educating, all the Christian faithful comprising the Church of Christ work for the realization of God's plan and actually carries out its mission of evangelization and salvation to all people.³⁷³

The second paragraph of canon 794 lays the primary duty on the pastors of souls to provide everything towards Catholic education (*officium est omnia disponendi*).³⁷⁴ The canon expresses a duty, not a right, but the right to a Catholic education is implicitly contained in the duty of the pastors of souls to provide it. The *pastores animarum* are those officeholders who have the care of souls, especially diocesan bishops, pastors, parochial vicars, and chaplains.³⁷⁵ Regarding the pastor of a parish (*parochus*), c. 528, §1 speaks about the special care of the parish priest for the Catholic education of children and young people.³⁷⁶ As Coriden asserts, however, it is ultimately the community of faith which must

³⁷² See D. CITO, Commentary on c. 794, in *Exegetical Comm*, vol. 3/1, 200; see also G. DE LIMA, "Catholic Education: Challenges and Prospects," in *Vidyajyoti*, 69 (2005), 675-686; J. CHINGANTHARA, "Catholic Education: Perspectives of Canon Law," in *The Living Word*, 116 (2010), 292-310; J. GALLAGHER, "Parents Right to Educate: A 'Right' Inalienable," in *Homiletic and Pastoral Review*, 76 (1976), 29-54.

³⁷³ See EUART, Commentary on c. 794, in *CLSA Comm2*, 954; cf. H.A. BUETOW, *The Catholic School: Its Roots, Identity, and Future*, New York, Crossroad Publishing, 1988.

³⁷⁴ See HUELS, *The Teaching Office of the Catholic Church*, 182.

³⁷⁵ Ibid. See also CORIDEN, Commentary on c. 794, in *CLSA Comm1*, 555.

³⁷⁶ See MORRISEY, "The Rights of Parents in the Education of their Children," 436. See also M.A. HAYES, "As Stars for All Eternity: A Reflection on Canons 793-795," in *Studia canonica*, 23 (1989), 409-427 (=HAYES, "As Stars for All Eternity").

bear the real responsibility, while the pastors are the stimulators and coordinators of the effort.³⁷⁷

Right to establish and direct schools

Canon 800 §1. The Church has the right to establish and direct schools of any discipline, type, and level.³⁷⁸

This canon is an assertion of the Church's right to establish and run any school at any level, of any type, and of any discipline. This is a particular application with respect to schools of the divine law right of the Church to educate, as noted above in c. 794. The Church has always been a leader in education through various institutions it establishes and directs which impart education, including schools at all levels, universities, parishes, diocesan centres, etc. The Church has founded and operated universities long before the civil governments or state assumed these responsibilities. This canon is a forceful assertion that the Church continues to enjoy that right.³⁷⁹ The "Church" in question is not only the Church as institution but more fundamentally all the baptized faithful who comprise it.

Right to schools imbued with a Christian spirit

Canon 802 §1. If schools which offer an education imbued with a Christian spirit are not available, it is for the diocesan bishop to take care that they are established.

§2. Where it is expedient, the diocesan bishop is to make provision for the establishment of professional schools, technical schools, and other schools required by special needs.³⁸⁰

³⁷⁷ See CORIDEN, Commentary on c. 794, in *CLSA Comm1*, 565.

³⁷⁸ Cf. *CIC*, c. 800, §1. *Ecclesiae ius est scholas cuiusvis disciplinae, generis et gradus condendi ac moderandi.*

³⁷⁹ See HUELS, *The Teaching Office of the Catholic Church*, 194. See also D. CITO, *Exegetical Comm*, vol. 3/1, 214; and Dimitrios SALACHAS, *Il magistero e l'evangelizzazione dei popoli nei Codici latino e orientale: Studio teologico-giuridico comparativo*, Bologna, Centro Editoriale Dehoniano, 2001, 203 (=SALACHAS, *Il magistero e l'evangelizzazione dei popoli nei Codici latino e orientale*).

³⁸⁰ Cf. *CCEO*, c. 635; *CIC*, c. 802, §1. *Si praesto non sint scholae in quibus educatio tradatur christiano spiritu imbuta, Episcopi dioecesanus est curare ut condantur.*

§2. *Ubi id expediat, Episcopus dioecesanus provideat ut scholae quoque condantur professionales et technicae necnon aliae quae specialibus necessitatibus requirantur.*

The first paragraph of this canon treats the responsibility of the diocesan bishop to see to the establishment of schools filled with the Christian spirit, especially if they are lacking in his diocese. Implicit in this responsibility of the bishop is the right of the faithful to have such schools in their diocese. Although the canon is directed to the diocesan bishop personally, he does not necessarily have to found diocesan schools as such. Rather, if schools imbued with a Christian spirit are lacking, he is to “take care” that they are established (*est curare ut condantur*). He can fulfill this responsibility by inviting lay persons, associations of the faithful, religious institutes, societies of apostolic life, and others to establish schools *in quibus educatio tradatur christiano spiritu imbutu*.³⁸¹

The second paragraph of this canon addresses the possible need for various kinds of schools, not just those that teach the Catholic religion but also professional, technical and other schools required for special needs of the local Church. It is left to the discretion of the bishop to determine whether this is advantageous for his diocese. Certainly, the need for such schools varies from region to region. The canon offers the examples of professional and technical schools, but it is open to any kind of school, leaving it to the diocesan bishop to determine whether to establish them.³⁸² This is not a strict duty of the bishop, so the faithful do not have a strict right to these schools. Rather, the implicit right in the canon is the same as that explicitly stated in canon 800, §1, namely, the right of the Church to establish and direct schools of any discipline, type, and level.

Right to good teachers

Canon 804 §2. The local ordinary is to be concerned that those who are designated teachers of religious instruction in schools, even in non-Catholic

³⁸¹ See CITO, Commentary on c. 802, in *Exegetical Comm*, vol. 3/1, 220.

³⁸² See EUART, Commentary on c. 802, in *CLSA Comm2*, 957.

ones, are outstanding in correct doctrine, the witness of a Christian life, and teaching skill.³⁸³

This canon lays the responsibility on the ordinary of the place concerning the requisite qualities of the teachers of the Catholic religion, whether in a Catholic school or non-Catholic school. He is to be solicitous (*sollicitus sit*) that the teachers of religious instruction in schools are outstanding (*praestantes*) in these qualities. This is not only the responsibility of the diocesan bishop for vigilance and supervision of the religious education effort as seen in the first paragraph of this canon, but this second paragraph of the canon addresses the local ordinary, including the vicar general and episcopal vicar within their competence.³⁸⁴ This canon emphasizes the duty of ensuring that those appointed as teachers of religion in schools, even the non-Catholic ones, are outstanding in correct doctrine, are a witness of the Christian life, and have an adequate ability to teach.³⁸⁵ Implicit in this requirement is the right of the faithful to have teachers of religion who are “outstanding in correct doctrine, the witness of a Christian life, and teaching skill.”

Right to good schools

Canon 806 §2. Directors of Catholic schools are to take care under the watchfulness of the local ordinary that the instruction which is given in them is at least as academically distinguished as that in the other schools of the area.³⁸⁶

³⁸³ Cf. *CCEO*, c. 639; *CIC*, c. 804, §2. *Loci Ordinarius sollicitus sit, ut qui ad religionis institutionem in scholis, etiam non catholicis, deputentur magistri recta doctrina, vitae christianae testimonio atque arte paedagogica sint praestantes.*

³⁸⁴ See EUART, Commentary on c. 804 in *CLSA Comm2*, 959.

³⁸⁵ See CITO, Commentary on c. 804, in *Exegetical Comm*, vol. 3/1, 231; cf. W. GALVIN, “Ecclesiastical Legislation on Christian Education with Special Application to Current Problems,” in *The Jurist*, 14(1954), 463-480.

³⁸⁶ Cf. *CCEO*, c. 634, §3; *CIC*, c. 806, §2. *Curent scholarum catholicarum Moderatores, advigilante loci Ordinatio, ut institutio quae in iisdem traditur pari saltem gradu ac in aliis scholis regionis, ratione scientifica sit praestans.*

This canon concerns the quality of education in Catholic schools. It is mainly directed to those who are administrators and focuses on the quality of the educational programs in the school, in particular, that the instruction in the Catholic school is not inferior to that of other schools in the area. The local ordinary also has a role in that he is to be vigilant in overseeing the responsibility of the directors of Catholic schools. The word “directors” of Catholic schools refers to those who are actually in the governance of the schools (principal, vice-principal, pastor, administrator, school board, etc.).³⁸⁷ Implicit in this duty of the directors is the right of the faithful to have Catholic schools that are at least as academically distinguished as other schools of the area.

Right to erect and direct universities

Canon 807. The Church has the right to erect and direct universities, which contribute to a more profound human culture, the fuller development of the human person, and the fulfillment of the teaching function of the Church.³⁸⁸

This explicit right of the Church to erect and direct universities pertains both to juridical persons in the Church as well as to all the *christifideles*. The major source of universal law governing Catholic universities that are not ecclesiastical universities is the apostolic constitution of John Paul II, *Ex corde Ecclesiae*, which contains norms on the establishment of a Catholic university.³⁸⁹ The canon mainly affirms the two rights of the

³⁸⁷ See HUELS, *The Teaching Office of the Catholic Church*, 214; J.P. BEAL, “Where’s the Body? Where’s the Blood? The Teaching Authority of the Diocesan Bishop and the Rights of Catholic School Teachers,” in *CLSA Proceedings* (1995), 91-128; B.A. CUSACK, *A Study of the Relationship between the Diocesan Bishop and Catholic Schools below the Level of Higher Education in the United States: Canons 801-806 of the 1983 Code of Canon Law*, Canon Law Studies, no. 525, Washington, DC, Catholic University of America, 1988.

³⁸⁸ Cf. *CCEO*, c. 640, §1; *CIC*, c. 807. *Ius est Ecclesiae erigendi et moderandi studiorum universitates, quae quidem ad altiorem hominum culturam et pleniorum personae humanae promotionem necnon ad ipsius Ecclesiae munus docendi implendum conferant.*

³⁸⁹ See JOHN PAUL II, apostolic constitution *Ex corde Ecclesiae*, 15 August 1990, in *AAS*, 82 (1990), 1475-1509, English translation in *CLD*, vol. 12, 511-532 (= *ECE*). *Ex corde Ecclesiae* contains a strong affirmation of the value and importance of Catholic colleges and universities and a call to renewal and re-examination of Catholic higher education in light of gospel and culture. See José SARAIVA MARTINS, “Iter e punti salienti della Cost. Apost. *Ex corde Ecclesiae*,” in *Seminarium*, 42 (1990), 657-665. For commentaries

Church to establish universities and to govern them. The general purposes and goals of a Catholic university are to contribute to the advancement of human culture, the fuller promotion of the human person, and the fulfillment of the Church's *munus docendi*.³⁹⁰

Rights concerning professors, Catholic doctrine

Canon 810 §1. The authority competent according to the statutes has the duty to make provision so that teachers are appointed in Catholic universities who besides their scientific and pedagogical qualifications are outstanding in integrity of doctrine and probity of life and that they are removed from their function when they lack these requirements; the manner of proceeding defined in the statutes is to be observed.

§2. The conferences of bishops and diocesan bishops concerned have the duty and right of being watchful so that the principles of Catholic doctrine are observed faithfully in these same universities.³⁹¹

The canon is directed to the authorities competent to determine the quality of teachers appointed to Catholic universities and to watch over the observance of Catholic doctrine.³⁹² The two paragraphs of the canon, by imposing duties on the authorities mentioned, imply concomitant rights of the faithful, namely, the right to have teachers in Catholic universities who are outstanding in integrity of doctrine and probity of life and the right to have Catholic universities in which the principles of Catholic doctrine are observed faithfully.

on *Ex corde Ecclesiae*, see J. PROVOST, "A Canonical Commentary on *Ex corde Ecclesiae*," in J. LANGAN (ed.), *Catholic Universities in Church and Society: A Dialogue on 'Ex corde Ecclesiae'*, Washington, DC, Georgetown University, 1993, 105-136; P. DE POOTER, "L'université catholique: Au service de l'Église et de la société," in *Ius Ecclesiae*, 4 (1992), 45-78.

³⁹⁰ See HUELS, *The Teaching Office of the Catholic Church*, 221; cf. A. GALLIN, "On the Road: Toward a Definition of a Catholic University," in *The Jurist*, 48 (1988), 536-558.

³⁹¹ Cf. c. 810, §1. Auctoritati iuxta statuta competenti officium est providendi ut in universitatibus catholicis nominentur docentes qui praeterquam idoneitate scientifica et paedagogica, doctrinae integritate et vitae probitate praestent utque, deficientibus his requisitis, servato modo procedendi in statutis definito, a munere removeantur.

§2. Episcoporum conferentiae et Episcopi dioecesani, quorum interest, officium habent et ius invigilandi, ut in iisdem universitatibus principia doctrinae catholicae fideliter servantur.

³⁹² See EUART, Commentary on c. 810, in *CLSA Comm2*, 965.

The first paragraph addresses the institutional authority who has this responsibility in virtue of the university's own statutes.³⁹³ The canon gives general guidance regarding acceptable norms for the appointment and removal of teachers in Catholic colleges and universities. The canon also instructs that specific criteria and procedures should be developed by the individual institutions to assist in the application of the norms.³⁹⁴ The two qualities of the university professors are stated here: one related to scientific and pedagogical expertise and the other concerning doctrinal integrity and uprightness of life.³⁹⁵

The second paragraph addresses the duty and right of vigilance over the observance of Catholic doctrine in Catholic colleges and universities, a duty and explicit right of the episcopal conference and the diocesan bishop.³⁹⁶ What could this duty and right of vigilance imply? It certainly does not imply ownership, governance, jurisdiction, control, intervention, or even visitation. Those are all levels of authority and responsibility distinct from the *ius invigilandi*. Rather, it means the duty and right of a pastoral watchfulness and a solicitous oversight.³⁹⁷ The bishops are successors of the apostles (c. 753), authoritative teachers of the faith (c. 386, §1) and so are competent to make judgments regarding the

³⁹³ See CORIDEN, Commentary on c. 810, in *CLSA Comm1*, 574.

³⁹⁴ See EUART, Commentary on c. 810, in *CLSA Comm2*, 965; cf. G. DE LIMA, "Catholic Education: Challenges and Prospects," in *Vidyajyoti*, 69 (2005), 675-686.

³⁹⁵ See CITO, Commentary on c. 810, in *Exegetical Comm*, vol. 3/1, 253.

³⁹⁶ Some of the duties of the diocesan bishop given in the Code may have consequences for both ecclesiastical universities and faculties and Catholic universities and other institutes of higher studies located in the bishop's territory. E.g., the bishop is obliged to protect firmly the integrity and unity of the faith by whatever means seem most appropriate, while at the same time recognising a lawful freedom of research (c. 386, §2). Related duties include protecting the unity of the universal Church, promoting its discipline and insisting on the observance of all ecclesiastical laws, and preventing abuses from creeping into ecclesiastical discipline (c. 392). See CORIDEN, Commentary on cc. 807-814, in *CLSA Comm1*, 574.

³⁹⁷ See CORIDEN, Commentary on c. 810, in *CLSA Comm1*, 574. See also T.J. GREEN, "The Church's Teaching Mission: Some Aspects of Normative Role of Episcopal Conferences," in *Studia canonica*, 27 (1993), 23-57.

observance of Catholic teaching.³⁹⁸ Moreover, the faithful have an implied right to doctrinal vigilance by the conference of bishops in virtue of its duty (*officium*) to provide it.

Right to theological instruction

Canon 811 §1. The competent ecclesiastical authority is to take care that in Catholic universities a faculty or institute or at least a chair of theology is erected in which classes are also given for lay students.

§2. In individual Catholic universities, there are to be classes which especially treat those theological questions which are connected to the disciplines of their faculties.³⁹⁹

The first paragraph of this canon makes it mandatory upon the ecclesiastical authorities to promote the teaching of theology in Catholic colleges and universities, also for the benefit of the lay students. Here the canon does not specify who that ecclesiastical authority actually is, but it would include the Holy See, episcopal conferences, and diocesan bishops. The canon offers three options for theological programs in Catholic universities: a faculty (i.e., a college, department), an institute or a chair of theology. The choice and discernment depend on the situation of the college or university and its resources.⁴⁰⁰

The second paragraph reflects the concern that theological studies are not to be isolated from the other academic disciplines in the educational enterprise. Such interaction between these disciplines enriches theology, and it gives a better understanding of the

³⁹⁸ See EUART, Commentary on c. 810, in *CLSA Comm2*, 965. See also D.M. O'CONNELL, *An Analysis of Canon 810 of the 1983 Code of Canon Law and Its Application to the Catholic Universities and Institutes of Higher Studies*, JCD dissertation, Washington, Catholic University of America, 1990.

³⁹⁹ Cf. *CCEO*, c. 643; *CIC*, c. 811, §1. *Curet auctoritas ecclesiastica competens ut in universitatibus catholicis erigatur facultas aut institutum aut saltem cathedra theologiae, in qua lectiones laicis quoque studentibus tradantur.*

§2. *In singulis universitatibus catholicis lectiones habeantur, in quibus eae praecipue tractentur quaestiones theologicae, quae cum disciplinis earundem facultatum sunt conexas.*

⁴⁰⁰ See CORIDEN, Commentary on c. 811, in *CLSA Comm1*, 575.

world today and its needs.⁴⁰¹ Both paragraphs of the canon contain implicit rights of the faithful: in the first paragraph, the right to have theology taught in a Catholic university and, in the second, the right that theological questions also be addressed in some of the other disciplines offered at the university.

Canon 812. Those who teach theological disciplines in any institutes of higher studies whatsoever must have a mandate from the competent ecclesiastical authority.⁴⁰²

This canon establishes the requirement of an ecclesiastical mandate (*mandatum*)⁴⁰³ for those who teach theological disciplines in Catholic institutions of higher learning.⁴⁰⁴

All those who teach the theological disciplines, including the laity (cf. c. 229, §3), in any institutes of higher studies are required to have a mandate.⁴⁰⁵ The word “mandate” is used

⁴⁰¹ See EUART, Commentary on c. 811, in *CLSA Comm2*, 966; cf. J. P. BEAL, “Catholic Theological Faculties in the United States,” in *Studia canonica*, 37 (2003), 443-466.

⁴⁰² Cf. *CCEO*, c. 644; *CIC*, c. 812. Qui in studiorum superiorum institutis quibuslibet disciplinas tradunt theologicas, auctoritatis ecclesiasticae competentis mandatum habeant oportet.

⁴⁰³ The conference of bishops of the USA, in their particular norms, offers a good explanation of the juridical nature of the *mandatum*. 1) The *mandatum* is fundamentally an acknowledgement by Church authority that a Catholic professor of a theological discipline is a teacher within the full Communion of the Catholic Church. 2) The *mandatum* should not be construed as an appointment, authorization, delegation, or approbation of one’s teaching by Church authorities. Those who have received a *mandatum* teach in their own name in virtue of their baptism and their academic and professional competence, not in the name of the bishop or of the Church’s magisterium. 3) The *mandatum* recognizes the professor’s commitment and responsibility to teach authentic Catholic doctrine and to refrain from putting forth as Catholic teaching anything contrary to the Church’s magisterium.

The question of what are the “theological disciplines” for which a professor requires a mandate is best regulated in particular law, preferably in the implementing legislation of the conference of bishops or, lacking that, in diocesan law or the university statutes. In addition to its particular law implementing *Ex corde Ecclesiae*, the bishops’ conference of the USA also issued some “Guidelines” on the *mandatum*. In these Guidelines, the theological disciplines for which professors must have a mandate to teach are specified as Scripture, dogmatic theology, moral theology, pastoral theology, canon law, liturgy, and church history. See NATIONAL CONFERENCE OF CATHOLIC BISHOPS, The Application of *Ex corde Ecclesiae* for the United States, 17 November 1999, in *CLD*, vol. 14, 755-777, art. 4, no. 4 e. Although binding only in the USA, the norms were granted the *recognitio* of the Congregation for Catholic Education on 3 May 2000. Insofar as this indicates the *praxis Curiae Romanae* (c. 19), the norms may be used to interpret the law in other places if a lacuna should arise. See also NATIONAL CONFERENCE OF CATHOLIC BISHOPS, Guidelines concerning the Academic *mandatum* in Catholic Universities (canon 812), 15 June 2001, in *Origins*, 31 (2001), 128-131, no. 2 d.

⁴⁰⁴ See EUART, Commentary on c. 811, in *CLSA Comm2*, 966.

⁴⁰⁵ Who is obliged to seek the mandate from the ecclesiastical authority, the university or the professor? The answer is suggested in the canon by the words any institutes (*in institutis quibuslibet*) of higher studies. The word *quibuslibet* (“any at all”) indicates that the legislator is going beyond the immediate

variously in canon law, at times to denote a person's acting in the name of the one mandating, while other times acting in one's own name but with a juridical tie to the Church in virtue of the mandate granted by ecclesiastical authority.⁴⁰⁶ It is the latter meaning at play in this canon.

James Conn states that the purpose of the mandate of c. 812 "is to assure the community that someone teaching theology is doing so in communion with the Church, that he is faithful to the Magisterium, and that he is not proposing doctrine that is opposed to it. The Catholic faithful and the parents of Catholic youth have a right to this assurance in choosing institutions of higher education. This right is enshrined in the law in a variety of places and is derivative of other guaranteed rights...." He mentions the rights in cc. 213, 217, 226, §2, 793, §1 and 797.⁴⁰⁷ Conn makes this conclusion, not on the basis of the

context of these canons which only treat Catholic universities and similar institutes of higher studies and is here concerned with teaching theology in any such institution at all, including non-Catholic institutions. It follows that this canon does not bind the university but only the individual professors and, moreover, only professors who are Catholic. This is evident from the rule of canon 11: only Catholics are bound by canon law.

⁴⁰⁶ See R.P. DEELEY, *The Mandate for Those Who Teach Theology in Institutes of Higher Learning: An Interpretation of Canon 812 of the Code of Canon Law*, Rome, Pontificia Università Gregoriana, 1986; ID., "An Interpretation of Canon 812," in *PCLSA*, 50 (1988), 70-85. See also E.F. DALY, "The Needed Mandate to Teach," in *CLSA Proceedings*, 46 (1984), 114-129; P. DE POOTER, "La 'mission canonique' el le 'mandatum' au sein des universités ecclésiastiques et catholiques: un jeu de mots ou une distinction plus fondamentale?" in *Ius Ecclesiae*, 14 (2004), 595-618; S.A. EUART, Church-State Implications in the United States of Canon 812 of the 1983 Code of Canon Law, JCD dissertation, Washington, DC, Catholic University of America, 1989; L. ÖRSY, "The Mandate to Teach Theological Disciplines: Glosses on Canon 812 of the New Code," in *Theological Studies*, 44 (1983), 476-488; R. PAGÉ, "La responsabilité des évêques dans l'enseignement: le mandat," in *Ius Ecclesiae*, 5 (1993), 699-717; A. DULLES, "The Mandate to Teach," in *America*, 158 (1988), 293-295; and HUELS, *The Teaching Office of the Catholic Church*, 242.

⁴⁰⁷ On the other hand, he/she who teaches in virtue of a "mandate" continues to exercise his/her own personal responsibility as a Christian faithful, because the mandate does not communicate any sharing in the authentic power of teaching nor any particular function within the Christian community. It simply is an official attestation from the hierarchical superior that the one teaching is a Catholic in communion with the Church, whereas in the content of his/her teaching there is nothing to contradict this good standing. See J.J. CONN, "The Mandate of Can. 812 Revisited," in James J. CONN and Luigi SABBARESE (eds.), *Iustitia in caritate. Miscellanea di studi in onore di Velasio de Paolis*, Vatican City, Urbaniana University, 2005, 227-248, at 246-247. See also HUELS, *The Teaching Office of the Catholic Church*, 242.

wording of c. 812, but on his deep research and reflection on the canon that resulted in his doctoral thesis on this subject.

As noted in the Introduction to this thesis, we believe Conn's discovery of a right in this canon to be an example of a "tacit" right of the faithful, since no right is discerned from the wording of the canon, not even implicit. The canon imposes an obligation directly on the professors of the theological disciplines to have the *mandatum*, but no parallel obligation is expressly placed on the ecclesiastical authority or the university itself to see that they have it. This could be remedied in particular law, but it is not found in the universal law, neither in the canon nor in *Ex corde Ecclesiae*.

2.3 Rights in the Canons on Instruments of Social Communication

The canons of Title IV of Book III are centered more on books and on the means of censorship of them to preserve the Church's doctrine and make it known. Three canons in this Title contain implicit rights of the faithful flowing from duties imposed on officeholders. These are the duties of the pastors regarding writings and other media (c. 823) and the requirements for textbooks used in schools and for writings available in churches for display and distribution (c. 827); there is also an implicit right in c. 822, as follows.

Rights concerning instruments of social communication

Canon 822 §1. The pastors of the Church, using a right proper to the Church in fulfilling their function, are to endeavor to make use of the instruments of social communication.

§2. These same pastors are to take care to teach the faithful that they are bound by the duty of cooperating so that a human and Christian spirit enlivens the use of instruments of social communication.

§3. All the Christian faithful, especially those who in any way have a role in the regulation or use of the same instruments, are to be concerned to offer

assistance in pastoral action so that the Church exercises its function effectively through these instruments.⁴⁰⁸

The first two paragraphs are exhortations directed to the *pastores Ecclesiae*. The obligations are laid on the pastors of the Church, in fulfilling their office (*munus*), to be diligent in making use of the instruments of social communication.⁴⁰⁹ The third paragraph is directed to all the faithful.⁴¹⁰

The first paragraph of the canon exhorts that it is the duty of the pastors of the Church to use these instruments in carrying out their pastoral mission.⁴¹¹ The canon asserts that the Church has every right to use media in fulfilling her mission.⁴¹² Since the pastors of the Church have this obligation to make use of the media in exercising the *munus docendi*, it follows that the Christian faithful have an implicit right that the media be used for evangelizing and educational purposes.

The second paragraph is also addressed to the *pastores Ecclesiae*. Their duty here is to instruct the faithful on their own duty to imbue the world of social communications with a human and Christian spirit.⁴¹³ The implicit right of the faithful is to have some formation (pastoral letters, classes, etc.) on how the uses of the instruments of social communication are to be animated with a human and Christian spirit. Some of the lay

⁴⁰⁸ Cf. *CCEO*, c. 651; *CIC*, c. 822, §1. *Ecclesiae pastores, in suo munere explendo iure Ecclesiae proprio utentes, instrumenta communicationis socialis adhibere satagant.*

§2. *Iisdem pastoribus curae sit fideles edocere se officio teneri cooperandi ut instrumentorum communicationis socialis usus humano christianoque spiritu vivificetur.*

§3. *Omnes christifideles, ii praesertim qui quoquo modo in eorundem instrumentorum ordinatione aut usu partem habent, solliciti sint operam adiutricem actioni pastoralis praestare, ita ut Ecclesia etiam his instrumentis munus suum efficaciter exercent.*

⁴⁰⁹ See PONTIFICAL COUNCIL FOR SOCIAL COMMUNICATIONS, pastoral instruction *Aetatis novae* on social communications, 22 February 1992, in *AAS*, 84 (1992), 447-468; English translation in *Origins*, 21 (1991-1992), 669-677.

⁴¹⁰ See HUELS, *The Teaching Office of the Catholic Church*, 288.

⁴¹¹ See C. J. ERRÁZURIZ, Commentary on c. 822, in *Exegetical Comm*, vol. 3/1, 294; cf. V. CRUZ, "Canon Law on Media," in *Philippine Canonical Forum*, 7 (2005), 205-228.

⁴¹² See CORIDEN, Commentary on c. 822, in *CLSA Comm1*, 579.

⁴¹³ See ERRÁZURIZ, Commentary on c. 822, in *Exegetical Comm*, vol. 3/1, 294.

faithful have more influence over the management of the media than do ecclesiastical authorities, so they are the faithful most in need of such formation.⁴¹⁴

The final paragraph stipulates that all the faithful, especially those involved in the world of communications, are to be diligent in supporting the Church's pastoral action taking place through communications media.⁴¹⁵ This is an exhortation that has more the character of a general obligation than a right.

Right to publications free of doctrinal error

Canon 823 §1. In order to preserve the integrity of the truths of faith and morals, the pastors of the Church have the duty and right to be watchful so that no harm is done to the faith or morals of the Christian faithful through writings or the use of instruments of social communication. They also have the duty and right to demand that writings to be published by the Christian faithful which touch upon faith or morals be submitted to their judgment and have the duty and right to condemn writings which harm correct faith or good morals.

§2. Bishops, individually or gathered in particular councils or conferences of bishops, have the duty and right mentioned in §1 with regard to the Christian faithful entrusted to their care; the supreme authority of the Church, however, has this duty and right with regard to the entire people of God.⁴¹⁶

This canon is about pastoral and ecclesiastical vigilance over writings and other media, particularly those dealing with subjects touching on faith or morals (*mores*). Paragraph one of the canon lists three duties that are also rights of the hierarchy (the *pastores Ecclesiae*). The first is the duty of vigilance over the content of books or other media so that they do not harm the faith or morals of the Christian faithful. The second is

⁴¹⁴ See CORIDEN, Commentary on c. 822, in *CLSA Comm1*, 579.

⁴¹⁵ See ERRÁZURIZ, Commentary on c. 822, in *Exegetical Comm*, vol. 3, 294.

⁴¹⁶ Cf. *CCEO*, c. 652; *CIC*, c. 823, §1. Ut veritatum fidei morumque integritas servetur, officium et ius est Ecclesiae pastoribus invigilandi, ne scriptis aut usu instrumentorum communicationis socialis christifidelium fidei aut moribus detrimentum afferatur; item exigendi, ut quae fidem moresve tangant a christifidelibus edenda suo iudicio subiciantur; necnon reprobandi scripta quae rectae fidei aut bonis moribus noceant.

§2. Officium et ius, de quibus in §1, competunt Episcopis, tum singulis tum in conciliis particularibus vel Episcoporum conferentiis adunatis quoad christifideles suae curae commissos, supremae autem Ecclesiae auctoritati quoad universum Dei populum.

the right and duty to demand a prior review of those writings related to faith and morals. The third is the right and duty to admonish (*reprobare*) those writings that are harmful to the rectitude of the faith or good morals.⁴¹⁷ The first right and duty applies to writings and other media of social communication; the second and third are limited to writings (*scripta*). These three duties and rights of the pastors collectively imply a right of the faithful, namely, the right to Catholic books and other means of social communication that are free of doctrinal and moral error. The means for assuring this right are laid down in the subsequent canons of Title III, especially c. 827 as treated below.

The second paragraph of c. 823 specifies the “pastors of the Church” who are competent to deal with the issues mentioned in paragraph one of this canon. The episcopal prerogatives can be exercised either individually by the diocesan bishop himself or collegially when bishops gather in a particular council or in the episcopal conference. The canon gives this right and duty to the individual diocesan bishops by the use of the expression “with regard to the Christian faithful committed to their care,”⁴¹⁸ which is also applied to the circumscriptions of the particular council and conference of bishops. The exercise of this duty and right for the universal Church is the responsibility of the supreme authority of the Church, the pope and the college of bishops, who are assisted by the Roman Curia, especially the Congregation for the Doctrine of the Faith.

Rights concerning specific publications

Canon 827 §2. Books which regard questions pertaining to sacred scripture, theology, canon law, ecclesiastical history, and religious or moral disciplines cannot be used as texts on which instruction is based in elementary, middle, or higher schools unless they have been published with

⁴¹⁷ See ERRÁZURIZ, Commentary on c. 823, in *Exegetical Comm*, vol. 3, 301; cf. H. SCHMITZ, “Das Nihil Obstat des Diözesanbischofs,” in *Archiv für katholisches Kirchenrecht*, 170 (2001), 51-73.

⁴¹⁸ See CORIDEN, Commentary on c. 823, in *CLSA Comm1*, 580.

the approval of competent ecclesiastical authority or have been approved by it subsequently.

§4. Books or other writings dealing with questions of religion or morals cannot be exhibited, sold, or distributed in churches or oratories unless they have been published with the permission of competent ecclesiastical authority or approved by it subsequently.⁴¹⁹

This canon has four paragraphs, two of which contain implicit rights of the faithful. Paragraph one concerns text books, and paragraph four is on books or other writings available in churches or oratories. The textbooks of paragraph two are those written and used for classroom instruction only. The textbooks that require ecclesiastical approval are those on sacred scripture, theology, canon law, Church history, and religious or moral disciplines. The approval may be given either before or after the book's publication. The competent authority is the local ordinary of the author or the publishing house (c. 824, §1). The canon alludes to schools at all levels, from primary stage through college, both those which are Catholic (c. 803) and non-Catholic schools in which the Catholic religion is taught (cf. c. 804).⁴²⁰

Paragraph four deals with books or other writings on matters of religion or morals that are to be displayed, sold, or given away in churches or oratories. Such writings require an advanced ecclesiastical permission (*licentia*) prior to publication, or else a subsequent approval (*approbatio*) after publication. This rule is to be understood in light of the particular attention given in the law to churches and oratories by virtue of their sacred

⁴¹⁹ Cf. *CCEO*, c. 659; *CIC*, c. 827, §2. Nisi cum approbatione competentis auctoritatis ecclesiasticae editi sint aut ab ea postea approbati, in scholis, sive elementariis sive mediis sive superioribus, uti textus, quibus institutio ninitur, adhiberi non possunt libri qui quaestiones recipiunt ad sacram Scripturam, ad theologiam, ius canonicum, historiam ecclesiasticam, et ad religiosas aut morales disciplinas pertinentes.

§4. In ecclesiis oratoriisve exponi, vendi aut dari non possunt libri vel alia scripta de quaestionibus religionis aut morum tractantia, nisi cum licentia competentis auctoritatis ecclesiasticae edita sint aut ab ea postea approbata.

⁴²⁰ See HUELS, *The Teaching Office of the Catholic Church*, 312.

character (cf. cc. 1210 and 1213).⁴²¹ The prohibition of the fourth paragraph (*non possunt nisi*) is implicitly directed to and binds the pastors of parishes and other priests and superiors who have charge of churches and oratories (cf. 1214, 1223).⁴²²

The two paragraphs of this canon are concrete applications of the right implied in c. 823. The faithful, consequently, have the right that the textbooks used for instruction in schools on religious subjects, as well as written materials on religion or morals distributed in their churches and oratories, are free of doctrinal errors harmful to their faith and good morals. This right flows not from the requirement placed on the author or publisher to seek the imprimatur but rather from the duty of the local ordinary to exercise vigilance over the media and his obligation to demand that writings on religious subjects be submitted to his judgement, as discussed above with reference to c. 823.

⁴²¹ See ERRÁZURIZ, Commentary on c. 827, in *Exegetical Comm*, vol. 3/1, 317; cf. R. BARRETT, "The Pitfalls of the Imprimatur: A Gloss on Canon 827 §2," in *Angelicum*, 77 (2000), 165-202.

⁴²² See HUELS, *The Teaching Office of the Catholic Church*, 313.

Conclusion

In this chapter we examined the rights of the faithful in the canons of Book III of the *Code of Canon Law*, entitled *De Ecclesiae munere docendi*. The canons of this book on the teaching office of the Church are all related to the “prophetic office” of the Church of announcing the good news of Jesus Christ to all peoples. Various explicit and implicit rights were identified in several categories: rights related to the ministry of the divine word, especially the rights to preaching and catechetical formation; rights with respect to Catholic education; and rights with respect to the publication of books and other media by Catholic authors on topics of faith and morals.

Several canons, additionally, deal with other rights of the faithful with respect to the Church’s teaching office. Among the rights contained in Book III, a few are of the divine law. These are the right to preach the gospel to all peoples (c. 747, §1), the right to follow one’s own conscience in the discernment of truth about God and religion (c. 748, §1) and the concomitant right not to be coerced to embrace the Catholic faith against one’s own conscience (c. 748, §2), the fundamental duty of the faithful to assume their own role in the mission work of the Church (c. 781) and their consequent right to participate in the Church’s mission effort (cf. c. 791, 4^o), and the right and duty of the Church (all the faithful) to educate (c. 794). Most of these rights of the divine law are rooted in the words of Christ in the Gospel of Matthew to go out to the nations and announce the good news (Mt 28:18-20). The rights concerning freedom of religion are of the divine natural law.

Several of the rights in Book III are explicit, that is, the word “right” or an equivalent term is explicitly used in the canon. These are the right of the Church (all the faithful) to preach the Gospel to all peoples (c. 747, §1), the right of the faithful to have the

word of God preached to them (c. 762), the right to establish any kind of school (c. 800, §1), and the right to establish and govern universities (c. 807).

Most of the rights in Book III are implicit and typically are the consequence of the concomitant duties imposed on Church ministers and officeholders. With respect to the ministry of the divine word, these are the right of the faithful to have various means used in proclaiming Christian teaching (c. 761); the right to have preaching from bishops, priests, and deacons (cc. 763, 757, 762, 764); the right to have a homily preached at Masses on Sundays and holy days of obligation (c. 767 §§ 2, 4); the right to have homilies and other forms of preaching that incorporate certain values (c. 768); the right to have preaching in the form of spiritual exercises or sacred missions (c. 770); the right to catechetical formation (cc. 773, 766), in particular, that which is organized by the pastor of the parish (c. 777) and in the apostolate of religious and secular institutes (c. 778); and the right to have various means used in catechetical instruction (c. 779).

With respect to Catholic education, the implicit rights of the faithful are the right to have Catholic schools patronized by the diocesan bishop (c.802); the right to have teachers of religion who are outstanding in correct doctrine, the witness of a Christian life, and teaching skill (c. 804, §2); the right to an education in a Catholic school that is equal to that of other schools in the area (c. 806, §2); the right to erect and direct universities (c. 807); the right to have teachers in Catholic universities who are outstanding in integrity of doctrine and probity of life and the right to have Catholic universities in which the principles of Catholic doctrine are observed faithfully (c. 810); the right to have theology taught in a Catholic university and the right that theological questions also be addressed in some of the other disciplines offered at the university (c. 811). An additional right, albeit

tacit, is the right of the faithful to know which Catholic university professors of theological disciplines have the required *mandatum* (c. 812).

Finally, with respect to the instruments of social communication, the Code implicitly gives three rights to the faithful: that the media be used for evangelizing and educational purposes (c. 822, §1); to have some formation on how the uses of the instruments of social communication are to be animated with a human and Christian spirit (c. 822, §2); and that Catholic books and other means of social communication be free of doctrinal and moral error (cc. 823, §1; 827).

CHAPTER THREE

RIGHTS OF THE FAITHFUL IN THE *MUNUS SANCTIFICANDI*

Book IV of the Code, titled “The Sanctifying Office of the Church” (*De Ecclesiae munere sanctificandi*) is divided into three parts. Following several introductory canons on the liturgy and the sacraments (cc. 834-848), Part I treats the sacraments in seven titles for each sacrament (cc. 849-1165). Part II is on other acts of divine worship with five titles on sacramentals; the liturgy of the hours; funerals; the veneration of the saints, sacred images, and relics; and a vow and an oath (cc. 1166-1204). Part III has two titles on sacred places and sacred times (cc. 1205-1253). This is a sizeable Book of the Code, but our concern is the treatment of only those canons dealing with explicit and implicit rights common to all the faithful. These are organized into seven categories: rights to the official liturgical celebrations of the Church, explicit rights to the sacraments, implicit rights to the sacraments, rights to sacraments in danger of death, rights to preparation for the sacraments, rights to Church funerals, and rights concerning churches.

3.1 Rights to the Official Liturgical Celebrations of the Church

The identity of the Church is revealed in a pre-eminent way whenever Christ’s faithful gather to worship God. The liturgy, which includes the celebration of the sacraments, is central to the Church’s worship, evoking the faith and deepening the spirituality of the faithful.⁴²³ Given its centrality in the Church’s life, there is extensive legislation governing the liturgy and sacraments. Our concern here is only with the

⁴²³ See J.M. HUELS, “Preparation for the Sacraments: Faith, Rights, Laws,” in *Studia canonica*, 28 (1994), 33-58, 34 (=HUELS, “Preparation for the Sacraments”).

regulation of the liturgy in Book IV of the Code, excluding the enormous body of legislation contained in the liturgical books and the norms of other documents of the Holy See.

The Code contains several canons which accord the faithful the right to partake in the official liturgical celebrations of the Church. In the following four canons, we will see implicit rights of the faithful to the Church's official liturgical celebrations.

3.1.1 Right to the official liturgy of the Church

Canon 834 §1. The Church fulfills its sanctifying function in a particular way through the sacred liturgy, which is an exercise of the priestly function of Jesus Christ. In the sacred liturgy the sanctification of humanity is signified through sensible signs and effected in a manner proper to each sign. In the sacred liturgy, the whole public worship of God is carried out by the Head and members of the mystical Body of Jesus Christ.

§2. Such worship takes place when it is carried out in the name of the Church by persons legitimately designated and through acts approved by the authority of the Church.⁴²⁴

This canon is the foundational canon on the liturgy located at the beginning of Book IV. The first paragraph of the canon is a theological definition of the liturgy. The liturgical action of the Church has its foundation in the priestly office of Jesus Christ. This public worship of God is carried out by Jesus Christ the Head of the Body and all the members of the mystical Body, the Church.⁴²⁵

⁴²⁴ Cf. *CCEO*, c. 668, §1; *CIC*, c. 834, §1. *Munus sanctificandi Ecclesia peculiari modo adimplet per sacram liturgiam, quae quidem habetur ut Iesu Christi muneris sacerdotalis exercitatio, in qua hominum sanctificatio per signa sensibilia significatur ac modo singulis proprio efficitur, atque a mystic Iesu Christi Corpore, Capite nempe et membris, integer cultus Dei publicus exercetur.*

§2. *Huiusmodi cultus tunc habetur, cum defertur nomine Ecclesiae a personis legitime deputatis et per actus ab Ecclesiae auctoritate probatos.*

⁴²⁵ See TEJERO, Commentary on c. 834, in *Exegetical Comm*, vol. 3/1, 361; cf. T.J. GREEN, "Selected Issues in Divine Worship/Sacraments in the Latin and Eastern Codes: A Comparative Study," in *Studies in Church Law*, 4 (2008), 81-108; J.M. HUELS, *Liturgy and Law, Liturgical Law in the System of Roman Catholic Canon Law*, Montréal, Gratianus, Wilson & Lafleur, 2006; A. REHRAUER, "Current Issues in Liturgical and Sacramental Law," in *CLSA Proceedigs*, 62 (2000), 254-262.

Paragraph two of the canon offers a juridical definition of the liturgy. It gives three fundamental elements that make the sacred liturgy authentic. The first element is that worship is offered in the name of the Church. This element is affirmed in the teaching of the Vatican II stressing the fact that liturgical services are not private functions but are the public worship of the Church (*SC*, no. 26).⁴²⁶ The second element is that the official sacred liturgy of the Church is carried out by persons who are legitimately deputed to perform those duties or actions.⁴²⁷ Lastly, liturgical acts are only those approved as such by the competent authority of the Church.⁴²⁸ Again, this approval occurs in the manner determined by law. Thus, we see in this second paragraph the three juridical elements that form the root of the faithful's right to the official liturgy of the Church: the public aspect of the liturgy, that it is the act of the whole Church and not the property of any individual; that those who carry out the liturgy are designated for their roles in accord with the norm of law; and that the conduct of the liturgy must be carried out according to the lawfully approved rites. In two canons, one on the sacraments (c. 846) and the other on the sacramentals (c. 1167), we see an application of this right of the faithful to have the liturgy celebrated as determined in the liturgical laws.

3.1.2 Right to proper liturgical observances and discipline

Canon 846 §1. In celebrating the sacraments the liturgical books approved by competent authority are to be observed faithfully; accordingly, no one is to add, omit, or alter anything in them on one's own authority.⁴²⁹

⁴²⁶ See *SC*, no. 26, in *AAS*, 56 (1964), 107, *FLANNERY I*, 10.

⁴²⁷ This *deputatio* at times is the divine law power of order, as is the case with the necessity of being a priest in order to celebrate Holy Mass (c. 900). At other times, the determination of the Church must be taken into account to be able to specify who is the person designated for a particular liturgical action (cf. cc. 132, 519, 530, 566, 882, 883-885, 887, 966-975, 1108-1114).

⁴²⁸ See TEJERO, Commentary on c. 834, in *Exegetical Comm*, vol. 3/1, 361.

⁴²⁹ Cf. *CCEO*, c. 668, §2; 674; *CIC*, c. 846, §1. In sacramentis celebrandis fideliter servantur libri liturgici a competent auctoritate probati; quapropter nemo in iisdem quidpiam proprio Marte addat, demat aut mutet.

This first paragraph of the canon is not merely an exhortation but commands the faithful observance of the approved liturgical books in the celebration of the sacraments. From this command flows the implied right of the faithful that their liturgical ministers in fact faithfully observe the liturgical books approved by competent authority so that the celebrations of the sacraments are truly the authentic liturgy of the Church. The canon is an expression of the basic right of the faithful to worship God according to provisions of their approved rite (c. 214).⁴³⁰ The second part of the paragraph is a quotation of the Constitution on the Sacred Liturgy of Vatican II: no one is to add, omit, or alter anything in the liturgical books on one's own authority (*SC*, no. 22, §3).⁴³¹

3.1.3 Right to careful celebrations of sacramentals

Canon 1167 §2. In confecting or administering sacramentals, the rites and formulas approved by the authority of the Church are to be observed carefully.⁴³²

Sacramentals are the liturgical rites of the Church apart from the sacraments and the liturgy of the hours.⁴³³ Unlike the sacraments which are instituted by Christ, the sacramentals are established by the Church — in the Latin Church solely by the Apostolic

⁴³⁰ See WOESTMAN, *Sacraments*, 24; cf. T.J. PAPROCKI, "Why stick to the book?" in *Homiletic and Pastoral Review*, 8-9 (2004), 8-15; G. READ, "The Roman Missal: The New General Instruction," in *CLSN*, 125 (2001) 44-46.

⁴³¹ See *SC*, no. 22, in *AAS*, 56 (1964), 106, *FLANNERY I*, 9-10.

⁴³² Cf. *CCEO*, c. 867, §2; *CIC*, c. 1167, §2. In sacramentalibus conficiendis seu administrandis accurate servantur ritus et formulae ab Ecclesiae auctoritate probata.

⁴³³ Sacramentals are similar to sacraments but different from them in both their origin and nature. John Huels identifies five elements of a juridical definition of a sacramental: "(1) sacramentals are liturgical rites; (2) the rites of the sacraments are not sacramentals; (3) the liturgy of the hours is not a sacramental; (4) sacramentals (in the Latin Church) must be approved by the Holy See; and (5) sacramentals are celebrated by designated ministers in accord with the law." See J.M. HUELS, "A Juridical Notion of Sacramentals," in *Studia canonica*, 38 (2004), 345-368; and ID., "The Ministers of Sacramentals," in *The Jurist*, 65 (2005), 338-385.

Many of the existing sacramentals are totally independent from sacraments, while other are closely interrelated with them as a preparation of the matter or the subject, or also in fulfillment of the sacrament itself. See M. DEL MAR MARTÍN, Commentary on Sacramentals cc. 1166-1172, in *Exegetical Comm*, vol. 3/2, 1634-1659. Huels proposes the classifying of sacramentals into two categories – those that have juridic effects and those that do not. See J.M. HUELS, "A Juridical Notion of Sacramentals," 356.

See (c. 1167, §1) and, in the Eastern Churches *sui iuris*, in accord with the particular law of each Church (CCEO c. 867, §2).⁴³⁴ The second paragraph of c. 1167 is a particular application with respect to sacramentals of the general rule established in c. 834, §2. Ministers are obliged to observe carefully (*accurate*) the official rites and formulas of the Church in confecting and administering all sacramentals. It follows that the faithful have a right to celebrations of the sacramentals conducted accurately according to the approved rites and formulas.⁴³⁵

3.1.4 Right to a properly celebrated funeral

Canon 1176 §2. Ecclesiastical funerals, by which the Church seeks spiritual support for the deceased, honors their bodies, and at the same time brings the solace of hope to the living, must be celebrated according to the norm of the liturgical laws.⁴³⁶

Canon 1176, §2 determines the purpose of ecclesiastical funeral rites: suffrages or spiritual assistance for the deceased, honor to their memory and body, and comfort for the living. The canon makes an explicit affirmation of the requirement of fidelity to the norm of the liturgical laws in the celebration of funeral rites,⁴³⁷ which in turn implies the right of the faithful to properly celebrated funerals. The Directory on Popular Piety and the Liturgy, issued by the Congregation for Divine Worship and the Discipline of the Sacraments, calls for the greatest dignity and religious sensibility in conducting funerals. This refers especially to the respect due to the body of the deceased, funeral furnishings which should

⁴³⁴ See DELMAR MARTÍN, Commentary on c. 1167, in *Exegetical Comm*, vol. 3/2, 1640.

⁴³⁵ Cf. HUELS, "The Ministers of the Sacramentals," in *The Jurist*, 65 (2005), 337-384.

⁴³⁶ Cf. CCEO, c. 875; CIC, 1176, §2. Exequiae ecclesiasticae, quibus Ecclesia defunctis spiritualem opem impetrat eorumque corpora honorat ac simul vivis spei solacium affert, celebrandae sunt ad normam legum liturgicarum.

⁴³⁷ See J.L. SANTOS, Commentary on c. 1176, in *Exegetical Comm*, vol. 3/2, 1679; cf. V. ANTONIO, "The Revised Order of Funerals: Theological and Pastoral Orientations," in *Immaculate Conception School of Theology Journal*, 10 (2008), 25-56.

be “decorous and free of all ostentation” and the proper use of liturgical signs (i.e., the cross, the paschal candle, the holy water and the incense).⁴³⁸

3.2 Explicit Rights to the Sacraments

In this and the following section, the focus is on canons that express rights to the sacraments.⁴³⁹ Excluded from the scope of our study are the canons on holy orders and marriage. The canons on holy orders do not pertain to all the faithful but only to men who are clerics or who want to be ordained. Likewise, the canons on marriage pertain to persons who are married or want to be married. Moreover, many of these canons on marriage apply to natural marriage as well as to the sacrament of marriage and thus are not restricted to the *christifideles*. For example, c. 1058 says that all persons not prohibited by divine or ecclesiastical laws may contract marriage (*omnes possunt matrimonium contrahere*).⁴⁴⁰ This is a natural right of the divine law applicable to all persons (*omnes*), not just an ecclesiastical right of the *christifideles*. When both parties to the marriage are baptized, however, the canon equally involves the right to the *sacrament* of marriage.

In the canons on the five sacraments under consideration, most of the rights are implicit, but seven canons explicitly state rights. As noted in the Introduction, an explicit right is indicated either when the law uses the word *iure* or an equivalent term. If that

⁴³⁸ CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, *Directory on Popular Piety and Liturgy: Principles and Guidelines*, 17 December 2001, Libreria Editrice Vaticana, 2002, 181, no. 253.

⁴³⁹ The Code mentions sacraments in approximately 325 canons. The canons focus on juridical essentials, on those things minimally necessary for sacramental administration and the requirements for validity and liceity. They do not attempt to describe the fullness of sacramental celebrations, with active participation, diverse ministerial roles, integrity of signs, and pastoral adaptations. One must look to the ritual books for what is normal and desirable in sacramental worship.

⁴⁴⁰ See T.P. DOYLE, Commentary on c. 1058, in *CLSA Comm1*, 743; Cf. *CCEO*, c. 778; *CIC* c. 1058. *Omnes possunt matrimonium contrahere, qui iure non prohibentur.*

equivalent term can be substituted by the word *ius* without changing the meaning of the canon, the right in question is explicit.

Canon 865 §2 states: “An adult in danger of death may be baptized if, having some knowledge of the principal truths of the faith, the person has manifested in any way at all the intention to receive baptism and promises to observe the commandments of the Christian religion.”⁴⁴¹ The person must: a) possess “some” knowledge of the principal truths of the faith, not the “sufficient” knowledge called for in normal situations; b) manifest the will to be baptized “in any way,” even only implicitly; and c) promise to fulfill the mandates of the Christian religion (provided the person recovers). The subject of the canon is the minister of baptism who must determine whether the person in question fulfills these minimal conditions.⁴⁴² If the conditions are met, the adult has the right to be baptized (*baptizari potest*), and the minister is obliged to celebrate it. Although not yet a *christifidelis* prior to the baptism, the person has this right by the divine law since baptism is necessary for salvation.

Canon 912 says that any baptized person not prohibited by law may and must be admitted to Holy Communion.⁴⁴³ Any baptized person, even non-Catholic, who is not prohibited by law, has the right (*admitti potest*) to receive the Holy Eucharist and the minister has the corresponding duty (*admitti debet*) to give it to the faithful who rightfully request it. The canon has a condition worded in the negative – any baptized person who is

⁴⁴¹ Cf. *CCEO*, c. 682, §2; *CIC*, c. 865, §2. Adultus, qui in periculo mortis versatur, baptizari potest si, aliquam de praecipuis fidei veritatibus cognitionem habens, quovis modo intentionem suam baptismum recipiendi manifestaverit et promittat se christianae religionis mandata esse servaturum.

⁴⁴² The intention to be baptized may be habitual (once given and not withdrawn). Some intention must be present; if this intention is ambiguous, baptism may be conditional. See K.T. HART, Commentary on c. 865, in *CLSA Comm2*, 1053.

⁴⁴³ Cf. *CIC*, c. 912. Quilibet baptizatus, qui iure non prohibeatur, admitti potest et debet ad sacram communionem.

not prohibited (*non prohibeatur*) by law. This recalls the general norm of c. 18 on the strict interpretation of restrictions on the free exercise of rights. The minister may refuse Holy Communion only when there is an explicit basis in the law for such denial, and the laws in question are subject to a strict interpretation.⁴⁴⁴

A much discussed and debated canon is a good example of when such strict interpretation is required. Canon 915 states: “Those who have been excommunicated or interdicted after the imposition or declaration of the penalty and others obstinately persevering in manifest grave sin are not to be admitted to Holy Communion.”⁴⁴⁵ The canon first deals with the denial of Holy Communion in the external forum to those laboring under the penalty of imposed or declared excommunication or interdict. It then includes in this prohibition those who obstinately persevere in manifest, grave sin. The canon is directed to ministers of the Eucharist, both ordinary and extraordinary,⁴⁴⁶ whose duty is not to admit (*ne admittantur*)⁴⁴⁷ those persons mentioned in the canon to the

⁴⁴⁴ See I. GRAMUNT, Commentary on c. 912, in *Exegetical Comm*, vol. 3/1, 607. The phrase, “who is not prohibited by law,” is a specific application of c. 843, §1. Canonical discipline provides several contexts when a baptized person may be forbidden by law from receiving Holy Communion. See for instance: (a) penal prohibitions due to excommunication (c. 1331, §1, 2°) and interdict (c. 1332); (b) persons not properly disposed or prepared (cc. 913, §1; 915); and (c) ecumenical hospitality (c. 844 §§ 3-4); cf. P.J. TRAVERS, “Reception of the Holy Eucharist by Catholics attempting Remarriage after Divorce and the 1983 Code of Canon Law,” in *The Jurist*, 55 (1995), 187-217.

⁴⁴⁵ Cf. *CCEO*, c. 712; *CIC*, c. 915. Ad sacram communionem ne admittantur excommunicati et interdicti post irrogationem vel declarationem poenae alii que in manifesto gravi peccato obstinate perseverantes.

Cf. R.L. BURKE, “Canon 915: The Discipline Regarding the Denial of Holy Communion to Those Obstinately Persevering in Manifest Grave Sin,” in *Periodica*, 96 (2007), 3-58; see also W. KOWAL, “The Non-Admission of the Divorced and Remarried Persons to Holy Communion: Canon 915 Revisited,” in *Studia canonica*, 49 (2015), 411–441; J. WERCKMEISTER, “The Admission to the Sacraments of Divorcees Who Have Remarried and the Interpretation of Canon 915,” in *Revue de Droit Canonique*, 51 (2001), 373-399; J.J. MYERS, “Divorce, Remarriage, and Reception of the Holy Eucharist,” in *The Jurist*, 57 (1997), 484-516; I. GRAMUNT, “Non-Admission to Holy Communion: The Interpretation of Canon 915 (CIC),” in *Studia canonica*, 35 (2001), 175-190.

⁴⁴⁶ See c. 910 on the ordinary minister (bishop, priest, and deacon) and the extraordinary minister (acolyte and those foreseen in c. 230, §3 when their services are needed).

⁴⁴⁷ See PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Declaration concerning the admission to Holy Communion of the faithful who are divorced and remarried, 24 June 2000, in *Communicationes*, 32 (2000), 159-162, English translation in *Origins*, 30 (2000-2001), 174-175 (=PCLT, Declaration); see J.

participation in the blessed Eucharist. Therefore, since it concerns the restriction of the right to the Eucharist, it is to be interpreted strictly (c. 18). While the first reason for denial is an objective fact (excommunication or interdict inflicted or declared), the second reason calls for the minister or ecclesiastical authority to make a judgment about the situation and act accordingly.⁴⁴⁸ A strict interpretation means, accordingly, that all the conditions of the law must be verified: the person in question is “obstinately persevering” in a “sin” that is both “manifest” and “grave.” If every one of these conditions is not demonstrated or is doubtful, the faithful in question has the right to receive Holy Communion (c. 912).

Canon 917 has an explicit right pertaining to a faithful who wishes to receive the Lord’s Body and Blood a second time on the same day, provided that the second time is during the celebration of the Eucharist.⁴⁴⁹ This canon was subject to an authentic

RATZINGER, Letter to Cardinal Theodore McCarrick concerning Catholics in Political Life,” in *Origins*, 34 (2004-2005), 134. As Cardinal Burke notes, this principle “makes clear the application of can. 915 to the case of a Catholic politician who persists in publicly supporting legislation in grave violation of the natural law. It also provides the pastoral instruction regarding the procedure to be followed in observing the norm of the law in the matter.” See BURKE, “Canon 915: The Discipline Regarding the Denial of Holy Communion to those Obstinately Persevering in Manifest Grave Sin,” in *Periodica*, 96 (2007), 37. See also CONGREGATION FOR THE DOCTRINE OF THE FAITH, Letter to Bishops concerning the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful, no. 6, 14 September 1994, in *AAS*, 86 (1994), 974-979, English translation in *Origins*, 24 (1994-1995), 337-341.

⁴⁴⁸ Ignatius Gramunt explains that it should not be concluded to mean that the decision “not to admit” implies an act of jurisdiction. The bishop and the *parochus* celebrating the Eucharist within their jurisdiction may indeed reach that decision by virtue of the juridical power they hold over the congregation, but for those other ministers who lack jurisdiction (including a bishop or a priest with no power of governance over that particular congregation), the faculty to administer Communion is only a liturgical function and, by not admitting, they are simply applying to themselves the prohibition to “not admit” to the sacrament a person whom the law excludes. See GRAMUNT, Commentary on c. 915, in *Exegetical Comm*, vol. 3/1, 615.

⁴⁴⁹ Doubt: Whether, according to canon 917, one who has already received the Most Holy Eucharist may receive it on the same day only a second time, or as often as one participates in the celebration of the Eucharist. Response: Affirmative to the first; negative to the second. In *AAS*, 76 (1984), 74, Eng. translation in *CCLA*, 1629.

Interestingly, when this canon was being drafted in 1978, “practically all” the consultants favored the right of a properly disposed person to receive Holy Communion not just a second time but as often as he or she participates in the celebration of Mass. See *Communicationes*, 13 (1981), 414-415.

interpretation.⁴⁵⁰ In saying that a person may receive (*potest suscipere*) a second time, the law accords the right to do so.

Canon 923 says that, without prejudice to c. 844, the Christian faithful may participate in the Eucharistic sacrifice and receive Holy Communion in any Catholic rite i.e., in any Church *sui iuris* in communion with the Apostolic See. In saying that the faithful may (*possunt*) participate and receive, the canon explicitly acknowledges the right of the faithful to inter-ecclesial participation in the Eucharist and reception of Holy Communion. The reference to c. 844 highlights the fact that the right given in this canon is not applicable to and should not be confused with the norms on sacramental sharing (*communicatio in sacris*) with baptized non-Catholics.⁴⁵¹

Canon 991, using the words *cuius christifideli integrum est*, speaks of the freedom of the faithful to confess their sins to a legitimately approved confessor of their choice, even to one of another rite. The explicit character of this right is well expressed in the Spanish translation of *integrum est* by the words *tiene derecho*⁴⁵² and in Italian by the words *è diritto*,⁴⁵³ both which mean “have the right.”⁴⁵⁴

⁴⁵⁰ Cf. *CIC*, c.917. Qui sanctissimam Eucharistiam iam recepit, potest eam iterum eadem die suscipere solummodo intra eucharisticam celebrationem cui participat, salvo praescripto can. 921, §2.

⁴⁵¹ See GRAMUNT, Commentary on c. 923, in *Exegetical Comm*, vol. 3/1, 635; cf. H. PREE, “Questioni interrituali e interecclesiali nell’amministrazione dei sacramenti,” in *Folia Theologica et Canonica*, 17 (2014), 213-230; A. MCGRATH, “Communicatio in Sacris: An Effort to Express the Unity of Christians or Simply an Exercise in Politeness?,” in *CLSA Proceedings*, 63 (2001), 173-214.

⁴⁵² *Código de Derecho Canónico, Edición bilingüe anotada*, a cargo del INSTITUTO MARTÍN DE AZPILCUETA, 4a ed., Ediciones Universidad De Navarra, Pamplona, 1987. See also A. GOOCH, *Cassell’s Spanish-English Dictionary*, London, Cassell Ltd., 1980.

⁴⁵³ *Codice di Diritto Canonico, Testo ufficiale e versione italiana*, terza edizione riveduta, corretta e aumentata, Rome, 1997. See also I. MAY, *Italian-English Dictionary*, New York, Saphrograph Corp., 1973.

⁴⁵⁴ Cf. *CIC*, c. 991. Cuius christifideli integrum est confessario legitime approbato etiam alius ritus, cui maluerit, peccata confiteri.

A member of the faithful has freedom of choice when selecting a confessor and cannot be compelled in any fashion in his or her choice. See cc. 240, §1 and 630, §1 for an application of this norm in seminaries and religious communities. Canon 844, §2 covers the special circumstances when a Catholic could lawfully approach a non-Catholic priest whose Church is acknowledged to have a valid sacrament of penance. See F.R. MCMANUS, “Commentary on c. 991,” in *CLSA Comm1*, 697; J. ABBASS, “CCEO Canon 1 and Absolving Eastern Catholics in the Latin Church,” in *Studia canonica*, 46 (2012), 75-96.

Canon 994 has an explicit right to gain partial and plenary indulgences, using the words *quivis fidelis potest*.⁴⁵⁵ “Any member of the faithful may gain partial or plenary indulgences for oneself or apply them to the dead by way of suffrage.”⁴⁵⁶ The legislator could equally have said that any faithful has the right to obtain an indulgence.

In addition to these explicit rights, twelve canons have implicit rights to the sacraments. Here we will identify the implicit rights specific to each sacrament after first considering two canons pertaining to all the sacraments.

3.3 Implicit Rights to the Sacraments

A number of canons in Book IV of the Code implicitly acknowledge rights to the sacraments. The first of these are in cc. 843 and 848, which give general rules pertaining to all the sacraments. Thereafter, we find implicit rights for the sacraments of baptism, confirmation, Eucharist, penance, and anointing of the sick.

3.3.1 General rules on the right to the sacraments

Canon 843 §1. Sacred ministers cannot deny the sacraments to those who seek them at appropriate times, are properly disposed, and are not prohibited by law from receiving them.⁴⁵⁷

⁴⁵⁵ A plenary indulgence remits all temporal punishment due for sins. As Peters notes: “God alone knows exactly how much punishment, in absolute terms, would have been due for the forgiven sins of a specific person, but whatever the amount of that punishment was, God accepts the indulgence as payment in full, or, more precisely, he accepts the application of the infinite merits of Christ from the treasury of the Church to pay the debt of punishment of the forgiven sinner who obtains a plenary indulgence.” For a more detailed study, see E. PETERS, *A Modern Guide to Indulgences*, Chicago, Hillenbrand Books, 2008.

⁴⁵⁶ Cf. *CIC*, c. 994. *Quivis fidelis potest indulgentias sive partiales sive plenarias, aut sibi ipsi, aut defunctis applicare ad modum suffragii.*

The Code does not deal explicitly with the question of whether indulgences can be applied to other living persons besides oneself, though it can be claimed the canon implicitly excludes this possibility.

⁴⁵⁷ Cf. *CCEO*, c. 381, §2; *CIC*, c. 843, §1. *Ministri sacri denegare non possunt sacramenta iis qui opportune eadem petant, rite sint dispositi, nec iure ab iis recipiendis prohibeantur.*

This canon has an implicit right to the sacraments. The canon is worded negatively (*Ministri sacri denegare non possunt*), but it implies a positive right to the sacraments. It correlates with c. 213 which acknowledges the faithful's right to receive the spiritual goods of the Church, especially the word of God and the sacraments. The canon also has an implicit obligation pertaining to the ordained ministers. They are obliged to administer the sacraments to the faithful as long as they ask for them at the appropriate time, are properly disposed, and are not barred by law.⁴⁵⁸

Right not to be charged beyond the fixed offering for sacraments

Canon 848. The minister is to seek nothing for the administration of the sacraments beyond the offerings defined by competent authority, always taking care that the needy are not deprived of the assistance of the sacraments because of poverty.⁴⁵⁹

The canon pertains to the offerings that are usually requested from the faithful on the occasion of the administration of certain sacraments.⁴⁶⁰ In saying that the minister should not seek any more than the standard offering, the canon shows a concern for the reverence due to sacred things, especially the sacraments, and the need to avoid even the appearance of profit seeking from their celebration. Moreover, the concern is not just to protect the dignity and sacredness of the sacraments but also the rights of those to whom they are administered. The canon exhorts the ministers not to seek anything beyond the fixed offering established by the competent authority (cf. c. 1264, 2°). It is also concerned that ministers not deny the sacraments to those who are not able to give the required offerings without sacrifice. These requirements yield two implicit rights: the right not to

⁴⁵⁸ See T.J. MARTÍN DE AGAR, Commentary on c. 843, in *Exegetical Comm*, vol. 3/1, 404.

⁴⁵⁹ Cf. *CIC*, c. 848. Minister, praeter oblationes a competenti auctoritate definitas, pro sacramentorum administratione nihil petat, cauto semper ne egentes priventur auxilio sacramentorum ratione paupertatis.

⁴⁶⁰ See MARTÍN DE AGAR, Commentary on c. 848, in *Exegetical Comm*, vol. 3/1, 425.

be charged a higher offering than that established by the competent authority and the right of the poor not to be deprived of a sacrament even without furnishing the standard offering. Nevertheless, the canon in no way prohibits greater offerings or gifts that are voluntary.⁴⁶¹

3.3.2 Baptism

Canon 859. If because of distance or other circumstances the one to be baptized cannot go or be brought to the parish church or to the other church or oratory mentioned in can. 858, §2 without grave inconvenience, baptism can and must be conferred in another nearer church or oratory, or even in another fitting place.⁴⁶²

The canon gives an implicit right to have baptism celebrated apart from the ordinary place of baptism, which is the parish church unless a just cause suggests otherwise (c. 857, §2) or unless the local ordinary has permitted or ordered that there be a baptismal font in another church or oratory within the parish boundaries (c. 858, §2). The right only exists when the person to be baptized cannot, without grave inconvenience, go or be brought to the usual place of baptism in the parish. In this situation, baptism *can* and *must* be conferred in another nearer church or oratory, or even another fitting place. The use of the word “can” (*potest*) indicates that it is licit to celebrate baptism in any other location apart from the parish church in a case of grave inconvenience; the word “must” (*debet*) stresses the fact that the celebration of baptism itself is more important than the place of celebration.⁴⁶³ It also implies a duty on the part of the pastor to arrange for such a baptism, which in turn

⁴⁶¹ See MCMANUS, “Commentary on c. 848,” in *CLSA Comm2*, 1031.

⁴⁶² Cf. *CCEO*, c. 687, §1 merely states that ordinarily baptism is administered in a parish church with due regard for legitimate customs, leaving a certain openness as to the church where a baptism might take place.

CIC, c. 859. Si ad ecclesiam paroecialem aut ad aliam ecclesiam vel oratorium, de quo in can. 858, §2, baptizandus, propter locorum distantiam aliave adiuncta, sine gravi incommodo accedere vel transferri nequeat, baptismus conferri potest et debet in alia propinquiore ecclesia vel oratorio, aut etiam alio in loco decenti.

⁴⁶³ See MCMANUS, Commentary on c. 859, in *CLSA Comm2*, 1048; cf. J. CHIRAMEL, “Sacraments of Initiation in the Latin and Eastern Codes: a Comparative Study,” in *Studies in Church Law*, 3 (2007), 327-350.

implies the right of the faithful to have their baptism outside the parish church when there exists the grave inconvenience as indicated in the canon.

3.3.3 Confirmation

Three canons have implicit rights to the sacrament of confirmation (apart from danger of death which is treated below). These have to do with the right to the sacrament implied in the ministers' obligations to celebrate it, the right of adults to full sacramental initiation, and the right to confirmation at the appropriate age.

Right to confirmation implied in ministers' obligations

Canon 885 §1. The diocesan bishop is obliged to take care that the sacrament of confirmation is conferred on subjects who properly and reasonably seek it.

§2. A presbyter who possesses this faculty must use it for the sake of those in whose favor the faculty was granted.⁴⁶⁴

In paragraph one of the canon, the diocesan bishop is explicitly mentioned and is said to be bound by legal obligation (*obligation tenetur*) to see that the sacrament of confirmation is administered to his subjects who duly and responsibly request it. This obligation gives rise to the implicit right of the faithful to receive the sacrament whenever they properly and reasonably request it.

The second paragraph of the canon speaks about the strong duty of the presbyter who has the faculty to confirm: he must use it (*utidebet*) on behalf of those for whom the faculty was granted. This strong obligation implies and equally strong right of the faithful to receive the sacrament. The faculty of a presbyter to confirm is acquired by law or delegation. Presbyters who have the faculty by law are enumerated in c. 883. A presbyter

⁴⁶⁴ Cf. cc. 213; 381, §1, 835, §1 and 882; *CIC*, c. 885, §1. *Episcopus dioecesanus obligatione tenetur curandi ut sacramentum confirmationis subditis rite et rationabiliter petentibus conferatur.*

§2. *Presbyter, qui hac facultate gaudet, eadem uti debet erga eos in quorum favorem facultas concessa est.*

may also have the delegated faculty to confirm, whether by general or special delegation. The faculty can validly be granted only by the diocesan bishop (c. 884, §1) or by someone to whom the bishop has delegated the power to grant the faculty.⁴⁶⁵

Right of adults to be baptized and confirmed at the same time

Canon 866. Unless there is a grave reason to the contrary, an adult who is baptized is to be confirmed immediately after baptism and is to participate in the Eucharistic celebration also by receiving communion.⁴⁶⁶

This canon stresses that the newly baptized is to be “confirmed immediately” after baptism, is to participate in the celebration of the Eucharist, and is to receive communion. There is one exception: unless there is a “grave reason” to the contrary which prevents it (*gravisobstet ratio*). This canon is a perfect example of the unity that exists among the three sacraments of Christian initiation and which is reflected in c. 883.⁴⁶⁷ The canon implicitly imposes an obligation on the pastor and other ministers to administer all three sacraments of initiation in the same rite. This obligation is explicitly reinforced with regard to confirmation in c. 885, §2: “A presbyter who possesses this faculty [to confirm] must use it for the sake of those in whose favor the faculty was granted.” Consequently, there is an implicit right of the adult faithful who are newly baptized also to complete their sacramental initiation in the same rite.

This canon equally applies to all minors who have attained the use of reason (cf. c. 852, §1). The mere fact that children baptized in infancy are confirmed in a particular place only when they are older than seven does not justify postponing confirmation for children

⁴⁶⁵ Cf. G. READ, “Age of Confirmation. Limitations on the Power of the Bishop,” in *CLSGBI Newsletter*, 125 (2001), 107-110.ID., “Pastoral Policies on the Administration of the Sacraments,” in *CLSGBI Newsletter*, 125 (2001), 107-110; W.J. LEVADA, “Reflections on the Age of Confirmation,” in *Theological Studies*, 57 (1996), 302-312.

⁴⁶⁶ Cf. *CIC*, c. 866. *Adultus qui baptizatur, nisi gravis obstet ratio, statim post baptismum confirmetur atque celebrationem eucharisticam, communionem etiam recipiendo, participet.*

⁴⁶⁷ See M. BLANCO, Commentary on c. 866, in *Exegetical Comm*, vol. 3/1, 463.

of a younger age when they are baptized or received into the Church.⁴⁶⁸ One sees this interpretation also in particular law, for example, in that of the conference of bishops of the USA which explicitly states that children of catechetical age “should receive the sacraments of baptism, confirmation, and Eucharist at the Easter Vigil, together with the older catechumens.”⁴⁶⁹

Right to be confirmed at the appropriate age

Canon 891. The sacrament of confirmation is to be conferred on the faithful at about the age of discretion unless the conference of bishops has determined another age, or there is danger of death, or in the judgment of the minister a grave cause suggests otherwise.⁴⁷⁰

The age of confirmation, which admits of wide variety in practice, is the subject of this norm. The canon is directed to the ministers of confirmation and obligates them to ensure that the faithful are not deprived of their right to the sacrament of confirmation when they are eligible to receive it.⁴⁷¹ As a basic rule, confirmation is to be conferred (*conferatur*) at about the age of discretion, which is seven years. In keeping with Catholic theology and liturgical norms, confirmation is the second sacrament of Christian initiation and so is

⁴⁶⁸ “There is a firm legal obligation binding the minister to confirm the adults and children of catechetical age who are baptized or received into the Church, even though they may be below the age that children baptized in infancy normally confirmed in that locale [...] In sum, confirmation and first communion may not licitly be delayed following the baptism of anyone who is seven years or older and has the use of reason. Likewise, confirmation and first communion cannot licitly be delayed in case of someone baptized in a non-Catholic ecclesial community and who is being received into full communion. In either case, the sacraments of confirmation and Eucharist must be administered in the course of the celebration of initiation or reception. The only exception permitted in the law is a case where there is a serious reason for delay.” See J.M. HUELS, *The Catechumenate and the Law: A Pastoral and Canonical Commentary for the Church in the United States*, Chicago, Liturgical Training Publications, 1994, 32-33.

⁴⁶⁹ See NCCB, National Statutes for the Catechumenate, no. 14, 11 November 1986. The Statutes are appended to all editions of the Rite of Christian Initiation of Adults which are published for use in the dioceses of the USA.

⁴⁷⁰ Cf. *CCEO*, c. 695, §1; *CIC*, c. 891. Sacramentum confirmationis conferatur fidelibus circa aetatem discretionis, nisi Episcoporum conferentia aliam aetatem determinaverit, aut adsit periculum mortis vel, de iudicio ministri, gravis causa aliud suadeat.

⁴⁷¹ See WOESTMAN, *Sacraments*, 88; cf. READ, “Age of Confirmation. Limitations on the Power of the Bishop,” in *CLSGBI Newsletter*, 125 (2001), 107-110.

optimally conferred before first Communion. In danger of death, confirmation must be administered even to infants, as discussed below. Also, the minister of the sacrament may admit a child younger than the standard age if a grave cause exists. In ordinary circumstances, the delay of the sacrament until the age of discretion or other age established in particular law allows for suitable preparation for confirmation (cf. c. 890).

3.3.4 Eucharist

Two canons address the right to the Eucharist (apart from the danger of death situation). The first of these is an implicit right of the faithful to have limits on the concelebration of Mass. The second is an implicit right to receive Holy Communion outside Mass for a just cause.

Rights concerning concelebrated Masses

Canon 902. Unless the welfare of the Christian faithful requires or suggests otherwise, priests can concelebrate the Eucharist. They are completely free to celebrate the Eucharist individually, however, but not while a concelebration is taking place in the same Church or oratory.⁴⁷²

This canon addresses concelebration by priests at the Eucharist. It is a permissive law allowing priests to concelebrate or celebrate individually. They may not concelebrate, however, when “the welfare of the Christian faithful requires or suggests otherwise.” This occurs especially at large celebrations with many people and priests present, a concern addressed in a document of the Congregation for Divine Worship and Discipline of the Sacraments.⁴⁷³ The welfare of the people cannot be compromised at the cost of a

⁴⁷² Cf. *CCEO*, c. 701; *CIC*, c. 902. Nisi utilitas christifidelium aliud requirat aut suadeat, sacerdotes Eucharistiam concelebrare possunt, integra tamen pro singulis libertate manente Eucharistiam individuali modo celebrandi, non vero eo tempore, quo in eadem ecclesia aut oratorio concelebratio habetur.

⁴⁷³ See CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, Guide for Large-Scale Celebrations, 13 June 2014, prot. no. 371/14, in *USCCB Committee on the Liturgy Newsletter*, 52 (March-April 2016), 9-16.

concelebration by priests as would happen, for example, if the assembly's view of the altar is concealed by the concelebrants standing in the front pews, or Mass is unduly protracted by their reception of Communion. In such situations, pastoral needs require or suggest that there be a limit on the number of concelebrants or that the Mass not be concelebrated. Implicit in this canon, therefore, is the right of the faithful to have their own welfare considered in the planning for concelebrated Masses so that they may have a fitting celebration of the Eucharist as envisioned by the Second Vatican Council and the revised Order of Mass.⁴⁷⁴

Right to receive Holy Communion outside Mass for a just cause

Canon 918. It is highly recommended that the faithful receive Holy Communion during the Eucharistic celebration itself. It is to be administered outside the Mass, however, to those who request it for a just cause, with the liturgical rites being observed.⁴⁷⁵

This canon is about the reception of the Holy Communion within and outside the Mass. In saying that Communion should be administered (*ministratur*), the canon implicitly imposes a duty on the ministers of the Eucharist to give Holy Communion to the faithful not only during the celebration of Mass but also outside it when they request it for a just cause. This duty in turn implies the right of the faithful regarding the reception of the Holy Communion outside of the Mass. This right is limited to those who have a just cause, typically the inability to participate in the Mass due to illness or old age or the absence of a priest who can celebrate the Eucharist (c. 528 § 2).⁴⁷⁶

⁴⁷⁴ See J.M. HUELS, Commentary on c. 902, in *CLSA Comm2*, 1098; cf. J. ABBASS., "The Eucharist: A Comparative Study of the Eastern and Latin Codes," in *Studies in Church Law*, 7 (2011), 47-84.

⁴⁷⁵ Cf. *CCEO*, c. 713, §1; *CIC*, c. 918. *Maxime commendatur ut fideles in ipsa eucharistica celebratione sacram communionem recipiant; ipsis tamen iusta de causa petentibus extra Missam ministratur, servatis liturgicis ritibus.*

⁴⁷⁶ See GRAMUNT, Commentary on c. 918, in *Exegetical Comm*, vol. 3/1, 625; cf. G. READ, "Receiving Communion Worthily," in *CLSGBI Newsletter*, 154 (2008), 61-64; ID., "Worship of the Eucharist outside Mass," in *CLSGBI Newsletter*, 161 (2010), 26-29.

3.3.5 Penance

Six canons have implicit rights to the sacrament of penance (apart from danger of death). These have to do with the place for hearing confessions, the right to absolution, the right to have the sacramental seal protected, the right to absolute confidentiality concerning matters learned from a penitent, the right of access to the sacrament, and the right to use an interpreter.

The right to penance outside a sacred place

Canon 964 §3. Confessions are not to be heard outside a confessional without a just cause.⁴⁷⁷

The first paragraph of this canon says that the proper place to hear confessions is a church or an oratory. The second canon calls on the conference of bishops to make particular law regarding the confession, but ensuring “that there are always confessionals with a fixed grate between the penitent and the confessor.” This third paragraph is an exception, allowing for the sacrament to be celebrated outside of a confessional in a church or an oratory. Confession may take place elsewhere for a just cause: in homes or hospitals or other places where the hearing of confession is reasonably requested.⁴⁷⁸ The obligation to hear confessions in a confessional implies the right of penitents to confess their sins without revealing their identity.⁴⁷⁹ There is, moreover, a right of the faithful to confess their sins outside a confessional when they have a just cause, but this right is contingent. For it is the confessor, not the penitent, who determines whether the cause is just. This would include factors such as the suitability of the place, the fear of being overheard, danger of

⁴⁷⁷ Cf. *CIC*, c. 964, §3. *Confessiones extra sedem confessionalem ne excipiantur, nisi iusta de causa.*

⁴⁷⁸ See MCMANUS, Commentary on c. 964, in *CLSA Comm2*, 1151; cf. J. ABBASS, “Penance: A Comparative Study of the Eastern and Latin Codes,” in *Studia canonica*, 45 (2011), 293-328; P. COGAN, “The Sacrament of Reconciliation: Issues, Praxis and the Future,” in *CLSA Proceedings*, 66 (2004), 81-92.

⁴⁷⁹ See J.W.H. STETSON, Commentary on c. 964, in *Exegetical Comm*, vol. 3/1, 770.

abuse, inconvenience, scrupulosity, and so forth, any of which may justify the denial of a request for the sacrament outside a sacred place. In doubt about the adequacy of the cause, the confessor should admit the penitent to the sacrament.

Right to absolution

Canon 980. If the confessor has no doubt about the disposition of the penitent, and the penitent seeks absolution, absolution is to be neither refused nor deferred.⁴⁸⁰

This canon affirms that, if the confessor has no reason for doubting the penitent's disposition, absolution is to be neither refused nor deferred. Behind the negative wording of the canon (*absolutio ne denegetur nec differatur*) is the implicit right to the sacrament. Any penitent who is disposed (cc. 987-988) and who lacks any penal impediment has the right to receive the absolution from a priest who has the faculty to hear confessions (cf. cc. 213, 841 and 843 §1).

Right to the inviolability of the sacramental seal

Canon 983 §1. The sacramental seal is inviolable; therefore, it is absolutely forbidden for a confessor to betray in any way a penitent in words or in any manner and for any reason.

§2. The interpreter, if there is one, and all others who in any way have knowledge of sins from confession are also obliged to observe secrecy.⁴⁸¹

The first paragraph of the canon deals with the sacramental *seal* of confession. The choice of the words “absolutely forbidden” (*nefas est*) by the legislator demonstrates the strong sense of protection and dignity attached to the sacramental seal. The inviolability of the confessional seal is more than a matter of ecclesiastical law but has its origin in the

⁴⁸⁰ Cf. *CIC*, c. 980. Si confessario dubium non est de paenitentis dispositione et hic absolutionem petat, absolutio ne denegetur nec differatur.

⁴⁸¹ Cf. *CCEO*, c. 733; *CIC*, c. 983, §1. Sacramentale sigillum inviolabile est; quare nefas est confessario verbis vel alio quovis et quavis modo de causa aliquatenus prodere paenitentem.

§ 2. Obligatione secretum servandi tenentur quoque interpretes, si detur, necnon omnes alii ad quos ex confessione notitia peccatorum quoquo modo pervenerit.

divine law.⁴⁸² This obligation of the sacramental seal also reinforces the right of every individual to privacy as stipulated in c. 220. The obligation of maintaining the sacramental seal is binding on all confessors without exception.⁴⁸³ The prohibition against betraying a penitent applies to any violation of the seal, whether direct or indirect.⁴⁸⁴

The second paragraph of the canon deals with the obligation to observe secrecy. This is a most grave obligation which also binds the interpreter and all other persons who may in any way have knowledge of the information received during confessions.⁴⁸⁵ This obligation, like that of the sacramental seal, has its basis in the natural law regarding a person's right to privacy (c.220).⁴⁸⁶ The rationale for this obligation is the protection of the dignity of the sacraments and the rights of the faithful.⁴⁸⁷

⁴⁸² See R.T. MORIARITY, "Violation of the Confessional Seal and the Associated Penalties," in *The Jurist*, 58 (1998), 153-154 (=MORIARITY, "Violation of the Confessional Seal"). Cf. G.J. ZUBACZ, *The Seal of Confession and Canadian Law*, Montréal, Wilson & Lafleur Ltée, 2009.

⁴⁸³ See WOESTMAN, *Sacraments*, 273.

⁴⁸⁴ A direct violation of the seal consists in revealing both the identity of the penitent and the sin confessed. A direct violation can occur not only by stating the penitent's name and the sin but also by revealing circumstances by which this could be known. An example of direct violation of the seal would be if the pastor of a small parish reports to another person from the same parish that "a woman confessed to him that she was living with a man without benefit of matrimony," and it well known in the town who this woman is.

An indirect violation occurs when, from the things the confessor says or does, there arises a danger that others will come to know a sin confessed and the identity of the penitent. For example, a priest says that, in confession, an accountant (no name mentioned) admitted he had embezzled money from a parish. This is an indirect violation, because the danger exists that the identity of the sinner could be known if he were to be arrested for embezzlement from a parish. For a helpful overview on both direct and indirect violations and the sacrament itself, see J.M. HUELS, *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry*, 5th rev. ed., Montréal, Wilson & Lafleur, 2016, 144. See WOESTMAN, *Sacraments*, 272-276.

⁴⁸⁵ See F. LOZA, Commentary on c. 983, in *Exegetical Comm*, vol. 3/1, 821; cf. K. MARTENS, "Secrecy in Catholicism," in *Revue de droit canonique*, 52 (2002), 259-274.

⁴⁸⁶ See WOESTMAN, *Sacraments*, 277.

⁴⁸⁷ See LOZA, Commentary on c. 983, in *Exegetical Comm*, vol. 3/1, 823; cf., G READ, "The Integrity of the Sacrament of Penance," in *CLSGBI Newsletter*, 129 (2002), 40-42.

Right to absolute secrecy of confession

Canon 984 §1. A confessor is prohibited completely from using knowledge acquired from confession to the detriment of the penitent even when any danger of revelation is excluded.

§2. A person who has been placed in authority cannot use in any manner for external governance the knowledge about sins which he has received in confession at any time.⁴⁸⁸

The first paragraph of the canon is a strong prohibition (*omnino prohibetur*) against using knowledge acquired from confession to the detriment of the penitent. The subject of the prohibition is the confessor. The prohibited object or matter is “using knowledge acquired from confession to the detriment of the penitent.” Even if there is no danger of breaking the seal, it is still forbidden for the confessor to use such knowledge from the confession.⁴⁸⁹

The second paragraph treats the prohibition against the use of knowledge about sins gained through confession. The concern of this canon is persons in authority who in anyway could make use of such knowledge in the external forum.⁴⁹⁰ It applies to any knowledge about a sin, whether deleterious or advantageous to the penitent.⁴⁹¹

In this canon, the legislator emphasizes the distinction and separation between the internal forum, the forum of conscience, and the external forum, the forum of government and the public life of the Church. This separation of the fora is guaranteed by law to the faithful and, indeed, is an important right, albeit implicit. It helps to avoid any suspicion

⁴⁸⁸ Cf. *CCEO*, c. 734, §1-2; *CIC*, c. 984, §1. *Omnino confessario prohibetur scientiae ex confessione acquisitae usus cum paenitentis gravamine, etiam quovis revelationis periculo excluso.*

§2. *Qui in auctoritate est constitutus, notitia quam de peccatis in confessione quovis tempore excepta habuerit, ad exteriorem gubernationem nullo modo uti potest.*

⁴⁸⁹ See WOESTMAN, *Sacraments*, 278.

⁴⁹⁰ All those “who are in authority are those who exercise offices of governance: Ordinaries (cc. 134, §1, 295, §1, 368, 372, §2, 427), superiors (cc. 596, 620, 622), parish priests (c. 519) and their equivalents, rector of seminaries (cc. 260, 262), and rectors of churches (cc. 556, 562). These authorities are obligated by the prohibition even if they come into office after the confessions have been made (*quovis tempore*).

⁴⁹¹ See MCMANUS, Commentary on c. 984, in *CLSA Comm2*, 1165.

that those in authority or governance may be affected by what they come to know in the sacrament of penance.⁴⁹² Clearly, the faithful have the right to absolute secrecy concerning what is said in sacramental confession.

Right to access the sacrament of penance

Canon 986 §1. All to whom the care of souls has been entrusted in virtue of some function are obliged to make provision so that the confessions of the faithful entrusted to them are heard when they reasonably seek to be heard and that they have the opportunity to approach individual confession on days and at times established for their convenience.⁴⁹³

The first paragraph of the canon is an application to penance of the right to the sacraments (cc. 213, 843, §3).⁴⁹⁴ Since the faithful have a right to the sacrament, the law here establishes an obligation on those entrusted with the care of souls to make provision for the celebration of the sacrament on a regular basis. This is an obligation of justice binding all to whom the care of souls is committed.⁴⁹⁵ These *pastores animarum* must provide the opportunity for confessions: (a) anytime when reasonably requested (and thus, whenever a penitent's conscience feels burdened, a confessor should presume that a request for the sacrament is reasonable); and (b) at fixed days and times to suit the convenience of the faithful.⁴⁹⁶

Right to an interpreter

⁴⁹² See LOZA, Commentary on c. 984, in *Exegetical Comm*, vol. 3/1, 826.

⁴⁹³ Cf. *CCEO*, c. 735; *CIC*, c. 986, §1. *Omnis cui animarum cura vi muneris est demandata, obligatione tenetur providendi ut audiantur confessiones fidelium sibi commissorum, qui rationabiliter audiri petant, utque iisdem opportunitas praebeatur ad confessionem individuaalem, diebus ac horis in eorum commodum statutis, accedendi.*

⁴⁹⁴ See E. GARCIA, "Priestly Obligation to Hear Confessions," in *Boletín Eclesiástico de Filipinas*, 63 (1987), 610-618 (=GARCIA, "Priestly Obligation to Hear Confessions").

⁴⁹⁵ See LOZA, Commentary on c. 986, in *Exegetical Comm*, vol. 3/1, 830.

⁴⁹⁶ See MCMANUS, Commentary on c. 986, in *CLSA Comm2*, 1166.

Canon 990 – No one is prohibited from confessing through an interpreter as long as abuses and scandals are avoided and without prejudice to the prescript of can. 983, §2.⁴⁹⁷

This canon speaks about the service of an interpreter in the case of a confessor who does not know the penitent's language or know it well. The choice always remains that of the penitent but, if he or she is unwilling to use an interpreter, the integral confession of sins in accord with c. 960 would probably be morally impossible. That being said, the faithful have an implicit right to use an interpreter if needed, a right which enables them to access the sacrament. Although the canon is worded negatively (*nemo prohibetur quominus per interpretem confiteatur*), a positive right is implied. The right is conditioned in that an interpreter is allowed only if abuse and scandal are avoided, especially in regard to sacramental confidentiality. The mention of c. 983, §2 is a reminder that the interpreter is bound by the sacramental secret.⁴⁹⁸

3.4 Rights to the Sacraments in Danger of Death

This section treats the legislation of the Code pertaining to the right to the sacraments of those who are in danger of death (*periculum mortis*). The legislator establishes certain provisions in the law for which the faithful may benefit from the spiritual goods of the Church in a time of danger. Priests and others are obliged to administer the sacraments to persons in danger of death, and this implies a right of such persons to receive them. In the case of baptism and penance, this duty and right are of the

⁴⁹⁷ Cf. *CIC*, c. 990. *Nemo prohibetur quominus per interpretem confiteatur, vitatis quidem abusibus et scandalis atque firmo praescripto can. 983, § 2.*

⁴⁹⁸ See MCMANUS, Commentary on c. 984, in *CLSA Comm2*, 1172.

divine law, as these sacraments are considered necessary for salvation. We will treat twelve canons which implicitly refer to the right to the sacraments of those in danger of death.

3.4.1 Sacramental sharing (*communicatio in sacris*)

Canon 844 §4. If the danger of death is present or if, in the judgment of the diocesan bishop or conference of bishops, some other grave necessity urges it, Catholic ministers administer these same sacraments licitly also to other Christians not having full communion with the Catholic Church, who cannot approach a minister of their own community and who seek such on their own accord, provided that they manifest Catholic faith in respect to these sacraments and are properly disposed.⁴⁹⁹

Paragraph four of c. 844 gives an implicit right to Christians who are not in full communion with the Catholic Church and who are in danger of death. Although the canon does not explicitly impose a duty on the Catholic minister to administer the sacraments to them, this is unnecessary because it is not a matter of merely ecclesiastical law with respect to the sacrament of penance for those in a state of grave sin. The minister is thus implicitly obliged by the divine law.

There are several conditions that must be fulfilled before the right of the faithful can be exercised. The first is that they truly are Christian faithful, that is, validly baptized. The second is that they are in danger of death or have some other serious need determined in the judgment of the diocesan bishop or the bishops' conference,⁵⁰⁰ although our concern here is only with the danger of death. The remaining conditions of the law are: a) inability to approach their own minister; b) a voluntary request by the recipient; c) a manifestation

⁴⁹⁹ Cf. *CCEO*, c. 671, §4; *CIC*, c. 844, §4. Si adsit periculum mortis aut, iudicio Episcopi dioecesanii aut Episcoporum conferentiae, alia urgeat gravis necessitas, ministri catholici licite eadem sacramenta administrant ceteris quoque christianis plenam communionem cum Ecclesia non habentibus, qui ad suae communitatis ministrum accedere nequeant atque sponte id petant, dummodo quoad eadem sacramenta fidem catholicam manifestent et rite sint dispositi.

⁵⁰⁰ See MARTIN DE AGAR, Commentary on c. 844, in *Exegetical Comm*, vol. 3/1, 414; cf. P. PALLATH, "Sacramental Sharing According to the Second Vatican Council and Catholic Canon Law," in *Studies in Church Law*, 4 (2008), 185-214.

of Catholic faith in the sacraments; and d) the proper disposition to receive the sacrament.⁵⁰¹

3.4.2 Baptism

Canon 861 §2. When an ordinary minister is absent or impeded, a catechist or another person designated for this function by the local ordinary, or in a case of necessity any person with the right intention, confers baptism licitly. Pastors of souls, especially the pastor of a parish, are to be concerned that the Christian faithful are taught the correct way to baptize.⁵⁰²

This section of the canon gives a provision for an extraordinary minister to baptize in a case of necessity when the ordinary minister (bishop, presbyter, deacon) is absent or impeded.⁵⁰³ In a case of necessity, especially a danger of death situation as discussed below, any person (*quilibet homo*) may baptize. Even non-baptized persons may administer baptism in case of necessity as long as their intention is to do what the Church does when it baptizes.⁵⁰⁴

Strictly speaking, catechumens requesting baptism are not *christifideles* and so do not fall within the parameters of this study. However, they are accorded some rights in canon law in virtue of their intention to be baptized (cf. c. 206). Among these rights is the right to be baptized in danger of death. Indeed, this right applies by the divine law to

⁵⁰¹ See MCMANUS, Commentary on c. 844, in *CLSA Comm2*, 1026; cf. HUELS, “A Policy on Canon 844 §4 for Canadian Dioceses,” in *Studia canonica*, 34 (2000), 91-118.

⁵⁰² Cf. *CCEO*, c. 677, §2; *CIC*, c. 861, §2. Absente aut impedito ministro ordinario, licite baptismum confert catechista aliusve ad hoc munus ab Ordinario loci deputatus, immo, in casu necessitatis, quilibet homo debita intentione motus solliciti sint animarum pastores, praesertim parochus, ut christifideles de recto baptizandi modo edoceantur.

⁵⁰³ The absence is not defined by the legislator; however, applying the provisions established in c. 1116, §1, 2° by analogy, the ordinary minister may be considered absent when it is impossible to reach him without great difficulty, and it can be prudently expected that this situation will last one month. Application of this criterion would allow parents to baptize their children within their first week of life (cf. c. 867).

⁵⁰⁴ See W.H. WOESTMAN, *Sacraments*, 51. See also A.URRU, “Ministrostraordinariodelbattesimo: fondamento di tale potestà,” in *Questioni canonice*, no. 22, Studia Universitatis S. Thomæ in Urbe, Milan, Massimo, 1984, 209.

anyone, even if not formally admitted to the Order of Catechumens. Once baptized, they have the right to be confirmed and to receive Viaticum, as discussed below.

Right to baptism of an infant in danger of death

Canon 867 §2. An infant in danger of death is to be baptized without delay.⁵⁰⁵

The focus of the second paragraph of c. 867 is an infant in danger of death, who should be baptized without delay. This norm should be read in conjunction with c. 861 §2 which concerns the absence of the ordinary minister in a case of necessity.⁵⁰⁶ The implicit right (with respect to both adults and infants in danger of death) is a right of the divine law applicable to all persons since baptism “is necessary for salvation by actual reception or at least by desire” (c. 849).⁵⁰⁷ As seen above, c. 865, §2 on the baptism of an adult in danger of death has explicit wording of this right (*baptizari potest*), but in this canon the right of the infant is implicit from the obligation of the minister to baptize without delay.

Right to baptism even against the wishes of parents

Canon 868 §2. An infant of Catholic parents or even of non-Catholic parents is baptized licitly in danger of death even against the will of the parents.⁵⁰⁸

This canon deals with the baptism of an infant in danger of death even if the parents are opposed to the baptism. This norm is applicable to an infant of Catholic or non-Catholic parents. The canon affirms the necessity of baptism for salvation, even in the face of

⁵⁰⁵ Cf. *CIC*, c. 867, §2. Si infans in periculo mortis versetur, sine ulla morabaptizetur.

⁵⁰⁶ See BLANCO, Commentary on c. 867, in *Exegetical Comm*, vol. 3/1, 466.

⁵⁰⁷ Cf. A.L. LINAQ, “The Deferral of Baptism of Children of Unmarried Couples,” in *Philippine Canonical Forum*, 8 (2011), 279-288.

⁵⁰⁸ Cf. *CCEO*, c. 681, §4; *CIC*, c. 868, §2. Infans parentum catholicorum, immo et non catholicorum, in periculo mortis licite baptizatur, etiam invitis parentibus.

parental opposition, and asserts that the eternal salvation of the child prevails over the wishes of the parents.⁵⁰⁹ The implicit right of this canon is the same as that of c. 867 §2.

3.4.3 Confirmation

Canon 883. The following possess the faculty of administering confirmation by the law itself:
3° as regards those who are in danger of death, the pastor or indeed any presbyter.⁵¹⁰

The administration of confirmation to those in danger of death is a function especially entrusted to pastors (c. 530, 2°).⁵¹¹ Yet, the canon hardly reserves this function to the pastor, even if he is first mentioned. In virtue of this canon, any presbyter (*quilibet presbyter*) has the faculty by law to confirm someone in danger of death. There is no restriction mentioned, such as being under a censure.⁵¹² Again we see the legislator's deep concern that there be no merely legal obstacle, such as the lack of a faculty, to hinder a person in danger of death from the reception of a sacrament, even one like confirmation that is not necessary for salvation. The Rite of Confirmation gives an exception with regard to the preparation: if one who has the use of reason is confirmed in danger of death, there should, as far as possible, be some spiritual preparation given beforehand suited to the

⁵⁰⁹ See HART, Commentary on c. 868, in *CLSA Comm2*, 1057; cf. A. ARZA and P. GARIN, "Comentario al canon 868 §2 del CIC," in *Estudios Eclesiásticos*, 74 (1999), 639-660.

⁵¹⁰ Cf. *CIC* c. 883, *Ipso iure facultate confirmationem ministrandi gaudent: 3° quoad eos qui in periculo mortis versantur, parochus, immo quilibet presbyter.*

⁵¹¹ The canon authorizes priests to confirm in danger of death persons who have not received this sacrament. Pope Pius XII gave this faculty to parish priests within their own territory, and it was subsequently broadened for mission territories, military chaplains, hospitals, and similar circumstances. See PIUS XII, Decree *Spiritus Sancti munera*, 14 September 1946, in *AAS*, 38 (1946), 349-358. Therefore, c. 566, §1 authorizes every chaplain to confer confirmation in danger of death, and this canon confers the same faculty "on any parish priest and indeed any priest." With this last expression, the Code broadens the concession of this faculty, since the confirmation rite limits it "to any priest who is not under censure or canonical penalty." This follows the general rule that "if a censure prohibits the celebration of the sacraments...the prohibition is suspended whenever this is necessary to provide for the faithful who are in danger of death" (c. 1335). See E. TEJERO, Commentary on c. 883, in *Exegetical Comm*, vol. 3/1, 521-522.

⁵¹² See HART, Commentary on c. 883, in *CLSA Comm2*, 1081; cf. J.M. HUELS, "The Supply of the Faculty to Confirm in Common Error," in *Studia canonica*, 40 (2006), 293-348.

individual situation.⁵¹³ The right to confirmation in danger of death is implicit when this canon is read together with c. 885, §2: “A presbyter who has this faculty [to confirm] must use it for the sake of those in whose favor the faculty was granted.”

3.4.4 Eucharist

Several canons treat the administration of Holy Communion in danger of death. This may be during the period of a prolonged or chronic danger of death or it may be close to the point of death (*articulum mortis*). If the latter, Holy Communion is to be administered observing the rite of Viaticum of the Roman Ritual.⁵¹⁴ As the last rite of the Church, Viaticum should be administered in proximate danger of death but while the ailing person is still conscious.

Young children in danger of death

Canon 913 §2. The Most Holy Eucharist, however, can be administered to children in danger of death if they can distinguish the body of Christ from ordinary food and receive communion reverently.⁵¹⁵

The second paragraph of c. 913 deals with the reception of Holy Communion by young children in danger of death situations. This paragraph allows the Eucharist to be administered to children in danger of death, even if they have not yet received sacramental preparation or otherwise have never received the Eucharist. Thus, the “sufficient knowledge” and “careful preparation” requirements of the first paragraph cede to a more minimal requirement in danger of death. The canon only requires that they be able to

⁵¹³ See *Rite of Confirmation* 12, DOL 2521.

⁵¹⁴ *Ordo Unctionis infirmorum eorumque pastoralis curae*, Typis Polyglottis Vaticanis, 1975, chapter 3; *De sacra communione et de cultu mysterii eucharistici extra Missam*, Typis Polyglottis Vaticanis, 1973, chapter 2.

⁵¹⁵ Cf. *CIC*, c. 913, §2. Pueris tamen in periculo mortis versantibus sanctissima Eucharistia ministrari potest, si Corpus Christi a communi cibo discernere et communionem reverenter suscipere possint.

distinguish the body of Christ from ordinary food and receive it reverently.⁵¹⁶ In doubt whether this fact is adequately demonstrated, Communion should be given, for the legislative intent here and elsewhere is that requirements of the merely ecclesiastical law must give way to the right of the faithful to receive sacraments in danger of death.

Viaticum and subsequent reception of Communion in danger of death

- Canon 921** §1. The Christian faithful who are in danger of death from any cause are to be nourished by Holy Communion in the form of Viaticum.
 §2. Even if they have been nourished by Holy Communion on the same day, however, those in danger of death are strongly urged to receive Communion again.
 §3. While the danger of death lasts, it is recommended that Holy Communion be administered often, but on separate days.⁵¹⁷

Viaticum, which is Holy Communion administered to those at or near the time of death, is the last sacrament of the Christian life.⁵¹⁸ Paragraph one of the canon stresses that Christ's faithful are to be strengthened by Viaticum, which implies a duty on the part of

⁵¹⁶ See HUELS, Commentary on c. 913, in *CLSA Comm2*, 1108. See also W. KERN, *Pastoral Ministry with Disabled Persons*, New York, NY, Alba House, 1985; D. WILSON, "The Church, the Eucharist, and the Mentally Handicapped," in *Clergy Review*, 60 (1975), 69-84; id., *L'Église, l'Eucharistie et les handicaps mentaux*, Lille, Fédération Universitaire et Polytechnique de Lille, Faculté de Théologie, 1974, 49-56; U. HOLMES, *Young Children and the Eucharist*, New York, NY, Seabury, 1982; J.M. HUELS, *One Table, Many Laws: Essays on Catholic Eucharistic Practice*, Collegeville, MN, Liturgical Press, 1986, 74-84; ID., "Preparation for the Sacraments," 33-58.

⁵¹⁷ Cf. *CCEO*, c. 708; *CIC*, c. 921, §1. *Christifideles qui versantur in periculo mortis, quavis ex causa procedenti, sacra communione per modum Viatici reficiantur.*

§2. *Etiamsi eadem die sacra communione refecti fuerint, valde tamen suadetur ut qui in vitae discrimen adducti sint, denuo communicent.*

§3. *Perdurante mortis periculo, commendatur ut sacra communio pluries, distinctis diebus, administretur.*

⁵¹⁸ Unfortunately, the expression "the last rites" for many means the conferral of the sacrament of anointing of the sick upon one who is dying or who will almost certainly die. The revised ritual attempts to counteract this attitude. Viaticum, food for the passage through death to eternal life, is the real source of spiritual strength proper to the dying Christian. It signifies the completion and crown of the Christian life on earth and the attainment of eternal glory and the banquet of the heavenly kingdom. The sacrament of the anointing of the sick should be celebrated at the beginning of a serious illness. Viaticum, celebrated when death is close, will then be better understood as the last sacrament of Christian life. Christians in danger of death are bound by the precept of receiving Communion so that, in their passage from this life, they may be strengthened by the body of Christ, the pledge of the resurrection.

pastoral ministers to make Viaticum available and a right on the part of the faithful to receive it at the time of their death.

The second paragraph of this canon speaks of those in danger of death who have already communicated on the same day. If they are in danger of death, it is “strongly urged” that they should communicate again according to the special rite of Viaticum. The norm of c. 917 cedes to this situation. Given the importance of Viaticum, there is an implicit obligation on the minister to administer Viaticum and a right of the faithful to receive it a second time even apart from the Eucharistic celebration.

Paragraph three of the canon is about one who is continually in a danger of death situation. In such situations it is “recommended” that Holy Communion be administered often (*pluries*) but on separate days (c. 921, §3). Canon 911 identifies those who have the duty to bring Viaticum: pastor, assistant priest, chaplains, other priests, superior in clerical institutes or societies, deacons, and lay ministers.⁵¹⁹ To facilitate daily Communion by someone in protracted danger of death, the pastor can avail himself of the assistance of deacons, acolytes, and other extraordinary ministers of Communion. If this cannot readily be done, the pastor himself is not strictly obliged to bring Communion frequently to such persons, as the law only recommends but does not require the practice. Thus, there is no right on the part of the faithful to receive Communion often while in danger of death apart from the right already expressed in c. 918.

⁵¹⁹ See WOESTMAN, *Sacraments*, 155.

Right to receive Viaticum in due time

Canon 922. Holy Viaticum for the sick is not to be delayed too long; those who have the care of souls are to be zealous and vigilant that the sick are nourished by Viaticum while fully conscious.⁵²⁰

This canon stresses the diligent care towards dying persons who should receive Viaticum while they are fully conscious. This duty is laid upon those who have the care of souls, and thus it follows that the faithful in danger of death have a right to receive the sacrament from these ministers before they fall unconscious.⁵²¹ The instruction *Eucharisticum mysterium* also insisted that the faithful themselves have the obligation to receive this sacrament.⁵²² Consequently, the reception of Holy Viaticum is both a right and a duty of the all faithful.

3.4.5 Penance

The right to receive the sacrament of penance in danger of death is implicit in three canons. Each of these has in common the right of the dying person to confess to any validly ordained priest.

A priest lacking the faculty

Canon 976. Even though a priest lacks the faculty to hear confessions, he absolves validly and licitly any penitents whatsoever in danger of death from any censures and sins, even if an approved priest is present.⁵²³

This canon is about the faculty to hear confessions in danger of death situations. In the canonical system, the highest law is the *salus animarum* (c. 1752), which in c. 976

⁵²⁰ Cf. *CIC*, c. 922. Sanctum Viaticum infirmis ne nimium differatur; qui animarum curam gerunt sedulo advigilent, ut eodem infirmi plene sui compotes reficiantur.

⁵²¹ See WOESTMAN, *Sacraments*, 155; cf. P.J. VERE, “Administering Viaticum to a Dying Individual of Unknown Cognitive Capacity,” in *Roman Replies Advisory Opinions*, (2004), 151-154.

⁵²² Cf. CONGREGATION OF RITES, Instruction, *Eucharisticum mysterium*, 25 May 1967 (= *EM*), no. 39, in *AAS*, 59 (1967), 539-578, 562, English translation in *FLANNERY I*, 100-136, 124.

⁵²³ Cf. *CCEO*, c. 725; *CIC*, c. 976. Quilibet sacerdos, licet ad confessiones excipiendas facultate careat, quoslibet paenitentes in periculo mortis versantes valide et licite absolvit a quibusvis censuris et peccatis, etiamsi praesens sit sacerdos approbatus.

pertains to the eternal salvation of the penitent.⁵²⁴ The canon is all embracing: every validly ordained priest, no matter what his canonical status or situation, can absolve any penitent who is in danger of death and, indeed, is strictly obliged to do so (c. 986, §2). It follows, therefore, that a dying person has the right to receive the sacrament of penance from any priest of his or her choosing. The final clause of this canon is: “even if an approved priest [with the requisite faculties] is present.” The penitent is completely free in such circumstances to confess to a priest who lacks faculties (e.g., due to the loss of the clerical state) or who is not in good standing with the Church (e.g., due to suspension or excommunication). This absolution in danger of death covers not just sins but also all ecclesiastical sanctions.⁵²⁵

The general norm of posterior recourse is that, if the penitent was absolved from an imposed or declared censure or one reserved to the Holy See and later recovers, he or she is then bound to have recourse within one month to the competent authority, under pain of again incurring the censure (c. 1357, §3). Recourse may be made via the confessor. Those subject to unreserved, undeclared *latae sententiae* (automatic) penalties are exempt from such an obligation of recourse after recovering from a crisis.⁵²⁶

A priest accomplice

Canon 977. The absolution of an accomplice in a sin against the sixth commandment of the Decalogue is invalid except in danger of death.⁵²⁷

The canon speaks about an invalid absolution of a partner in a sin against the sixth commandment. Except when the penitent is in danger of death, absolution given by a priest

⁵²⁴ See LOZA, Commentary on c. 976, in *Exegetical Comm*, vol. 3/1, 796.

⁵²⁵ See MCMANUS, Commentary on c. 976, in *CLSA Comm2*, 1160.

⁵²⁶ See LOZA, Commentary on c. 976, in *Exegetical Comm*, vol. 3/1, 797.

⁵²⁷ Cf. *CCEO*, c. 730; *CIC*, c. 977. Absolutio complicitis in peccato contra sextum Decalogi praeceptum invalida est, praeterquam in periculo mortis.

to a partner in a sin against the sixth commandment is invalid, and the priest also incurs a *latae sententiae* excommunication reserved to the Holy See (c. 1378, §1). However, this strictness of the law does not apply in danger of death. The legislator wants to assure that requirements of the merely ecclesiastical law do not interfere with a person's eternal salvation. It follows that a penitent in danger of death has the implicit right to choose any priest to hear his or her confession, including a priest who was an accomplice in a sin against the sixth commandment.⁵²⁸

Right implied in the duty of every priest

Canon 986 §2. In urgent necessity, any confessor is obliged to hear the confessions of the Christian faithful, and in danger of death, any priest is so obliged.⁵²⁹

The second paragraph of c. 986 imposes two obligations. The first obligation pertains to any situation of urgent necessity, not just danger of death. Every confessor (i.e., a priest with the faculty to hear confessions) is obliged to hear confessions when some need urges it (*urgente necessitate*). This obligation is laid out of pastoral charity rather than justice as compared to paragraph one of this canon (discussed above). The second obligation is binding on all validly ordained priests, even those who have lost the clerical state or who are under the penalty of an inflicted or a declared excommunication. Any priest is strictly obliged to hear the confession of someone who seeks the sacrament and is in danger of death.⁵³⁰ Doubtless, there are rights implied here: the strong right to the sacrament in an urgent need and even stronger right in danger of death.

⁵²⁸ See LOZA, Commentary on c. 976, in *Exegetical Comm*, vol. 3/1, 799; A. BAMBERG, "L'évêque face à la sainteté des sacrements: loi et procédure concernant les délits les plus graves," in *Revue de Droit Canonique*, 57 (2007), 49-433.

⁵²⁹ Cf. *CCEO*, c. 735; *CIC*, c. 986, §2. *Urgente necessitate, quilibet confessarius obligatione tenetur confessiones christifidelium excipiendi, et in periculo mortis quilibet sacerdos.*

⁵³⁰ See LOZA, Commentary on c. 986, in *Exegetical Comm*, vol. 3/1, 831.

3.4.6 Anointing of the sick

Canon 1004 §1. The anointing of the sick can be administered to a member of the faithful who, having reached the use of reason, begins to be in danger due to sickness or old age.

§2. This sacrament can be repeated if the sick person, having recovered, again becomes gravely ill or if the condition becomes more grave during the same illness.⁵³¹

From the first paragraph of the canon, it may seem that the anointing of the sick is merely an option, that it “can be administered.” However, this refers to the eligibility for the sacrament on the part of the recipient: they are able to receive the sacrament when they have the use of reason and begin to be in danger due to sickness or old age. As for the ministers, they are strictly obliged by the liturgical law to administer this sacrament. They must confer (*conferenda est*) the blessed oil on the faithful who are in danger due to sickness or old age.⁵³² Consequently, the faithful have a right to the sacrament at the beginning of an infirmity that puts them in danger of death. According to the liturgical law, this includes a sick person before undergoing surgery, elderly people if they have become weak due to their age, and sick children if they have sufficient use of reason to be comforted by the sacrament.⁵³³

The sacrament of the anointing of the sick can be repeated if the sick person, having recovered, again becomes seriously ill or if, in the same illness, the danger becomes more serious (c. 1004, §2). The repetition of the anointing is not a mere option, as could be

⁵³¹ Cf. *CIC*, c. 1004, §1. *Unctio infirmorum ministrari potest fideli qui, adepto rationis usu, ob infirmitatem vel senium in periculo incipit versari.*

§2. *Hoc sacramentum iterari potest, si infirmus, postquam convaluerit, denuo in gravem infirmitatem inciderit aut si, eadem infirmitate perdurante, discrimen factum gravius sit.*

⁵³² *Ordo Unctionis infirmorum eorumque pastoralis curae, editio typica*, 7 December 1972, *Typis Polyglottis Vaticanis*, 1975, no. 8.

⁵³³ *Ibid.*, nos. 10-12; English translation in *Pastoral Care of the Sick: Rites of Anointing and Viaticum*, in *DOL*, 3330-3332. Cf. W.B. SMITH, “Execution and Anointing,” in *Homiletic and Pastoral Review*, 10 (200), 72-74.

misconstrued by the words “can be repeated.” As in the first paragraph, this refers to the eligibility for the sacrament’s repetition. If, after the anointing, the person recovers and later becomes seriously ill or if, in the same illness, the danger becomes more serious, the minister has a duty to confer the sacrament, and the faithful have a right to it. Apart from these conditions, there is no right to the anointing once it has been administered.

3.5 Rights to the Preparation for the Sacraments

The right to sacramental preparation was already seen in several canons of Book III of the Code, as discussed in the previous chapter, and Book IV has even more canons. The right to the sacraments is expressed in the fundamental c. 213 which states, “The Christian faithful have the right to receive the assistance from the sacred pastors out of the spiritual goods of the Church, especially the word of God and the sacraments.” To this right there are correlative obligations on the part of ministers to prepare the faithful for the sacraments. This duty extends not only to the pastors of souls but also to parents and those in ministry assisting the pastors, including other priests and deacons, catechists, and the Christian community at large (cf. c. 776). The right to preparation and formation for the sacraments is further reinforced in cc. 843, 836, and 843, §2. The following six canons deal with implicit rights pertaining to the preparation for the sacraments.⁵³⁴

3.5.1 Right to the ministry of the word

Canon 836. Since Christian worship, in which the common priesthood of the Christian faithful is carried out, is a work which proceeds from faith and is based on it, sacred ministers are to take care to arouse and enlighten this

⁵³⁴ See HUELS, “Preparation for the Sacraments,” 33-58.

faith diligently, especially through the ministry of the word, which gives birth to and nourishes the faith.⁵³⁵

The canon begins by orienting divine worship to the common priesthood of the faithful. The Christian faithful share in the priesthood of Christ through participation in the sanctifying office of the Church, mainly through the liturgy. In order for this participation to be fruitful and to obtain the graces of the liturgy, the faithful must have the proper disposition.⁵³⁶ According to c. 836, the ordained ministers and their collaborators have the obligation to arouse and nourish the faith of those in their charge. This is done in various ways through the ministry of the word: catechesis, preaching, evangelization, and the immediate preparation for the sacraments. The faithful on their part have the duty to learn about the faith and deepen their appreciation of it by their active participation in the liturgy.⁵³⁷ Since the ordained ministers have the obligation to arouse and enlighten faith, it follows that the faithful have an implicit right to this evangelization through the ministry of the word, as discussed amply in the preceding chapter.

3.5.2 Baptism

Canon 861 §2. When an ordinary minister is absent or impeded, a catechist or another person designated for this function by the local ordinary, or in a case of necessity any person with the right intention, confers baptism licitly. Pastors of souls, especially the pastor of a parish, are to be concerned that the Christian faithful are taught the correct way to baptize.⁵³⁸

⁵³⁵ Cf. *CIC*, c. 836. Cum cultus christianus, in quo sacerdotium commune christifidelium exercetur, opus sit quod a fide procedit et eadem innititur, ministri sacri eandem excitare et illustrare sedulo curent, ministerio praesertim verbi, quo fides nascitur et nutritur.

⁵³⁶ See HUELS, "Preparation for the Sacraments," 33-58.

⁵³⁷ See MCMANUS, Commentary on c. 836, in *CLSA Comm2*, 1010; cf. A.F. REHRAUER, "An Introduction to Liturgical Law: Sources and Interpretation," in *CLSA Proceedigs*, 64 (2002), 241-252.

⁵³⁸ Cf. *CCEO*, c. 677, §2; *CIC*, c. 861, §2. Absente aut impedito ministro ordinario, licite baptismum confert catechista aliusve ad hoc munus ab Ordinario loci deputatus, immo, in casu necessitatis, quilibet homo debita intentione motus solliciti sint animarum pastores, praesertim parochus, ut christifideles de recto baptizandi modo edoceantur.

This canon was treated earlier under the rights to the sacraments in the danger of death. However, here our concern is on the right to formation for the sacrament of baptism, not preparation to receive it but to administer it correctly. In necessity, the canon permits the extraordinary minister to be any person, baptized or not, as long as the minister has the right intention to do what the Church intends.⁵³⁹ In this regard, the canon requires pastors of souls and especially the parish priest to be solicitous so that the faithful are taught to baptize correctly (*de recto*).⁵⁴⁰ It follows from this obligation that the faithful have a right to learn the correct way to baptize so that they may do so in a case of necessity. Eloy Tejero asserts that the knowledge about administering this sacrament must form part of Christian formation since baptism is necessary for salvation.⁵⁴¹

3.5.3 Confirmation

Canon 889 §2. To receive confirmation licitly outside the danger of death requires that a person who has the use of reason be suitably instructed, properly disposed, and able to renew the baptismal promises.⁵⁴²

The canon establishes three requirements that must be present to receive the sacrament of confirmation licitly: due instruction, proper disposition and ability to renew the baptismal promises. Our concern here is the recipient's suitable instruction and preparation for the sacrament. This duty of preparing the candidates for the reception of

⁵³⁹ See MCMANUS, Commentary on c. 843, in *CLSA Comm2*, 1024; cf. G. READ, "Unauthorized Baptism," in *CLSGBI Newsletter*, 149 (2007), 54-58.

⁵⁴⁰ All lay persons, since they belong to the priestly people, and especially parents and, by reason of their work, catechists, midwives, family or social workers or nurses of the sick, as well as physicians and surgeons, should be thoroughly aware, according to their capacities, of the proper method of baptizing in case of emergency. They should be taught by parish priests, deacons, and catechists. Bishops should provide appropriate means within their diocese for such instruction. See the General Introduction to Christian Initiation, 17.

⁵⁴¹ See E. TEJERO, Commentary on c. 861, in *CCLA*, 679 (=TEJERO, Commentary on c. 861 in *CCLA*).

⁵⁴² Cf. *CIC* c. 889, §2. Extra periculum mortis, ut quis licite confirmationem recipiat, requiritur, si rationis usu polleat, ut sit apte institutus, rite dispositus et promissiones baptismales renovare valeat.

the sacrament mainly falls on the pastor (cf. c. 777, 2°), at least to arrange for and oversee this preparation even if he does not personally get involved with the actual catechesis. Because the pastor has this responsibility in law, the faithful have a right to suitable preparation for confirmation. Commenting on this canon, Tomás Rincón-Pérez explains that every juridical regulation of a fundamental right, such as c. 889, must be interpreted in light of the principle of justice.⁵⁴³

Right to proper instruction for confirmation

Canon 890. The faithful are obliged to receive this sacrament at the proper time. Parents and pastors of souls, especially pastors of parishes, are to take care that the faithful are properly instructed to receive the sacrament and come to it at the appropriate time.⁵⁴⁴

The canon enunciates the same duty and implicit right as in the previous one. Rincón-Pérez highlights the two duties in this canon with regard to the preparation and reception of confirmation. First is the obligation of the faithful to receive the sacrament at the proper time. Every faithful who has domicile or quasi-domicile in a particular ecclesiastical jurisdiction, and who is not barred from receiving the sacrament due to age or another reason, is obligated to receive the sacrament at the proper time. The Rite of Confirmation extensively deals with the role of parents and pastors in this endeavor of preparing for the sacrament.⁵⁴⁵

⁵⁴³ See T. RINCÓN-PÉREZ, Commentary on c. 889, in *Exegetical Comm*, vol. 3/1, 539; cf. ID., “El ministro de la confirmación, edad y preparación debida del confirmando,” in *Revista Española de Derecho Canónico*, 61 (2004), 87-114; G. READ, “Pastoral Policies on the Administration of the Sacraments,” in *CLSN*, 124 (2000), 43-44.

⁵⁴⁴ Cf. *CCEO*, c. 695 §1; *CIC*, c. 890. Fideles tenentur obligatione hoc sacramentum tempestive recipiendi; current parentes, animarum pastores, praesertim parochi, ut fideles ad illud recipiendum rite instruuntur et opportuno tempore accedant.

⁵⁴⁵ See *Rite of Confirmation 3*, *DOL* 2512; see also K.T. HART, Commentary on c. 890, in *CLSA Comm2*, 1087.

The second duty is the pre-sacramental preparation which is both a right and a duty. The canon affirms the right to preparation on the part of the faithful and confirms the duty of preparation by the pastors of souls and also the parents if those being prepared are children. The right to preparation for confirmation is rooted not only in a moral duty on the part of those charged to carry it out but also a juridical one.⁵⁴⁶

3.5.4 Eucharist

Canon 914. It is primarily the duty of parents and those who take the place of parents, as well as the duty of pastors, to take care that children who have reached the use of reason are prepared properly and, after they have made sacramental confession, are refreshed with this divine food as soon as possible. It is for the pastor to exercise vigilance so that children who have not attained the use of reason or whom he judges are not sufficiently disposed do not approach Holy Communion.⁵⁴⁷

The canon emphasizes the role and duty of parents in the sacramental preparation of their children. The canon establishes that it is primarily (*imprimis*) the duty of parents and those who take the place of parents, and pastors as well, to take care that children who have reached the use of reason are prepared properly and, after they have made sacramental confession, to be refreshed with the Holy Eucharist as soon as possible.⁵⁴⁸ This canon does not, however, bind the parents to participate in sacramental preparation programmes along with their children, even if this may be desirable.⁵⁴⁹

⁵⁴⁶ See RINCÓN-PÉREZ, Commentary on c. 890, in *Exegetical Comm*, vol. 3/1, 542-545.

⁵⁴⁷ Cf. *CIC* c. 914. Parentum imprimis atque eorum qui parentum locum tenent necnon parochi officium est curandi ut pueri usum rationis assecuti debite praeparentur et quamprimum, praemissa sacramentali confessione, hoc divino cibo reficiantur; parochi etiam est advigilare ne ad sacram Synaxim accedant pueri, qui rationis usum non sint adepti aut quos non sufficienter dispositos iudicaverit.

⁵⁴⁸ See HUELS, Commentary on c. 914, in *CLSA Comm2*, 1109.

⁵⁴⁹ Huels observes that the lack of participation on the part of the parents in the catechetical programme of the children cannot justify the denial of the sacrament to the child. This is a clear violation of the child's right to the sacraments. See HUELS, "Preparation for the Sacraments," 52. See also J.H. PROVOST, "The Reception of First Penance," in *The Jurist*, 47 (1987), 294-340; J.M. HUELS, *Disputed Questions in the Liturgy Today*, Chicago, IL, Liturgy Training Publications, 1988, 67-74; W.H. WOESTMAN, *Sacraments*, 129-131.

Although the pastor is mentioned subsequently in the canon, he has the same duty as the parents and those who take their place to see that children who have reached the use of reason are duly prepared for the reception of first Communion and that they receive it as soon as possible (*quam primum*). Implied in this duty of the pastor is the right of children to be prepared for the reception of first Communion as soon as possible after they have attained the use of reason. The canon gives broad discretionary scope to the pastor for determining whether the child meets this requirement so that children may receive this sacrament as early as possible and so are not deprived of a sacrament to which they have a right in law.⁵⁵⁰

3.5.5 Anointing of the sick

Canon 1001. Pastors of souls and those close to the sick are to take care that the sick are consoled by this sacrament at the appropriate time.⁵⁵¹

The main purpose of this canon is to ensure that the faithful have the opportunity to receive the sacrament of the anointing of the sick at the appropriate time, that is, when they begin to be in danger due to sickness or old age. This duty rests on the pastors of souls and those who are close to the sick person.⁵⁵² There is no explicit mention of preparation for the sacrament. However, if those close to the sick are to take care that the sick are consoled by the sacrament at the appropriate time, it falls to the pastors of souls to teach them about this appropriate time. A liturgical law states: “In public and private catechesis, the faithful should be educated to ask for the sacrament of anointing and, as soon as the right time comes, to receive it with full faith and devotion. They should not follow the

⁵⁵⁰ See HUELS, Commentary on c. 914, in *CLSA Comm2*, 1109.

⁵⁵¹ Cf. *CCEO*, c. 738, §1; *CIC*, c. 1001. *Curent animarum pastores et infirmorum propinqui, ut tempore opportuno infirmi hoc sacramento subleventur.*

⁵⁵² See MCMANUS, Commentary on c. 1001, in *CLSA Comm2*, 1184.

wrongful practice of delaying the reception of the sacrament. All who care for the sick should be taught the meaning and purpose of the sacrament.”⁵⁵³ Clearly, catechetical preparation for the anointing is a requirement of the law, so it follows that the faithful have the right to this preparation.

3.6 Rights to Church Funerals

This section treats the legislation of the Code on rights pertaining to the celebration of funeral rites. There are four canons which accord the faithful the right to have the funeral rites of the Church.

3.6.1 Right to a funeral

Can. 1176 §1. Deceased members of the Christian faithful must be given ecclesiastical funerals according to the norm of law.⁵⁵⁴

The first paragraph uses the passive periphrastic *donandi sunt*, translated as the faithful *must be given* funeral rites according to the norm of law. This strong obligation implies an equally strong right of the faithful to an ecclesiastical funeral, according to the norm of law. The obligation is on the part of pastors to see that Church funeral rites are celebrated for their deceased parishioners (cf. c. 530, 5°), even those who may not have been active in the parish during their lifetime.⁵⁵⁵

3.6.2 Churches for funerals

Canon 1177 §1. A funeral for any deceased member of the faithful must generally be celebrated in his or her parish church.

§2. Any member of the faithful or those competent to take care of the funeral of a deceased member of the faithful are permitted to choose another church for the funeral rite with the consent of the person who governs it and after notification of the proper pastor of the deceased.

⁵⁵³ Cf. *RAnointing* 13, *DOL* 3333.

⁵⁵⁴ Cf. *CCEO*, c. 875, *CIC*, c. 1176, § 1. *Christifideles defuncti exequiis ecclesiasticis ad normam iuris donandi sunt.*

⁵⁵⁵ See HUELS, Commentary on c. 1176, in *CLSA Comm2*, 1408.

§3. If a death occurred outside the person's own parish, and the body was not transferred to it nor another church legitimately chosen for the funeral rite, the funeral is to be celebrated in the church of the parish where the death occurred unless particular law has designated another church.⁵⁵⁶

The first paragraph of c.1177 uses preceptive language: funeral rites must be celebrated (*celebraridebent*) in one's own parish church. This obligation is binding on both the faithful and the pastor but more so on the pastor. He has the obligation to provide the funeral rites of his parishioners (cf. cc. 107, §1, 530, 5°). This implies the right of Catholics to funeral rites in their parish church, whether or not they were active parishioners during life. Besides the right to a funeral in their own parish, there is also the possibility of having a funeral in another church in keeping with the provisions of the second paragraph of the canon. Indeed, the faithful have the explicit right (*fas est*) to choose another church but the exercise of this right is subject to the consent of the person who governs the church. Moreover, when a faithful dies away from his/her parish and the body cannot be returned to the proper parish, the third paragraph of the canon prescribes, unless particular law provides otherwise, that the funeral rites should be celebrated in the parish where the death occurs. This ensures that the faithful have a right to a Church funeral even if their body cannot be returned to their home parish.⁵⁵⁷

⁵⁵⁶ Cf. *CIC*, c. 1177, §1. Exequiae pro quolibet fidei defuncto generatim in propriae paroeciae ecclesia celebrari debent.

§2. Fas est autem cuilibet fidei, vel iis quibus fidelis defuncti exequias curare competit, aliam ecclesiam funeris eligere de consensu eius, qui eam regit, et monito defuncti parrocho proprio.

§3. Si extra propriam paroeciam mors acciderit, neque cadaver ad eam translatum fuerit, neque aliqua ecclesia funeris legitime electa, exequiae celebrentur in ecclesia paroeciae ubi mors accidit, nisi alia iure particulari designata sit.

⁵⁵⁷ Cf. P. DUGAN, "Burial in a Catholic Cemetery," in *Roman Replies and CLSA Advisory Opinions*, 2005, 82-83; R. BARRY, "Should the Catholic Church Give Christian Burial to Rational Suicides?," in *Angelicum*, 74 (1997), 513-550; F.G. MORRISEY, "Issues Relating to Cremation Today," in *Australian Catholic Record*, 81 (2004), 308-323; M.J. HENSCHAL, "Cremation: Canonical Issues," in *The Jurist*, 55 (1995), 281-298; J. GONZÁLEZ, "Cremation: A Valid Option for Catholics?," in *Boletín eclesiástico de Filipinas*, 81 (2005), 899-910; ID., "Suicide and Catholic Burial," in *Boletín eclesiástico de Filipinas*, 77 (2001), 282-283.

3.6.3 Rights concerning offerings for funerals

Canon 1181. Regarding offerings on the occasion of funeral rites, the prescripts of can. 1264 are to be observed, with the caution, however, that there is to be no favoritism toward persons in funerals and that the poor are not deprived of fitting funerals.⁵⁵⁸

The canon deals with offerings on the occasion of funeral rites. Canon 1264, 2° says that, unless the law has provided otherwise, the bishops of a province are competent at a meeting “to set a limit on the offerings on the occasion of the administration of sacraments and sacramentals.” In virtue of c. 1181, this norm applies to offerings for funerals, with the caution that there is to be no favoritism toward persons and that the poor are not deprived of proper funeral rites (cf. c. 848). There are two implicit rights here. The first is that the faithful have the right not to be asked for a higher offering than that established at a meeting of the province’s bishops. The second is that the poor have an implicit right to the funeral rites of the Church even if they are unable to pay the usual required offering.⁵⁵⁹

3.6.4 Right of catechumens for funerals

Canon 1183 §1. When it concerns funerals, catechumens must be counted among the Christian faithful.⁵⁶⁰

This first paragraph of c. 1183 treats the right of catechumens to a Church funeral.

Although catechumens are not yet *christifideles*, they must be counted (*accensendi sunt*)

⁵⁵⁸ Cf. *CCEO*, c. 878; *CIC*, c. 1181. Ad oblationes occasione funerum quod attinet, servantur praescripta can. 1264, cauto tamen ne ulla fiat in exequiis personarum acceptio neve pauperes debitis exequiis priventur.

⁵⁵⁹ See SANTOS, Commentary on c. 1181, in *Exegetical Comm*, vol. 3/2, 1692-1693; cf. K. IRWIN, “Dying, Death and Burial - Overview of Christian Practices,” in *The Jurist*, 59 (1999), 175-190.

⁵⁶⁰ Cf. *CCEO*, c. 875, 876, §1, §2; *CIC*, c. 1183, §1. Ad exequias quod attinet, christifidelibus catechumeni accensendi sunt.

§2. Ordinarius loci permittere potest ut parvuli, quos parentes baptizare intendebant quique autem ante baptismum mortui sunt, exequiis ecclesiasticis donentur.

§3. Baptizatis alicui Ecclesiae aut communitati ecclesiali non catholicae adscriptis, exequiae ecclesiasticae concedi possunt de prudenti Ordinarii loci iudicio, nisi constet de contraria eorum voluntate et dummodo minister proprius haberi nequeat.

among them with respect to funerals, that is, they have the same rights as the Catholic faithful. Through this canon, the legislator extends the right to a funeral of Catholic Christian faithful even to those who are only in communion with the Church by the baptism of desire.⁵⁶¹

3.7 Rights Concerning Churches

A church is the house of God in which the community meets for the celebration of divine worship.⁵⁶² This section of the chapter deals with the faithful's rights of access to churches.⁵⁶³ An explicit right of the faithful to enter a church is a constituent element of the very definition of a church in canon law. According to c. 1214,⁵⁶⁴ a church has three principal elements. It is (1) a sacred building designated for divine worship, (2) to which the faithful have the right (*ius*) of entry, (3) for the exercise, especially the public exercise, of divine worship. The faithful exercise this right in accord with the rite to which they belong (c. 214) and as long as they are in full communion with the Church (c. 205).⁵⁶⁵ Here our concern is to deal with four canons which have implicit rights of the faithful concerning churches.

⁵⁶¹ See SANTOS, Commentary on c. 1183, 1696; Cf. W.B. SMITH, "Non-Catholic Funerals?" in *Homiletic and Pastoral Review*, 4 (2005), 67-68.

⁵⁶² See J. KRUKOWSKI, Commentary on c. 1214, in *Exegetical Comm*, vol. 3/2, 1809; C. MOHRMANN, "Les dénominations de l'Église en tant qu'édifice en grec et en latin au cours des premiers siècles chrétiens," in *Revue des Sciences Religieuses*, 36 (1962), 155-174.

⁵⁶³ The Catholic tradition is unanimous regarding the importance of churches over the other sacred places, because from the *domus Ecclesiae* to the most modern parishes, including basilicas, cathedrals, collegiate churches, etc., in the most diverse locations and cultures, there have always existed buildings assigned to the religious service of *all the faithful*. This is what the Code calls churches. They are, in fact, sacred buildings assigned to divine worship to which "all the faithful have right of access for the exercise, most of all, of divine worship" (c. 1214). Their nature entails the obligation to dedicate them according to the liturgical prescriptions (c. 1217). For a detailed commentary on sacred places and times, see J.A. ABAD, Commentary on Sacred Places and Sacred Times cc. 1205-1253, in *Exegetical Comm*, vol. 3/2, 1783-1912.

⁵⁶⁴ Cf. *CCEO*, c. 869, §1; *CIC*, c. 1214. *Ecclesiae nomine intellegitur aedes sacra divino cultui destinata, ad quam fidelibus ius est adeundi ad divinum cultum praesertim publice exercendum.*

⁵⁶⁵ See MARTIN DE AGAR, Commentary on c. 1214, in *CCLA*, 938.

3.7.1 Right to have sacred images in the churches

Canon 1188. The practice of displaying sacred images in churches for the reverence of the faithful is to remain in effect. Nevertheless, they are to be exhibited in moderate number and in suitable order so that the Christian people are not confused nor occasion given for inappropriate devotion.⁵⁶⁶

The canon regulates the norm on the practice of displaying sacred images for the reverence of the faithful in churches. This canon takes its roots from the fundamental rights of the faithful to be enriched by the spiritual goods of the Church from the sacred pastors (c. 213) and to make known their spiritual needs and desires to them (c. 212, §2). There are two obligations in the canon binding those in charge of churches, which in turn imply rights for the faithful who use the churches. The faithful have the right to some sacred images for their reverence, but they also have the right that these images not be so numerous as to be overwhelming or inappropriate.⁵⁶⁷

3.7.2 Right to free entry into the churches

Canon 1221. Entry to a church is to be free and gratuitous during the time of sacred celebrations.⁵⁶⁸

This canon implies a right of the faithful to enter the church without charge for sacred worship. Even though entrance to a church during the time of sacred celebrations is gratuitous, there may be other times when entrance to the church itself is not free. For instance, if the church is of particular artistic value and is considered analogous to a museum, admission may be charged. Such fees can assist with church maintenance and the costs associated with security, accommodating large number of visitors, etc. However,

⁵⁶⁶ Cf. *CCEO*, c. 886; *CIC*, c. 1188. Firma maneat praxis in ecclesiis sacras imagines fidelium venerationi proponendi; attamen moderato numero et congruo ordine exponantur, ne populi christiani admiratio excitetur, neve devotioni minus rectae ansa praebeatur.

⁵⁶⁷ Cf. S. BOIRON, "Trente et les images," in *Année Canonique*, 46 (2004), 195-222.

⁵⁶⁸ Cf. *CIC*, c. 1221. Ingressus in ecclesiam tempore sacrarum celebrationum sit liber et gratuitus.

John Huels argues that, in cases where fees are charged, provision must still be made for the free entry of the people who wish to pray before the Blessed Sacrament (cf. c. 937), at least for some period each day or in that part of the church where the sacrament is reserved, as treated in the next canon.⁵⁶⁹

3.7.3 Right to enter church at least for few hours a day

Canon 937. Unless there is a grave reason to the contrary, a church in which the Most Holy Eucharist is reserved is to be open to the faithful for at least some hours every day so that they can pray before the Most Blessed Sacrament.⁵⁷⁰

Although this canon appears earlier in Book IV in the Title on the Eucharist, the real import of the canon concerns the church where the Eucharist is reserved rather than the sacrament itself. The canon acknowledges the prominent place of the Eucharist in the life of the Church. The legislator wishes to have the possibility for the faithful to pray before the reserved Eucharist and so requires that churches be open for some hours of the day, that is, more than one hour.⁵⁷¹ As Juan Ignacio Bañares affirms, making this possibility of the Blessed Sacrament to be available to the faithful is not just a moral responsibility but one that is of strict justice, given the importance of the Eucharist in the life of the faithful.⁵⁷²

⁵⁶⁹ See HUELS, Commentary on c. 1221, in *CLSA Comm2*, 1432; cf. ID., “Canonical Comments on Concerts in Churches,” in *Worship*, 62 (1988), 165-172; C. AZZIMONTI, “L’ingresso in chiesa, libero e gratuito, nel tempo delle sacre celebrazioni (can. 1221),” in *Quaderni di Diritto Ecclesiale*, 18 (2005), 194-201; E.M. LOHSE, “The Right of the Faithful to Enter a Church for the Offering of Divine Worship,” in *Studia Canonica*, 51 (2017), 497-527; G. HERKEL, “The Sacred and Profane in Canon Law,” in *Studia canonica*, 3 (1969), 49-75.

⁵⁷⁰ Cf. *CIC*, c. 937. Nisi gravis obstet ratio, ecclesia in qua sanctissima Eucharistia asservatur, per aliquot saltem horas cotidie fidelibus pateat, ut coram sanctissimo Sacramento orationi vacare possint.

⁵⁷¹ See HUELS, Commentary on c. 937, in *CLSA Comm1*, 664; cf. M. MOSCONI, “A che ora apre la chiesa? Le disposizioni del can. 937,” in *Quaderni di Diritto Ecclesiale*, 16 (2003), 145-163.

⁵⁷² See J.I. BAÑARES, Commentary on c. 937, in *Exegetical Comm*, vol. 3/1, 673.

In saying that a church is to be open (*pateat*), the canon implies that the faithful have the right to enter a church every day for a visit to the Blessed Sacrament. The canon, however, contains an excepting clause: “unless there is a grave reason to the contrary.” Thus, the right to enter a church for prayer before the reserved sacrament exists only insofar as there is no reason for keeping the church locked, such as danger of vandalism, burglary, or desecration. However, where no such reason exists, the pastor or other authority responsible for the church has the duty to keep it open for at least some hours every day.

3.7.4 Rights concerning the relegation of a church to profane use

Canon 1222 §1. If a church cannot be used in any way for divine worship and there is no possibility of repairing it, the diocesan bishop can relegate it to profane but not sordid use.

§2. Where other grave causes suggest that a church no longer be used for divine worship, the diocesan bishop, after having heard the presbyteral council, can relegate it to profane but not sordid use, with the consent of those who legitimately claim rights for themselves in the church and provided that the good of souls suffers no detriment thereby.⁵⁷³

This canon deals with the relegation of a church to profane use in accordance with c. 1212, which treats sacred places in general losing their dedication or blessing by their destruction or by decree of the competent ordinary. Since it is the diocesan bishop who grants express written consent for the erection of church (c. 1215, §1), he is also the competent authority to relegate it to profane use by means of a decree. Even if the church is owned by a juridic person other than the diocese or parish, it is still the diocesan bishop who is competent to relegate it to profane use.

⁵⁷³ Cf. *CCEO*, c. 873; *CIC*, c. 1222, §1. Si qua ecclesia nullo modo ad cultum divinum adhiberi queat et possibilitas non detur eam reficiendi, in usum profanum non sordidum ab Episcopo dioecesano redigi potest.

§2. Ubi aliae graves causae suadeant ut aliqua ecclesia ad divinum cultum amplius non adhibeatur, eam Episcopus dioecesanus, audito consilio presbyterali, in usum profanum non sordidum redigere potest, de consensus eorum qui iura in eadem sibi legitime vindicent, et dummodo animarum bonum nullum inde detrimentum capiat.

The second paragraph deals with other grave causes which suggest that a church no longer be used for divine worship. The canon points out three conditions that the diocesan bishop is to observe before relegation of a church to profane use. He must (1) hear the presbyteral council (cf. c. 127, §1), (2) obtain the consent of those people who have legal rights towards the church, and (3) ensure that the good of the souls would not be harmed.

Both paragraphs of c. 1222 imply a right of the faithful with regard to the church building and the right to celebrate the liturgy in it. This right can be restricted only according to the conditions of the canon, in particular, that there be the impossibility of using the church or other grave causes suggest relegation to profane use. The legislator clearly upholds the right of the faithful to continue to worship in their church while at the same time respecting the discretion of the diocesan bishop to relegate it to profane use according to the rules of this canon (cf. also c. 1284, §1, 3^o).⁵⁷⁴ This right is reinforced by the restriction that a church may be relegated to profane use only “provided that the good of souls suffers no detriment thereby.”

Conclusion

In this chapter, we have examined the rights of the faithful in the canons of Book IV of the Code of Canon Law, entitled *De Ecclesiae munere sanctificandi*. The canons of this Book are related to the Church’s mission of sanctification, which is focused primarily on the public worship of God. Various explicit and implicit rights were identified in several categories: rights to the official liturgical celebrations of the Church, explicit rights to the sacraments, implicit rights to the sacraments, rights to the sacraments in danger of death,

⁵⁷⁴ See HUELS, Commentary on c. 1222, in *CLSA Comm2*, 1432-1433; cf. N. SCHÖCH, “Relegation of Churches to Profane Use (c. 1222, §2): Reasons and Procedure,” in *The Jurist*, 67 (2007), 485-502.

rights to preparation for the sacraments, rights to Church funerals, and rights concerning churches.

We identified several rights in Book IV that are explicit, but most of the rights in Book IV are implicit and typically the consequence of the concomitant duties imposed on Church ministers and office holders. We have seen that the faithful implicitly have the right to have their liturgical ministers faithfully observe the liturgical books approved by competent authority. This general right is applied specifically to the sacraments (c. 846, §1) and the sacramentals (c. 1167, §2).

A number of canons implicitly deal with the right of the faithful to receive the sacraments. This right is first implied in c. 843, §1, which prohibits sacred ministers from denying the sacraments to the faithful who seek them at appropriate times, are properly disposed, and are not prohibited by law from receiving them. This right to the sacraments is also seen in the prohibition against charging a higher offering than that established by the competent authority and the requirement that the poor not be deprived of the sacraments (c. 848).

Other implicit rights regarding specific sacraments are the right to have baptism celebrated elsewhere apart from the place of baptism (c. 859); the right of the newly baptized to be confirmed immediately after adult baptism and to participate in the celebration of the Eucharist and receive Communion (c. 866); the right to receive confirmation from a minister, whether bishop or presbyter, who has the duty to administer it (c. 885); the right of the faithful to be confirmed at the age of discretion or other lawful age (c. 891); the right of the faithful to have an individual celebration of the Eucharist or limits on the number of concelebrants when their welfare requires or suggests it (c. 902);

the right of every baptized person to be admitted to Holy Communion unless prohibited by law (c. 912); the right of the faithful to receive Holy Communion within and outside the Mass (c. 918); the right of the faithful to participate in the Eucharistic Sacrifice and receive Holy Communion in any Catholic rite (c. 923); the right of the faithful to have access to churches to pray before the Blessed Sacrament at least for some hours of the day (c. 937); the right to have their confessions heard in a confessional or outside it for a just cause (c. 964); the right not to be refused absolution in the sacrament of penance when they are properly disposed (c. 980); rights concerning the sacramental seal and the external forum use of knowledge acquired in the sacrament of penance (cc. 983, 984); and the right to celebrate the sacrament of reconciliation on a regular basis (c. 986).

A considerable number of canons are devoted to the right to the sacraments in danger of death situations. This is especially the case with respect to baptism and penance which are necessary for salvation. In necessity, anyone with the right intention may be the minister of baptism (c. 861, §2) and, in danger of death, any priest may hear a penitent's confession (c. 976). Although confirmation is not necessary for salvation, the law also grants the faculty to any presbyter to confirm the faithful in danger of death (c. 883, 3°).

Several canons imply rights to the sacraments by the faithful and catechumens in danger of death situations. An infant in danger of death is to be baptized without delay (c. 867, §2), and an infant of Catholic parents or even of non-Catholic parents is licitly baptized in danger of death even against the will of the parents (c. 868, §2). An adult in danger of death can be baptized without observing the full catechumenate if he or she has some knowledge of the principal truths of the faith, manifests in any way the intention to

be baptized, and promises to observe the commandments of the Christian religion (c. 865, §2). This latter right is worded explicitly (*baptizari potest*).

In danger of death, the faithful have a right to receive the sacrament of confirmation even if they have not yet reached the age of discretion (c. 891). Furthermore, young children have the right to receive the Holy Eucharist in danger of death, if they can distinguish the body of Christ from ordinary food and receive Communion reverently (c. 913, §2). The faithful have the right to receive Holy Viaticum at the time of their death (c. 921, §1) when they are fully conscious (c. 922). In danger of death, they have the right to make confession to and have censures remitted by any priest (cc. 976, 986, §2), even by one who has lost the clerical state or by one who was an accomplice in a sin against the sixth commandment (c. 977). With respect to the anointing of the sick, the faithful have the right to the sacrament at the beginning of an infirmity that puts them in danger (c. 1004).

Book IV of the Code has a number of canons which affirm rights to preparation and formation for the sacraments. The faithful have the right to the ministry of the divine word to arouse and enlighten their faith (c. 836); the right to be taught how to baptize in danger of death or other necessity (c. 861, §2); the right to suitable preparation for confirmation (c. 889, §2); the right to receive confirmation at the appropriate time with proper instruction (c. 890); the right of children to be prepared for the reception of first penance and Holy Communion as soon as possible after they have attained the use of reason (c. 914); and the right to be educated about the appropriate time to receive the anointing of the sick (c. 1001), namely, when a person begins to be in danger due to sickness or old age (c. 1004, §1).

The Code also has rights concerning Church funerals. In c. 1177, three such rights are accorded. The faithful have the right to the celebration of the funeral rites of the Church

in their own parish, the right to request a funeral in another church, and the right to a funeral in the parish in which death occurred in keeping with the conditions of the third paragraph of that canon. They have these same rights even if they are unable to pay the usual required offering (c. 1181). Catechumens, moreover, have the same rights as the faithful with respect to Church funerals (c. 1183, §1).

Finally, with respect to rights concerning churches, the Code implicitly gives five rights to the faithful: the right to be enriched in their spiritual life by the display in churches of sacred images in moderate number and in suitable order (c. 1188), the explicit right of entry to a church especially for the public exercise of divine worship (c. 1214), the right to free and gratuitous entry to a church during the time of sacred celebrations (c. 1221), and the right not to have their church relegated to profane use unless there are grave causes and the procedures of the law are observed (c. 1222, §2).

CHAPTER FOUR

RIGHTS OF THE FAITHFUL IN THE *MUNUS REGENDI*

The office of governing, or ruling (*munus regendi*), consists of all the Church's activities other than those of the teaching and sanctifying offices. It includes Church governance, financial administration, and many apostolic activities. The entire body of canon law, including the two Codes, pertains to this *munus regendi*. As explained in the Introduction to this work, this final chapter focuses on two areas of the Code in which the faithful have explicit and implicit rights in the *munus regendi*. These are in Book II of the Code, titled "The People of God" (*De Populo Dei*),⁵⁷⁵ and in Book V, "The Temporal Goods of the Church" (*De bonis Ecclesiae temporalibus*).⁵⁷⁶ Other rights of the *munus regendi* common to the *christifideles* are found in Books I, VI, and VII of the Code (Appendices One and Two).

This chapter has two major sections. The first considers the rights common to all the faithful in Book II of the Code, apart from the rights at the beginning of the Book that were already treated above in Chapter One. The second section is on the rights of all the faithful in Book V of the Code.

⁵⁷⁵ The people are the Church. The baptized and believing people, who are in communion with Christ and with one another, constitute the Church in the world. They are God's children, the Holy Spirit dwells in them; their goal is God's kingdom. The Christian faithful are, quite properly, the first and foremost subject in this book, "The People of God."

⁵⁷⁶ Book V is devoted to the acquisition, retention, administration, and alienation of temporal goods. Consisting of only fifty-seven canons, it is the shortest of the seven books of the Code of Canon Law. Temporal goods, in contrast to spiritual goods, are those which have economic value. They include real estate, personal property, money, securities, entitlements, etc. The Catholic Church has the right to acquire, retain, administer and alienate, to conduct divine worship, to provide for the support of its ministers, and to perform the works of the apostolate and of charity (c. 1254). This canon speaks about the need for stewardship and accountability. Ecclesiastical property is cared for by office holders, e.g., bishops of dioceses, pastors of parishes, superiors of religious houses. They are the stewards of the goods; the properties are entrusted to their supervision, and they are held responsible for their safekeeping, maintenance and disposition.

4.1 The People of God

The usage of the word *people* has different meanings, but in the Church its emphasis is on all the members of the Christian faithful who have a fundamental equality and common purpose (cf. c. 204).⁵⁷⁷ There are three major divisions in Book II: Part One, “The Christian Faithful” (the *christifideles*, cc. 204–329); Part Two, “The Hierarchical Constitution of the Church” (cc. 330–572); and Part Three, “Institutes of Consecrated Life and Societies of Apostolic Life” (cc. 573–746). Our concern here will be with the canons in Part One and Part Two on the Christian faithful and the hierarchical constitution of the Church respectively. Although there are some explicit and implicit rights in the third part, they are not germane to our study since they pertain only to certain members of the faithful who belong to institutes of consecrated life and societies of apostolic life. The canons of the first two parts of Book Two (apart from Title I) that contain rights common to all the faithful are Part I, Title V, on associations of the faithful and Part II, Section II, Title III on the diocese and the parish. This first section of the chapter will deal with twenty implicit rights related to associations of the faithful, the diocese, the parish, and diocesan and parish registers.

4.1.1 Associations of the faithful

Several canons on associations contain explicit rights of all the faithful. One of these is the fundamental right to found and direct associations (c. 215), as already treated above in Chapter One. The other is c. 299, §1 on the freedom of all the faithful (*integrum est Christifidelibus*) to establish a private association for the purposes indicated in c. 298,

⁵⁷⁷ See J. FORNÉS, Commentary on Book II: People of God, in *Exegetical Comm*, vol. 2/1, 4.

§1.⁵⁷⁸ These purposes are “to foster a more perfect life, to promote public worship or Christian doctrine, or to exercise other works of the apostolate such as initiatives of evangelization, works of piety or charity, and those which animate the temporal order with a Christian spirit.” Two other canons also give explicit rights, cc. 309 and 310, but these are treated below because they need a fuller explanation. The other rights of the faithful pertaining to associations are implicit in the canons that follow.

Rights of membership

Canon 306. In order for a person to possess the rights and privileges of an association and the indulgences and other spiritual favors granted to the same association, it is necessary and sufficient that the person has been validly received into it and has not been legitimately dismissed from it according to the prescripts of law and the proper statutes of the association.⁵⁷⁹

Canon 306 expresses that a person is “validly received” into an association in accordance with the law and its statutes. Lawful membership in an association is necessary in order to enjoy the various rights like: the right to participate in ordinary and extraordinary meetings, the right to be duly summoned, the right to submit motions in meetings, the right to be heard, the right to vote, the right to have an active and passive voice in the elections, etc. Also, privileges, indulgences and other spiritual benefits granted to an association are benefits enjoyed by a validly admitted member who has not been lawfully dismissed.⁵⁸⁰ Implicit in the canon, therefore, is the right of members to enjoy all

⁵⁷⁸ Cf. *CIC*, c. 299, §1. *Integrum est christifidelibus, privata inter se conventionem inita, consociationes constituere ad fines de quibus in can. 298, §1 persequendos, firmo praescripto can. 301, §1.*

⁵⁷⁹ Cf. *CIC*, c. 306. *Ut quis consociationis iuribus atque privilegiis, indulgentiis aliisque gratiis spiritualibus eidem consociationi concessis fruatur, necesse est et sufficit ut secundum iuris praescripta et propria consociationis statuta, in eandem valide receptus sit et ab eandem non sit legitime dimissus.*

⁵⁸⁰ See L.F. NAVARRO, *Commentary on c. 306*, in *Exegetical Comm.*, vol. 2/1, 476; cf. ID., “The Typical Forms of the Association of the Faithful,” in *Philippiniana Sacra*, 37 (2002), 279-295. See also J. ABBASS., “Associations of the Christian Faithful in *CIC* and *CCEO*,” in *Apollinaris*, 73 (2000), 227-244; R.W. OLIVER., “Canonical Requisites for Establishing Associations for the Faithful,” in *The Jurist*, 61 (2001),

the rights and privileges and other benefits of the association in virtue of their valid membership.

Right to multiple memberships

Canon 307 §2. The same person can be enrolled in several associations.⁵⁸¹

This canon is not, strictly speaking, a right but a capability: one and the same person is capable of being a member of several associations. Thus, the faithful have a certain amount of freedom in choosing to join several associations according to their needs and preferences.⁵⁸² Implicit in the canon, moreover, is the right not to be rejected for membership in one association solely for the reason of one's membership in another association, unless this is established in the statutes or when such dual membership is physically or morally incompatible.

Right not to be dismissed unlawfully

Canon 308. No one legitimately enrolled is to be dismissed from an association except for a just cause according to the norm of law and the statutes.⁵⁸³

By becoming a member of an association, an individual acquires the rights and privileges that belong to membership. According to c. 308, a member can be deprived of membership or dismissed only for a proportionately just cause, and this must be done in accordance with the norm of law and the statutes of the association. Thus, there is an implicit right not to be dismissed from the association except for a just cause according to

213-318; R. PAGÉ., "Associations of Christ's Faithful: Selected Issues," in *The Jurist*, 62 (2002), 294-311; and ID., "Les associations des fidèles: reconnaissance et érection," in *Studia canonica*, 19 (1985), 327-338.

⁵⁸¹ Cf. *CCEO*, c. 578, §2; *CIC*, c. 307, §2. *Eadem persona adscribi potest pluribus consociationibus.*

⁵⁸² See L.M. SISTACH, *Associations of Christ's Faithful*, Montréal, Wilson & Lafleur, 2008, 79 (=SISTACH, *Associations of Christ's Faithful*).

⁵⁸³ Cf. *CCEO*, c. 581; *CIC*, c. 308. *Nemo legitime adscriptus a consociatione dimittatur, nisi iusta de causa ad normam iuris et statutorum.*

the norm of law and the statutes. It would be wise for the association to specify in the statutes what causes will justify a dismissal and the procedures that will lead to it.⁵⁸⁴

Rights of governance

Canon 309. According to the norm of law and the statutes, legitimately established associations have the right to issue particular norms respecting the association itself, to hold meetings, and to designate moderators, officials, other officers, and administrators of goods.⁵⁸⁵

Canon 309 affirms that all “legitimately established” associations of the faithful enjoy autonomy in managing their own internal affairs in accordance with the norm of law and their statutes. Thus, the present canon asserts explicitly that associations have this right (*ius est*) to issue particular norms regarding the association, to hold meetings, to designate moderators, officials, and administrators of goods. In keeping with c. 310 (treated below), these rights pertain jointly to the individual faithful who belong to a private association, not to the association as such which lacks standing in canon law unless it has been established as a juridic person. Accordingly, this is an explicit right of all the *christifideles* who may join a private association of the faithful.

Contractual rights

Canon 310. A private association which has not been established as a juridic person cannot, as such, be a subject of obligations and rights. Nevertheless, the members of the Christian faithful associated together in it can jointly contract obligations and can acquire and possess rights and goods as co-owners and co-possessors; they are able to exercise these rights and obligations through an agent or a proxy.⁵⁸⁶

⁵⁸⁴ See R. PAGÉ, Commentary on c. 308, in *CLSA Comm2*, 407.

⁵⁸⁵ Cf. *CIC*, c. 309. *Consociationibus legitime constitutis ius est, ad normam iuris et statutorum, edendi peculiare normas ipsam consociationem respicientes, celebrandi comitia, designandi moderatores, officiales, ministros atque bonorum administratores.*

⁵⁸⁶ Cf. *CIC*, c. 310. *Consociatio privata quae uti persona iuridica non fuerit constituta, qua talis subiectum esse non potest obligationum et iurium; christifideles tamen in ea consociati coniunctim obligationes contrahere atque uti condomini et compossessores iura et bona acquirere et possidere possunt; quae iura et obligationes per mandatarium seu procuratorem exercere valent.*

Canon 310 says that a private association which does not enjoy juridic personality is not and cannot be the subject of rights and obligations, including the ownership of temporal goods and the contracting of debts and other obligations. However, the individual members of such an association can be and are the subjects of such rights and obligations. There are two explicit rights in the canon. The *christifideles* who are members of the association can (*possunt*) contract obligations and acquire and possess rights and goods as co-owners and co-possessors; and they are able (*valent*) to exercise these rights and obligations through an agent or a proxy. Thus, the temporal goods of the association are canonically the property of the individual members, who are responsible for any liabilities. As joint owners and joint possessors, they can possess rights and goods, and they can exercise these rights and obligations through a delegate or a proxy. This most likely will be the only way the association can act, unless all the members act together.⁵⁸⁷ Evidently, there may also be applicable civil laws which allow the association itself to function in a civil capacity, so this limitation of the canon law may have little practical effect on the association's operations.

Right to self-direction

Canon 321. The Christian faithful guide and direct private associations according to the precepts of the statutes.⁵⁸⁸

Canon 321 puts forth an important principle that private associations have their own autonomy and are governed by the faithful according to their proper statutes. Christ's faithful direct and moderate private associations *according to the precepts of the statutes*.

⁵⁸⁷ See PAGÉ, Commentary on c. 310, in *CLSA Comm2*, 408; R.J. BARRETT, "The Non-recognized Association and Its Capacity to Act in Court," in *Periodica*, 86 (1997), 677-711; ID., "The Non-recognized Association and Its Capacity to Act in Court [Part II]," in *Periodica*, 87 (1998), 39-79.

⁵⁸⁸ Cf. *CIC*, c. 321. *Consociationes privata christifideles secundum statutorum praescripta dirigunt et moderantur.*

The statutes of an association are constituted as its proper law. They are the norms regulating the life of the association. The statutes bind everyone in the association who are the legitimate members (c. 94, §2). It is imperative, then, to elaborate in the statutes how the association will be directed. This canon acknowledges the right and competency of the faithful to guide and direct private associations.⁵⁸⁹ The canon is worded as a statement of fact, but implicit in this statement is the right of the faithful to guide and direct their own private associations.

4.1.2 The diocese

All the faithful acquire an ordinary, and therefore belong to a diocese or other particular Church, by virtue of their place of domicile or quasi-domicile or, in the case of transients (*vagi*), in the place where they are staying (c. 107). The rights of the faithful at the diocesan level are, for the most part, implicit in the numerous canonical obligations of the diocesan bishop, as treated in the following canons. This does not mean that the diocesan bishop or his equivalent must personally fulfill all these responsibilities but, as head of the particular Church, he is charged with seeing that they are done.

Right of the Eastern faithful

Canon 383 §1. In exercising the function of a pastor, a diocesan bishop is to show himself concerned for all the Christian faithful entrusted to his care, of whatever age, condition, or nationality they are, whether living in the territory or staying there temporarily; he is also to extend an apostolic spirit to those who are not able to make sufficient use of ordinary pastoral care because of the condition of their life and to those who no longer practice their religion.

§2. If he has faithful of a different rite in his diocese, he is to provide for their spiritual needs either through priests or parishes of the same rite or through an episcopal vicar.

§3. He is to act with humanity and charity toward the brothers and sisters who are not in full communion with the Catholic Church and is to foster ecumenism as it is understood by the Church.

⁵⁸⁹ See J.A. FUENTES, Commentary on c. 321, in *Exegetical Comm*, vol. 2/1, 529.

§4. He is to consider the non-baptized as committed to him in the Lord, so that there shines on them the charity of Christ whose witness a bishop must be before all people.⁵⁹⁰

Canon 383 identifies some of the specific groups who are the subjects of the pastoral care of a diocesan bishop: Catholics (even those of another *sui iuris* Church), baptized non-Catholic Christians, and the non-baptized. The Directory on the Pastoral Ministry of Bishops *Apostolorum successores*,⁵⁹¹ in discussing the *munus regendi* of the diocesan bishop, points out various aspects of his pastoral ministry.⁵⁹²

In the first paragraph of the canon, the emphasis is laid on the diocesan bishop to show concern for all Christian faithful present in his diocese even if they are there temporarily. He is to extend his care to those who are unable to make sufficient use of ordinary pastoral care because of their condition and those who no longer practice their religion. The second paragraph emphasizes that the diocesan bishop is to be concerned with the faithful of different rites and provide spiritual care to them. The third paragraph exhorts the bishop to be humble and charitable. The final paragraph invites the diocesan bishop to

⁵⁹⁰ Cf. *CCEO*, c. 192, §1; 193, §2; 678, §2; 192, §3; *CIC*, c. 383, §1. In exercendo munere pastoris, Episcopus diocesanus sollicitum se praebeat erga omnes christifideles qui suae curae committuntur, cuiusvis sint aetatis, condicionis vel nationis, tum in territorio habitantes tum in eodem ad tempus versantes, animum intendens apostolicum ad eos etiam qui ob vitae suae condicionem ordinaria cura pastorali non satis frui valeant necnon ad eos qui a religionis praxi defecerint.

§2. Fideles diversi ritus in sua dioecesi si habeat, eorum spiritualibus necessitatibus provideat sive per sacerdotes aut paroecias eiusdem ritus, sive per Vicarium episcopalem.

§3. Erga fratres, qui in plena communione cum Ecclesia catholica non sint, cum humanitate et caritate se gerat, oecumenismum quoque fovens prout ab Ecclesia intellegitur.

§4. Commendatos sibi in Domino habeat non baptizatos, utetipsis caritas eluceat Christi, cuius testis coram omnibus Episcopus esse debet.

⁵⁹¹ CONGREGATION FOR BISHOPS, Directory for the Pastoral Ministry of Bishops *Apostolorum successores*, Libreria Editrice Vaticana, 2004 (= *Apostolorum successores*).

⁵⁹² Various aspects of the pastoral concern of the bishop are identified in *Apostolorum successores*: works of charity (193-197); social services and voluntary services (198-2000); the family (202); adolescents and young people (203); workers and laborers (204); the suffering (205); emigrants (206a); dispersed groups of the faithful (206b); and military personnel (206c). See J.A. RENKEN, *Particular Churches and the Authority Established in Them, Commentary on Canons 368-430*, Ottawa, Faculty of Canon Law, Saint Paul University, 2011, 103 (=RENKEN, *Particular Churches*).

consider the non-baptized committed to him in the Lord and show Christ-like charity to them.⁵⁹³

The canon mainly consists of exhortations, not specific obligations of the bishop in exercising his pastoral role (*munus pastorale*). A right is implied, however, in the second paragraph, namely, the right of the faithful of Eastern Churches *sui iuris* who reside in the territory of the diocese to have their spiritual needs provided for by the Latin bishop when nothing else has been arranged by the competent authority of their own Church *sui iuris* or by the Holy See.⁵⁹⁴

Rights to the ministry of the word

Canon 386 §1. A diocesan bishop, frequently preaching in person, is bound to propose and explain to the faithful the truths of the faith which are to be believed and applied to morals. He is also to take care that the prescripts of the canons on the ministry of the word, especially those on the homily and catechetical instruction, are carefully observed so that the whole Christian doctrine is handed on to all.

§2. Through more suitable means, he is firmly to protect the integrity and unity of the faith to be believed, while nonetheless acknowledging a just freedom in further investigating its truths.⁵⁹⁵

The two paragraphs of c. 386 distinguish two aspects of the pastoral work of the diocesan bishop regarding the proclamation and teaching of the faith by means of preaching and his vigilance over the unity and integrity of the faith and morals.⁵⁹⁶ The canon focuses

⁵⁹³ See RENKEN, Commentary on c. 383, in *CLSA Comm2*, 522.

⁵⁹⁴ See J. ABBASS, "Latin Bishops' Duty of Care toward Eastern Catholics," in *Studia canonica*, 35 (2001), 7-32; ID., "Canonical Dispositions for the Care of Eastern Catholics outside Their Territory," in *Periodica de re canonica*, 86 (1997), 330-346.

⁵⁹⁵ Cf. *CCEO*, c. 196; *CIC*, c. 386, §1. Veritates fidei credendas et moribus applicandas Episcopus dioecesanus fidelibus proponere et illustrare tenetur, per se ipse frequenter praedicans; curet etiam ut praescripta canonum de ministerio verbi, de homilia praesertim et catechetica institutione sedulo serventur, ita ut universa doctrina christiana omnibus tradatur.

§2. Integritatem et unitatem fidei credendae mediis, quae aptiora videantur, firmiter tueatur, iustam tamen libertatem agnoscens in veritatibus ulterius perscrutandis.

⁵⁹⁶ See J.L. GUTIÉRREZ, Commentary on c. 386, in *CCLA*, 332; cf. J.A., CORIDEN, "The Teaching Ministry of the Diocesan Bishop and its Collaborative Exercise," in *The Jurist*, 68 (2008), 382-407; J. TOBIN, "The Diocesan Bishop as Moderator of the Entire Ministry of the Word," *CLSANZ Proceedings*, (1988), 51-84.

on the exercise of the ministry of the divine word by the bishop, which entails his duty to teach doctrine and to preach personally and to enforce the canons on preaching (cc. 762-772) and catechetical instruction (cc. 773-780). These twofold duties of the bishop imply that the faithful have the corresponding rights entailed in them: the right to preaching by the bishop in person; the right to have the bishop teaching on matters of faith and morals; the right to the observance of the canons on the ministry of divine word, especially preaching and catechetics; the right to have the integrity and unity of their faith protected by the bishop; and the right that he at the same time respect their just freedom of inquiry.⁵⁹⁷

Right to the means of sanctification

Canon 387. Since the diocesan bishop is mindful of his obligation to show an example of holiness in charity, humility, and simplicity of life, he is to strive to promote in every way the holiness of the Christian faithful according to the proper vocation of each. Since he is the principal dispenser of the mysteries of God, he is to endeavor constantly that the Christian faithful entrusted to his care grow in grace through the celebration of the sacraments and that they understand and live the paschal mystery.⁵⁹⁸

The canon briefly emphasizes the duty of the bishop to exercise the sanctifying office in his diocese. He has this special obligation to promote the holiness of the Christian faithful.⁵⁹⁹ This canon is a summary of the Church's teaching on the vocation of the faithful to holiness and the means of achieving this and is applied to the episcopal exercise of the sanctifying office within the diocese.⁶⁰⁰ There are no specific rights of the faithful implied

⁵⁹⁷ See A. DE LA HERA, Commentary on c. 386, in *Exegetical Comm*, vol. 2/1, 796.

⁵⁹⁸ Cf. *CCEO*, c. 197; *CIC*, c. 387. *Episcopus dioecesanus, cum memor sit se obligatione teneri exemplum sanctitatis praebendi in caritate, humilitate et vitae simplicitate, omni ope promovere studeat sanctitatem christifidelium secundum uniuscuiusque propriam vocationem atque, cum sit praecipuus mysteriorum Dei dispensator, iugiter annitatur ut christifideles suae curae commissi sacramentorum celebratione in gratia crescent utque paschale mysterium cognoscant et vivant.*

⁵⁹⁹ See RENKEN, *Particular Churches*, 140. Cf. V. CRUZ, "Bishops are Proclaimers of Justice," in *Philippine Canonical Forum*, 10 (2008), 251-271; and T.J. GREEN, "The Church's Sanctifying Mission: Some Aspects of the Normative Role of the Diocesan Bishop," in *Studia canonica*, 25(1991), 245-276.

⁶⁰⁰ See DE LA HERA, Commentary on c. 387, in *Exegetical Comm*, vol. 2/1, 799.

in the exhortation of the canon but, just generally, the right to the various dimensions of the *munus sanctificandi* to assist their growth in holiness as discussed in the previous chapter.

Right to the *Missa pro populo*

Canon 388 §1. After the diocesan bishop has taken possession of the diocese, he must apply a Mass for the people entrusted to him each Sunday and on the other holy days of obligation in his region.

§2. The bishop himself must personally celebrate and apply a Mass for the people on the days mentioned in §1. If he is legitimately impeded from this celebration, however, he is to apply the Masses either on the same days through another or on other days himself.

§3. A bishop to whom other dioceses besides his own have been entrusted, even under title of administration, satisfies the obligation by applying one Mass for all the people entrusted to him.

§4. A bishop who has not satisfied the obligation mentioned in §§1-3 is to apply as soon as possible as many Masses for the people as he has omitted.⁶⁰¹

Canon 388 is the obligation of the diocesan bishop to celebrate the *Missa pro populo*, namely, to apply a Mass for the intention of the people each Sunday and holy day of obligation. It is a strict legal obligation (*debet applicare*), which implies the strict right of the faithful to it. This may be seen as one of the ways that the diocesan bishop seeks to promote the holiness of his faithful through the celebration of the sacraments (c. 387), especially through the Eucharist.⁶⁰² In addition, the faithful have the right implied in the

⁶⁰¹ Cf. *CCEO*, c. 198; *CIC*, c. 388, §1. Episcopus dioecesanus, post captam dioecesis possessionem, debet singulis diebus dominicis aliisque diebus festis de praecepto in sua regione Missam pro populo sibi commisso applicare.

§2. Episcopus Missam pro populo diebus, die quibus in, §1, per se ipse celebrare et applicare debet; si vero ab hac celebratione legitime impediatur, iisdem diebus per alium, vel aliis diebus per se ipse applicet.

§3. Episcopus cui praeter propriam dioecesim aliae, titulo etiam administrationis, sunt commissae, obligationi satisfacit unam Missam pro universe populo sibi commisso applicando.

§4. Episcopus qui obligationi, de qua in §§ 1-3, non satisfecerit, quam primum pro populo tot Missas applicet quot omiserit.

⁶⁰² See DE LA HERA, Commentary on c. 388, in *Exegetical Comm*, vol. 2/1, 801.

second paragraph of the canon that the bishop personally celebrate and apply (*celebrare et applicare debet*) the *Missa pro populo* unless he is legitimately impeded.⁶⁰³

Rights to common discipline and vigilance

Canon 392 §1. Since he must protect the unity of the universal Church, a bishop is bound to promote the common discipline of the whole Church and therefore to urge the observance of all ecclesiastical laws.

§2. He is to exercise vigilance so that abuses do not creep into ecclesiastical discipline, especially regarding the ministry of the word, the celebration of the sacraments and sacramentals, the worship of God and the veneration of the saints, and the administration of goods.⁶⁰⁴

This canon specifies two obligations on the diocesan bishop. First, so as to defend the unity of the universal Church, he is bound (*tenetur*) to promote the common discipline of the whole Church and thus to urge the observance of all ecclesiastical laws (cf. cc. 12-13).⁶⁰⁵ Second, he is to exercise vigilance (*advigilet*) so that abuses do not creep into ecclesiastical discipline, especially in the areas indicated in the second paragraph. If there is any chance of abuses, the *salus animarum* directly comes into play. Implied in these obligations of the bishop is the right of the faithful to the maintenance of Church discipline throughout the diocese by the enforcement of applicable universal and particular laws.⁶⁰⁶

Rights to various forms of apostolate and apostolic works

Canon 394 §1. A bishop is to foster various forms of the apostolate in the diocese and is to take care that in the entire diocese or in its particular

⁶⁰³ See RENKEN, Commentary on c. 388, in *CLSA Comm2*, 526; and U. NAVARRETE., “Missapro populo et stips alterius Missae eadem die celebratae (c. 951 §1),” in *Periodica de re canonica*, 77(1988), 497-510.

⁶⁰⁴ Cf. *CCEO*, c. 198; *CIC*, c. 392, §1. Ecclesiae universae unitatem cum tueri debeat, Episcopus disciplinam cunctae Ecclesiae commune promovere et ideo observantiam omnium legum ecclesiasticarum urgere tenetur.

§2. Advigilet ne abusus in ecclesiasticam disciplinam irrepant, praesertim circa ministerium verbi, celebrationem sacramentorum et sacramentalium, cultum Dei et Sanctorum, necnon bonorum administrationem.

⁶⁰⁵ See RENKEN, *Particular Churches*, 169. See also T.J. GREEN., “Selected Issues in Developing Structures of Diocesan Communion,” in *The Jurist*, 69 (2009), 418-441.

⁶⁰⁶ See V. GÓMEZ-IGLESIAS, Commentary on c. 392, in *Exegetical Comm*, vol. 2/1, 818. See also P. ARTNER, “Disciplinary Measures outside Book VI of the 1983 CIC,” in *Studia canonica*, 42 (2008), 473-502.

districts, all the works of the apostolate are coordinated under his direction, with due regard for the proper character of each.

§2. He is to insist upon the duty which binds the faithful to exercise the apostolate according to each one's condition and ability and is to exhort them to participate in and assist the various works of the apostolate according to the needs of place and time.⁶⁰⁷

Canon 394 lays an obligation on the diocesan bishop to foster various forms of apostolate in his diocese. He is to coordinate the works of the apostolate under his direction, with due regard for the proper character of each one. He is to exhort and invite the faithful to participate in and exercise the apostolate according to the various needs of place and time.⁶⁰⁸ The bishop's duty is to discern and protect the various services present in his Church. He must base his ministry on the principles of the unity of faith and governance, the division of apostolic tasks and offices, sincere mutual assistance and complementarity.⁶⁰⁹ However, he is to respect the identity and character of each apostolate as he promotes both their unity and diversity.⁶¹⁰ Implied in all this is the right of the faithful to apostolic works organized and overseen by the diocese under the supervision of the bishop.

Right to physical presence of the diocesan bishop in the diocese

Canon 395 §1. Even if a diocesan bishop has a coadjutor or auxiliary, he is bound by the law of personal residence in the diocese.

§2. Apart from *ad limina* visits, councils, synods of bishops, conferences of bishops which he must attend, or some other duty legitimately entrusted to him, he can be absent from his diocese for a reasonable cause but not beyond

⁶⁰⁷ Cf. *CCEO*, c. 190; *CIC*, c. 394, §1. *Varias apostolatus rationes in dioecesi fovat Episcopus, atque curet ut in universa dioecesi, vel in eiusdem particularibus districtibus, omnia apostolatus opera, servata uniuscuiusque propria indole, sub suo moderamine coordinentur.*

§2. *Urgeat officium, quo tenentur fideles ad apostolatam pro sua cuiusque condicione et aptitudine exercendum, atque ipsos adhortetur ut varia opera apostolatus, secundum necessitates loci et temporis, participent et iuvent.*

⁶⁰⁸ See V. GÓMEZ-IGLESIAS, Commentary on c. 394, in *Exegetical Comm*, vol. 2/1, 823.

⁶⁰⁹ See G. GHIRLANDA, "Movements within the Ecclesial Communion and Their Rightful Autonomy," in *Christi fideles laici: Comments and Reflections*, Vatican City, Pontifical Council for the Laity, *The Laity Today*, 32-33 (1989-90), 52.

⁶¹⁰ See GÓMEZ-IGLESIAS, Commentary on c. 394, in *Exegetical Comm*, vol. 2/1, 823.

a month, whether continuous or interrupted, and provided that he makes provision so that the diocese will suffer no detriment from his absence.

§3. He is not to be absent from the diocese on Christmas, during Holy Week, and on Easter, Pentecost, and the Feast of the Body and Blood of Christ, except for a grave and urgent cause.

§4. If a bishop has been illegitimately absent from the diocese for more than six months, the metropolitan is to inform the Apostolic See of his absence; if it concerns the metropolitan, the senior suffragan is to do so.⁶¹¹

Canon 395 is about the obligation of residence. The diocesan bishop has a personal obligation (*tenetur lege*) to reside in the diocese even if he has a coadjutor or auxiliary bishop,⁶¹² with the exceptions noted in the canon.⁶¹³ The pastoral care and work of the diocese requires the bishop's physical presence so that he can personally and actively perform his many responsibilities in his particular Church.⁶¹⁴ As the canon expounds, only a grave and urgent reason can justify the bishop's absence from his diocese on the days of major solemnities: Christmas, Holy Week and Easter Sunday, Pentecost and Corpus Christi

⁶¹¹ Cf. *CCEO*, c. 204; *CIC*, c. 395, §1. *Episcopus dioecesanus, etiamsi coadiutorem aut auxiliarem habeat, tenetur lege personalis in dioecesi residentiae.*

§2. *Praeterquam causa visitationis Sacrorum Liminum, vel Conciliorum, Episcoporum synodi, Episcoporum conferentiae, quibus interesse debet, aliusve officii sibi legitime commissi, a dioecesi aequa de causa abesse potest nonultra mensem, sive continuum sive intermissum, dummodo cautum sit ne ex eius absentia dioecesis quidquam detrimenti capiat.*

§3. *A dioecesi ne absit diebus Nativitatis, Hebdomadae Sanctae et Resurrectionis Domini, Pentecostes et Corporis et Sanguinis Christi, nisi ex gravi urgentique causa.*

§4. *Si ultra sex menses Episcopus a dioecesi illegitime abfuerit, de eius absentia Metropolita Sedem Apostolicam certiore faciat; quod si agatur de Metropolita, idem faciat antiquior suffraganeus.*

⁶¹² The obligation of residency also binds others in the Code: the coadjutor bishop (c. 410), the auxiliary bishop (c. 395), the diocesan administrator (c. 429), the *parochus* (c. 533), and the priests to whom is entrusted a parish(es) in *solidum* (c. 543, §2, 1°), and the parochial vicar (c. 550). See RENKEN, *Particular Churches and the Authority*, 177.

⁶¹³ The presence of a bishop at gatherings of the conference of bishops is justified when the conference's statutes state a given bishop *must* be present. A superior authority may also confer another office on a bishop occasioning his absence from the diocese. Finally, a bishop should count his vacation time within the month-long period of his absence from the diocese. Also within this month, he would include such things as: giving retreats outside the diocese to persons not from his diocese, attending lectures or conferences, meetings of various regional or national groups (associations, movements, etc.), visiting foreign missions, leading religious and cultural pilgrimages not organized by the diocese, etc. The document insists that bishops exhibit their solicitude for all the Church best when they minister well to the people of their own particular Churches. See PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, explanatory note *Obbligo del vescovo di risiedere in diocesi (circa il canone 395 CIC)*, 12 September 1996, prot. no. 5125/96, in *Communicationes*, 28 (1996), 182-186.

⁶¹⁴ See J. PROVOST, "Canonical Reflections on Selected Issues in Diocesan Governance," in J.K. MALLET (ed.), *The Ministry of Governance*, Washington, 1986, 209.

(c. 395, §3). On these days, he may be anywhere in the diocese but not outside its territorial boundaries. Finally, in case of an illegitimate absence of the diocesan bishop for over six months, the metropolitan must inform the Apostolic See and, if the absent party is the metropolitan, the senior suffragan is to do the same (c. 395, §4).⁶¹⁵ The strict legal obligation of residence implies the right of the faithful to the physical presence of their bishop for the fulfillment of his obligations and thus the fulfillment of their rights in the diocesan Church.

Right to have the canonical visit by the diocesan bishop

Canon 396 §1. A bishop is obliged to visit the diocese annually either in whole or in part, so that he visits the entire diocese at least every five years either personally or, if he has been legitimately impeded, through the coadjutor bishop, an auxiliary, vicar general, episcopal vicar, or another presbyter.

§2. A bishop is permitted to choose the clerics he prefers as companions and assistants on a visitation; any contrary privilege or custom is reprobated.⁶¹⁶

Canon 396 is on the strict obligation of the diocesan bishop (*tenetur obligatione*) to make the canonical visitation of institutions and persons in his diocese. According to Valentín Gómez-Iglesias, this pastoral visit meets two fundamental needs of the *munus pastorale* of the bishop: a) it gives the bishop first-hand information in detail on the state of the diocese, and this information helps him approach certain diverse situations and take some concrete solutions and measures of governance; and b) it affords him the opportunity to encourage each of the Christian faithful according to his or her condition (c. 208) by

⁶¹⁵ See GÓMEZ-IGLESIAS, Commentary on c. 395, in *Exegetical Comm*, vol. 2/1, 829.

⁶¹⁶ Cf. *CCEO*, c. 205, §1; *CIC*, c. 396, §1. Tenetur Episcopus obligatione dioecesis vel ex toto vel ex parte quotannis visitandae, ita ut singulis saltem quinquenniis universam dioecesim, ipse per se vel, si legitime fuerit impeditus, per Episcopum coadiutorem, aut per auxiliarem, aut per Vicarium generalem vel episcopalem, aut per alium presbyterum visitet.

§2. Fas est Episcopo sibi eligere quos maluerit clericos in visitatione comites atque adiutores, reprobate quocumque contrario privilegio vel consuetudine.

providing a mutual opportunity for them to meet and share their concerns. The bishop can thereby directly show his appreciation for each one and support them in their role, mission, obligations and rights.⁶¹⁷ The obligation on the bishop to make the canonical visitation implies the right of the faithful to it.

4.1.3 The parish

Canon 519 describes the pastor and his role.⁶¹⁸ The pastor or parish priest (*parochus*) is the proper pastor (*pastor*)⁶¹⁹ who shares in the diocesan bishop's ministry.⁶²⁰ Through the ministry of the parish, he carries out the *munera* of teaching, sanctifying, and governing. He exercises these *munera* with the help of other presbyters⁶²¹ and deacons,⁶²² and with the assistance of the other members of the Christian faithful. The canon specifies that the parish priest can and must have the collaboration of the other members of the parochial community. Regarding the collaboration of the faithful in the *munus* of the

⁶¹⁷ See GÓMEZ-IGLESIAS, Commentary on c. 396, in *Exegetical Comm*, vol. 2/1, 832; see also G.N. SMITH, "The Canonical Visitation Today," in *Periodica*, 98 (2009), 643-661.

⁶¹⁸ Cf. *CCEO*, c. 281, §1; *CIC*, c. 519. *Parochus est pastor proprius parociae sibi commissae, cura parochialis communitatis sibi concredita fungens sub auctoritate Episcopi dioecesanii, cuius in partem ministerii Christi vocatus est, ut pro eadem communitate munera exsequatur docendi, sanctificandi et regendi, cooperantibus etiam aliis presbyteris vel diaconis atque operam conferentibus christifidelibus laicis, ad normam iuris.*

⁶¹⁹ To define the parish priest as the proper pastor of the parish simply means that the immediate pastoral care of the parochial community corresponds to him. It is a task that he performs under the authority of the diocesan bishop and that fundamentally consists in the performance of the functions stated in cc. 528-530.

⁶²⁰ The pastor is obliged *always* to carry out his duties under the authority of the diocesan bishop. The diocesan bishop is like a father to the pastor; there is a paternal relationship that has both pastoral and juridic dimensions. For an excellent study of the relationship between the diocesan bishop and his priests, see A. MENDONÇA, "The Bishop as Father, Brother and Friend to His Priests," in *Philippine Canonical Forum*, 4 (2002), 75-95.

⁶²¹ Presbyters assisting the *parochus* are the parochial vicar (cc. 545-552) and, to some measure, chaplains providing pastoral care to some community or particular group of Christian faithful within the parish (cc. 564-572).

⁶²² The Code does not assign a title or ecclesiastical office (c. 145, §1) to a deacon assigned to a parish, but diocesan particular law could do so.

ordained ministers, the faithful do not enjoy a right to such tasks and functions, but rather they are capable of being admitted to them by the sacred pastors.⁶²³

As seen in the previous section on the diocesan bishop, the canons likewise impose certain obligations on the pastor, which in turn give rise to implicit rights of the faithful of the parish. Although expressed only in three canons, these obligations and rights are fairly numerous.

Rights to preaching and sacraments from pastors

Canon 528 §1. A pastor is obliged to make provision so that the word of God is proclaimed in its entirety to those living in the parish; for this reason, he is to take care that the lay members of the Christian faithful are instructed in the truths of the faith, especially by giving a homily on Sundays and holy days of obligation and by offering catechetical instruction. He is to foster works through which the spirit of the gospel is promoted, even in what pertains to social justice. He is to have particular care for the Catholic education of children and youth. He is to make every effort, even with the collaboration of the Christian faithful, so that the message of the gospel comes also to those who have ceased the practice of their religion or do not profess the true faith.

§2. The pastor is to see to it that the Most Holy Eucharist is the center of the parish assembly of the faithful. He is to work so that the Christian faithful are nourished through the devout celebration of the sacraments and, in a special way, that they frequently approach the sacraments of the Most Holy Eucharist and penance. He is also to endeavor that they are led to practice prayer even as families and take part consciously and actively in the sacred liturgy which, under the authority of the diocesan bishop, the pastor must direct in his own parish and is bound to watch over so that no abuses creep in.⁶²⁴

⁶²³ See A.S. SÁNCHEZ-GIL, Commentary on c. 519, in *Exegetical Comm*, vol. 2/2, 1287. SÁNCHEZ-GIL says that, in any event, collaboration from the members of the parish community will always be necessary, not only to help the parish priest in the exercise of his pastoral duties, but especially in the performance of the evangelizing duty of the entire parish community. See ID., “L’apporto dei fedeli laici all’esercizio della cura pastorale della comunità parrocchiale,” in J.I. ARRIETA and G.P. MILANO (eds.), *Metodo, fonti e soggetti del diritto canonico*, Libreria Editrice Vaticana, 1999, 1131-1146.

⁶²⁴ Cf. *CCEO*, c. 289; *CIC*, c. 528, §1. Parochus obligatione tenetur providendi ut Dei verbum integre in paroecia degentibus annuntietur; quare curet ut christifideles laici in fidei veritatibus edoceantur, praesertim homilia diebus dominicis et festis de praecepto habenda necnon catechetica institutione tradenda, atque foveat opera quibus spiritus evangelicus, etiam ad iustitiam sociale quod attinet, promoveatur peculiarem curam habeat de puerorum iuvenumque educatione catholica omni ope satagat, associate etiam sibi christifidelium opera, ut nuntius evangelicus ad eos quoque perveniat, qui a religione colenda recesserint aut veram fidem non profiteantur.

Canon 528 is on the duties of the pastor as minister of the Word and minister of Sanctification. The first paragraph of the canon stresses the pastor's responsibilities regarding the teaching office.⁶²⁵ It begins with a strong legal obligation (*obligatione tenetur*) to provide for the proclamation of the word of God. In paragraph two, exhortative language is used at first, indicating more general obligations and ideals to be striven for. In this paragraph, the emphasis is on the sanctifying functions of the pastor towards his faithful.⁶²⁶ The last phrase of c. 528 §2 concerning the sacred liturgy requires that the pastor must direct (*moderari debet*) the liturgy in the parish and "is bound (*tenetur*) to be vigilant lest any abuses creep in." This strong language indicates important obligations on the pastor and concomitant rights of the faithful, as treated in the previous chapter.⁶²⁷

§2. Consulat parochus ut sanctissima Eucharistia centrum sit congregationis fidelium paroecialis; allaboret ut christifideles per devotam sacramentorum celebrationem, pascantur, peculiarique modo ut frequenter ad sanctissimae Eucharistiae et paenitentiae sacramenta accedant; annitatur item ut iidem ad orationem etiam in familiis perendam ducantur atque conscie et actuose partem habeant in sacra liturgia, quam quidem, sub auctoritate Episcopi dioeciesani, parochus in sua paroecia moderari debet et, ne abusus irrepant, invigilare tenetur.

⁶²⁵ This responsibility includes the proclaiming of the word of God and the preaching of Christian doctrine (cc. 757, 762), the homily (c. 767-768) and catechetical instruction (cc. 773, 776-777). He is to foster works which promote the spirit of the gospel, even in matters of social justice (c. 222, §2). He is to have particular care for the Catholic education of children and youth (cc. 217, 229, 793-806). See J.A. RENKEN, *Particular Churches: Their Internal Ordering: Commentary on Canons 460-572*, Ottawa, Faculty of Canon Law, Saint Paul University, 2011, 246-250; see also F.G. MORRISEY, "The Role of Law and the Exercise of Authority within the Church, Particularly at the Parish Level," in *The Canonist*, 6 (2015), 220-249.

⁶²⁶ This responsibility includes the sanctifying office of the pastor. There are several canons with explicit reference to the pastor's role in sanctifying his parishioners. The canons concern his role in baptism (cc. 851, 2°; 855; 858, §2; 861, §2; 867, §1; 874, §1, 1°-2°; 877, §§1-2; 878; 1706); confirmation (cc. 883, 3°; 890; 895-896); the Eucharist (cc. 911; 914; 958, §1); penance (c. 968, §1); orders (cc. 1043, 1054); marriage (cc. 1067; 1069-1070; 1079, §2; 1081; 1105, §2; 1106; 1108, §1; 1109-1110; 1111, §1; 1114-1115; 1118, §1; 1121; 1122, §2; 1123; 1706); and funerals (c. 1177, §2).

A. BORRAS holds that there is a responsibility on the pastors and that the parochial community constitutes a basic ordinary institutional context in which relationships of justice and charity are developed daily between the pastors of the Church and the rest of the faithful. In "La notion du curé dans le Code de droit canonique," in *Revue de Droit Canonique*, 37 (1987), 225-227.

⁶²⁷ The importance of the pastor guarding against liturgical abuses was a serious consideration for the Pontifical Commission for the Revision of the Code of Canon Law, which reviewed cc. 362-363 of the Schema "De populo Dei" on May 8 and 9, 1980. In their discussions of cc. 362-363 of that Schema, which would become cc. 528 and 530 of the 1983 Code, all of the consultants agreed that the strong statement of the obligation proposed in c. 362, §2 should be retained. In addition, one of the consultants argued against the text

A number of implicit rights are contained in the lengthy c. 528. The faithful have the right:

- to be instructed in the truths of the faith through homilies and catechetical instruction;
- to have apostolic works through which the spirit of the gospel is promoted, even in what pertains to social justice;
- to have a Catholic education for the children and youth of the parish;
- to have an outreach to those who have ceased the practice of their religion or do not profess the true faith;
- to have the Eucharist as the center of the parish assembly;
- to be nourished through the devout celebration of the sacraments;
- to have opportunities frequently to approach the sacraments of the Most Holy Eucharist and penance;
- to be led to the practice of prayer and take part consciously and actively in the sacred liturgy; and
- to have liturgical celebrations that are free of abuses.

Rights to pastoral care and charity from the pastors

Canon 529 §1. In order to fulfill his office diligently, a pastor is to strive to know the faithful entrusted to his care. Therefore, he is to visit families, sharing especially in the cares, anxieties, and griefs of the faithful, strengthening them in the Lord, and prudently correcting them if they are failing in certain areas. With generous love he is to help the sick, particularly those close to death, by refreshing them solicitously with the sacraments and commending their souls to God; with particular diligence he is to seek out the poor, the afflicted, the lonely, those exiled from their country, and similarly those weighed down by special difficulties. He is to work so that spouses and parents are supported in fulfilling their proper duties and is to foster growth of Christian life in the family.

§2. A pastor is to recognize and promote the proper part which the lay members of the Christian faithful have in the mission of the Church, by fostering their associations for the purposes of religion. He is to cooperate with his own bishop and the presbyterium of the diocese, also working so that the faithful have concern for parochial communion, consider themselves members of the diocese and of the universal Church, and participate in and sustain efforts to promote this same communion.⁶²⁸

of c. 363 because, in his view, the “reservation” of certain liturgical services to the pastor was the best way to enable the pastor to forestall and avoid liturgical abuses. See *Communicationes*, 12 (1981), 280-282.

⁶²⁸ Cf. *CCEO*, c. 289, §3; *CIC*, c. 529 §1. *Officium pastoris sedulo utadimpleat, parochus fideles suae curae commissos cognoscere satagat; ideo familias visitet, fidelium sollicitudines, angores et luctus praesertim participans eosque in Domino confortans necnon, si in quibusdam defecerint, prudenter corrigens; aegrotos, praesertim morti proximos, effuse caritate adiuvet, eos sollicite sacramentis reficiendo eorumque animas Deo commendando; peculiari diligentia prosequatur pauperes, afflictos, solitarios, e patria exsules*

Canon 529 is about the responsibility and functions of the office of pastor in the ministry of pastoral care, charitable and social outreach, and the fostering of wider communion beyond the parish boundaries. The pastor is to strive to know his faithful, and so he visits families; he shares parishioners' cares, anxieties, and griefs; he strengthens them and prudently corrects them as necessary. He is to have a generous love for the sick, refreshing them with the sacraments and commending their souls to God. He seeks out the poor, the afflicted, the lonely, the exiled, and all those weighed down by special difficulties. He is to support spouses and parents in fulfilling their proper duties, and he fosters the growth of the Christian family life. The second paragraph of the canon is an exhortation on the communion of his parishioners with the diocese and universal Church, including promoting the role of the laity in the mission of the Church (see cc. 208, 211, 224-231) and fostering associations for the purposes of religion (see cc. 215; 223, § 1; 225, § 1; 327-329).⁶²⁹

As with the obligations of the diocesan bishop, the pastor does not personally have to fulfill all these goals and responsibilities, but he is in charge of seeing that the parish offers such services to the extent possible. Since the language of the entire canon is purely exhortative, there are no strict rights implicit in the canon. However, one may conclude that all these ideals and goals, taken together, ought to be part of the parish life to a greater

itemque peculiaribus difficultatibus gravatos; allaboret etiam ut coniuges et parentes ad officia propria implenda sustineantur et in familia vitae christianae incrementum foveat.

§2. Partem quam christifideles laici in missione Ecclesiae propriam habent, parochus agnoscat et promoveat, consociationes eorundem ad fines religionis fovendo. Cum proprio Episcopo et cum dioecesis presbyterio cooperetur, allaborans etiam ut fideles communionis paroecialis curam habeant, iidemque tum dioecesis tum Ecclesiae universae membra se sentient operaque ad eandem communionem promovendam participant vel sustineant.

⁶²⁹ See RENKEN, Commentary on c. 529, in *CLSA Comm2*, 701; see also J.A. CORIDEN, "Parish Pastoral Leaders: Canonical Structure and Practical Questions," in *The Jurist*, 67 (2007), 461-484.

or lesser extent, and so the parishioners have the right that they not be entirely neglected.

Right to parish pastoral council

Canon 536 §1. If the diocesan bishop judges it opportune after he has heard the presbyteral council, a pastoral council is to be established in each parish, over which the pastor presides and in which the Christian faithful, together with those who share in pastoral care by virtue of their office in the parish, assist in fostering pastoral activity.

§2. A pastoral council possesses a consultative vote only and is governed by the norms established by the diocesan bishop.⁶³⁰

Canon 536 says that the diocesan bishop, if he judges it opportune and after hearing the presbyteral council, is to establish a pastoral council in every parish. If the bishop does not mandate it, then such a council is not required in every parish.⁶³¹ If mandated, the faithful have the implied right to a pastoral council in their parish in which the members enjoy a consultative vote. The faithful also have an implicit right that their pastoral council be governed according to the regulations of diocesan law (*regitur normis ab Episcopo dioecesano statutis*).

The pastoral council allows for collaboration in the parish between the pastor and faithful.⁶³² The members of the parish pastoral council share in parish's pastoral care along with other members of the Christian faithful.⁶³³ The parish council's basic purpose is to serve as an institutional channel for the collaboration of the faithful in the fostering of

⁶³⁰ Cf. *CCEO*, c. 295; *CIC*, c. 536, §1. Si, de iudicio Episcopi dioecesani, audito consilio presbyterali, opportunum sit, in unaquaque paroecia constituatur consilium pastorale, cui parochus praeest et in quo christifideles una cum illis qui curam pastorem vi officii sui in paroecia participant, ad actionem pastorem fovendam suum adiutorium praestent.

§2. Consilium pastorale voto gaudet tantum consultivo et regitur normis ab Episcopo dioecesano statutis.

⁶³¹ See RENKEN, Commentary on c. 535, in *CLSA Comm2*, 710.

⁶³² See SÁNCHEZ-GIL, Commentary on c. 536, in *Exegetical Comm*, vol. 2/2, 1345.

⁶³³ See RENKEN, *Particular Churches*, 283; see also K.S. SEBASTIAN, "Participation of the Laity in the Decision-Making Structures of the Church," in *Vidyajyoti*, 66 (2002), 52-66.

pastoral activity. It is an appropriate instrument of communion between the parish priest and all others who participate in the pastoral care of the parish.⁶³⁴

Right to parish finance council

Canon 537. In each parish there is to be a finance council which is governed, in addition to universal law, by norms issued by the diocesan bishop and in which the Christian faithful, selected according to these same norms, are to assist the pastor in the administration of the goods of the parish, without prejudice to the prescript of can. 532.⁶³⁵

Canon 537 mandates the establishment of a finance council in every parish. It is composed of members of the Christian faithful who are selected to assist the pastor in the administration of parochial goods. It is the pastor himself, however, who is the administrator of the temporal goods. He represents the parish in all juridic matters and is to take care that parochial goods are administered according to the norm of cc 1281-1288 (c. 532). Canon 537 is a specific application of the general provision of c. 1280 which says that every juridic person is to have its own finance council or at least two counselors who assist the administrator of the juridic person.⁶³⁶ The requirement of the finance council in every parish implies the right of the parishioners to have one in order to assist the pastor in the administration of the temporal goods of the parish.

⁶³⁴ See SÁNCHEZ-GIL, Commentary on c. 536, in *Exegetical Comm*, vol. 2/2, 1345; L. SPINELLI, “Responsabiliti à parte cipata dei laici al consiglio pastorale,” in *l’Année canonique*, hors série 2 (1992), 827-831.

⁶³⁵ Cf. *CCEO*, c. 295; *CIC*, c. 537. In unaquaque paroecia habeatur consilium a rebus oeconomicis, quod praeterquam iure universali, regitur normis ab Episcopo dioecesano latis et in quo christifideles, secundum easdem normas selecti, parrocho in administratione bonorum paroecia adiutorio sint, firmo praescripto can. 532.

⁶³⁶ See RENKEN, Commentary on c. 537, in *CLSA Comm2*, 710; see also J.A. JANICKI, Commentary on c. 537, in *CLSA Comm1*, 433; K.S. SEBASTIAN, “Participation of the Laity in the Decision-Making Structures of the Church,” in *Vidyajyoti*, 66 (2002), 52-66.

4.1.4 Diocesan and parish registers

Canon 487 §2. Interested parties have the right to obtain personally or through a proxy an authentic written copy or photocopy of documents which by their nature are public and which pertain to their personal status.⁶³⁷

Canon 487 is on the diocesan archives. The first paragraph says the archive must be locked; no one may enter it except with the permission either of the bishop or of both the moderator of the curia and the chancellor. This second paragraph of the canon explicitly gives a right (*ius*) to interested persons personally or through a proxy to obtain an authentic written copy or photocopy of the documents which pertain to their personal status (e.g., baptismal status, marriage status, status of appointments or removal from office, etc.).⁶³⁸ However, this right does not exist if the document is not of a public nature, even if only in the regular archive and not the secret archive.⁶³⁹ It would be very helpful for the diocesan bishop to identify in diocesan laws the documents which by their nature are public and pertain to personal status.⁶⁴⁰

Right to secret archives

Canon 489 §2. Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained.⁶⁴¹

Canon 489 is on the secret archive of the diocese in which sensitive documents are kept and securely protected. The canon upholds the value and importance of keeping the

⁶³⁷ Cf. *CCEO*, c. 257, §2; *CIC*, c. 487, §2. *Ius est iis quorum interest, documentorum, quae natura sua sunt publica quaeque ad statum suae personae pertinent, documentum authenticum scriptum vel photostaticum per se vel per procuratorem recipere.*

⁶³⁸ See RENKEN, *Particular Churches*, 95; see also E. MCDONOUGH, "Archives of Religious Communities," in *Review for Religious*, 65 (2006), 323-327.

⁶³⁹ See J.I. ARRIETA, Commentary on c. 487, in *CCLA*, 405.

⁶⁴⁰ See B.A. CUSACK, Commentary on c. 487, in *CLSA Comm2*, 642.

⁶⁴¹ Cf. *CCEO*, c. 259, §2; *CIC*, c. 489, §2. *Singulis annis destruantur documenta causarum criminalium in materia morum, quarum rei vita cesserunt aut quae a decennio sententia condemnatoria absolutae sunt, retento facti brevi summario cum textu sententiae definitivae.*

documents in greater security and destroying certain documents that have lost their relevance either by time or after the accused parties have died. These are documents pertaining to criminal cases in matters of morals. Still, a brief summary of what occurred along with the text of the definitive sentence is to be retained. Thus, witness depositions, briefs of the promoter of justice and advocate, police reports, press accounts, and so forth would all be destroyed. This requirement of the law implies a right of the faithful, which is a concrete expression of the fundamental right to privacy (c. 220).⁶⁴²

Right to historical archives

Canon 491 §1. A diocesan bishop is to take care that the acts and documents of the archives of cathedral, collegiate, parochial, and other churches in his territory are also diligently preserved and that inventories or catalogs are made in duplicate, one of which is to be preserved in the archive of the church and the other in the diocesan archive.

§2. A diocesan bishop is also to take care that there is an historical archive in the diocese and that documents having historical value are diligently protected and systematically ordered in it.

§3. In order to inspect or remove the acts and documents mentioned in §§ 1 and 2, the norms established by the diocesan bishop are to be observed.⁶⁴³

This canon first addresses the records of various churches located in the diocese: cathedral, collegiate, parochial, and other churches. The diocesan bishop is to ensure that

⁶⁴² Cf. P.T. SHEA, “Records Management and Canon 489, Part One: Civil Law Concerns,” in *CLSAProceedings*, 2009, 168-175; C. TAYLOR, “Records Management and Canon 489, Part Two: Canon 489, A Contemporary Review,” in *CLSAProceedings*, 2009, 175-180; J.J. TREATOR, “Records Management and Canon 489, Part Three: Canon 489 from an Archivist / Records Manager’s Perspective,” in *CLSAProceedings*, 2009, 180-184; M. VIERA, “Records Management and Canon 489, Part Four: The Tribunal Archive,” in *CLSAProceedings*, 2009, 185-189; J.H. PROVOST, “Removal of Materials from Secret Archives,” in Arthur J. Espelage (ed.), *CLSA Advisory Opinions*, 1994-2000, Washington, CLSA, 2002, 117-121.

⁶⁴³ Cf. *CCEO*, c. 261, §§1-2; *CIC*, c. 491, §1. Curet Episcopus dioecesanus ut acta et documenta archivorum quoque ecclesiarum cathedralium, collegiatarum, paroecialium, aliarumque in suo territorio exstantium diligenter serventur, atque inventaria seu catalogi conficiantur duobus exemplaribus, quorum alterum in proprio archivo, alterum in archivo dioecesano serventur.

§2. Curet etiam Episcopus dioecesanus ut in dioecesi habeatur archivum historicum habentia in eodem diligenter custodiantur et systematice ordinentur.

§3. Acta et documenta, de quibus in §§ 1 et 2, ut inspiciantur aut efferantur, serventur normae ab Episcopo dioecesano statutae.

the acts and documents of these churches are preserved and copies made for both the archive of the church and the diocese. The canon next imposes the requirement of a diocesan historical archive followed by the issue of access to these various records. The obligation is laid on the diocesan bishop to see that the diocese has an historical archive.⁶⁴⁴ The historical archive protects and systematically orders documents which have historical value.⁶⁴⁵ The obligations and requirements of this canon imply the right of the faithful to the sound maintenance of diocesan and church archives that preserve valuable records and historical information, not only about their personal status but also about the church they attend and their diocese in general.

Rights to parish registers and archives

Canon 535 §1. Each parish is to have parochial registers, that is, those of baptisms, marriages, deaths, and others as prescribed by the conference of bishops or the diocesan bishop. The pastor is to see to it that these registers are accurately inscribed and carefully preserved.

§2. In the baptismal register are also to be noted confirmation and those things which pertain to the canonical status of the Christian faithful by reason of marriage, without prejudice to the prescript of can. 1133, of adoption, of the reception of sacred orders, of perpetual profession made in a religious institute, and of change of rite. These notations are always to be noted on a baptismal certificate.

§3. Each parish is to have its own seal. Documents regarding the canonical status of the Christian faithful and all acts which can have juridic importance are to be signed by the pastor or his delegate and sealed with the parochial seal.

⁶⁴⁴ See CUSACK, Commentary on c. 491, in *CLSA Comm2*, 645; cf. P. HURTUBISE, “Le devoir de mémoire. Pourquoi il faut assurer dès maintenant l’avenir de nos archives religieuses,” in *Studia canonica*, 42 (2008), 319-330.

⁶⁴⁵ See SACRED CONGREGATION FOR THE CLERGY, circular letter on the care of the historical artistic patrimony of the Church *Opera artis*, 11 April 1971, in *AAS*, 63 (1971), 315-317, English translation in *CLD*, vol. 7, 821-824. This document says in no. 3: “It is the responsibility of each diocesan curia to be vigilant and to look into it that, in accord with the norms passed by the ordinary, the rectors of churches, in cooperation with experts, draw up an inventory of sacred edifices as well as of things which are noteworthy artistically. In this inventory each item should be described and its value indicated. Two copies of this kind of inventory should be prepared, one of which is kept at the church and the other deposited in the diocesan curia. It would be very useful if the diocesan curia itself would transmit another copy to the Vatican Apostolic Library. Notations of changes which may have taken place in the meanwhile should not be omitted.”

§4. In each parish there is to be a storage area, or archive, in which the parochial registers are protected along with letters of bishops and other documents which are to be preserved for reason of necessity or advantage. The pastor is to take care that all of these things, which are to be inspected by the diocesan bishop or his delegate at the time of visitation or at some other opportune time, do not come into the hands of outsiders.

§5. Older parochial registers are also to be carefully protected according to the prescripts of particular law.⁶⁴⁶

The first two paragraphs of c. 535 stress the need and importance of having parochial registers, a parish seal, and an archive. Every parish is to have parochial registers, and the pastor is to see that they are accurately inscribed regarding the reception of the sacraments, Mass offerings and parish accounts.⁶⁴⁷ These registers are to be carefully preserved. In paragraph three of the canon, the requirement of the parish seal is imposed.⁶⁴⁸

⁶⁴⁶ Cf. *CCEO*, c. 296; *CIC*, c. 535, §1. In unaquaque paroecia habeantur libri paroeciales, liber scilicet baptizatorum, matrimoniorum, defunctorum, aliique secundum Episcoporum conferentiae aut Episcopi dioeciesani praescripta; prospiciat parochus ut iidem libri accurate conscribantur atque diligenter asserventur.

§2. In libro baptizatorum adnotentur quoque adscriptio Ecclesiae sui iuris vel ad aliam transitus, necnon confirmatio, itemque pertinent ad statum canonicum christifidelium, ratione matrimonii, salvo quidem praescripto can. 1133, ratione adoptionis, ratione suscepti ordinis sacri, necnon professionis perpetuae in instituto religioso emissae; eaeque adnotationes in documento accepti baptismi semper referantur.

§3. Unicuique paroecia sit proprium sigillum; testimonia quae de statu canonico christifidelium dantur, sicut et acta omnia quae momentum iuridicum habere possunt, ab ipso parochus eiusve delegato subscribantur et sigillo paroeciali muniantur.

§4. In unaquaque paroecia habeatur tabularium seu archivum, in quo libri paroeciales custodiantur, una cum Episcoporum epistulis aliisque documentis, necessitatis utilitatisve causa servandis; quae omnia, ab Episcopo dioeciesano eiusve delegato, visitationis vel alio opportuno tempore inspicienda, parochus caveat ne ad extraneorum manus perveniant.

§5. Libri paroeciales antiquiores quoque diligenter custodiantur, secundum praescripta iuris particularis.

⁶⁴⁷ The specific registers envisioned are for baptisms (cc. 877-878), marriages (c. 1121), deaths (c. 1182), and other events as prescribed either by the conference of bishops or the diocesan bishop. Examples of registers which may be required by particular law are the confirmation register (c. 895), the first communion register, and the register for the reception of baptized non-Catholics into full communion. Special consideration is given to the baptismal register. It is to contain not only data concerning a person's baptism but also data about confirmation (c. 895), marriage (cc. 1122-1123, 1685, 1706), adoption (c. 877, §3), reception of sacred orders (c. 1054), perpetual religious profession, and change of Church *sui iuris*. All these annotations are always to be noted on a baptismal certificate. Other canons mention other books to be maintained by each parish. Canon 788, § 1 mentions the book inscribing the names of catechumens. Canon 958 calls for a parochial book recording Mass offerings and obligations; and c. 1307, §2 calls for an additional book to record the offerings and obligations of pious foundations. The pastor, as administrator of the juridical person which is the parish, must also keep well organized books of parochial receipts and expenditures (c. 1284, §2, 7°). See RENKEN, Commentary on c. 535, in *CLSA Comm2*, 707.

⁶⁴⁸ Every parish is also to have its own seal which, with the signature of the pastor or his delegate, is to be placed on documents regarding the canonical status of the Christian faithful and on all acts which

In the fourth paragraph, the emphasis is on the parochial archives in which these registers and other important documents are preserved.⁶⁴⁹ The final paragraph is on the preservation of older registers. Commenting on this canon, Juan Calvo observes that special care is to be given in preserving the parochial archives since their contents are true cultural treasures and are witnesses to the religious life of the Christian community.⁶⁵⁰

The requirements of this lengthy canon imply several rights of the faithful, especially the faithful who are current or past members of the parish as well as historians and others who have an interest in these registers and other documents. These are:

- the right to have kept in the prescribed parochial registers the records pertaining to one's juridical status in the Church;
- the right to have authentic documents, affixed with the parish seal, pertaining to one's canonical status; and
- the right to have these records and documents protected and preserved, including older registers belonging to parishioners who have died.

4.2 The Temporal Goods of the Church

The temporal goods of the Church is the subject of Book V of the Code of Canon Law (*De bonis Ecclesiae temporalibus*). Temporal goods are necessary for accomplishing the spiritual work of the Church through its services.⁶⁵¹ According to c. 1254, §2, the proper

have juridic importance. See RENKEN, Commentary on c. 535, in *CLSA Comm2*, 708.

⁶⁴⁹ Each parish is to have its own archive (or storage area) which protects letters of bishops and other documents to be preserved that are necessary or useful. The pastor is to make sure that the contents of the archives do not come into the hands of outsiders. The diocesan bishop or his delegate is to inspect the archive at the time of the visitation (cc. 396-398). The archive would certainly contain the aforementioned parish books and the prenuptial investigation files (c. 1067). See RENKEN, Commentary on c. 535, in *CLSA Comm2*, 708.

⁶⁵⁰ See J. CALVO, Commentary on c. 535, in *CCLA*, 536; cf. V.G. D'SOUZA, "A Note on Parish Registers and Documents," in *Indian Theological Studies*, 42 (2005), 77-84.

⁶⁵¹ See R.T. KENNEDY, Commentary to the Introduction to Book V, in *CLSA Comm2*, 1452; J. RENKEN, "Temporal Goods in the Latin and Eastern Codes: A Comparative Study," in *Studies in Church Law*, 5 (2009), 79-118; J. ABBASS, "The Temporal Goods of the Church: a Comparative Study of the Eastern and Latin Codes of Canon Law," in *Periodica*, 83 (1994), 669-714.

purposes of temporal goods are “to order divine worship, to care for the decent support of the clergy and other ministers, and to exercise works of the sacred apostolate and of charity, especially toward the needy.”⁶⁵²

The opening canon of Book V speaks of the innate right (*ius nativum*) of the Catholic Church to acquire, retain, administer, and alienate temporal goods. This and many of the rights in Book V of the Code of Canon Law are not within the purview of this thesis because they are not rights of physical persons but rights of moral and juridic persons: the Catholic Church, the Apostolic See, individual dioceses, institutes of consecrated life and societies of apostolic life, parishes, and other juridic persons. Still, the number of rights of the *christifideles* in Book V is not insignificant. One canon explicitly gives a right to the Christian faithful to donate to and support the Church. Canon 1261, §1 says that the faithful are free (*integrum est christifidelibus*) to give temporal goods for the benefit of the Church.⁶⁵³ Canon 1299, §1 in an explicit way states the right of persons to give their goods (*potest bona relinquere*) for pious causes through an act *inter vivos* or an act *mortis*

⁶⁵² Cf. *CCEO*, c. 1007; *CIC*, c. 1254, §2. Fines vero proprii praecipue sunt: cultus divinus ordinandus, honesta cleri aliorumque ministrorum sustentatio procuranda, opera sacri apostolatus et caritatis, praesertim erga egenos, exercenda.

The question of the priority of the purposes has been raised. For a detailed discussion on the purposes stated in c. 1254, §2, see V. DE PAOLIS, *De bonis Ecclesiae temporalibus: Adnotationes in Codicem: Liber V*, Rome, Gregorian University, 1986, 29; F. MORRISEY, “Acquiring Temporal Goods for the Church’s Mission,” in *The Jurist*, 56 (1996), 591; V. DE PAOLIS, “Temporal Goods of the Church in the New Code with Particular Reference to Institutes of Consecrated Life,” in *The Jurist*, 43 (1983), 343-360.

Adam J. MAIDA and Nicholas CAFARDI comment thus about c. 1254, §2: “The statement of the church’s ends, given its location in Book V, obviously refers to those ends for which property is used. It is an illustrative list of the purposes for which property can be held. Property held for reasons other than these is not properly held by the Church.” In *Church Property, Church Finances, and Church-Related Corporations*, Saint Louis, The Catholic Health Association of the United States, 1984, 10 (=MAIDA-CAFARDI, *Church Property*).

G. ROCHE questions whether service to the poor is less a priority than maintenance of the clergy. Are the poor to be assisted only after the needs of divine worship and the needs of the clergy have been met? That is, are the purposes listed in order of priority? In “The Poor and Temporal Goods in Book V of the Code,” in *The Jurist*, 55 (1995), 316 (=ROCHE, “The Poor and Temporal Goods”).

⁶⁵³ Cf. *CIC*, c. 1261, §1. *Integrum est christifidelibus bona temporalia in favorem Ecclesiae conferre.*

§2. *Episcopus dioecesanus fideles de obligatione, de qua in can. 222, §1, monere tenetur et opportuno modo eam urgere.*

causa.⁶⁵⁴ In addition, there are eleven canons which have implicit rights. These implicit rights are related to donations of the faithful, administrators of temporal goods, the diocesan bishop, the diocesan finance council and the parish finance council.

4.2.1 Donations of the faithful

Canon 1267 §1. Unless the contrary is established, offerings given to superiors or administrators of any ecclesiastical juridic person, even a private one, are presumed given to the juridic person itself.

§2. The offerings mentioned in §1 cannot be refused except for a just cause and, in matters of greater importance if it concerns a public juridic person, with the permission of the ordinary; the permission of the same ordinary is required to accept offerings burdened by a moral obligation or condition, without prejudice to the prescript of can. 1295.

§3. Offerings given by the faithful for a certain purpose can be applied only for that same purpose.⁶⁵⁵

Canon 1267 concerns offerings given to the Church by the faithful. The first paragraph of the canon says that offerings given to superiors or administrators of any ecclesiastical juridic person, whether public or private, are presumed to be given to the juridic person itself unless the contrary is established. The second paragraph establishes that these offerings may not be refused (*repudiari nequeunt*) except for a just cause⁶⁵⁶ and

⁶⁵⁴ *Pious causes* refer to an undertaking for a spiritual or supernatural motive, to merit grace or to glorify God, or in satisfaction for one's sins or those of others (cc. 114, §2; 1254, §2).

Inter vivos refers to transfer of ownership while the donor remains alive. It is contractual (c. 1290) and therefore must be accepted by the recipient; once accepted, it is irrevocable.

Mortis causa refers to transfer of ownership upon the death of the donor; it becomes effective at the moment of death. See KENNEDY, Commentary on c. 1299, in *CLSA Comm2*, 1510.

⁶⁵⁵ Cf. *CCEO*, c. 1016; *CIC*, c. 1267, §1. *Nisi contrarium constet, oblationes quae fiunt Superioribus vel administratoribus cuiusvis personae iuridicae ecclesiasticae, etiam privatae, praesumuntur ipsi personae iuridicae factae.*

§2. *Oblationes, de quibus in §1, repudiari nequeunt nisi iusta de causa et, in rebus maioris momenti, de licentia Ordinarii, si agitur de persona iuridica publica; eiusdem Ordinarii licentia requiritur ut acceptentur quae onere modali vel condicione gravantur, firmo praescripto can. 1295.*

§3. *Oblationes a fidelibus ad certum finem factae, nonnisi ad eundem finem destinari possunt.*

⁶⁵⁶ J. RENKEN observes that a "just cause" for refusing a gift may be that the gift is given with perpetual conditions attached. In *Church Property*, 129; cf. J.H. PROVOST and R.A. HILL, "Advisory Opinion: Stole Fees," in *The Jurist*, 45 (1985), 321-324.

MARIANO LÓPEZ ALARCÓN remarks that, if no just cause is determined, then the just cause shall be established in relation to the lawful origin of the goods, the good faith of the donor, the destination of the goods, the nature and figurative representation of the object, etc., while the importance of the object will depend mainly on its values. Should the donation be refused without the fulfilment of these conditions, the

in keeping with the specified conditions concerning matters of greater importance pertaining to a public juridic person.⁶⁵⁷ The final paragraph of the canon speaks about fidelity to the intentions of the donors. Donations given for a specific purpose may be used only for that purpose, whether it is for a spiritual purpose, charity, the apostolate or other similar work. In case of doubt, it should be remembered that the ordinary is the executor of all pious dispositions (c. 1301). Moreover, the faithful must be informed of the use of the goods given for those specific purposes (c. 1287, §2).⁶⁵⁸

Three rights of the faithful are implied in the requirements of this canon. First, the faithful have the right to give donations to the Church via the competent superior or administrator in the knowledge that the latter will transmit them to the juridic person. Second, they have the right not to have their offerings refused except in accord with the conditions of the second paragraph of c. 1267. Third, they have the right to have their donations used for the purposes for which they were given.

Rights concerning pious causes

Canon 1299 §2. In dispositions *mortis causa* for the good of the Church, the formalities of civil law are to be observed if possible; if they have been

person refusing could be sued for damages (c. 128). However, nothing is said about the rejection of donations by representatives of private juridical persons, which means that they would have to observe the prescriptions of their own statutes, which must remain within the legal limits established in the Code and applicable secular legislation. In Commentary on c. 1267, in *CCLA*, 982; R.E. JENKINS, “Gifts, Donations and Donor Intent in the Canon Law of the Catholic Church,” in *The Jurist*, 72 (2012), 76-108.

⁶⁵⁷ Canon 1295 requires the observance of cc. 1291-1294 on alienation and on transactions that jeopardize the patrimonial conditions of a juridic person. Since matters of greater importance are not specified in c. 1267, §2, they are to be determined by the statutes of the juridic person. These matters may also depend upon the particular circumstances. See KENNEDY, Commentary on c. 1267, in *CLSA Comm2*, 1469-1470.

KENNEDY differentiates a gift with a “modal obligation” attached from a gift with a “condition” attached. “A modal obligation, according to Roman law whence the term is derived, is an obligation undertaken at the time of accepting a gift which is enforceable against the donor but the breach of which does not result in reversion of the gift to the donor. A conditional gift, on the other hand, conditions transfer of ownership upon fulfilment of the condition; the breach results in a reversion of ownership to the donor.” In *ibid.*, 1469.

⁶⁵⁸ See J.A. RENKEN, *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, New York, Alba House, 2009, 128-131 (=RENKEN., *Church Property*); D. TIRAPU, Commentary on c. 1267, in *Exegetical Comm*, vol. 4/1, 66-68; and KENNEDY, Commentary on c. 1267, in *CLSA Comm2*, 1470.

omitted, the heirs must be admonished regarding the obligation, to which they are bound, of fulfilling the intention of the testator.⁶⁵⁹

Canon 1299, §2 directs the observance of civil laws, if possible, for dispositions *mortis causa* and admonishes heirs to fulfill the intention of the testator when civil laws are not observed. The main purpose of the observance of civil laws is to avoid conflict and confusion after the donor has died.⁶⁶⁰ We see two implicit rights here. The faithful have the right that civil laws, if possible, be observed in their dispositions *mortis causa* for the good of the Church. If they have been omitted, the faithful have the right that the competent authority will admonish their heirs to fulfill their intentions.

Right to have pious wills respected

Canon 1300. The legitimately accepted wills of the faithful who give or leave their resources for pious causes, whether through an act *inter vivos* or through an act *mortis causa*, are to be fulfilled most diligently even regarding the manner of administration and distribution of goods, without prejudice to the prescript of can. 1301, §3.⁶⁶¹

Canon 1300 deals with pious wills of the faithful, whether their bequest be given through an act *inter vivos* or an act *mortis causa*. The law obliges the faithful fulfillment of pious wills by the competent authorities. Fidelity to the intention of the donor is a cardinal principle of canon law, and it extends even to the manner of the administration and distribution of the goods.⁶⁶² In saying that the legitimately accepted wills of the faithful are to be fulfilled (*impleantur*), the canon implies the right of the faithful to have their wills

⁶⁵⁹ Cf. *CCEO*, c. 1043; *CIC*, c. 1299, §2. In dispositionibus mortis causa in bonum Ecclesiae servantur, si fieri possit, sollemnitates iuris civilis; quae si omissae fuerint, heredes moneri debent de obligatione, qua tenentur, adimplendi testatoris voluntatem.

⁶⁶⁰ See RENKEN, *Church Property*, 301; cf. ID., “Collaboration of Canon Law and Civil Law in Church Property Issues,” in *Studies in Church Law*, 4(2008), 43-80; and ID., “Pious Wills and Pious Foundations,” in *Philippine Canonical Forum*, 10 (2008), 69-110.

⁶⁶¹ Cf. *CCEO*, c. 1044; *CIC*, c. 1300. Voluntates fidelium facultates suas in pias causas donantium vel relinquentium, sive per actum inter vivos sive per actum mortis causa, legitime acceptatae, diligentissime impleantur etiam circa modum administrationis et erogationis bonorum, firmo praescripto can. 1301, §3.

⁶⁶² See KENNEDY, Commentary on c. 1299, in *CLSA Comm2*, 1513.

respected by Church authorities. The reference to c. 1301, §3 is explained in the treatment of the following canon.

Right to have the ordinary fulfill pious wills

Canon 1301 §1. The ordinary is the executor of all pious wills whether *mortis causa* or *inter vivos*.

§2. By this right, the ordinary can and must exercise vigilance, even through visitation, so that pious wills are fulfilled, and other executors are bound to render him an account after they have performed their function.

§3. Stipulations contrary to this right of an ordinary attached to last wills and testaments are to be considered non-existent.⁶⁶³

Canon 1301, §1 state that the ordinary is the executor of all pious wills. The ordinary also has the right and obligation to exercise vigilance so that the intentions expressed in pious wills – whether *inter vivos* or *mortis causa* – are fulfilled. He can and must be vigilant (*potest ac debet vigilare*) in seeing that these wills are properly satisfied. This right of vigilance can be exercised by the ordinary through the visitation, as mentioned in c. 1300, §2. Stipulations contrary to the right of the ordinary in last wills and testaments are to be considered non-existent (c. 1301, §3). The duty of the ordinary in executing wills and overseeing their fulfillment gives rise to the implicit right of the faithful to have their wills fulfilled in accord with their wishes.⁶⁶⁴

⁶⁶³ Cf. *CCEO*, c. 1045; *CIC*, c. 1301, §1. *Ordinarius omnium piarum voluntatum tam mortis causa quam inter vivos exsecutor est.*

§2. *Hoc ex iure Ordinarius vigilare potest ac debet, etiam per visitationem, ut piae voluntates impleantur, eique ceteri exsecutores, perfuncti munere, reddere rationem tenentur.*

§3. *Clausulae huic Ordinarii iuri contrariae, ultimis voluntatibus adiectae, tamquam non appositae habeantur.*

⁶⁶⁴ See KENNEDY, Commentary on c. 1301, in *CLSA Comm2*, 1513. Cf. J.F. HITE, “The Administration of Church Property,” in J. HITE and D.J. WARD (eds.), *Readings, Cases, Materials in Canon Law: A Textbook for Ministry Students*, rev. ed., Collegeville, The Liturgical Press, 1990, 417.

Rights to safeguard and execute pious trusts

Canon 1302 §2. The ordinary must demand that goods held in trust are safeguarded and also exercise vigilance for the execution of the pious will according to the norm of can. 1301.⁶⁶⁵

Canon 1302 is about pious trusts. A pious trust is one kind of pious will, namely, one that entails ongoing administration; the ordinary must see to it that these pious trusts are safeguarded.⁶⁶⁶ Whenever goods are received in trust for pious causes, the ordinary must require (*debet exigere*) that the goods be safely preserved, and he must be vigilant that the pious dispositions are executed as per c. 1301.⁶⁶⁷ This strong obligation imposed on the ordinary yields the implicit right of the faithful that their pious trusts be safeguarded and executed.

Rights concerning pious foundations

Canon 1305. Money and movable goods assigned to an endowment are to be deposited immediately in a safe place approved by the ordinary so that the money or value of the movable goods is protected; as soon as possible, these are to be invested cautiously and usefully for the benefit of the foundation, with express and specific mention made of the obligation; this investment is to be made according to the prudent judgment of the ordinary, after he has heard those concerned and his own finance council.⁶⁶⁸

⁶⁶⁵ Cf. *CCEO*, c. 1046, §2; *CIC*, c. 1302, §2. *Ordinarius debet exigere ut bona fiduciaria in tuto collocentur, itemque vigilare pro executione piae voluntatis ad normam can. 1301.*

⁶⁶⁶ KENNEDY, Commentary on c. 1302, in *CLSA Comm2*, 1514. The ordinary is not primarily responsible for implementing the terms of a pious will. It belongs to the other executors. (See *Communicationes*, 12 [1980], 429.) The ordinary must ensure that no abuses creep into the execution of a pious will. If there is no executor named in a will, or if an executor is negligent, the ordinary is responsible to implement the terms of a pious will personally or through a delegate. In this sense, the role of the ordinary does not depend upon the will of the faithful who made the will but upon the nature of the hierarchical structure of the Church. See Commentary on c. 1299, in *CLSA Comm2*, 1513; cf. J. OTADUY, “Perspectiva canónica del trust,” in *Ius Canonicum*, 55 (2015), 593-640.

⁶⁶⁷ *Debet exigere* may entail the ordinary issuing a precept. If the goods given in trust to a member of a religious institute or society of apostolic life are destined for a particular place, for a diocese or their inhabitants, or for pious causes, the local ordinary must ensure that the requirements of c. 1302, §2 are fulfilled (c. 1302, §3).

⁶⁶⁸ Cf. *CCEO*, c. 1049; *CIC*, c. 1305. *Pecunia et bona mobilia, dotationis nomine assignata, statim in loco tuto ab Ordinario approbando deponantur eum in finem, ut eadem pecunia vel bonorum mobilium pretium custodiantur et quam primum caute et utiliter secundum prudens eiusdem Ordinarii iudicium, auditis et iis quorum interest et proprio a rebus oeconomicis consilio, collocentur in commodum eiusdem foundationis cum expressa et individua mentione oneris.*

Canon 1305 is on the pious foundation. The pious foundation is defined in the first paragraph of c. 1303 which distinguishes autonomous and non-autonomous pious foundations. This canon has rules on the careful handling of money and movable goods assigned to the endowment of a pious foundation. Good arguments indicate that the canon pertains only to non-autonomous foundations.⁶⁶⁹ An important concern of the canon is the way the money and movable goods are protected by being deposited immediately (*statim*) in a safe place approved by the ordinary. The canon mandates the ordinary to hear his finance council before he decides about investing the funds. He is also to hear other concerned persons (living donors, families of deceased donors, beneficiaries of the foundation, et al.).⁶⁷⁰ The requirements of the canon and the obligations it places on the ordinary imply that the faithful who make a pious foundation on behalf of the Church have the right that it be protected and invested cautiously and usefully as well as the right that the finance council and other concerned persons be consulted before the ordinary makes the investment.

4.2.2 Administrators of temporal goods

The administrators of temporal goods are those who take care of the administration and the stewardship of all ecclesiastical goods. The Code states in c. 1273 that the Roman Pontiff is the supreme administrator and steward of all the ecclesiastical goods. In every diocese it is required by the law to have a finance officer whose duty is to administer, under the authority of the bishop, the temporal goods belonging to the public juridic person

⁶⁶⁹ R.T. KENNEDY maintains that c. 1305 is only about non-autonomous pious foundations. Autonomous pious foundations are themselves juridic persons and, as such, are governed by their statutes. Since many autonomous pious foundations are often *private* juridic persons, it would not be appropriate for the ordinary to supervise them closely, as c. 1305 requires. See Commentary on c. 1305, in *CLSA Comm2*, 1518-1519.

⁶⁷⁰ *Ibid.*, 1519. See also V.G. PEÑUELA, Commentary on c. 1305, in *Exegetical Comm*, vol. 4/1, 180.

known as the diocese (c. 494).⁶⁷¹ Particular duties of the diocesan bishop in the administration of temporal goods are considered in the subsequent section 4.2.3.

Rights to diligent administration

Canon 1284 §1. All administrators are bound to fulfill their function with the diligence of a good householder.

§2. Consequently, they must:

1° exercise vigilance so that the goods entrusted to their care are in no way lost or damaged, taking out insurance policies for this purpose insofar as necessary;

2° take care that the ownership of ecclesiastical goods is protected by civilly valid methods;

3° observe the prescripts of both canon and civil law or those imposed by a founder, a donor, or legitimate authority, and especially be on guard so that no damage comes to the Church from the non-observance of civil laws;

4° collect the return of goods and the income accurately and on time, protect what is collected, and use them according to the intention of the founder or legitimate norms;

5° pay at the stated time the interest due on a loan or mortgage and take care that the capital debt itself is repaid in a timely manner;

6° with the consent of the ordinary, invest the money which is left over after expenses and can be usefully set aside for the purposes of the juridic person;

7° keep well organized books of receipts and expenditures;

8° draw up a report of the administration at the end of each year;

9° organize correctly and protect in a suitable and proper archive the documents and records on which the property rights of the Church or the institute are based, and deposit authentic copies of them in the archive of the curia when it can be done conveniently.

§3. It is strongly recommended that administrators prepare budgets of incomes and expenditures each year; it is left to particular law, however, to require them and to determine more precisely the ways in which they are to be presented.⁶⁷²

⁶⁷¹ R.T. KENNEDY maintains that c. 1278 empowers the diocesan bishop to delegate the diocesan finance officer the power to appoint the administrators mentioned in c. 1279, §2. See Commentary on c. 1278, in *CLSA Comm2*, 1480. J. HUELS offers a suggested faculty which the diocesan bishop may give to the diocesan finance officer: "If the public juridic person does not have its own administrator, whether by law, custom, the charter of foundation, or its statutes, you may appoint a suitable administrator for a three-year term and reappoint the same person for another term (c. 1279, §2)." In *Empowerment for Ministry*, New York, Paulist Press, 2003, 195.

⁶⁷² Cf. *CCEO*, c. 1020, §1, §2; 1028; *CIC*, c. 1284, §1. Omnes administratores diligentia boni patrisfamilias suum munus implere tenentur.

§2. Exinde debent:

1° vigilare ne bona suae curae concredita quoquo modo pereant aut detrimentum capiant, initis in hunc finem, quatenus opus sit, contractibus assecurationis;

2° curare ut proprietates bonorum ecclesiasticorum modis civiliter validis in tuto ponatur;

Canon 1284 considers the obligations of the administrator in the performance of his office. In paragraph one we see the general principle that administrators are bound to fulfill their function with the diligence of a good householder. The third paragraph strongly recommends that an annual budget of diocesan income and expenditures is to be prepared but leaves it to particular law to require them and determine how exactly they are to be presented.⁶⁷³ The lengthy second paragraph imposes nine obligations on administrators of temporal goods which they must (*debent*) observe. Strictly speaking, these obligations only pertain to administrators of the goods of public juridic persons, those who fulfill their office in the name of the Church (cf. c. 1282), and so the implied rights are those of the juridic person as such. Insofar as the temporal goods came to the public juridic person by donation or bequest, however, the concerned faithful would have the implicit right that the administrator responsibly fulfill these obligations.

3° praescripta servare iuris tam canonici quam civilis, aut quae a fundatore vel donatore vel legitima auctoritate imposita sint, ac praesertim cavere ne ex legum civilium inobservantia damnum Ecclesiae obveniat;

4° redditus bonorum ac proventus accurate et iusto tempore exigere exactosque tuto servare et secundum fundatoris mentem aut legitimas normas impendere;

5° foenus vel mutui vel hypothecae causa solvendum, statuto tempore solvere, ipsamque debiti summam capitalem opportune reddendam curare;

6° pecuniam, quae de expensis supersit et utiliter collocari possit, de consensu Ordinarii in fines personae iuridicae occupare;

7° accepti et expensi libros bene ordinatos habere;

8° rationem administrationis singulis exeuntibus annis componere;

9° documenta et instrumenta, quibus Ecclesiae aut instituti iura in bona nituntur, rite ordinare et in archivo convenienti et apto custodire; authentica vero eorum exemplaria, ubi commode fieri potest, in archivo curiae deponere.

§3. Provisiones accepti et expensi, ut ab administratoribus quotannis componantur, enixe commendatur; iuri autem particulari relinquitur eas praecipere et pressius determinare modos quibus exhibendae sint.

⁶⁷³ See V.G. PEÑUELA, Commentary on c. 1284, in *Exegetical Comm*, vol. 4/1, 112-114. See also KENNEDY, Commentary on c. 1284, in *CLSA Comm2*, 1485-1487; and RENKEN, *Church Property*, 210-219. Cf. R.F. AUSTIN, "The Search for Identity: Canonical Prospective on Diocesan Development Funds," in *CLSANZ*, 1 (1997), 12-25.

Rights to justice in employment

Canon 1286. Administrators of goods:

1° in the employment of workers are to observe meticulously also the civil laws concerning labor and social policy, according to the principles handed on by the Church;

2° are to pay a just and decent wage to employees so that they are able to provide fittingly for their own needs and those of their dependents.⁶⁷⁴

Canon 1286, 1° obligates the administrators to observe the civil laws relating to labour and social life, not forgetting the Church's social doctrine.⁶⁷⁵ Applying the civil law principles is not always easy, especially when there is a conflict with regard to the Church's teachings and the divine law. This could happen in the case, cited by some writers, of secular labour legislation that requires employers to insure their workers for abortion costs.⁶⁷⁶ Canon 1286, 2° requires the payment of just and decent wages that would provide fittingly for the employees' own needs and those of their family. Church administrators cannot ignore the natural right of a person with regard to a just and honest wage. We see, therefore, in the two sections of this canon two implied rights of the faithful: the right to

⁶⁷⁴ Cf. *CCEO*, c. 1030; *CIC*, c. 1286. *Administratores bonorum*:

1° in operarum locatione leges etiam civiles, quae ad laborem et vitam socialem attinent, adamussim servent, iuxta principia ab Ecclesia tradita;

2° iis, qui operam ex conducto praestant, iustam et honestam mercedem tribuant, ita ut iidem suis et suorum necessitatibus convenienter providere valeant.

⁶⁷⁵ Some important documents on the Church's social teachings are LEO XIII, Encyclical Letter *Rerum novarum*, 15 May 1891, in *ASS*, 23 (1891), 641-670, English translation in C. CARLEN (ed.), *Papal Encyclicals: 1878-1903*, vol. 2, Raleigh, NC, McGrath, 1981, 241-261; PIUS XI, Encyclical Letter *Quadragesimo anno*, 15 May 1931, in *AAS*, 23 (1931), 177-228, English translation in C. CARLEN (ed.), *Papal Encyclicals: 1939-1958*, vol. 3, 415-443; JOHN XXIII, Encyclical Letter on Christianity and Social Progress *Mater et magistra*, 15 May 1961, in *AAS*, 53 (1961), 401-464, English translation in *TPS*, 7 (1962), 295-343; PAUL VI, Encyclical Letter *Populorum progressio*, 26 March 1967, in *AAS*, 59 (1967), 257-299, English translation in *TPS*, 12 (1967), 144-172; JOHN PAUL II, Encyclical Letter *Laborem exercens* on the Commemoration of the Ninetieth Anniversary of *Rerum novarum*, 14 September 1981, in *AAS*, 73 (1981), 577-647, English translation in *TPS*, 26 (1981), 289-336; JOHN PAUL II, Encyclical Letter *Sollicitudo rei socialis*, 30 December 1987, in *AAS*, 80 (1988), 513-586, English translation in *TPS*, 33 (1988), 122-155; JOHN PAUL II, Encyclical Letter for the 100 years of *Rerum novarum*, "Centessimus annus," 1 May 1991, in *AAS*, 83 (1991), 793-867; English translation, in O' BRIEN, *Catholic Social Thought*, 437-488.

⁶⁷⁶ See J. MYERS, Commentary on c. 1286, in *CLSA Comm1*, 877.

have the civil laws on labour and social policy observed by Church administrators and the right of Church employees to a just and decent wage.⁶⁷⁷

Right to financial reports

Canon 1287 §1. Both clerical and lay administrators of any ecclesiastical goods whatever which have not been legitimately exempted from the power of governance of the diocesan bishop are bound by their office to present an annual report to the local ordinary who is to present it for examination by the finance council; any contrary custom is reprobated.

§2. According to norms to be determined by particular law, administrators are to render an account to the faithful concerning the goods offered by the faithful to the Church.⁶⁷⁸

Canon 1287 focuses on an administrator's accountability to ecclesiastical authority and to other members of the faithful. The obligations of the canon pertain to administrators of ecclesiastical goods, both clerical and lay. The first paragraph applies to administrators who are not exempt from the authority of the diocesan bishop. These administrators are bound by office (*officio tenentur*) to submit an annual report to the local ordinary, and then the local ordinary is to present this report to the diocesan finance council for examination. The second paragraph obliges administrators to render an account to the faithful (*rationes fidelibus reddant*) for the goods they have donated to the Church. The obligation of presenting the report to the faithful is not as forcefully stated as is the obligation of presenting the report to the local ordinary.⁶⁷⁹ Still, an obligation exists, even if mild; and

⁶⁷⁷ Cf. RENKEN, "Collaboration of Canon Law and Civil Law in Church Property Issues," in *Studies in Church Law*, 4 (2008), 43-80.

⁶⁷⁸ Cf. *CCEO*, c. 1031; *CIC*, c. 1287, §1. *Reprobata contraria consuetudine, administratores tam clerici quam laici quorumvis bonorum ecclesiasticorum, quae ab Episcopi dioecesanii potestate regiminis non sint legitime subducta, singulis annis officio tenentur rationes Ordinario loci exhibendi, qui eas consilio a rebus oeconomicis examinandas committat.*

§2. *De bonis, quae a fidelibus Ecclesiae offeruntur, administratores rationes fidelibus reddant iuxta normas iure particulari statuendas.*

⁶⁷⁹ M. LÓPEZ ALARCÓN suggests that this entails presenting information about the state and use of these goods rather than a formal rendering of accounts. See Commentary on c. 1287, in *Pamplona Comm. A*. A different opinion is expressed by F. AZNAR, *La administración de los bienes temporales de la Iglesia*, Salamanca, 1993, 390 (=AZNAR, *La administración de los bienes temporales*).

this obligation could be strengthened and made more specific in particular law. Thus, in accord with the norms of particular law, the faithful have a right to an accounting from the administrators of temporal goods concerning the goods they have offered to the Church.

4.2.3 The diocesan bishop

The diocesan bishop is the ex officio representative of the diocese in all juridical matters, both ecclesiastical and civil, and in the administrative as well as judicial arenas (c. 393).⁶⁸⁰ Two canons in Book V have rules concerning acts of administration placed by the diocesan bishop and on diocesan taxes, which in turn give rise to implicit rights of the faithful of the diocese.

Rights concerning ordinary and extraordinary administration

Canon 1277. The diocesan bishop must hear the finance council and college of consultors to place acts of administration which are more important in light of the economic condition of the diocese. In addition to the cases specially expressed in universal law or the charter of a foundation, however, he needs the consent of the finance council and of the college of consultors to place acts of extraordinary administration. It is for the conference of bishops to define which acts are to be considered of extraordinary administration.⁶⁸¹

Canon 1277 is about important acts of ordinary and extraordinary administration placed by the diocesan bishop. The canon has two parts, the first dealing with acts of ordinary administration which are more important in light of the economic condition of the

⁶⁸⁰ Concerning parishes, the *parochus* is the only legal representative of the parish (c. 532). Canon 537 requires that each parish is to have a finance council which is regulated by universal law as well as by norms issued by the diocesan bishop. The purpose of the finance council, according to c. 537, is to provide the pastor with the assistance of the Christian faithful in the administration of parish goods.

⁶⁸¹ Cf. *CCEO*, c. 263, §4; *CIC*, c. 1277. *Episcopus dioecesanus quod attinet ad actus administrationis ponendos, qui, attento statu oeconomico dioecesis, sunt maioris momenti, consilium a rebus oeconomicis et collegium consultorum audire debet; eiusdem tamen consilii atque etiam collegii consultorum consensu eget, praeterquam in casibus iure universali vel tabulis foundationis specialiter expressis, ad ponendos actus extraordinariae administrationis. Conferentiae autem Episcoporum est definire quinam actus habendi sint extraordinariae administrationis.*

diocese.⁶⁸² In matters of more important administration, the diocesan bishop must hear (*audire debet*) the opinion of two bodies, the diocesan finance council (c. 492) and the college of consultors (c. 502). This consultation is necessary for the validity of his act (c. 127, §1).⁶⁸³ The second part of the canon treats acts of extraordinary administration.⁶⁸⁴ To place an act of extraordinary administration, the bishop needs to obtain the consent (*consensu eget*) of both the finance council and the college of consultors, which consent also is necessary for the validity of the act (c. 127, §1). The canon places the responsibility on the episcopal conference to determine which acts are to be regarded as extraordinary administration.⁶⁸⁵

The evident purpose of this canon is to protect diocesan assets from arbitrary and unwise decisions by requiring the bishop to seek the advice or consent of the finance

⁶⁸² Ordinary administration is divided into routine and non-routine acts. Ordinary administration includes whatever is necessary for the preservation of Church property and whatever actions are required to collect the income from such property; also, the payment of current bills and taxes, the making of ordinary repairs, and keeping an ordinary bank account. Ordinary acts of administration also include such acts as are to be done at fixed intervals (monthly, quarterly, annually) as well as those which are necessary for the customary transaction of business.

Routine acts of ordinary administration are performed by the diocesan finance officer, who administers diocesan goods under the supervision of the diocesan bishop (c. 494, §3). Non-routine acts are acts of ordinary administration which are more important in the light of the economic condition of the diocese.

⁶⁸³ John Renken comments on the phrase “matters of more important administration” which require the counsel of the diocesan finance council and the college of consultors before the diocesan bishop places “non-routine” acts of ordinary diocesan administration “which are more important in the light of the economic condition of the diocese.” He says that the meaning of the phrase “more important” is not explained. It may be reasonable to hold as a rule of thumb that the “matters of greater importance” in c. 1267 would involve gifts whose value surpasses the minimum amount set by the conference of bishops for the alienation of ecclesiastical goods (c. 1292, §1). In addition, it may also happen that a gift is considered to be of greater importance if certain notoriety is attached to it or its donor. In the final analysis, the decision on the meaning of the term rests with the person wishing to refuse the gift, unless its meaning has been certainly defined by a higher authority. In *Church Property*, 129; ID., “Acts of Extraordinary Administration,” in S.A. EUART, J.A. ALESANDRO, and P.HARTMANN (eds.), *Roman Replies and CLSA Advisory Opinions*, Washington, CLSA, 2010, 160-168 (=RR). Cf. R.J., KASLYN, “Accountability of Diocesan Bishops: A Significant Aspect of Ecclesial Communion,” in *The Jurist*, 67(2007), 109-152; and F. MORRISEY, “Ordinary and Extraordinary Administration: Canon 1277,” in *The Jurist*, 48(1998), 709-726.

⁶⁸⁴ Acts of extraordinary administration are “acts which exceed the limits and manner of ordinary administration” (c. 1281, §1).

⁶⁸⁵ For a detailed explanation of extraordinary administration and the particular law for the United States, see RENKEN, *Church Property*, 179-187.

council and college of consultors. According to c. 127, §3, “all whose consent or council is required are obliged (*obligatione tenentur*) to offer their opinion sincerely.” Thus, not only do the faithful have the right that their bishop make the required consultations, they also have the right that those giving their opinions do so sincerely and not just be a “rubber stamp” for every project of the bishop.

Rights concerning diocesan taxes

Canon 1263. After the diocesan bishop has heard the finance council and the presbyteral council, he has the right to impose a moderate tax for the needs of the diocese upon public juridic persons subject to his governance; this tax is to be proportionate to their income. He is permitted only to impose an extraordinary and moderate exaction upon other physical and juridic persons in case of grave necessity and under the same conditions, without prejudice to particular laws and customs which attribute greater rights to him.⁶⁸⁶

This canon is about diocesan taxes, both ordinary and extraordinary. Taxes are considered a secondary means of financing and, in a certain sense, supplementary to voluntary offerings.⁶⁸⁷ Canon 1263 envisions the following types of taxes:⁶⁸⁸ a) the

⁶⁸⁶ Cf. *CCEO*, c. 1012; *CIC*, c. 1263. Ius est Episcopo dioecetano, auditis consilio a rebus oeconomicis et consilio presbyterali, pro dioecesis necessitatibus, personis iuridicis publicis suo regimini subiectis moderatum tributum, earum redditibus proportionatum, imponendi; ceteris personis physicis et iuridicis ipsi licet tantum, in casu gravis necessitatis et sub iisdem condicionibus, extraordinariam et moderatam exactionem imponere, salvis legibus et consuetudinibus particularibus quae eidem potiora iura tribuant.

⁶⁸⁷ See J.T. MARTÍN DE AGAR, “Bienes temporales y misión de la Iglesia,” in *Manual de Derecho Canónico*, 2nd ed., Pamplona, 1991, 660-661(=MARTÍN DE AGAR, “Bienes temporales y misión de la Iglesia”); see also D. TIRAPU, Commentary on c. 1263, in *Exegetical Comm*, vol. 4/1, 55.

⁶⁸⁸ Martín De Agar observes that the taxes which are contemplated in the Code have certain characteristics: “a) it is up to the diocesan bishop to determine how to impose them in the most appropriate and effective manner; b) they are of a general character; one canon not impose them on a singular subjects; c) they are diocesan: their establishment, subjects, collection, and final application must all take place in the same diocese; d) the collection quota must always be moderate and attuned to the financial state of each passive subject. Moderation implies that the real needs of the diocese are assessed in conjunction with those proper to the subject persons, lest the diocese hinder from attaining their ends. The Code makes specific reference to the income, which fashions the taxes as burdens upon the rent and, indirectly, hinders their status as taxes on the stable patrimony of the persons so obliged.” In MARTÍN DE AGAR, “Bienes temporales y misión de la Iglesia,” 661.

ordinary tribute,⁶⁸⁹ b) a specific ordinary tribute, c) an extraordinary diocesan tribute,⁶⁹⁰ d) and possibly other taxes based on particular laws and customs. The canon has a number of conditions that must be met before the bishop can impose taxes. Regarding the ordinary tax, the bishop must first consult the finance council and the presbyteral council. Second, the tax must be moderate. Third, it must be needed for the diocese. Fourth, it can only be imposed on public juridic persons subject to the bishop's governance. Fifth, it must be proportionate to their income. Regarding the extraordinary tax imposed on other physical and juridic persons, the other conditions are, first, that the tax be moderate and, second, that it be levied only in a case of grave necessity. These are all restrictions on the bishop's power and imply the right of the faithful not to be taxed unless all the conditions of the canon are met.⁶⁹¹

⁶⁸⁹ F. AZNAR says of the ordinary tribute: a) this is a fixed general contribution to the needs of the diocese; b) imposition of this tax is the responsibility of the diocesan bishop by a *decree* which, due to its special character and meaning, may specify as exactly as possible the persons taxed and the amount to be paid; c) for the decree to be valid the ordinary must solicit the opinion of the presbyteral council and the finance council (c. 127, §1); d) the remaining legal details of the tax must be determined: frequency, installments, purposes, method of payment, exemptions, etc.; e) the subjects to be taxed are the public juridic person subject to the bishop's jurisdiction; f) the amount of the tax must be moderate to the income of each juridical person affected. In AZNAR, *La administración de los bienes temporales*, 99. See also MARTÍN DE AGAR, "Bienes temporales y misión de la Iglesia," 661.

⁶⁹⁰ D. Tirapu observes, regarding the specific ordinary tribute, that the so called *seminary tax* may be mentioned, to provide for the needs of a seminary (c. 264). All juridical persons are subject to this tax, both public and private, if they have an establishment in the diocese, regardless of whether they are subject to the bishop's jurisdiction. The tax shall be moderate according to the seminary's actual needs that are not covered by other means. Certain subjects are exempt from this tax, such as juridical persons who live solely on alms or who have duties similar to those of a seminary.

The extraordinary diocesan tribute is a contribution for cases of extreme necessity that cannot be established as a fixed tax. The general conditions of an extraordinary tax are the same as for an ordinary tax, but the taxable subjects are different. An extraordinary tax includes private juridical persons and physical persons subject to the bishop's jurisdiction. See TIRAPU, Commentary on c. 1263, in *Exegetical Comm*, vol. 4/1, 57.

⁶⁹¹ Cf. J.A. RENKEN, "Canon 1263: Parish Financial Goals," in *RR*, 2008, 122-124.

Conclusion

In this chapter, we have explored rights common to all the faithful in the *munus regendi* of the Church as found in the canons of Books II and V of the Code of Canon Law. With respect to Book II, various explicit and implicit rights were identified in several categories on associations of the faithful, the diocese, the parish, and diocesan and parish registers. Additional explicit and implicit rights of all the faithful were identified in Book V. These were treated in three categories on donations of the faithful, duties of administrators of temporal goods, and financial duties of the diocesan bishop.

We identified a number of rights in Books II that are explicit in the wording of the canons. Regarding associations of the faithful, these explicit rights are the fundamental right to establish associations (c. 215), even by means of a private agreement (c. 299, §1), in which the faithful are free to pursue the purposes of associations (c. 298, §1); the right of members of an association to issue particular norms regarding the association, to hold meetings, and to designate moderators, officials, and administrators of goods (c. 309); and, in a private association of the faithful which has not been established as a juridic person, to exercise collectively the rights involved in managing the association (c. 310).⁶⁹²

Most of the rights common to all the faithful in the canons of Books II and V are implicit. As with the canons on the *munus docendi* and the *munus sanctificandi*, these rights of the *munus regendi* by and large are implicit in the obligations of office holders and in other requirements of the law.

⁶⁹² Other explicit rights are noted below.

The faithful who belong to associations enjoy all the rights and privileges of membership (c. 306). They have the right not to be rejected for membership in an association solely for the reason of their membership in another association (c. 307, §2), and they may be dismissed from an association only for a just cause according to the norm of law and the statutes (c. 308). They have the right to regulate their association's internal organisation, to hold meetings, to have their own officials, to administer their goods according to the norm of their statutes (c. 309), and to guide and direct the association (c. 321).

With respect to implicit rights in their diocese, the faithful have the right to the pastoral care and ministry of their bishop (c. 383); the right to be instructed in the truths of the faith through the preaching of their bishop and to have the integrity of their faith defended (c. 386); and the right to the spiritual means for growing in holiness according to their own vocation (c. 387). They have the right to the *Missa pro populo* celebrated personally by their bishop (c. 388); the right to have the law of the Church enforced by the bishop so that abuses do not creep into ecclesiastical discipline (c. 392); and the right to apostolic works organized and overseen by the diocese under the supervision of the bishop (c. 394). They also have the right to the bishop's residence and presence in the diocese for the fulfillment of their diocesan rights (c. 395), and they have the right to a canonical visitation by their bishop or his delegate in accord with the law (c. 396).

At the level of the parish, the faithful have the right to be instructed in the truths of the faith through homilies and catechetical instruction, to have opportunities to engage in apostolic works, to have a Catholic education for the children and youth of the parish, to have an outreach to those who have ceased the practice of their religion or do not profess

the true faith, to have the Eucharist as the center of the parish assembly, to be nourished through the devout celebration of the sacraments, to have opportunities frequently to approach the sacraments of the Most Holy Eucharist and penance, to be led to the practice of prayer and to take part consciously and actively in the sacred liturgy, and to have liturgical celebrations that are free of abuses (c. 528). The faithful also have the right to the pastoral care and leadership of their pastor (c. 529), to have a pastoral council of the parish in accord with diocesan law (c. 536), and to have a parish finance council (c. 537).

With respect to diocesan and parish registers, the faithful have the explicit right to obtain from the archives of the diocese, either personally or through proxy, a copy of public documents pertaining to their personal status (c. 487, §2). They also have several implicit rights. In virtue of their right to privacy, they have the right that their records with respect to criminal cases be destroyed in accord with c. 489, §2. They also have the right that the records of the diocese and all churches in it be well maintained and safeguarded (c. 491). At the parish level, they have the right to have their records pertaining to their juridical status kept in the prescribed parochial registers; the right to obtain authentic documents, affixed with the parish seal, pertaining to their canonical status; and the right to have these records and documents protected and preserved, including older registers belonging to parishioners who have died (c. 535).

Two canons of Book V of the Code, on the temporal goods of the Church, explicitly grant rights to the faithful. Canon 1261, §1 says that the faithful are free to give temporal goods for the benefit of the Church; and c. 1299, §1 states the right of persons to give their goods for pious causes through an act *inter vivos* or an act *mortis causa*. Most of the rights in Book V, however, are implicit in the wording of the canons.

The faithful have the implicit right to give donations to the competent superior or administrator in the knowledge that the latter will transmit them to the juridic person; they have the right not to have their offerings refused except in accord with the conditions of the law; and they have the right to have their donations used for the purposes for which they were given (c. 1267). The faithful have the right to have their wills respected by Church authorities (c. 1300) and fulfilled in accord with their wishes (c. 1301). They have the right that their pious trusts be safeguarded and correctly executed (c. 1302) and that their pious foundations be protected and invested cautiously and usefully, which includes the required consultations of the finance council and other concerned persons (c. 1305). Moreover, the faithful have the right that their donations and bequests be administered responsibly in accord with the canonical obligations binding all administrators of temporal goods (cc. 1284, 1287). Moreover, the faithful who are employees of the Church have the right that administrators meticulously observe the applicable civil laws according to Church principles, and they have the right to just and decent wages that provide fittingly for their own needs and those of their family (c. 1286).

The faithful also have some rights with respect to certain fiscal acts of the diocesan bishop. They have the right that their bishop makes the required consultations before placing an act of ordinary administration which is more important in light of the economic condition of the diocese as well before placing any act of extraordinary administration (c. 1277). Finally, the faithful have the right not to be taxed by the diocesan bishop except in accord with the conditions of the law (c. 1263).

GENERAL CONCLUSION

In this study, we have identified the explicit and implicit rights common to all the faithful in the *Code of Canon Law*, also noting the counterpart canons of the *Code of Canons of the Eastern Churches*. In Chapter One, we focused chiefly on the fundamental rights of the faithful, that is, the “constitutional” rights of the faithful in Title I of Book II of the Code. This chapter surveyed the Church’s teaching and canon law on the fundamental rights of the faithful as this is developed in papal teachings, the documents of Vatican II, and in cc. 208-223 of the 1983 Code.

The focus of Chapter Two was the rights of all the faithful in Book III of the Code with respect to the teaching office of the Church (the *munus docendi Ecclesiae*). We chiefly considered rights to the ministry of the divine word, especially preaching and catechetical instruction (cc. 756-780); to participate in the mission action of the Church (cc. 781-792); to Catholic education, especially by means of schools, Catholic universities and other institutes of higher studies, and ecclesiastical universities and faculties (cc. 781-821); and to sound Catholic doctrine in instruments of social communication and books in particular (cc. 822-832).

Chapter Three surveyed the rights in Book IV of the Code, titled “The Sanctifying Office of the Church” (*De Ecclesiae munere sanctificandi*). The chapter was divided into seven parts: rights to the official liturgical celebrations of the Church, explicit rights to the sacraments, implicit rights to the sacraments, rights to the sacraments in danger of death, rights to preparation for the sacraments, rights to Church funerals, and rights concerning churches.

The focus of Chapter Four was on the office of governing, or ruling (*munus regendi*), which consists of all the Church's activities other than those of the teaching and sanctifying offices. It includes Church governance, financial administration, and many apostolic activities. The entire body of canon law, including the two Codes, pertains to the *munus regendi*. This final chapter dealt with two books of the Code in which the faithful have explicit and implicit rights in the *munus regendi*. These are Book II of the Code, titled "The People of God" (*De Populo Dei*), and Book V, "The Temporal Goods of the Church" (*De bonis Ecclesiae temporalibus*). Other rights of the *munus regendi* common to the *christifideles* are found in Books I, VI, and VII of the Code (Appendices One and Two).

Explicit Rights

In our study, we have identified a total of forty-six canons that explicitly name rights common to all the faithful. The Code uses various expressions to indicate explicitly a right. The word *ius* indicates a strict right except when the word is used in its objective sense, that is, when it refers to a law or another objective norm (custom, general administrative norm, statute). The Code uses expressions like *ius est*, *ius habet*, *iure gaudet*, etc. It also applies equivalent terminology to indicate explicitly a right, such as *fas est*, *integrum est*, *libertas est*, *potest/possunt*, etc. A special comment needs to be said about *potest/possunt*. If the Latin word should be translated by the English word "may," it indicates a right. When the legislator says the faithful *may* do such and such, he accords them the right to do so. The same word *potest*, however, should be translated by the English word "can" when indicating a capability or power to do something. If, for instance, the legislator says all the faithful can be deputed for some ecclesial service, it means they are

radically capable of exercising that service, not that they have the right to do it; for they must first be deputed. Thus, the same word in Latin may indicate a right, or it may not, depending on the meaning of the law.

Fundamental rights. Part I of Book II of the Code, in Title I, treats the fundamental rights that are common to all the baptized faithful. This title names twelve explicit rights. The terms that are employed by the legislator in these canons are *ius habent* (cc. 211, 216, 217), *ius est* (cc. 212, §3, 213, 214, 221, §2, 221, §3), *iure gaudent* (c. 219), *iusta libertate fruuntur* (c. 218), and *integrum est* (c. 212, §2, 215).

Munus docendi. There are four explicit rights of the faithful in the canons of Book III of the *Code of Canon Law*. The legislator uses the term *ius* in three canons (cc. 747, §1, 800, §1, 807) and the equivalent term *fas est* in one canon (c. 762). Canon 748, §1 uses the term *iure gaudent*, but it refers to a natural right of all people (*omnes homines*), not just the baptized *christifideles*.

Munus sanctificandi. The canons of Book IV are related to the Church's mission of sanctification. It explicitly names seven rights that are common to all the faithful. Only one of these canons has the word *ius* (c. 1214). Five of the canons use the word *potest* or *possunt*, meaning "may" (cc. 865, §2, 912, 917, 923, and 994). One canon uses *integrum est* (c. 991).

Munus regendi. Books I, II, V, VI, and VII of the *Code of Canon Law* have some canons recognizing rights common to all the faithful in various dimensions of the *munus regendi* of the Church. In the pertinent sections of these books, seventeen rights common to all the faithful are explicitly named. The terms employed here by the legislator for the rights include *ius* (cc. 178, 309, 1725) and equivalent terminology. The term *potest/possunt*

is used in ten canons (cc. 61, 98, §1; 111, §2, 112, §1, 2°, 112, §1, 3°, 187, 189, §4, 310, 1299, §1, 1727, §1). Other terms used are *integrum est* (cc. 299, §1, 1261, §1), *valent* (a synonym for *possunt* in c. 310), and a rare use of *facultas* to indicate a right (c. 1720, §1).

Implicit Rights

In our study of the implicit rights of the faithful, we have recognized and identified a total of 144 implicit rights. Implicit means that no right is explicitly mentioned, but the right is implied and may be inferred. These implicit rights can be categorized in two ways. The first is to distinguish those rights flowing from the obligations of officeholders and ministers from those rights based on other requirements of the law. The second way is to look for certain grammatical indicators that frequently imply a right in canon law.

Rights flowing from the obligations of office holders and ministers. Whenever an officeholder or another has a legal obligation to fulfill on behalf of the community, the faithful have a corresponding right that this duty be fulfilled, but this right is implicit. These implicit rights are very numerous in the Code. Just limiting our count to the rights common to all the faithful, we find forty-three rights flowing from the obligations of office holders and ministers. For instance, with regard to the law on pious wills in Book V, the competent authorities are obliged to fulfill them faithfully. Fidelity to the intention of the donor is a cardinal principle of canon law, and it extends even to the manner of the administration and distribution of the goods to be diligently fulfilled (*diligentissime impleantur*, c.1300). The faithful thus have the right that their wills be fulfilled faithfully upon their death.

Rights based on other requirements of the law. Not all implicit rights are based on obligations of office holders and ministers. Many are implied in other requirements of the

law. For example, c. 902 accords priests the right to concelebrate the Eucharist “unless the welfare of the Christian faithful requires or suggests otherwise.” This excepting clause is a restriction on the right of priests which implies several rights of the faithful as discussed above in the third chapter. We have identified a total of 101 canons that have implicit rights in this category.

*Grammatical indicators implying strong rights.*⁶⁹³ Appendix Three demonstrates another way of identifying implicit rights. This is to categorize them by certain grammatical indicators of strong rights and milder rights as well as rights implied in canons with no grammatical indicators. The first category consists of laws with forceful verbs and expressions that imply rights. These fall into two kinds. The first is that of canons with strong commands, prohibitions, requirements, or assertions in the present tense indicative mood, in either the active or passive voice. These include words such as *debet*, *tenetur*, *oportet*, *nequit*, *non postest*, *nefas est*, *officium est*, etc. There are fifty-two canons with such verbs that imply rights common to all the faithful (Appendix Three, no. I A).

The second kind of forceful expression, less common, is the passive periphrastic, which is said to be “the strongest Latin command” translated by the English “must.”⁶⁹⁴ Six canons imply a right of the faithful by the use of this grammatical construction (Appendix Three, no. I B). The passive periphrastic conjugation is composed of the future passive participle in the nominative case and *esse* in the required tense,⁶⁹⁵ which is always the present tense in canon law (*est*, *sunt*). The passive periphrastic imposes a grave obligation.

⁶⁹³ For this treatment, we mainly rely on HUELS, *Liturgy and Law*, 234-236.

⁶⁹⁴ Foreword to the Translation, *Code of Canon Law Latin-English Edition*, Washington, CLSA, 1998xix.

⁶⁹⁵ John F. COLLINS, *A Primer of Ecclesiastical Latin*, Washington, D.C., The Catholic University of America Press, 1985, 145.

For example, c. 1722 allows the ordinary at any stage of the penal process to place certain restrictions on someone accused of committing a crime.⁶⁹⁶ The canon then adds that, once the reason for them ceases, “all these measures must be revoked.” The legislator admonishes the ordinary with the strongest possible command: *omnia sunt revocanda*.

It stands to reason that, when the legislator uses a strong expression to impose a grave obligation on an office holder or minister, or to establish forcefully another requirement of the law, an equally strong right of the faithful is implied. Such rights are quite specific, and their violation is more clearly recognizable than rights in the next category in which less forceful grammatical expressions are used in the law. It follows that these strong rights, at least theoretically, should be more readily subject to vindication than those implied in canons with milder obligations and requirements.

Exhortations and mild requirements of the law implying rights. There are an additional two kinds of grammatical expressions that often imply rights in canon law, but these are mild commands in the present subjunctive and the use of the predicate genitive. A very common construction in canon law is the present subjunctive, often called the jussive subjunctive, because it is a form of command, even if mild. In canon law, the present subjunctive frequently is an exhortation directed to an office holder. It is used mostly to highlight the general requirements and goals of the office rather than to lay down specific duties or actions that must be undertaken. It is translated into English as *should*, or

⁶⁹⁶ Can. 1722. Ad scandala praevenienda, ad testium libertatem protegendam et ad iustitiae cursum tutandum, potest Ordinarius, audito promotore iustitiae et citato ipso accusato, in quolibet processus stadio accusatum a sacro ministerio vel ab aliquo officio et munere ecclesiastico arcere, ei imponere vel interdicere commorationem in aliquo loco vel territorio, vel etiam publicam sanctissimae Eucharistiae participationem prohibere; quae omnia, causa cessante, sunt revocanda, eaque ipso iure finem habent, cessante processu poenali.

is to, do such and such. The Code has fifty-six canons with such exhortations that imply rights of the Christian faithful (Appendix Three, no. II A).

A second mild form of grammatical expression which may imply a right is the predicate genitive, found in three canons with respect to implicit rights of the faithful (Appendix Three, no. II B). This Latin construction consists of a noun in the genitive case, plus *est* or *sit* and an infinitive. It can indicate a competency or an obligation. If the latter, a right is implied, but the right is not a strong one. For example, c. 767, §4 says that “it is for the pastor or rector of a church to take care” (*parochi aut ecclesiae rectoris est curare*) that the prescripts on the homily are observed conscientiously. This is clearly an obligation that implies the right of the faithful to have homilies given in accord with the law. However, it is a general obligation, not a specific one as seen in the second paragraph of that same canon, which forcefully requires a homily at all Masses on Sundays and holy days.

No grammatical indications. Finally, Appendix Three has a list of twenty-five canons that imply rights but without any of the above grammatical indicators (no. III). The rights can only be known after studying the canon in text and context and, as may be necessary, consulting canonical commentaries and specialized studies to understand the meaning and import of the canon.

Vindicating rights. As noted in the Introduction to this study, the vindication of rights by means of a formal or informal, canonically recognized procedure is beyond the scope of this study. Nevertheless, a few observations stemming from the results of this thesis are in order. The first is based on the categories of law in Appendix Three. The highly imperative, forceful expressions of the law which impose specific requirements, obligations, or prohibitions imply rights that are equally important, and their violation,

whether due to negligence or malice (cf. c. 128), is a serious canonical offence (though in most cases not a crime). In contrast, the rights implied in an exhortation using the present subjunctive usually follow from general responsibilities, not precise obligations. The faithful, in vindicating their rights, and the canonical advocate in assisting them, need to be aware of this distinction, as the right implied in a law in this latter category is not easily vindicated because of its very lack of specificity.

To illustrate this, we need only take as an example the canon just mentioned on the liturgical homily. Using the strongest language, c. 767, §2 speaks about the canonical obligation to preach the homily. The homily must be given (*homilia habenda est*) at all Masses on Sundays and holy days of obligation that are celebrated with a gathering of people. The canon adds that it cannot be omitted except for a grave cause. Certainly, the habitual neglect of this requirement by one's pastor would be an abuse of the liturgy and the violation of the right of the faithful to have a homily as required by law. If parishioners were to become aware that this is a violation of their right and would then seek the services of a canonist, he or she should advise them to report this neglect to the competent authority and, if the latter fails to rectify the situation or does not reply (cf. c. 57), to take administrative recourse.

On the other hand, it would be more difficult to identify a violation of rights based solely on c. 767, §4, which says that it is for the pastor or rector of a church to take care that the prescripts on the homily are observed conscientiously. This general obligation implies a right but, in case of an alleged violation of the canon, the specific laws that are not being observed would have to be identified before one could assert that this right was not being met.

The vindication and defense of rights is itself a fundamental, constitutional right of all the faithful (c. 221, §1), as discussed in Chapter One.⁶⁹⁷ For the most part, however, the Christian faithful are unaware that they have rights in the Church; much the less do they know how rights may be vindicated. So, it falls to the canonist, principally, to educate the faithful about their rights in the Church, both those that are explicit and the many more that are implicit. For greatest effect, this formation should begin with those faithful in positions of pastoral leadership. Such education should include an overview of the various means for resolving disputes, grievances and violations of rights.

This thesis has identified a total of 190 canons of the Latin Code that establish or declare rights common to all the *christifideles*. We have yet to mention, however, the important canon 1752 that refers to the “supreme law” of the Church, the *salus animarum*. It is our earnest desire that education of the faithful about their rights can move the Church a step forward to achieving its mission of the salvation of souls along our journey to the kingdom of God.

⁶⁹⁷ Commenting on canon 221, Robert Kaslyn expresses the view that administrative tribunals would really help to resolve a lot of issues that affect the faithful, among them, employment issues, school and pastoral issues, disputes involving the liturgy or reception of the sacraments, etc. KASLYN, Commentary on c. 221, 280.

APPENDIX ONE

RIGHTS OF ALL THE FAITHFUL IN BOOK I OF THE *CIC*

The rights that are common to all the *christifideles* or all the Catholic faithful are in several Titles of Book I of the *Code of Canon Law*. (1) The canons pertaining to coercive laws and administrative acts are applicable to all the Catholic faithful but not to anyone else (cf. c. 11). In contrast, even non-baptized persons may benefit from favourable laws and administrative acts, such as certain rescripts. (2) Most of the canons on physical persons apply to the Catholic faithful. (3) The canons on ecclesiastical offices apply mainly to all the baptized eligible for a given office, since communion with the Catholic Church is required for any office (c. 149, §1), whereas full communion is required only for specified offices (those restricted to a cleric or religious, or when full communion is explicitly required by law).

Laws and Administrative Acts

Canon 18. Laws which establish a penalty, restrict the free exercise of rights, or contain an exception from the law are subject to strict interpretation.⁶⁹⁸

– The right to have a strict interpretation of onerous laws and a broad interpretation of favorable laws (implicit).

Canon 36 §1. An administrative act must be understood according to the proper meaning of the words and the common manner of speaking. In a case of doubt, those which refer to litigation, pertain to threatening or inflicting penalties, restrict the rights of a person, injure the acquired rights of others, or are contrary to a law which benefits private persons are subject to a strict interpretation; all others are subject to a broad interpretation.

§2. An administrative act must not be extended to other cases besides those expressed.⁶⁹⁹

–The right to a strict interpretation of onerous administrative acts and to a broad interpretation of favourable acts (implicit).

⁶⁹⁸ Cf. *CCEO*, c. 1500; *CIC*, c. 18. *Leges quae poenam statuunt aut liberum iurium exercitum coarctant aut exceptionem a lege continent, strictae subsunt interpretationi.*

⁶⁹⁹ Cf. *CCEO*, c. 1512, §§1-2; *CIC*, c. 36 §1. *Actus administrativus intellegendus est secundum propriam verborum significationem et communem loquendi usum; in dubio, qui ad lites referuntur aut ad poenas comminandas infligendasve attinent aut personae iura aliis quaesita laedunt aut adversantur legi incommodum privatorum, strictae subsunt interpretationi; ceteri omnes, latae.*
§2. *Actus administrativus non debet ad alios casus praeter expressos extendi.*

– The right not to be subject to an onerous administrative act that had been directed to another (implicit).

Canon 38. An administrative act, even if it is a rescript given *motu proprio*, lacks effect insofar as it injures the acquired right of another or is contrary to a law or approved custom, unless the competent authority has expressly added a derogating clause.⁷⁰⁰

–The right that an acquired right not be lost by an administrative act without a derogating clause (implicit).

Canon 50. Before issuing a singular decree, an authority is to seek out the necessary information and proofs and, insofar as possible, to hear those whose rights can be injured.⁷⁰¹

–The right to a fair process before a decree is issued (implicit).

Canon 57 §3. A presumed negative response does not exempt the competent authority from the obligation of issuing the decree and even of repairing the damage possibly incurred, according to the norm of c. 128.⁷⁰²

–The right, in administrative silence, to obtain a requested decree and to the reparation of damage caused by its non-issuance (implicit).

Canon 61. Unless it is otherwise evident, a rescript can be requested for another even without the person's assent and has force before the person's acceptance, without prejudice to contrary clauses.⁷⁰³

–The right to request a rescript for another (explicit = *potest impetrari*).

Canon 71. No one is bound to use a rescript given only in his or her favor unless bound to do so by a canonical obligation from another source.⁷⁰⁴

–The right not to have to use a rescript (implicit = *nemo tenetur*).

⁷⁰⁰ Cf. *CCEO*, c. 1515; *CIC*, c. 38. Actus administrativus, etiam si agatur de rescripto *Motu proprio* dato, effectum caret quatenus ius quaesitum laedit aut legi consuetudinive probatae contrarium est, nisi auctoritas competens expresse clausulam derogatoriam addiderit.

⁷⁰¹ Cf. *CCEO*, c. 1517, §1; *CIC*, c. 50. Antequam decretum singulare ferat, auctoritas necessarias notitias et probationes exquirat, atque, quantum fieri potest, eos audiat quorum iura laedi possint.

⁷⁰² Cf. *CCEO*, c. 1518; *CIC*, c. 57, §3. Responsum negativum praesumptum non eximit competentem auctoritatem ab obligatione decretum ferendi, immo et damnum forte illatum, ad normam can. 128, reparandi.

⁷⁰³ Cf. *CCEO*, c. 1528; *CIC*, c. 61. Nisi aliud constet, rescriptum impetrari potest pro alio, etiam praeter eius assensum, et valet ante eiusdem acceptationem, salvo clausulis contrariis.

⁷⁰⁴ Cf. *CIC*, c. 71. Nemo uti tenetur rescripto in sui dumtaxat favorem concessio, nisi aliunde obligatione canonica ad hoc teneatur.

Canon 77. A privilege must be interpreted according to the norm of can. 36, §1, but that interpretation must always be used by which the beneficiaries of a privilege actually obtain some favor.⁷⁰⁵

–The right to a favourable interpretation of a privilege (implicit).

Physical Persons

Canon 98 §1. A person who has reached majority has the full exercise of his or her rights.⁷⁰⁶

–The right of an adult to the full exercise of one’s rights (explicit = *habet suorum iurium exercitium*).

Canon 107 §1. Through both domicile and quasi-domicile, each person acquires his or her pastor and ordinary.

§2. The proper pastor or ordinary of a transient is the pastor or local ordinary where the transient is actually residing.

§3. The proper pastor of one who has only a diocesan domicile or quasi-domicile is the pastor of the place where the person is actually residing.⁷⁰⁷

–The right to a parish and diocese and the rights that go with them in virtue of domicile and quasi-domicile (implicit).

Canon 111 §2. Anyone to be baptized who has completed the fourteenth year of age can freely choose to be baptized in the Latin Church or in another ritual Church *sui iuris*; in that case, the person belongs to the Church which he or she has chosen.⁷⁰⁸

–The right to choose freely the Church *sui iuris* in which to be baptized (explicit = *libere potest eligere*).

Canon 112 §1. After the reception of baptism, the following are enrolled in another Church *sui iuris*:

⁷⁰⁵ Cf. *CCEO*, c. 1512, §3; *CIC*, c. 77. Privilegium interpretandum est ad normam can. 36, §1; sed ea semper adhibenda est interpretatio, qua privilegio aucti aliquam revera gratiam consequantur.

⁷⁰⁶ Cf. *CCEO*, c. 910; *CIC*, c. 98, §1. Persona maior plenum habet suorum iurium exercitium.

⁷⁰⁷ Cf. *CCEO*, c. 916; *CIC*, c. 107, §1. Tum per domicilium tum per quasi-domicilium suum quisque parochum et Ordinarium sortitur.

§2. Proprius vagi parochus vel Ordinarius est parochus vel Ordinarius loci in quo vagus actu commoratur.

§3. Illius quoque qui non habet nisi domicilium vel quasi-domicilium dioecesanum, parochus proprius est parochus loci in quo actu commoratur.

⁷⁰⁸ Cf. *CCEO*, c. 30; *CIC*, c. 111, §2. Quilibet baptizandus qui quartum decimum aetatis annum expleverit, libere potest eligere ut in Ecclesia latina vel in alia Ecclesia sui iuris baptizetur; quo in casu, ipse ad eam Ecclesiam pertinet quam elegerit.

2° a spouse who, at the time of or during marriage, has declared that he or she is transferring to the Church *sui iuris* of the other spouse; when the marriage has ended, however, the person can freely return to the Latin Church;

3° before the completion of the fourteenth year of age, the children of those mentioned in nn. 1 and 2 as well as, in a mixed marriage, the children of the Catholic party who has legitimately transferred to another Church *sui iuris*; on completion of their fourteenth year, however, they can return to the Latin Church.⁷⁰⁹

–The right of a spouse in an inter-ecclesial marriage to transfer to the Church *sui iuris* of the other spouse (implicit).

–The right to return to the Latin Church when the marriage has ended (explicit = *libere potest redire*).

–The right of children to return to the Latin Church *sui iuris* (explicit = *possunt ad redire*).

Offices

Canon 151. The provision of an office which entails the care of souls is not to be deferred without a grave cause.⁷¹⁰

–The right of the faithful to the *cura animarum* (implicit).

Canon 159. No one is to be presented unwillingly; therefore, a person who is proposed for presentation and questioned about his or her intention can be presented unless the person declines within eight useful days.⁷¹¹

–The right not to accept presentation for an office (unless required by vow or promise).

Canon 178. The person elected who has accepted an election which does not need confirmation obtains the office in full right immediately; otherwise, the person acquires only the *ius ad rem*.⁷¹²

⁷⁰⁹ Cf. *CCEO*, c. 32, 33, 30, 34; *CIC*, c. 112, §1. Post receptum baptismum, alii *Ecclesiae sui iuris* ascribuntur:

2° coniux qui, in matrimonio ineundo vel eo durante, ad *Ecclesiam sui iuris* alterius coniugis se transire declaraverit; matrimonio autem soluto, libere potest ad latinam Ecclesiam redire;

3° filii eorum, de quibus in nn. 1 et 2, ante decimum quartum aetatis annum completum itemque, in matrimonio mixto, filii partis catholicae quae ad aliam *Ecclesiam sui iuris* legitime transierit; adepta vero hac aetate, iidem possunt ad latinam Ecclesiam redire.

⁷¹⁰ Cf. *CIC*, c. 151. Provisio officii animarum curam secumferentis, sine gravi causa ne differatur.

⁷¹¹ Cf. *CIC*, c. 159. Nemo invitus praesentetur; quare qui praesentandus proponitur, mentem suam rogatus, nisi intra octiduum utile recuset, praesentari potest.

⁷¹² Cf. *CCEO*, c. 958; *CIC*, c. 178. Electus, acceptata electione, quae confirmatione non egeat, officium pleno iure statim obtinet; secus non acquirit nisi ius ad rem.

–The right to decline an election (implicit).

–The right, upon acceptance of an election, to obtain the office immediately if confirmation is not needed (explicit = *officium pleno iure statim obtinet*).

–The right, if the election needs confirmation, to seek the confirmation (explicit = *ius ad rem*).

Canon 179 §2. The competent authority cannot deny confirmation if the person elected has been found suitable according to the norm of can. 149, §1, and the election was conducted according to the norm of law.⁷¹³

–The right to confirmation of an election if the elect is suitable and the election was lawful (implicit).

Canon 187. Anyone responsible for oneself (*sui compos*) can resign from an ecclesiastical office for a just cause.⁷¹⁴

–The right to resign from office for a just cause (explicit = *potest renuntiare*).

Canon 189 §4. A resignation can be revoked by the one resigning as long as it has not taken effect; once it has taken effect it cannot be revoked, but the one who resigned can obtain the office by some other title.⁷¹⁵

–The right to revoke a resignation not yet effective (explicit = *revocari potest*).

–The right to obtain an office again by some other title (explicit = *consequi potest*).

⁷¹³ Cf. *CCEO*, c. 960; *CIC*, c. 179, §2. Competens auctoritas, si electum repperit idoneum ad normam can. 149, § 1, et electio ad normam iuris fuerit peracta, confirmationem denegare nequit.

⁷¹⁴ Cf. *CCEO*, c. 967; *CIC*, c. 187. Quisquis sui compos potest officio ecclesiastico iusta de causa renuntiare.

⁷¹⁵ Cf. *CCEO*, c. 971; *CIC*, c. 189, §4. Renuntiatio, quamdiu effectum sortita non fuerit, a renuntiante revocari potest; effectu secuto revocari nequit, sed qui renuntiavit, officium alio ex titulo consequi potest.

APPENDIX TWO

RIGHTS OF ALL THE FAITHFUL IN PENAL LAW AND PROCEDURES BOOK VI AND PART IV OF BOOK VII OF THE *CIC*

All the rights in Book VI of the *Code of Canon Law* are rights common to all the Catholic *christifideles*, as only they are subject to penalties imposed by law, by judge, or by competent ecclesiastical authority. It follows, therefore, that the rights in the canons on the penal procedure in Book VII of the Code (cc. 1717-1731) are also common only to the Catholic faithful. The other rights in Book VII are not exclusive to the *christifideles*, as discussed in the Introduction to this work.

Rights in Book VI: Sanctions in the Church

Canon 1313 §1. If a law is changed after a delict has been committed, the law more favorable to the accused is to be applied.⁷¹⁶

–The right to the more favourable penal law (implicit).

Canon 1318. A legislator is not to threaten *latae sententiae* penalties except possibly for certain singularly malicious delicts which either can result in graver scandal or cannot be punished effectively by *ferendae sententiae* penalties; he is not, however, to establish censures, especially excommunication, except with the greatest moderation and only for graver delicts.⁷¹⁷

–The right not to be threatened with *latae sententiae* penalties apart from the exceptions of c. 1318 (implicit).

⁷¹⁶ Cf. *CCEO*, c. 1412, §2; *CIC*, c. 1313, §1. Si post delictum commissum lex mutetur, applicanda est lex reo favorabilior.

⁷¹⁷ Cf. *CIC*, c. 1318. *Latae sententiae* poenas ne comminetur legislator, nisi forte in singularia quaedam delicta dolosa, quae vel graviori esse possint scandalo vel efficaciter puniri poenis ferendae sententiae non possint; censuras autem, praesertim excommunicationem, ne constituat, nisi maxima cum moderatione et in sola delicta graviora.

Canon 1319 §2. A penal precept is not to be issued unless the matter has been considered thoroughly and those things established in cann. 1317 and 1318 about particular laws have been observed.⁷¹⁸

–The right to a thorough consideration of one’s case and the observance of cc. 1317 and 1318 before a penal precept is imposed (implicit).

Canon 1321§1. No one is punished unless the external violation of a law or precept, committed by the person, is gravely imputable by reason of malice or negligence.⁷¹⁹

–The right not to be punished for a crime unless it is gravely imputable by reason of malice or of culpability (implicit).

Canon 1323. The following are not subject to a penalty when they have violated a law or precept:

- 1° a person who has not yet completed the sixteenth year of age;
- 2° a person who without negligence was ignorant that he or she violated a law or precept; inadvertence and error are equivalent to ignorance;
- 3° a person who acted due to physical force or a chance occurrence which the person could not foresee or, if foreseen, avoid;
- 4° a person who acted coerced by grave fear, even if only relatively grave, or due to necessity or grave inconvenience unless the act is intrinsically evil or tends to the harm of souls;
- 5° a person who acted with due moderation against an unjust aggressor for the sake of legitimate self-defense or defense of another;
- 6° a person who lacked the use of reason, without prejudice to the prescripts of cann. 1324, §1, n. 2 and 1325;
- 7° a person who without negligence thought that one of the circumstances mentioned in nn. 4 or 5 was present.⁷²⁰

–The right not to be penalized under the stated conditions (implicit).

⁷¹⁸ Cf. *CIC*, c. 1319, §2. Praeceptum poenale ne feratur, nisi re mature perpensa, et iis servatis, quae in cann. 1317 et 1318 de legibus particularibus statuuntur.

⁷¹⁹ Cf. *CCEO*, c. 1414, §1; *CIC*, c. 1321, §1. Nemo punitur, nisi externa legis vel praecepti violatio, ab eo commissa, sit graviter imputabilis ex dolo vel ex culpa.

⁷²⁰ Cf. *CCEO*, c. 1413, §1; *CIC*, c. 1323. Nulli poenae est obnoxius qui, cum legem vel praeceptum violavit:

- 1° sextum decimum aetatis annum nondum explevit;
- 2° sine culpa ignoravit se legem vel praeceptum violare; ignorantiae autem inadvertentia et error aequiparantur
- 3° egit ex vi physica vel ex casu fortuito, quem praevidere vel cui praeviso occurrere non potuit;
- 4° metu gravi, quamvis relative tantum, coactus egit, aut ex necessitate vel gravi incommodo, nisi tamen actus sit intrinsece malus aut vergat in animarum damnum;
- 5° legitimae tutelae causa contra iniustum sui vel alterius aggressorem egit, debitum servans moderamen;
- 6° rationis usu carebat, firmis praescriptis cann. 1324, § 1, n. 2 et 1325;
- 7° sine culpa putavit aliquam adesse ex circumstantiis, de quibus in nn. 4 vel 5.

Canon 1324. The perpetrator of a violation is not exempt from a penalty, but the penalty established by law or precept must be tempered or a penance employed in its place if the delict was committed:

- 1° by a person who had only the imperfect use of reason;
- 2° by a person who lacked the use of reason because of drunkenness or another similar culpable disturbance of mind;
- 3° from grave heat of passion which did not precede and hinder all deliberation of mind and consent of will and provided that the passion itself had not been stimulated or fostered voluntarily;
- 4° by a minor who has completed the age of sixteen years;
- 5° by a person who was coerced by grave fear, even if only relatively grave, or due to necessity or grave inconvenience if the delict is intrinsically evil or tends to the harm of souls;
- 6° by a person who acted without due moderation against an unjust aggressor for the sake of legitimate self-defense or defense of another;
- 7° against someone who gravely and unjustly provokes the person;
- 8° by a person who thought in culpable error that one of the circumstances mentioned in can. 1323, nn. 4 or 5 was present;
- 9° by a person who without negligence did not know that a penalty was attached to a law or precept;
- 10° by a person who acted without full imputability provided that the imputability was grave.

§2. A judge can act in the same manner if another circumstance is present which diminishes the gravity of a delict.

§3. In the circumstances mentioned in §1, the accused is not bound by a *latae sententiae* penalty.⁷²¹

–The right to a lighter penalty or a penance under the stated conditions (implicit).

⁷²¹ Cf. *CCEO*, c. 1413, §2, 1415; *CIC*, c. 1324, §1. Violationis auctor non eximitur a poena, sed poena lege vel praecepto statuta temperari debet vel in eius locum paenitentia adhiberi, si delictum patratum sit:

- 1° ab eo, qui rationis usum imperfectum tantum habuerit;
- 2° ab eo qui rationis usu carebat propter ebrietatem aliamve similem mentis perturbationem, quae culpabilis fuerit;
- 3° ex gravi passionis aestu, qui non omnem tamen mentis deliberationem et voluntatis consensum praecesserit et impedierit, et dummodo passio ipsa ne fuerit voluntarie excitata vel nutrita;
- 4° a minore, qui aetatem sedecim annorum explevit;
- 5° ab eo, qui metu gravi, quamvis relative tantum, coactus est, aut ex necessitate vel gravi incommodo, si delictum sit intrinsece malum vel in animarum damnum vergat;
- 6° ab eo, qui legitima tutelae causa contra iniustum sui vel alterius aggressorem egit, nec tamen debitum servavit moderamen;
- 7° adversus aliquem graviter et iniuste provocantem;
- 8° ab eo, qui per errorem, ex sua tamen culpa, putavit aliquam adesse ex circumstantiis, de quibus in can. 1323, nn. 4 vel 5;
- 9° ab eo, qui sine culpa ignoravit poenam legi vel praecepto esse adnexam;
- 10° ab eo, qui egit sine plena imputabilitate, dummodo haec gravis permanserit.

§2. Idem potest iudex facere, si qua alia adsit circumstantia, quae delicti gravitatem deminuat.

§3. In circumstantiis, de quibus in § 1, reus poena *latae sententiae* non tenetur.

Canon 1328 §1. A person who has done or omitted something in order to commit a delict and yet, contrary to his or her intent, did not commit the delict is not bound by the penalty established for a completed delict unless the law or precept provides otherwise.⁷²²

–The right not to be penalized for attempting to commit a crime without actually committing it (implicit).

Canon 1335. If a censure prohibits the celebration of sacraments or sacramentals or the placing of an act of governance, the prohibition is suspended whenever it is necessary to care for the faithful in danger of death. If a *latae sententiae* censure has not been declared, the prohibition is also suspended whenever a member of the faithful requests a sacrament or sacramental or an act of governance; a person is permitted to request this for any just cause.⁷²³

–Rights of the faithful to sacraments, sacramentals, and acts of governance from a minister or authority who is under censure (implicit).

Canon 1341. An ordinary is to take care to initiate a judicial or administrative process to impose or declare penalties only after he has ascertained that fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, reform the offender.⁷²⁴

–The right to avoid a penal process except as a last resort (implicit).

Canon 1342 §2. Perpetual penalties cannot be imposed or declared by decree, nor can penalties be so applied when the law or precept establishing them prohibits their application by decree.⁷²⁵

– The right to a judicial penal process in the stated cases (implicit).

⁷²² Cf. *CCEO*, c. 1416, §1, 1415; *CIC*, c. 1328, §1. Qui aliquid ad delictum patrandum egit vel omisit, nec tamen, praeter suam voluntatem, delictum consummavit, non tenetur poena in delictum consummatum statuta, nisi lex vel praeceptum aliter caveat.

⁷²³ Cf. *CCEO*, c. 1435, §2; *CIC*, c. 1335. Si censura vetet celebrare sacramenta vel sacramentalia vel ponere actum regiminis, vetitum suspenditur, quoties id necessarium sit ad consulendum fidelibus in mortis periculo constitutis; quod si censura latae sententiae non sit declarata, vetitum praeterea suspenditur, quoties fidelis petit sacramentum vel sacramentale vel actum regiminis; id autem petere ex qualibet iusta causa licet.

⁷²⁴ Cf. *CIC*, c. 1341. Ordinarius proceduram iudicalem vel administrativam ad poenas irrogandas vel declarandas tunc tantum promovendam curet, cum perspexerit neque fraterna correctione neque correptione neque aliis pastoralis sollicitudinis viis satis posse scandalum reparari, iustitiam restitui, reum emendari.

⁷²⁵ Cf. *CCEO*, c. 1402, §2; *CIC*, c. 1342, §1. Quoties iustae obstant causae ne iudicialis processus fiat, poena irrogari vel declarari potest per decretum extra iudicium; remedia poenalia autem et paenitentiae applicari possunt per decretum in quolibet casu.

§2. Per decretum irrogari vel declarari non possunt poenae perpetuae, neque poenae quas lex vel praeceptum eas constituens vetet per decretum applicare.

Canon 1347 §1. A censure cannot be imposed validly unless the offender has been warned at least once beforehand to withdraw from contumacy and has been given a suitable time for repentance.⁷²⁶

– The right not to observe an invalidly imposed censure (implicit).

Canon 1349. If a penalty is indeterminate and the law does not provide otherwise, the judge is not to impose graver penalties, especially censures, unless the seriousness of the case clearly demands it; he cannot, however, impose perpetual penalties.⁷²⁷

– The right not to be penalized by grave penalties except according to the conditions of the canon (implicit).

Canon 1352 §1. If a penalty prohibits the reception of the sacraments or sacramentals, the prohibition is suspended as long as the offender is in danger of death.

§2. The obligation to observe an undeclared *latae sententiae* penalty which is not notorious in the place where the offender is present, is suspended totally or partially whenever the offender cannot observe it without danger of grave scandal or infamy.⁷²⁸

– The right of an offender to receive the sacraments and sacramentals in danger of death (implicit).

– The right of an offender to the non-observance of the penalty in danger of grave scandal or infamy (implicit).

Canon 1353. An appeal or recourse from judicial sentences or from decrees, which impose or declare a penalty, has a suspensive effect.⁷²⁹

– The right to the non-observance of a penalty during an appeal or a recourse (implicit).

⁷²⁶ Cf. *CCEO*, c. 1407, §§1-2; *CIC*, c. 1347, §1. *Censura irrogari valide nequit, nisi antea reus semel saltem monitus sit ut a contumacia recedat, dato congruo ad resipiscentiam tempore.*

⁷²⁷ Cf. *CCEO*, c. 1409, §2; *CIC*, c. 1349. *Si poena sit indeterminata neque aliud lex caveat, iudex poenas graviores, praesertim censuras, ne irroget, nisi casus gravitas id omnino postulet; perpetuas autem poenas irrogare non potest.*

⁷²⁸ Cf. *CCEO*, c. 1435, §1; *CIC*, c. 1352, § 1. *Si poena vetet recipere sacramenta vel sacramentalia, vetitum suspenditur, quamdiu reus in mortis periculo versatur.*

§2. *Obligatio servandi poenam latae sententiae, quae neque declarata sit neque sit notoria in loco ubi delinquens versatur, eatenus ex toto vel ex parte suspenditur, quatenus reus eam servare nequeat sine periculo gravis scandali vel infamiae.*

⁷²⁹ Cf. *CCEO*, c. 1319, 1471, §1, 1487, §2; *CIC*, c. 1353. *Appellatio vel recursus a sententiis iudicialibus vel a decretis, quae poenam quamlibet irrogent vel declarent, habent effectum suspensivum.*

Canon 1362, §1. Prescription extinguishes a criminal action after three years unless it concerns:

1° delicts reserved to the Congregation for the Doctrine of the Faith;

2° an action arising from the delicts mentioned in can. 1394, 1395, 1397, and 1398, which have a prescription of five years;

3° delicts which are not punished in the common law if particular law has established another period for prescription.⁷³⁰

– The right not to be prosecuted once a certain time has passed (implicit).

Canon 1363 §1. Prescription extinguishes an action to execute a penalty if the offender is not notified of the executive decree of the judge mentioned in can. 1651 within the time limits mentioned in can. 1362; these limits are to be computed from the day on which the condemnatory sentence became *res iudicata*.

§2. Having observed what is required, the same is valid if the penalty was imposed by extrajudicial decree.⁷³¹

– The right not to be penalized except under the conditions of the canon (implicit).

Rights in Book VII, Part IV: The Penal Process

Canon 1717 §2. Care must be taken so that the good name of anyone is not endangered from this investigation.⁷³²

– The right to a good reputation (implicit).

Canon 1719. The acts of the investigation, the decrees of the ordinary which initiated and concluded the investigation, and everything which preceded the investigation are to be kept in the secret archive of the curia if they are not necessary for the penal process.⁷³³

– Rights to privacy and a good reputation (implicit).

⁷³⁰ Cf. *CCEO*, c. 1152, §§2-3; *CIC*, c. 1362, §1. Actio criminalis praescriptione extinguitur triennio, nisi agatur:

1° de delictis Congregationi pro Doctrina Fidei reservatis;

2° de actione ob delicta de quibus in can. 1394, 1395, 1397, 1398, quae quinquennio praescribitur;

3° de delictis quae non sunt iure communi punita, si lex particularis alium praescriptionis terminum statuerit.

⁷³¹ Cf. *CCEO*, c. 1153; *CIC*, c. 1363, §1. Si intra terminos de quibus in can. 1362, ex die quo sententia condemnatoria in rem iudicatam transierit computandos, non sit reo notificatum executorium iudicis decretum de quo in can. 1651, actio ad poenam exsequendam praescriptione extinguitur.

§2. Idem valet, servatis servandis, si poena per decretum extra iudicium irrogata sit.

⁷³² Cf. *CCEO*, c. 1468, §2; *CIC*, c. 1717, §2. Cavendum est ne ex hac investigatione bonum cuiusquam nomen in discrimen vocetur.

⁷³³ Cf. *CCEO*, c. 1470; *CIC*, c. 1719. Investigationis acta et Ordinarii decreta, quibus investigatio initur vel clauditur, eaque omnia quae investigationem praecedunt, si necessaria non sint ad poenalem processum, in secreto curiae archivio custodianur.

Canon 1720. If the ordinary thinks that the matter must proceed by way of extrajudicial decree:

1° he is to inform the accused of the accusation and the proofs, giving an opportunity for self-defense, unless the accused neglected to appear after being properly summoned.⁷³⁴

– The right of self-defense (explicit = *data facultate sese defendendi*).

Canon 1722. To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the ordinary, after having heard the promoter of justice and cited the accused, at any stage of the process can exclude the accused from the sacred ministry or from some office and ecclesiastical function, can impose or forbid residence in some place or territory, or even can prohibit public participation in the Most Holy Eucharist. Once the cause ceases, all these measures must be revoked; they also end by the law itself when the penal process ceases.⁷³⁵

–The right to have all restrictions revoked once the cause ceases (implicit).

–The right not to have to observe said restrictions when the penal process ceases (implicit).

Canon 1723 §1. The judge who cites the accused must invite the accused to appoint an advocate according to the norm of can. 1481, §1 within the time limit set by the judge.

§2. If the accused does not make provision, the judge is to appoint an advocate before the joinder of the issue; this advocate will remain in this function as long as the accused does not appoint an advocate personally.⁷³⁶

–The right of the defendant to the services of counsel (implicit).

⁷³⁴ Cf. *CCEO*, c. 1486; *CIC*, c. 1720. Si Ordinarius censuerit per decretum extra iudicium esse procedendum:

1° reo accusationem atque probationes, data facultate sese defendendi, significet, nisi reus, rite vocatus, comparere neglexerit;

⁷³⁵ Cf. *CCEO*, c. 1473; *CIC*, c. 1722. Ad scandala praevenienda, ad testium libertatem protegendam et ad iustitiae cursum tutandum, potest Ordinarius, audito promotore iustitiae et citato ipso accusato, in quolibet processus stadio accusatum a sacro ministerio vel ab aliquo officio et munere ecclesiastico arcere, ei imponere vel interdicere commorationem in aliquo loco vel territorio, vel etiam publicam sanctissimae Eucharistiae participationem prohibere; quae omnia, causa cessante, sunt revocanda, eaque ipso iure finem habent, cessante processu poenali.

⁷³⁶ Cf. *CCEO*, c. 1474; *CIC*, c. 1723, §1. Iudex reum citans debet eum invitare ad advocatum, ad normam can. 1481, §1, intra terminum ab ipso iudice praefinitum, sibi constituendum.

§2. Quod si reus non providerit, iudex ante litis contestationem advocatum ipse nominet, tamdiu in munere mansurum quamdiu reus sibi advocatum non constituerit.

Canon 1725.In the discussion of the case, whether done in written or oral form, the accused, either personally or through the advocate or procurator, always has the right to write or speak last.⁷³⁷

–The right of the accused always to have the last word in self-defense (explicit = *accusatus semper ius habeat*).

Canon 1726.If at any grade and stage of the penal trial it is evidently established that the accused did not commit the delict, the judge must declare this in a sentence and absolve the accused even if it is also established that criminal action has been extinguished.⁷³⁸

–The right to a verdict of non-guilty when evidently established by facts (implicit).

Canon 1727 §1.The accused can propose an appeal even if the sentence dismissed the accused only because the penalty was facultative or because the judge used the power mentioned in cann. 1344 and 1345.⁷³⁹

–The right to appeal a conviction even if no penalty is imposed (explicit = *proponere potest*).

Canon 1728 §2.The accused is not bound to confess the delict nor can an oath be administered to the accused.⁷⁴⁰

–The right not to confess a delict and right not to take an oath (implicit).

⁷³⁷ Cf. *CCEO*, c. 1478, §2; *CIC*, c. 1725. In causae discussione, sive scripto haec fit sive ore, accusatus semper ius habeat ut ipse vel eius advocatus vel procurator postremus scribat vel loquatur.

⁷³⁸ Cf. *CCEO*, c. 1482; *CIC*, c. 1726. In quolibet poenalis iudicii gradu et stadio, si evidenter constet delictum non esse a reo patratum, iudex debet id sententia declarare et reum absolvere, etiamsi simul constet actionem criminalem esse extinctam.

⁷³⁹ Cf. *CCEO*, c. 1482; *CIC*, c. 1727, §1. Appellationem proponere potest reus, etiam si sententia ipsum ideo tantum dimiserit, quia poena erat facultativa, vel quia iudex potestate usus est, de qua in cann. 1344 et 1345.

⁷⁴⁰ Cf. *CCEO*, c. 1471, §2; *CIC*, c. 1728, §2. Accusatus ad confitendum delictum non tenetur, nec ipsi iusiurandum deferri potest.

APPENDIX THREE

GRAMMATICAL INDICATORS OF IMPLICIT RIGHTS IN CANON LAW *

I. Forceful Expressions in the Law Implying Rights

A. Canons with strong commands, prohibitions, requirements, and assertions in the present tense indicative mood, active or passive voice

| | |
|---------|--|
| 57, §3 | <i>non eximit competentem auctoritatem</i> |
| 179, §2 | <i>denegare nequit</i> |
| 220 | <i>nemini licet</i> |
| 386 | <i>proponere et illustrare tenetur</i> |
| 388 | <i>debet applicare</i> |
| 392, §1 | <i>promovere et urgere tenetur</i> |
| 395, §1 | <i>tenetur lege</i> |
| 396, §1 | <i>tenetur obligatione</i> (also 528, §1) |
| 528, §2 | <i>invigilare tenetur</i> |
| 776 | <i>curare tenetur</i> |
| 773 | <i>proprium et grave officium est</i> |
| 794, §2 | <i>officium est omnia disponendi</i> |
| 810, §1 | <i>officium est</i> |
| 810, §2 | <i>officium habent</i> |
| 823 | <i>officium et ius est invigilandi</i> |
| 827, §2 | <i>adhiberi non possunt</i> |
| 843, §1 | <i>denegare non possunt</i> |
| 846, §1 | <i>serventur nemo addat, demat aut mutet</i> |
| 859 | <i>conferri potest et debet</i> |
| 885 | <i>obligatione tenetur curandi ut</i> |
| 914 | <i>parochi officium est curandi</i> |

* This appendix is discussed in the General Conclusion in the section on implicit rights.

| | |
|----------|---|
| 983, §1 | <i>nefas est prodere</i> |
| 984, §1 | <i>omnino prohibetur</i> |
| 984, §2 | <i>nullo modo uti potest</i> |
| 986, §1 | <i>obligatione tenetur</i> |
| 986, §2 | <i>obligatione tenetur</i> |
| 1177, §1 | <i>celebrari debent</i> |
| 1267, §2 | <i>repudiari nequeunt</i> |
| 1267, §3 | <i>nonnisi destinari possunt</i> |
| 1277 | <i>audire debet</i> |
| 1284 | <i>debet</i> |
| 1287 | <i>tenentur exhibendi</i> |
| 1299, §2 | <i>moneri debent</i> |
| 1301 | <i>vigilare potest ac debet</i> |
| 1302 | <i>debet exigere</i> |
| 1321, §1 | <i>nemo punitur</i> |
| 1323 | <i>nulli poenae est obnoxius</i> |
| 1324 | <i>temperari debet vel adhiberi</i> |
| 1328, §1 | <i>non tenetur</i> |
| 1335 | <i>vetitum suspenditur</i> |
| 1342, §2 | <i>irrogari vel declarari non possunt</i> |
| 1347, §1 | <i>irrogari valide nequit</i> |
| 1349 | <i>irrogare non potest</i> |
| 1352, §1 | <i>vetitum suspenditur</i> |
| 1352, §2 | <i>obligatio suspenditur</i> |
| 1353 | <i>habent effectum</i> |
| 1362, §1 | <i>actio extinguitur</i> (also 1363, §1) |
| 1717, §2 | <i>cavendum est ne vocetur</i> |
| 1723 | <i>debet invitare</i> |
| 1726 | <i>debet declarare absolvere</i> |
| 1728, §2 | <i>non tenetur</i> |

B. Canons with the passive periphrastic

| | |
|----------|-------------------------|
| 767, §2 | <i>habenda est</i> |
| 1176, §1 | <i>donandi sunt</i> |
| 1176, §2 | <i>celebrandae sunt</i> |
| 1183, §1 | <i>accensendi sunt</i> |
| 1720 | <i>esse procedendum</i> |
| 1722 | <i>sunt revocanda</i> |

II. Exhortations and Mild Requirements of the Law Implying Rights

A. Canons with the jussive subjunctive

| | |
|---------|---|
| 50 | <i>auctoritas exquirat</i> |
| 151 | <i>ne differatur</i> |
| 308 | <i>nemo dimittatur</i> |
| 383, §1 | <i>sollicitum se praebeat</i> |
| 386, §1 | <i>curet ut tradatur</i> |
| 386, §2 | <i>tueatur</i> |
| 387 | <i>promovere studeat</i> |
| 392, §2 | <i>advigilet</i> |
| 394 | <i>foveat atque curet</i> |
| 489, §2 | <i>destruantur</i> |
| 491, §1 | <i>curet ut serventur</i> |
| 528, §2 | <i>consulat sit; annitatur ut</i> |
| 535 | <i>prospiciat conscribantur atque asserventur</i> |
| 536 | <i>constituatur</i> |
| 537 | <i>habeatur</i> |
| 768 | <i>propanant</i> |
| 768, §2 | <i>impertiant</i> |
| 769 | <i>proponatur</i> |
| 770 | <i>ordinent</i> |
| 778 | <i>curentur impertiatur</i> |

| | |
|----------|---|
| 779 | <i>tradatur</i> |
| 802, §1 | <i>est curare ut condantur</i> |
| 802, §2 | <i>provideat ut condantur</i> |
| 804, §2 | <i>sollicitus sit deputentur</i> |
| 806, §2 | <i>curent ut sit</i> |
| 811, §1 | <i>curet ut erigatur</i> |
| 811, §2 | <i>habeantur</i> |
| 822, §1 | <i>adhibere satagant</i> |
| 836 | <i>excitare et illustrare sedulo curent</i> |
| 848 | <i>nihil petat</i> |
| 861, §2 | <i>solliciti sint</i> |
| 863 | <i>deferatur</i> |
| 866 | <i>confirmetur atque participet</i> |
| 867, §2 | <i>baptizetur</i> |
| 890 | <i>curent ut instruantur et accedant</i> |
| 891 | <i>conferatur</i> |
| 918 | <i>ministretur</i> |
| 921 | <i>reficiantur</i> |
| 922 | <i>ne differatur; advigilent ut reficiantur</i> |
| 937 | <i>vacare possint</i> |
| 964, §3 | <i>ne excipiantur</i> |
| 980 | <i>ne denegetur nec differatur</i> |
| 1001 | <i>curent subleventur</i> |
| 1167, §2 | <i>serventur</i> (also 1181) |
| 1177, §3 | <i>celebrentur</i> |
| 1188 | <i>maneat exponantur</i> |
| 1221 | <i>sit</i> |
| 1286 | <i>servent praestant, providere valeant</i> |
| 1299, §2 | <i>serventur</i> |
| 1305 | <i>deponantur et custodiantur</i> |
| 1318 | <i>ne comminetur ne constituat</i> |

| | |
|----------|--------------------------|
| 1319, §2 | <i>ne feratur</i> |
| 1341 | <i>promovendam curet</i> |
| 1349 | <i>ne irroget</i> |
| 1719 | <i>custodiantur</i> |
| 1723, §2 | <i>nominet</i> |

B. Canons with the predicate genitive

(It is for the ____ to do ____.)

| | |
|---------|--|
| 767, §4 | <i>parochi est curare</i> |
| 775, §1 | <i>Episcopi dioecesani est edicere</i> |
| 822, §2 | <i>pastoribus curae sit edocere</i> |

III. Rights Implied with No Grammatical Indicators

| |
|-------------------------|
| 18 |
| 36 |
| 38 |
| 71 |
| 77 |
| 107 |
| 112, §1 |
| 159 |
| 178 |
| 208 |
| 221, §1 |
| 306 |
| 307, §2 |
| 321 |
| 781 |
| 791, 4° (read with 781) |
| 834 |
| 844, §4 |

868, §2

889, §2

902

913, §2

976

977

1004

1222, §2

1263

APPENDIX FOUR

EXPLICIT AND IMPLICIT RIGHTS OF THE FAITHFUL IN THE *CIC* AND *CCEO*

| EXPLICIT RIGHT | | IMPLICIT RIGHT | |
|--------------------|----------------|----------------|---------------------------|
| <i>CIC</i> | <i>CCEO</i> | <i>CIC</i> | <i>CCEO</i> |
| - | - | 18 | 1500 |
| - | - | 36 (2 rights) | 1512, §§1-2 (2 rights) |
| - | - | 38 | 1515 |
| - | - | 50 | 1517, §1 |
| - | - | 57, §3 | 1518 |
| 61 | 1528 | - | - |
| - | - | 71 | - |
| - | - | 77 | 1512, §3 |
| 98, §1 | 910 | - | - |
| - | - | 107 | 916 |
| 111, §2 | 30 | - | - |
| - | - | 112, §1, 1° | 32 |
| 112, §1, 2° | 33 | - | - |
| 112, §1, 3° | 34 | - | - |
| - | - | 151 | - |
| - | - | 159 | - |
| 178 (2 rights) | 958 (2 rights) | 178 | 958 |
| - | - | 179, §2 | 961 |
| 187 | 967 | - | - |
| 189, §4 (2 rights) | - | - | - |
| - | - | 208 | 11 |
| 209 | 12 | - | - |
| 210 | 13 | - | - |
| 211 | 14 | - | - |
| 212 | 15 | - | - |
| 213 | 16 | - | - |
| 214 | 17 | - | - |
| 215 | 18 | - | - |
| 216 | 19 | - | - |
| 217 | 20 | - | - |
| 218 | 21 | - | - |
| 219 | 22 | - | - |
| - | - | 220 (2 rights) | 23 |
| - | - | 221, §1 | 24 |
| 221, §§2-3 | 24 | - | - |

| EXPLICIT RIGHT | | IMPLICIT RIGHT | |
|-----------------------|-------------|-----------------------|--------------------------------------|
| <i>CIC</i> | <i>CCEO</i> | <i>CIC</i> | <i>CCEO</i> |
| 222 | 25 | - | - |
| 223 | 26 | - | - |
| 299, §1 | - | - | - |
| - | - | 306 | - |
| - | - | 307, §2 | 578, §2 |
| - | - | 308 | 581 |
| 309 | - | - | - |
| 310 | - | - | - |
| - | - | 321 | - |
| - | - | 383 | 192, §1; 193, §2 678, §2; 192, §3 |
| - | - | 386 | 196 |
| - | - | 387 | 197 |
| - | - | 388 | 198 |
| - | - | 392 | 198 |
| - | - | 394 | 190 |
| - | - | 395 | 204 |
| - | - | 396 | 205, §1 |
| - | - | 487, §2 | 257, §2 |
| - | - | 489, §2 | 259, §2 |
| - | - | 491 | 261, §§1-2 |
| 519 | 282, §1 | - | - |
| - | - | 528 | 289 |
| - | - | 529 | 289, §3 |
| - | - | 535 | 296 |
| - | - | 536 & 537 | 295 |
| 747, §1 | 595, §1 | - | - |
| 748, §1 | - | - | - |
| 748, §2 | 586 | - | - |
| - | - | 757 | - |
| - | - | 761 | - |
| 762 | - | - | - |
| 763 | 610, §1 | - | - |
| - | - | 764 | 610, §§2-3 |
| - | - | 767, §2 | 614, §2 |
| - | - | 768, §1 | 616 |
| - | - | 769 | 626 |
| - | - | 770 | 615 |
| - | - | 773 | 617 |
| - | - | 775, §1 | 622, §3 |
| - | - | 775, §2 | 622, §2 |
| - | - | 776 | 624 |

| EXPLICIT RIGHT | | IMPLICIT RIGHT | |
|----------------|-------------|---------------------|--------------|
| <i>CIC</i> | <i>CCEO</i> | <i>CIC</i> | <i>CCEO</i> |
| - | - | 777 | - |
| - | - | 778 | - |
| - | - | 779 | - |
| - | - | 781 | 584, §1 |
| - | - | 794 | 628 |
| - | - | 800, §1 | - |
| - | - | 802 | 635 |
| - | - | 804, §2 | 639 |
| - | - | 806, §2 | 634, §3 |
| - | - | 807 | 640, §1 |
| - | - | 810 | - |
| - | - | 811 | 643 |
| - | - | 812 | 644 |
| - | - | 822 | 651 |
| - | - | 823 | 652 |
| - | - | 827, §§1-2 | 659 |
| - | - | 834 | 668, §1 |
| - | - | 836 | - |
| - | - | 843, §1 | 381, §2 |
| - | - | 844, §4 | 671, §4 |
| - | - | 846, §1 | 668, §2; 674 |
| - | - | 848 | - |
| - | - | 859 | - |
| - | - | 861, §2 | 677, §2 |
| - | - | 865, §2 | 682, §2 |
| - | - | 866 | - |
| - | - | 867, §2 | - |
| - | - | 868, §2 | 681, §4 |
| - | - | 883, 3 ^o | - |
| - | - | 885 | - |
| - | - | 889, §2 | - |
| - | - | 890 | 695, §1 |
| - | - | 891 | 695, §1 |
| - | - | 902 | 701 |
| 912 | - | - | - |
| - | - | 913, §2 | - |
| - | - | 914 | - |
| 915 | 712 | - | - |
| 917 | - | - | - |
| - | - | 918 | 713, §1 |
| - | - | 921 | 708 |
| - | - | 922 | - |
| - | - | 937 | - |

| EXPLICIT RIGHT | | IMPLICIT RIGHT | |
|----------------|-------------|---------------------------|---------------------|
| <i>CIC</i> | <i>CCEO</i> | <i>CIC</i> | <i>CCEO</i> |
| - | - | 964, §3 | - |
| - | - | 976 | 725 |
| - | - | 977 | 730 |
| - | - | 980 | - |
| - | - | 983 | 733 |
| - | - | 984 | 734, §§1-2 |
| - | - | 986, §2 | 735 |
| - | - | 990 | - |
| 991 | - | - | - |
| 994 | - | - | - |
| - | - | 1001 | 738, §1 |
| - | - | 1004 | - |
| 1058 | 778 | - | - |
| - | - | 1167, §2 | 867, §2 |
| - | - | 1176, §1 §2 (2 rights) | 875 |
| 1177, §2 | - | 1177, §§ 1, 3 | - |
| - | - | 1181 | 878 |
| - | - | 1183, §1 | 875, 876, §§1-2 |
| - | - | 1188 | 886 |
| 1214 | 869, §1 | - | - |
| - | - | 1221 | - |
| - | - | 1222 | 873 |
| - | - | 1254, §2 | 1007 |
| 1261, §1 | - | - | - |
| - | - | 1263 | 1012 |
| - | - | 1267, §§1-3 | 1016 |
| - | - | 1277 | 263, §4 |
| - | - | 1284 | 1020, §1-2, 1028 |
| - | - | 1286 | 1030 |
| - | - | 1287 | 1031 |
| - | - | 1299 | 1043 |
| 1299, §1 | 1043 | - | - |
| - | - | 1300 | 1044 |
| - | - | 1301 | 1045 |
| - | - | 1302, §2 | 1046, §2 |
| - | - | 1305 | 1049 |
| - | - | 1313, §1 | 1412, §§2-3 |
| - | - | 1318 | - |
| - | - | 1319, §2 | - |
| - | - | 1321, §1 | 1414 |

| EXPLICIT RIGHT | | IMPLICIT RIGHT | |
|----------------|-------------|-----------------|-----------------|
| <i>CIC</i> | <i>CCEO</i> | <i>CIC</i> | <i>CCEO</i> |
| - | - | 1323 | 1413, §1 |
| - | - | 1324 | - |
| - | - | 1328, §1 | 1418 |
| - | - | 1335 | 1435 |
| - | - | 1341 | - |
| - | - | 1342, §2 | - |
| - | - | 1347, §1 | 1407 |
| - | - | 1349 | 1409, §2 |
| - | - | 1352 (2 rights) | - |
| - | - | 1353 | 1487, §2 |
| - | - | 1362, §1 | 1152, §§2-3 |
| - | - | 1363 | 1153 |
| - | - | 1717, §2 | 1468 |
| - | - | 1719 | 1470 |
| - | - | 1720 | 1486 |
| 1720, §1 | 1486 | - | - |
| - | - | 1722 (2 rights) | 1473 (2 rights) |
| - | - | 1723 | 1474 |
| 1725 | 1478 | - | - |
| - | - | 1726 | 1482 |
| 1727, §1 | 1481 | - | - |

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BIOGRAPHICAL NOTE

Sarath Chandra Sagar Maddineni, C.Ss.R. was born in Nagrjunasagar, India on 5 January 1977. He entered the Congregation of the Most Holy Redeemer (Redemptorists) in 1992. He professed first vows in 2000 and final vows in 2004. He was ordained a priest on 18 May 2005 in St. Joseph Parish, Nagrjunasagar, India.

After a year of ordained ministry in India, Sarath Maddineni, C.Ss.R. opted to work in Kenya in the Redemptorist Mission. From 2006-2008 he was assisting in the Iruma Parish in Meru Diocese as well as conducting youth seminars and preaching retreats. In 2008-2011 he was made the pastor of Iruma parish, and during this time he was instrumental in beginning a primary school for the parish, which is named St. Alphonsus Academy. In 2011-2012 he worked as an associate pastor of St. Joseph Parish in Grande Prairie, Alberta, Canada, which is served by the Redemptorists. In 2012-2014 he was preaching retreats for laity, religious men and women, and seminarians in Kenya, Tanzania, and Uganda.

Sarath Maddineni, C.Ss.R. holds a Bachelor of Arts degree from Bangalore University (1999), a Bachelor's in Theology from St. Peter's Pontifical Institute in Bangalore (2004), a Master's in Canon Law from the University of Ottawa (2016), and a Licentiate in Canon Law from St. Paul University, Ottawa (2016). He was the Faculty Council representative of the licentiate students for the academic year 2015-2016. He began his Ph.D. programme at St. Paul in 2016. Since January 2017, he has held the office of Defender of the Bond for the Eparchy of Saint Sauveur of the Montreal Tribunal for the Greek Melkite Catholics in Canada and the office of a Collegial Judge at the Arch Diocese of Toronto since September 2018. Since July 2018 he is appointed as the associate pastor of St. Patrick's Parish in Toronto served by the Redemptorists.