

THE RIGHTS AND OBLIGATIONS^{1/} OF ALL THE CHRISTIAN FAITHFUL

[Canons 208-223]

BACKGROUND

In promulgating the revised Code, Pope John Paul II identified various reasons for canon law in the Church. Among these he listed safeguarding and defining the rights of each person in the Church. A remarkable feature of papal teaching in the 20th century has been its concern for the rights of persons and the application of this concern resonates well with the sensitivities of people today. Such a concern for the rights of all within the Church's legal system has not always been a principle concern of canon law, even though the law has provided for the protection of individual rights in many ways. To appreciate the significance of this new title in the Code, several preliminary comments are in order. They will be arranged in the following manner:

- The history of the development of the Code's listing of rights for all the Christian faithful;
- The various statements of rights and obligations in the revised Code;
- Approaches to interpreting rights in the Church;
- Applications of these statements to Catholics and others.

Developing the List

The 1917 Code did indicate that baptism constituted one person in the Church with rights and duties proper to Christians. It did not list what these rights and duties might be; however, except in a passing reference that lay persons were not to be denied the sacraments without just cause. Rather that Code concentrated on the rights and duties of special groups within the Church, particularly clerics, religious and various officeholders ranging from pastors to cardinals. Intermingled with rights and duties were lists of privileges, a fact that may be a clue to understanding how the 1917 Code viewed rights as such. Under an absolute monarchical system of government, rights were considered a concession of the sovereign, and in that sense they were privileges granted to certain persons but not to others. 19th century political theory recognized other understandings of rights, including the rights of one's social class rather than the individual as such. The canonical tradition reflects the experience of the Church in the 19th century, warding off encroachments of liberalism and *Risorgimento* that deprived the pope of his temporal domain even as it unified the country of Italy. Under such circumstance it would not be unusual to find the law more congenial to theories of rights that resonate with the *ancient regime*.

By the time the Code was promulgated in 1917, the magisterium had already begun to adopt a different view of human rights – one based on the dignity of the human person. The dichotomy between the church teaching on human rights in society and the provisions of church law did not at first raise serious problems for canonists. The Church is a unique society; thus, it was not at all clear that “subjective rights” as they were termed, pertained to individuals in the Church. The debate even occasioned a major congress on canon law, but the results were inconclusive as far as canonical practice was concerned.

The experience of the Second World War and the subsequent heightened awareness of human rights based on the dignity of the persons affected civil society and church leaders alike. The magisterium spoke out forcefully in defense of human dignity. As Vatican II dawned, voices in the Church were calling for consistency in church teaching and the recognition of rights internal to the Church – based on human dignity and the dignity that comes with regeneration in baptism.

Impact of Vatican II

The Council shifted some basic perspectives that affect the appreciation of rights. 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. All the Christian faithful participate actively in the communion and mission of the Church, and based on their baptismal dignity, share a common concern for building up the body of Christ (LG32). This equality in

dignity and action precedes any differentiation in terms of function and standing in the Church and provides a newly understood basis for addressing fundamental rights in the Church.

The Council placed the action of Christ as central to the Church. The right and duty of lay persons to the apostolate, for example, are said to arise from their union with Christ (AA 3); this is hardly a privilege or concession by ecclesiastical authorities. Christ is also central to the understanding of clergy, who as sacred ministers are transformed by Christ into servants for all the Church (LG 32). While the canonical determination of how duties are to be carried out and what rights are to be enforceable in church law is made by ecclesiastical authority, the foundation for such rights and duties lies deeper than the canonical ordering itself.

Immediately after the Council there were various proposals for a listing of rights in the Church. Some turned to recognized statements of human rights, such as the United Nations' Universal Declaration of Human Rights (1948), and analyzed the Council's documents to see how these rights are found within the Church as well. Others used the conciliar documents directly, developing lists of rights as these were mentioned here and there throughout the various texts. Still others developed their own lists, frequently based on issues of more immediate concern to the authors, or to those on behalf of whom they expressed more direct concern. The 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. Those listed in the Declaration of Independence or Bill of Rights in the United States Constitution, or the Rights of Man proclaimed by the French Revolution, very clearly evidence the immediate concerns of those who drew them up. The same is true of the Universal Declaration from the United Nations or, for that matter, of the rights expressed by the Second Vatican Council. None is an comprehensive, exhaustive list of rights; all address real issues of the times, but are therefore limited and dated expressions. The same will be true of the listing in the revised Code.

Drafting the List

Protection or respect for rights is listed in four of the ten principles for the revision of the Code. The first principle, on the juridic nature of the Code, indicates that it should define and protect the rights and obligations of each person toward others and toward society. The next, which looks to fostering pastoral care in the Code, calls for the rights and duties that come within the juridic organization of the Church to be suited to its supernatural end. Canonical norms, therefore, neither restrict rights nor impose duties unless they are truly necessary for the public good and ecclesiastical discipline. The sixth principle directly addresses the protection of the rights of persons based on the natural law and divine positive law and what follows in the light of the social conditions that persons have in the Church. Moreover, this principle calls for the expression of a common juridic status for all in the Church based on their human dignity and the reception of baptism. Finally, the seventh principle looks to procedure for safeguarding and vindicating subjective rights in the Church, eliminating any suspicion of arbitrariness in ecclesiastical administration.

Applying these principles to the practical task of drafting canons proved to be somewhat difficult. Two *coetus* (assemblage) undertook the tasks independently. Both came up with lists of rights and duties, often mingling rights and duties in the same canon. The *coetus* 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. This work has taken over into the 1977 schema, *De Populo Dei*. Canons 16 – 38.

The *coetus* developed 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 come 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.

The *coetus* on the *Lex Ecclesiae Fundamental* also developed a list of obligations and rights. The organization of the list has undergone various changes as the different drafts were developed. The 1979 meeting of the special *coetus* to revise the schema *De Populo Dei* eventually recommended that the *Lex Ecclesiae Fundamental* version be adopted (since it then appeared that the *LEF* would be promulgated separately) and that the listing of rights and duties in Book II (of the Code) be dropped in order to avoid duplication. Suggestions were made for modifying the *Lex Ecclesiae Fundamental* version of some canons to benefit from elements only the *De Populo Dei* listing had included, although the promulgated version does not seem to reflect many of these. In 1981, when it was decided not to promulgate the *Lex Ecclesiae Fundamental*, the canons on rights and duties were returned to Book II, but this time based on the *Lex Ecclesiae Fundamental* listing.

Statements in the Code

The Code contains various lists of rights and duties. The listing of all those common to all Christian faithful (cc.208-223) is basically the organization and content of the 1980 *Lex Ecclesiae Fundamental* with some additions based on the *De Populo Dei* list (cc. 209, 220 §2; 222 §2). The list seems to have the following organization:

- First come four statements relative to the basic equality of Christians – equality, communion, universal call to holiness and participation in the mission of the Church (cc 208-211).
- Next are obligation and rights that arise from the hierarchical differentiation in the Church – obedience, petition and public opinion (c 212).
- The means of sanctification are addressed, including the rights to spiritual goods, to worship according to an approved rite, and to a personal spirituality in keeping with church teaching (cc. 213-214).
- Four statements relative to the mission of the Church follow – rights to association and assembly, apostolic works, education and freedom of inquiry and expression in sacred studies (cc. 215-218).
- Personal rights are listed – freedom from coercion in choosing a state in life, good name, and privacy (cc. 219-220).
- One canon lists three basic protections of rights – vindication of rights, due process in court, and legality of penalties (c. 221).
- Finally, certain social relationships are specified – support for the Church, promotion of justice, aid to the poor, respect for the common good, and limitations on rights in virtue of the common good (cc. 222-223).

Rights specific to various groups in the Church are also listed. For lay persons, canons 225-231 list seven obligations and rights as well as six capacities recognized in law. The obligations and rights concern participating in the mission of the Church, the vocation of married persons, duties of parents, Christian education, higher theological education, formation for church service, and a just family wage and benefits when employed in church service. Capacities relate to the functions of teaching (a mandate to teach theology), of sanctifying (installed ministers, temporary deputation for liturgical service, and supplying for services of ministers), and of ruling (assignment to church office, service as consultants). Lay persons are explicitly acknowledged to enjoy the obligations of all Christian faithful; this list is considered a further specification in light of their situation in life (c. 224).

These first two lists are new in canon law. They have been developed in the light of the teaching of the Council and represent an important new dimension for the canonical tradition. More in line with existing tradition are the next series of lists:

- The rights and obligations of the clergy are more simplified than in the 1917 Code: the privileges in the former Code have been dropped and several obligations have been revised in light of conciliar teaching or current conditions.
- Canons 273-290 list five obligations relating to the hierarchical structure, of which the cleric is a part, eleven obligations and rights related to his personal development and manner of living, and six obligations and prohibitions affecting his involvement in the world.

- The rights and obligations of religious institutes and their members are set forth in canons 662-672. Three statements relate to the pursuit of holiness, six concern the living of religious life, and two address activities that are permissible or prohibited in religious.

The Code contains other lists of rights, including procedural rights (throughout Book VII), rights attached to various offices, and rights inherent to various consultative bodies that must be consulted or even give their consent in accord with provisions in the law (c. 127). A new feature of the code is a consistent effort to support the obligations and rights of parents. Over twenty canons in various parts of the code spell out what might be called a bill of parental rights; these will be discussed below at Canon 226 §2.

Interpreting Rights

The proper interpretation of these various obligations and rights is not as simple as might first appear. Not unlike the 1917 Code, various terms are used for what might be called “rights,” but the nuances in Latin must be respected for an accurate interpretation. For example, *ius*, *integrum est*, *fas est*, *facultas*, *potestas*, can be taken as a right in some sense, as can verbal forms such as *licet* and *possunt*. The proper nuance can only be explored properly in discussing specific canons.

On a broader scale, the basic understanding of rights has become more complicated than the medieval philosophers’ approach. For them, *ius* could be understood in three dimensions. Objectively it stood for what is just, what must be or can be demanded. The efficient sense referred *ius* to a law or a norm of action. In a subjective meaning, *ius* meant an inviolable moral faculty of doing, omitting, or demanding something.

By the 18th century various notions of rights had emerged to explain how the subjective, objective, and efficient meanings of *ius* related to each other. These ranged from natural, to moral, to human rights theories. Fundamental rights were proposed to exist even if the law (the “efficient” *ius*) did not recognize them, and they serve as a sort of meta-legal concept that could be used to critique legal systems themselves (as at the Nuremberg trials after World War II).

Subjective rights can be given further classifications based on the distinction between public law and private law. Authors approached the distinction variously, but in general, it was held that rights are what a person enjoys in public law where society’s interests are at stake. In private law, where individuals’ interests are involved, it may be more a question of interests as such rather than rights.

Today, three traditions surrounding rights prevail in general usage. These will have a more direct impact on the understanding of the list of rights in the revised Code. For example, in line with the United States Bill of Rights or the French Declaration of the Rights of Man, rights can be understood as a sphere of free choice in which one is at liberty to act or not. To organize or join an association (c. 215), for instance, is a right that one may choose to exercise or not.

Another approach to consider is entitlements. The individual is not an isolated actor but a member of society ; to exercise true liberty may require that society may supply for deficiencies in the individual’s resources. This approach underlies the United Nation’s Universal Declaration of Human Rights and may be found in the canonical right to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the word and sacraments (c. 213).

A third approach to rights emphasizes the social responsibility that is integral to a right. Rights are not merely claims one can make for isolated freedom; neither are they only entitlements that one can demand from society. They entail an interaction between individual and society, located in the concept of the common good. The common good is not the sum total of the good of isolated individuals. Rather, the common good is the “sum of those conditions of social life by which individuals, families and groups can achieve their own fulfillment in a relatively thorough and ready way.” This approach is clearly found in the Code (c. 223), although it is applied specifically to the exercise of rights and not to their nature as such.

Obligations and Rights

The headings in the revised Code consistently use the ordering of obligations and rights, whereas the 1917 Code tended to use the reverse – rights and obligations. In some canons that repeated the 1917 Code (e.g., c. 96) the order has clearly been changed – from rights and duties to duties and rights. When queried about the significance of this, the Code Commission responded that the ordering was not significant, since both rights and obligations come from the sacraments.

This response is significant, for there were some who argued that the theory of rights to be adopted in drafting the Code should be that one's state in life determines the obligations to which one is bound. In order to carry out those obligations, one has corresponding rights. Thus rights will vary depending on one's condition or state in life. While this approach contains a significant point, for some rights do flow from obligations, it is not accurate when taken as the exclusive understanding of rights. The Church has recognized human nature and the common dignity flowing from it as the basis for fundamental human rights, and within the Church baptism produces other fundamental rights that are prior to any differentiation by states in life.

Rights, on the other hand, give rise to obligations. When the common good calls for one to exercise a right, there is an obligation to do so. Similarly, one person's right produces a corresponding obligation in others to respect that right. Moreover, when one has an obligation to provide something for others, those others have a right to that service. Thus, when the Code requires sacred ministers to preach (c. 767) or to provide the sacraments to those who seek them properly (c. 843), it is only expressing the reverse of the right to word and sacrament that is common to all the faithful (c. 213). Or when the Code requires pastors to provide pastoral care (cc. 528-529), bishops to be concerned for the welfare of all the people in their diocese (c. 383), or judges to render judgment (cc. 1453, 1457), it is by that fact assuring a right to those who are entitled to receive that pastoral care, concern or judgment.

Systems of Interpretation

The common good always regulates the exercise of rights. Rights in this sense are not absolute, but relative, for their exercise must respect the rights of other, and the conditions needed for all to achieve their fulfillment. This limitation on the exercise of rights is expressed variously in diverse legal systems – systems that are different because of their way of determining how the law is ultimately to be interpreted.

In a system of judicial supremacy, such as exists in the United States, the courts have the final word in determining the meaning of the law or the legitimate exercise of a right. The expression of rights, therefore, can be brief and to the point. The necessary precautions that regulate their exercise can either be found in other laws, or more likely, in the system of jurisprudence that surrounds the exercise of rights in that society.

In a system of legislative supremacy, on the other hand, such as exist in some other countries and that prevails in the Church, it is the legislator who determines the meaning of the law. The courts are to apply the law in the sense that the legislator determines. In such a system, when it is not clear what a law means or how it might be exercised, recourse is to be taken not to the courts but to the legislator for interpretation. Others can be designated by the legislator to provide this interpretation. Another possibility is to build into the expression of law itself the terms of its interpretation.

In an expression of rights, for example, the necessary qualifications to govern this exercise can be found in the system of the courts, or it may be placed in the very wording of the law. Practical examples of such expression of interpretative terms will be found in several canons on the rights common to all the faithful.

One of the most frequently mentioned qualifications in the Code is "condition." The meaning of this term is not always clear from the context. It could be used to refer to one's state in life in keeping with the theory discussed earlier, by which some proposed to locate the rights of Christians in his or her state of life rather than in human or baptismal dignity. In such a context, "condition" would be an essential limitation on rights; a person would have the right to question only to the extent that one's condition (the duties of one's state in life) required it.

As indicated, the Code is not to be interpreted in the light of such a theory. Instead, it remains within the position taught by Vatican II that rights inhere in the human person (GS 29) and, in the Church, also arise from baptism (see discussion on c. 204 above). Determining the meaning of “condition” becomes more complex.

Vatican II used the term at least 196 times. At least 60% of the time, it referred to external conditions of time, place or conditions in the situation. The term was also used with about equal frequency when it related to one’s personal abilities or infirmities, a person’s social status, the “human condition,” the condition of the Church itself, or preconditions for something else to happen. Less frequently, it was used to differentiate the condition of Christians from non-Christians, and four times it referred to one’s condition or state within the church structure (clergy, religious, laity).

The conciliar usage does not canonize any particular meaning of condition, leaving the possibilities open – depending on the context in which the term is used. Something similar may be said of the Code which is intended to implement the Council.

There is, however, another possible meaning of condition that may be added to the above, that is, a condition of a person who has been graced with a charism. The Council indicated such gifts are the basis for obligations and rights in the Church and in the world (AA 3). This is one right within the Church that was considered for inclusion in the Code but is not stated there expressly. Members of *Lex Ecclesiae Fundamentalis coetus* voted to include a statement on the obligations and rights that come from chrisms, but they wished to locate it in the theological preamble that was planned for the finished document. The *Lex Ecclesiae Fundamentalis* was not promulgated separately, the theological preamble has not appeared; therefore, no expression of this right is found in the revised Code.

However, a charism can be considered to be a condition in which a person is placed by the Holy Spirit. It is a gift not primarily for the benefit of the individual, but for others. A person in such a condition may have an obligation or be bound to exercise a right more intensely in virtue of the charism received. Final determination of this fact, of course, rests with the pastors of the Church who are to test the true nature of charisms and see to their proper use – not in order to extinguish the Spirit, but to test all things and hold to what is good (AA 3).

Catholics or All Christians?

The fundamental obligations and rights listed in the Code arise variously from human nature, baptism and positive church law. To what extent are these rights enjoyed in the Church by all the baptized and indeed, insofar as they are human rights, by all humans? An objection to canon 204 has already been noted, 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 that the broad meaning of the “Christian faithful” but claimed that in the Code it always means Catholics, since this is, after all, the Code for the Catholic Church, and non-Catholics are not bound by merely ecclesiastical laws (c. 11).

This response, however, seems too facile when it comes to such a basic question as rights. Those rights that are expressed in the Code and that rise from human nature, for example, association and assembly (c. 215), freedom of inquiry and expression in sacred sciences (c.218), reputation and privacy (c. 220), vindication of rights in the proper forum and due process of law when using the courts (c. 221), and respect for the common good (c. 223, §1) – are not granted by the law. They preexist the law, for they arise from human nature.

Similarly, rights that arise from baptism preexist the law, for they are rights not given by the legislator, but by Christ who acts in the sacrament. The Church can regulate the exercise of those rights, but their existence is given by the Lord. Such, for example, seem to be the obligations and rights to holiness of life (c. 210), participation in spreading the gospel (c.211), receiving spiritual help – especially the word and sacraments (c. 211), initiating and promoting apostolic action (c. 216), and Christian education (c. 217).

Certain obligations and rights are clearly rooted in full communion. These pertain to Catholics specifically, for example, the obligations and rights to preserve communion (c. 209), to obey the sacred pastors and participate in the flow of information in the Church (c. 212), to receive the sacraments without restriction when properly disposed (c.213), to worship God according to an approved rite and pursue a spirituality in keeping with Church teaching (c.214), to engage in the apostolate as a Catholic (c. 216), to legality of church penalties (c.222, §3), and to be regulated in the exercise of one's rights by church authorities (c. 223, §2).

This is not to claim that non-baptized or even baptized non-Catholics can claim full exercise of rights in the Catholic Church with regard to those matters that arise from human dignity or baptism. The common good of the Church may call for limitations to be imposed. On the other hand, there are times when the Code expressly permits others to exercise certain rights within the Catholic communion. For example, anyone – baptized or not – may present a case before a church court (c.1476), and the object of such a petition may properly be the vindication of rights (c. 1400, §1, 1°). Under certain circumstances, non-Catholic Christians may be admitted to the sacrament of penance, Eucharist and anointing (c. 844). The preaching of the word is not restricted to Catholic audiences (Book III).

In effect, the Code distinguishes obligations that the Church will enforce only on Catholics (c. 11) and rights that may or may not be able to be exercised in the Church by non-Catholics, depending on the requirements of the common good. In the following discussion on individual obligations and rights common to all the faithful (cc. 208-223), attention will be focused on Catholics. But this wider application should also be kept in mind where appropriate.

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