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RELATIONSHIP BETWEEN CHURCH AND STATE, CANON LAW AND CIVIL LAW: PROBLEMS AND PROSPECTS

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First of all the author examines the Lateran Pacts between the Holy See and the Italian State which constitutes the foundation for the relationship between the Catholic Church and the State even in modern times. Then an overview of the teaching of Vatican II on the autonomy and independence of the Church and civil society in their respective fields is presented, indicating the possibility and manner of observing canon law in democratic, theocratic, confessional, secular, atheistic or totalitarian states. After attempting a compendium of the canons on the theme, the final sections are dedicated to highlight the principles and directives provided by the Codes of canon law regarding the relationship between canon law and civil law, followed by the exemplification of three particular themes: marriage, temporal goods of the Church and penal law.

1. Introduction

The Christian faithful, including cardinals, bishops, priests, religious and lay people, are at the same time members of the Church and citizens of a nation. Hence their life and activities are regulated by two orders, canonical and civil, deriving rights and obligations from both. Hence the peaceful life of Christian citizens in any country depends on the harmonious and equilibrated application of canon law and civil

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law in their respective camps. This article is an attempt to shed some light on the nature and characteristics of the relationship between canon law and civil law, which in its turn depends on the interaction between Church and State.

First of all we consider the Lateran Pacts between the Holy See and the Italian State which constituted the foundation and paradigm for the relationship between Church and State not only in Italy, but also in other countries, enabling the ordering of the religious life of Catholic citizens according to canon law. Then we proceed to a brief review of the teaching of Vatican II on the autonomy and independence of the Church and civil society, as well as the possibility and manner of observing canon law in concordat and non-concordat countries. After attempting a compendium of the canons on the theme, the final sections are dedicated to highlight the principles and directives provided by the Codes of canon law regarding the relationship between canon law and civil law, followed by the exemplification of some particular themes.

1. Lateran Treaty as the Bedrock of the Relationship between Church and State, Canon and Civil Law

In the second half of the XIX century there were constant attempts to curtail the temporal power of popes as rulers of civil territories and to confiscate the Papal States. On 20 September 1870 even Rome was conquered by the Italian forces and was annexed to the Kingdom of Italy, thus completing the unification of Italian Peninsula.[1] After many negotiations and acrimonious disputes, agreements were reached between the government of Italy and the Holy See in 1929, which guaranteed the status of statehood to the latter in international law. They consisted of a political Treaty containing 27 articles, accompanied by a distinct Financial Convention and maps of the Vatican City State, as well as a concordat (45 articles) intended to regulate the conditions of the Catholic Church in Italy.[2] The treaty and the concordat between the two parties, known as Lateran Pacts were signed in the Lateran Palace on 11 February 1929 by Benito Mussolini, Prime Minister and Head of Government, for King Victor Emmanuel III of Italy, and by Pietro Gasparri, Cardinal Secretary of State, for Pope Pius XI (1922-1939). The Lateran Treaty and the concordat were ratified by the

[1] For details, R. De Cesare, *The Last Days of Papal Rome* (1850-1870), London 1909; G. Martina, *Pio IX (1867-1878)*, Roma 1990, 233–282.

[2] All these documents, entitled *Inter Sanctam Sedem et Italiae Regnum Conventiones,* can be found in *Acta Apostolicae Sedis* 21 (1929) 209-295.

Supreme Roman Pontiff and His Majesty the King of Italy on 7 June 1929.[3]

As the preamble of the Treaty affirms, its scope was to eliminate every existing reason for dissension between the Holy See and Italy "by arriving at a definitive settlement of their reciprocal relations, one which is consistent with justice and with the dignity of the two Parties and which, by assuring to the Holy See in a permanent manner a position in fact and in law which guarantees it absolute independence for the fulfilment of its exalted mission in the world, permits the Holy See to consider as finally and irrevocably settled the 'Roman Question', which arose in 1870 by the annexation of Rome to the Kingdom of Italy under the Dynasty of the House of Savoy".[4]

The Lateran Treaty created the State of the Vatican City, guaranteeing the full ownership, the exclusive and absolute power and jurisdiction of the Holy See over the said State. Moreover the Holy See obtained the status of an independent and sovereign State with the Roman Pontiff as its head even in the international realm. Articles two and three of the Treaty explicitly establish:

> Italy recognizes the sovereignty of the Holy See in the international realm as an attribute inherent in its nature in conformity with its tradition and with the requirements of its mission to the world.
>
> Italy recognizes the full ownership and the exclusive and absolute power and jurisdiction of the Holy See over the Vatican as it is presently constituted, together with all its appurtenances and endowments, creating in this manner Vatican City for the special purposes and under the conditions given in this Treaty [...].[5]

The Lateran Treaty brought about a beneficial separation of the Church and the State, temporal power and spiritual authority, with their own institutions and legal systems, securing the relative autonomy and independence of both in their respective realms, but ensuring mutual collaboration and assistance for the promotion of common good. Moreover the Treaty laid the foundation for a sound relationship between the Catholic Church and national States in the entire world.

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[3] Cf. *Acta Apostolicae Sedis* 21 (1929) 295; for an analysis of the juridical nature of the Treaty and the concordat, see F. Rufini, *Relazioni tra Stato e Chiesa*, Bologna 1974, 190-215.

[4] *Acta Apostolicae Sedis* 21 (1929) 209.

[5] *Acta Apostolicae Sedis* 21 (1929) 210.

A certain distinction has to be made between three entities: the Catholic Church, the Holy See and the Vatican City State. The Catholic Church, which extends all over the world, cannot be indentified with any nation, although it possesses a State, namely the Vatican City. The Holy See, recognized by the States, is the representative of the Catholic Church, which enters into international conventions and concordats. The role of the Vatican State is to serve as a support to the Holy See for accomplishing its mission.[6] Thus the Vatican City State is closely linked with the Holy See that they are essentially part of the same construct. The former has no permanent population apart from the Church officials and exists to support the work of the Holy See. Italy carries out a substantial number of administrative functions with regard to Vatican City.[7]

In 1946 the monarchy was abolished and Italy became a republic. The constitution of the Italian Republic, adopted in 1947 explicitly asserted:

> The State and the Catholic Church are independent and sovereign, each within its own sphere. Their relations are regulated by the Lateran Pacts. Amendments to such Pacts which are accepted by both parties shall not require the procedure of constitutional amendments.[8]

In fact the constitution of the Italian Republic received and confirmed the Lateran Pacts and explicitly recognized the independence and sovereignty of the Church. This is very important because, as has already been stated, the recognition of the Holy See with the Vatican City as a State in international law depends on the Lateran Treaty and such recognition of its sovereignty by Italy.

After the Lateran Treaty, the Holy See continued as before to engage in diplomatic relations and enter into international agreements and concordats according to the norms of international law. The Holy See

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[6] Cf. D. Salachas e L. Sabbarese, *Codificazione latina e orientale e canoni preliminari*, Città del Vaticano 2003, 213-214. Generally people do not understand the difference between the Holy See and the Vatican State. In non-Christian countries often the Pope is understood as the head of the Vatican State or of the Catholic Church. The expression "Holy See", written on Vatican passports, instead of Vatican State, is incomprehensible to many.

[7] M. N. Shaw, *International Law* (fourth edition), Cambridge 1997, 172.

[8] "Lo Stato e la Chiesa cattolica sono, ciascuno nel proprio ordine, indipendenti e sovrani. I loro rapporti sono regolati dai Patti Lateranensi. Le modificazioni dei Patti, accettate dalle due parti, non richiedono procedimento di revisione costituzionale". Senato della Repubblica, *Costituzione della Repubblica Italiana*, Roma 2002, Art. 7, p. 10.

is a member of the Universal Postal Union and the Intrenational Telecommunications Union. At present the Holy See has full, partial or nominal diplomatic relationship with 191 countries, out of 194.[9] As a sovereign entity recognized in public international law, the Holy See has the juridical status of a permanent Observer at the United Nations Organization (UNO) and at its various organs, as well as representatives or permanent observers in many other governmental and non-governmental international organizations.[10]

The concordat signed on 11 February 1929 guaranteed the Catholic Church in Italy free exercise of spiritual power, free and public celebration of worship as well as jurisdiction in ecclesiastical and religious matters in accordance with canon law. Obviously canonical marriages, Catholic schools and the lay Association of Catholic Action were recognized.[11] In the course of time a revision of the concordat between the Holy See and Italy became necessary, in order to harmonize it with the secular status of the modern Italian Republic, the reality of religious pluralism and the teaching of Vatican II. The agreement modifying the concordat was signed by Cardinal Secretary of State Augustine Casaroli and the Italian Prime Minister Bettino Craxi on 18 February 1984.[12] The first two articles of this Accord solemnly confirm the independence and sovereignty of the Italian State and the Catholic Church in their proper order, as well as the full religious liberty of the Church for carrying out its pastoral, charitable, educative, evangelizing and sanctifying mission.[13]

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[9] Cf. *Annuario Pontificio 2018*, 1275-1297. There are 195 countries in the world today. This total comprises 193 countries that are member States of the United Nations and 2 countries that are non-member observer States: the Holy See and the State of Palestine.

[10] Cf. *Annuario Pontificio 2018*, 1298-1302.

[11] The Concordat in *Acta Apostolicae Sedis* 21 (1929) 276-294.

[12] *Accordo tra la Santa Sede e la Repubblica Italiana che apporta modificazioni al Concordato Lateranense*, in *Acta Apostolicae Sedis* 77 (1985) 521-535; for details concerning the Accord, G. Della Torre (a cura di), La revisione del concordato, Città del Vaticano 1985; for an evaluation of the Accord, G. Gänswein, "I Rapporti tra Stato e Chiesa in Italia: la *Libertas Ecclesiae* nel Concordato del 1929 e nell'Accordo del 1984", in N. U. Buhlmann und P. Styra (Hg.), *Signum in Bonum, Festschrift für Wilhelm Imkamp zum 60. Geburtstag*, Regensburg 2011, 273-283.

[13] Cf. *Accordo tra la Santa Sede e la Repubblica Italiana*, in *Acta Apostolicae Sedis* 77 (1985) 521.

2. The Teaching of Vatican II on the Autonomy of the Church and Civil Society in Their Respective Fields

The Second Vatican Council has recognized and acknowledged the reality of the contemporary world, in which the "Christian countries" of Europe and America emerged as constitutional democracies and as secular States, without professing any religion.[14] Some of them, which advocate an ideology of extreme secularism and rampant laicism, have turned out to be even anti-Christian, denying the Christian roots of their society and culture. The Church had no choice, other than to accept the situation and to recognize the autonomy of the secular States, requiring reciprocally such recognition from the States as regards the Church.

The Council recognizes the fact that the faithful are at the same time members of the Church and of a human society and hence advices them to reconcile both these aspects:

> Because of the very economy of salvation the faithful should learn how to distinguish carefully between those rights and duties which are theirs as members of the Church, and those which they have as members of human society. Let them strive to reconcile the two, remembering that in every temporal affair they must be guided by a Christian conscience, since even in secular business there is no human activity which can be withdrawn from God's dominion. In our own time, however, it is most urgent that this distinction and also this harmony should shine forth more clearly than ever in the lives of the faithful, so that the mission of the Church may correspond more fully to the special conditions of the world today. For it must be admitted that the temporal sphere is governed by its own principles, since it is rightly concerned with the interests of this world. But that ominous doctrine which attempts to build a society with no regard whatever for religion, and which attacks and destroys the religious liberty of its citizens, is rightly to be rejected.[15]

The Council also recognizes the autonomy of earthly affairs, secular societies and sciences in their specific camps with their own proper laws and order. The Council affirms:

> If by the autonomy of earthly affairs we mean that created things and societies themselves enjoy their own laws and values which

[14] By the expression "Christian countries" I mean those States, which formerly accepted Christianity or Catholic faith as religion of the State.

[15] Vatican II, *Lumen gentium* (Dogmatic Constitution on the Church), no. 36.

> must be gradually deciphered, put to use, and regulated by men, then it is entirely right to demand that autonomy. Such is not merely required by modern man, but harmonizes also with the will of the Creator. For by the very circumstance of their having been created, all things are endowed with their own stability, truth, goodness, proper laws and order. Man must respect these as he isolates them by the appropriate methods of the individual sciences or arts [...].[16]

Since Christians are citizens of two "cities", the Council asks them to fulfil also their earthly duties according to the spirit of the Gospel:

> This council exhorts Christians, as citizens of two cities, to strive to discharge their earthly duties conscientiously and in response to the Gospel spirit. They are mistaken who, knowing that we have here no abiding city but seek one which is to come, think that they may therefore shirk their earthly responsibilities. For they are forgetting that by the faith itself they are more obliged than ever to measure up to these duties, each according to his proper vocation [...].[17]

Specifically as regards the relationship between the Church and the political communities the Council underlines the independence and autonomy of both in their own fields and the necessity of collaboration between them for the common good. In the words of the Council:

> It is very important, especially where a pluralistic society prevails, that there be a correct notion of the relationship between the political community and the Church, and a clear distinction between the tasks which Christians undertake, individually or as a group, on their own responsibility as citizens guided by the dictates of a Christian conscience, and the activities which, in union with their pastors, they carry out in the name of the Church.
>
> The Church, by reason of her role and competence, is not identified in any way with the political community nor bound to any political system. She is at once a sign and a safeguard of the transcendent character of the human person.
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> The Church and the political community in their own fields are autonomous and independent from each other. Yet both, under different titles, are devoted to the personal and social vocation of the same men. The more that both foster sounder cooperation

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[16] Vatican II, *Gaudium et spes* (Pastoral Constitution on the Church in the Modern World), no. 36.

[17] Vatican II, *Gaudium et spes*, no. 43.

> between themselves with due consideration for the circumstances of time and place, the more effective will their service be exercised for the good of all. For man's horizons are not limited only to the temporal order; while living in the context of human history, he preserves intact his eternal vocation. The Church, for her part, founded on the love of the Redeemer, contributes toward the reign of justice and charity within the borders of a nation and between nations. By preaching the truths of the Gospel, and bringing to bear on all fields of human endeavour the light of her doctrine and of a Christian witness, she respects and fosters the political freedom and responsibility of citizens.[18]

It is a natural consequence of the mutual recognition of autonomy that the States do not intervene in merely religious and ecclesiastical affairs, such as the appointment of bishops. Hence the Council asks the States to renounce the rights and privileges enjoyed by some of them in this matter:

> Since the apostolic office of bishops was instituted by Christ the Lord and pursues a spiritual and supernatural purpose, this sacred ecumenical synod declares that the right of nominating and appointing bishops belongs properly, peculiarly, and per se exclusively to the competent ecclesiastical authority.
>
> Therefore, for the purpose of duly protecting the freedom of the Church and of promoting more conveniently and efficiently the welfare of the faithful, this holy council desires that in future no more rights or privileges of election, nomination, presentation, or designation for the office of bishop be granted to civil authorities. The civil authorities, on the other hand, whose favourable attitude toward the Church the sacred synod gratefully acknowledges and highly appreciates, are most kindly requested voluntarily to renounce the above-mentioned rights and privileges which they presently enjoy by reason of a treaty or custom, after discussing the matter with the Apostolic See.[19]

According to *ius patronatus*, for several centuries the kings of Portugal and Spain enjoyed the right of selecting episcopal candidates and presenting them to the Pope for appointment in countries under their

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[18] Vatican II, *Gaudium et spes*, no. 76.

[19] Vatican II, *Christus Dominus* (Decree on the Pastoral Office of Bishops in the Church) no. 20.

dominion in the continents of Asia, Africa and America.[20] Even in modern times in some countries the civil authorities continued to involve in the appointment of bishops, on the basis of concordats or bilateral agreements sanctioned at particular political circumstances, often impairing the integrity of designation process.[21] So the Council asked the civil authorities to respect the autonomy of the Church in this purely religious and pastoral matter and to waive their rights and privileges in this matter.

A sound relationship between Church and State is impossible without the recognition of the fundamental right of religious freedom from the part of the latter. Hence, "This Vatican Council declares that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits".[22]

The Council also highlights the responsibilities of the State in safeguarding religious freedom, even in countries where one religion is recognized as State religion (theocratic countries). Here is the important teaching of the Council on this matter:

> The protection and promotion of the inviolable rights of man ranks among the essential duties of government. Therefore government is to assume the safeguard of the religious freedom of all its citizens, in an effective manner, by just laws and by other appropriate means [...].
>
> If, in view of peculiar circumstances obtaining among peoples, special civil recognition is given to one religious community in the constitutional order of society, it is at the same time imperative that the right of all citizens and religious communities to religious freedom should be recognized and made effective in practice.
>
> Finally, government is to see to it that equality of citizens before the law, which is itself an element of the common good, is never violated, whether openly or covertly, for religious reasons. Nor is there to be discrimination among citizens.

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[20] Cf. As regards India, see P. Pallath, *Important Roman Documents concerning the Catholic Church in India*, Kottayam 2004, 9-73 and 109-151.

[21] Cf. H. Vorgrimler (ed.), *Commentary on the Documents of the Vatican II*, vol. 2, New York 1968, 236-237.

[22] Vatican II, *Dignitatis humanae* (Declaration on Religious Liberty), no. 2.

> It follows that a wrong is done when government imposes upon its people, by force or fear or other means, the profession or repudiation of any religion, or when it hinders men from joining or leaving a religious community. All the more it is a violation of the will of God and of the sacred rights of the person and the family of nations when force is brought to bear in any way in order to destroy or repress religion, either in the whole of mankind or in a particular country or in a definite community.[23]

Finally the Council observes that Christ himself recognized the civil authority, without neglecting the higher rights of God: "He acknowledged the power of government and its rights, when He commanded that tribute be given to Caesar: but He gave clear warning that the higher rights of God are to be kept inviolate: 'Render to Caesar the things that are Caesar's and to God the things that are God's' (Mt 22, 21)".[24]

In brief, the Council envisioned a sound and equilibrated relationship between Church and State suitable for the modern multi-cultural, multi-religious and pluralistic society, recognizing the autonomy and independence of both in their own realms and underlining the necessity of fruitful collaboration between them for the common good of all citizens. Such autonomy of the Church in its own field and the recognition of the freedom of religion from the State enable the Catholic faithful to freely practise their faith and to regulate their life according to canon law.

3. Canon Law and Civil Law in Concordat Countries

As we have already seen, the Lateran Treaty and the concordat between the Holy See and the Italian Republic laid the foundation for an equilibrated and healthy relationship between Church and State, as well as civil law and canon law in Italy, in spite of the threats of modern atheism, materialism, secularism and religious pluralism. The Lateran Treaty, which recognized the Holy See with the Vatican City as a sovereign entity also enabled it to continue enter into international agreements with other countries, known as concordats. The concordat, both in its form and in its substance, has the characteristics of an international treaty, with all its applications, consequences and effects, which derive from such treatises in accordance with international law.[25] So a concordat is normally signed by the head of the State like

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[23] Vatican II, *Dignitatis humanae*, no. 6.

[24] Vatican II, *Dignitatis humanae*, no. 11.

[25] Cf. F. Rufini, *Relazioni tra Stato e Chiesa*, 187-188.

the president or prime minister and the supreme authority of the Church or head of the Holy See (Vatican State) which enjoys international juridical personality, although the beneficiary of a concordat is the Church in a determined country.[26]

In the course of history the Holy See made concordats both with totalitarian States and democratic countries. In totalitarian States concordats are stipulated to ensure the minimum liberty possible to the Church, necessary for its spiritual mission, in the context of a State legal system, which denies liberty both in individual and collective levels. On the other hand, in democratic countries, in which liberty is guaranteed to the Church and its faithful in the context of religious freedom recognized to all citizens, the concordats concretely define and regulate the modes of exercising liberty and religious rights.[27]

At present some kinds of concordats, agreements, conventions or protocols between the Holy See and sovereign national States or other political communities are in vigour in more than 95 countries.[28] These concordats and agreements specifically regulate one or other aspect of Christian life according to the particular political situation of the specific country such as Catholic education or schools, economic questions, acquisition and administration of temporal goods, matrimonial matters guaranteeing the sacramental celebration of marriage, circumscription of territories for the constitution of new dioceses and their reorganization, pastoral care of different sections of the people of God, etc.[29] If a concordat signed by the Holy See and the State exists in a country, obviously the relationship between canon law and civil law is also regulated taking into account its directives and norms. Such concordats generally guarantee the validity of canon law with regard to the internal governance of the Church in the respective country.

4. Canon Law and Civil Law in non-Concordat Democratic Countries

Modern constitutional, democratic and secular States, even in the absence of concordats, guarantee freedom of religion in accordance

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[26] Cf. C. Corral, "Concordato", in C. Corral Salvador, V. De Paolis e G. Ghirlanda, *Nuovo dizionario di diritto canonico*, Cinisello Balsamo 1993, 239-240.

[27] Cf. G. Gänswein, "I Rapporti tra Stato e Chiesa in Italia", 274.

[28] For details, see C. Corral, "Concordati vigenti", in C. Corral Salvador, V. De Paolis e G. Ghirlanda, *Nuovo dizionario di diritto canonico*, Cinisello Balsamo 1993, 225-237. See also J. T. Martin De Agar, *Raccolta di concordati 1950-1999*, Città del Vaticano 2000.

[29] Cf. C. Corral, "Concordato", 241.

with the Universal Declaration of Human Rights and other international charters and conventions. The Universal Declaration of Human Rights, drafted by representatives with different legal and cultural backgrounds from all regions of the world, was proclaimed by the United Nations General Assembly in Paris on 10 December 1948. As affirmed in the Preamble, this Declaration can be considered

> as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.[30]

As regards religious freedom article 18 of the Declaration affirms:

> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.[31]

Also based on the Universal Declaration of Human Rights the European Convention on Human Rights was signed on 4 November 1950 in Rome and became effective from 3 September 1953. The Convention is at present applicable in 47 countries, who are members of the Council of Europe. On freedom of thought, conscience and religion Article 9 of the Convention declares:

> 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
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> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the

[30] United Nations Organization, *Universal Dclaration of Human Rights* (illustrated edition), New York 2015, 3.

[31] United Nations Organization, *Universal Dclaration of Human Rights*, 38.

> protection of public order, health or morals, or for the protection of the rights and freedoms of others.[32]

The Organization of American States (OAS) is a continental organization that was founded on 30 April 1948, for the purposes of regional solidarity and cooperation among its member States. At present 35 independent States of America are members of the organization. The American Convention on Human Rights was signed on 22 November 1969 in San Jose (Costa Rica) and entered into force on 18 July 1978. As regards freedom of conscience and religion article 12 stipulates:

> 1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private. 2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs. 3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others. 4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.[33]

The Organization of African Unity (at present 53 member States), assembled in Nairobi adopted the African Charter on Human and Peoples' Rights on 27 June 1981, which entered into force on 21 October 1986. Article 8 of the Charter asserts: "Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms".[34]

Our brief presentation has demonstrated that the Universal Declaration of Human Rights (of UNO) and other international charters and conventions guarantee religious freedom and recognize the right to profess, practise and propagate any religion. If all the

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[32] Council of Europe (European Court of Human Rights), *European Convention on Human Rights*, Strasbourg 2010, 11.

[33] *American Convention on Human Rights*, article 12, in M. R. Ishay (ed.), *The Human Rights Reader: Major Political Essays, Speeches, and Documents from Bible to the Present*, New York 1997, 445-446.

[34] *African Charter on Human and Peoples' Rights*, article 8, in M. R. Ishay (ed.), *The Human Rights Reader*, 475.

countries implement the said Universal Declaration and other charters which they have signed there will not be any difficulty for the Catholic Church (and other Churches and religions) to accomplish its mission and for the Christian faithful to live according to Gospel and canonical regulations, even without any concordat.

Generally most of the modern democratic States guarantee freedom of religion in their constitution as a very fundamental right of all citizens.[35] The situation is completely different in some theocratic or confessional countries, in which there is no distinction between political society and religious community and in which the law of a single religion is also considered as the law of the State. Even in the XXI century such countries accept only a single State religion and endeavour to eliminate other religions or even persecute their faithful, violating international law and conventions. However, there are other confessional States, which accept only one religion as that of the State, but tolerate other religions or recognize full religious liberty to all other religious groups.[36] There existed and also still exist some atheistic States which endeavour to eliminate all religions from public life. Moreover, one cannot ignore the fact that, even in some countries, which qualify themselves as constitutional democracies, the authoritarian regimes have practically reduced human rights and freedom to deplorable levels.

In all democratic countries, whose constitution guarantees the freedom of religion, even without a concordat, the Catholic Church, can freely profess, practice and propagate the Christian faith, just like other religious groups. Obviously in those countries, the internal organization of the Church and the ecclesial life of the faithful are regulated by canon law, within the limits set by the respective constitutions.

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[35] For example, the Constitution of India guarantees to every person within the country freedom of conscience, faith and religion. The very preamble of the Constitution declares that India secures to its citizens "liberty of thought, expression, belief, faith and worship" (Government of India, *The Constitution of India*, New Delhi 2018, Preamble). The Constitution states further: "Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion" (Government of India, *The Constitution of India*, Part III, Fundamental Rights, Art. 25).

[36] Cf. D. Salachas e L. Sabbarese, *Codificazione latina e orientale e canoni preliminari*, 217.

5. Canon Law and Civil Law: Complementarity and Contrast

In this section first of all we provide a brief overview of the canons which directly or indirectly indicate relationship between Church and State, civil law and canon law. Then we consider a few important themes which illustrate the relationship between canon law and civil law, providing orientational principles.

5.1. An Overview of Canons Referring to Civil Law or Authority

In this list we follow the order of the *Code of Canons of the Eastern Churches* (hereafter Eastern Code or CCEO) indicating the corresponding canons of the *Code of Canon Law* 1983 (hereafter Latin Code or CIC). If something is lacking in one of them, it is indicated by a hyphen. In the Eastern Code there are only 1546 canons, while the Latin Code contains 1752 canons, because in the former many items are entirely left to particular law or to the special law enacted by the Roman Pontiff. Towards the last part of the list we indicate those items which are found only in the Latin Code.

Subject or themes	**CCEO** (canons)	**CIC** (canons)
Agreements entered in to by the Holy See with nations or other political societies continue in force, notwithstanding any contrary prescriptions of the Codes.	4	3
The patriarch can enter into agreements with a civil authority which are not contrary to the law established by the Apostolic See.	98	-
The patriarch is to see to the observation of personal statutes (where they are in force), granted by civil authorities.	99 §§1-2	-
The patriarch is competent to reserve to himself matters which concern several eparchies and involve the civil authorities.	100	-
In the eparchial or diocesan finance committee some suitable persons who are expert also in civil law are desirable because the financial administration of the diocese is to be conducted observing also civil law.	263 §1	492 §1
The curriculum of a minor seminary is to include those studies required in each nation for beginning higher studies. Care is generally to be taken that students obtain a civil diploma.	344 §3	234 §1-2

Although clerics ought to have the same civil and political rights as other citizens, nevertheless they are forbidden to assume public offices which entail a participation in the exercise of civil power.	383, 1	285 §3
Clerics are to make use of exemption from exercising public functions and offices alien to the clerical state as well as military service granted in their favour by civil laws, agreements or customs.	383, 2-3	289 §1-2
Married clerics, who do not exercise a secular or civil profession, deserve sufficient remuneration from the Church.	cf. 390.	281
Lay people who are appointed permanently or temporarily to some special service of the Church have the right to a just remuneration, with due regard for the prescriptions of civil law.	409	231 §2
As soon as the monastic profession has been made, all necessary steps shall be taken at once in order that the renunciation may become effective also in civil law.	467 §2	668 §4
A member shall be held dismissed from the monastery *ipso iure* who has celebrated or attempted marriage, even only a civil one.	497	694
In congregations, at least before perpetual profession the member shall freely make a last will which is also valid in civil law.	530	668 §1
Among other things, the preachers of the word of God should also teach the doctrine of the Church about the dignity of the human person and fundamental human rights, about family life, social and civil life.	616 §2	cf. 768 §2
Parents are to enjoy true freedom in the choice of the means of education; therefore the Christian faithful are to see that this right is recognized by the civil authority and even fostered by suitable assistance in accordance with the requirements of justice.	627 §3	793, 797
The fruit of an author's intellectual efforts is under the protection of the law; More detailed norms about this matter may be issued in the	666 §3	-

particular law of each Church *sui iuris*, in accordance with the civil laws concerning the rights of authors.		
Baptismal register: If it is a case of an adopted child, the names of the natural parents are also recorded, at least if it is done in the civil records.	689 §3	877 §3
Among other things also a person who has attempted marriage, even only a civil one, is impeded from receiving sacred orders under some circumstances.	762, 3	1041, 3
The Church recognizes the competence of civil authority concerning the merely civil effects of marriage.	780 §1	1059
The priest is not to bless, without the permission of the local hierarch or ordinary, a marriage which cannot be recognized or entered into according to the norms of civil law.	789, 2	1071 §1,2
Among other things, the impediment of public propriety arises also from the living together of a couple, who have attempted marriage before a civil official.	810 §1, 3	-
Adultery: tacit condonation is presumed, if the innocent spouse has maintained the partnership of conjugal life for six months without taking the matter to the ecclesiastical or the civil authority.	863 §2	1152 § 2
In the exercise of rights a minor is subject to parents or guardians. In regard to the appointment of guardians, generally the prescriptions of civil law are to be observed.	910	98 §2
A minor who is no longer an infant can also acquire a quasi-domicile of his or her own, and if legally emancipated according to the norm of civil law, a domicile also.	915 §1	105 §1
Juridical person: among other things the statutes must stipulate, who represents the juridical person in the civil and in the ecclesiastical forum.	922 §2, 4	
A cleric who has attempted marriage, even a civil one, is removed from office by virtue of the law itself.	976 §1, 3	194 §1, 3

Registration of the temporal goods of the Church is to be done with due regard for the prescriptions of civil law which safeguard the rights of the Church.	1020 § 1	1284 §2,2
If civil law does not allow temporal goods to be registered in the name of a juridical person, ways and means that are valid in civil law are to be adopted.	1020 §2	-
All administrators must ensure that the ownership of ecclesiastical goods is safeguarded in ways which are valid in civil law.	1020, 1028	1284 § 2, 2
Special funds for the support of the clergy are established in such a manner that they will have standing also in the civil law.	cf. 1021	1274 §5
Administrators of ecclesiastical goods are to furnish appropriate bonds that are valid in civil law, so that the Church may suffer no harm.	1027	cf. 1284
Every administrator of ecclesiastical goods must observe the prescriptions of both canon and civil law; he must especially be on guard lest the Church should suffer harm through the non-observance of civil law.	1028 § 2, 2	1284 § 2, 3
The administrators of ecclesiastical goods in making contracts of employment are accurately to observe the civil law relating to labour and social life.	1030, 1	1286
Permission of local hierarch or ordinary is needed to institute or contest legal proceedings in a civil court in the name of juridical person.	1032	1288
Whatever the civil law establishes about contracts and about the rescinding of contracts, is to be observed in canon law with the same effects.	1034	1290
Alienation of ecclesiastical goods contrary to the prescriptions of canon law, but valid in civil law is somehow tolerated.	1040	1296
In the last wills made in favour of the Church, if possible, the prescriptions of civil law are to be observed.	1043 §2	1299 §2
The Roman Pontiff alone has the right to judge heads of States (obviously in spiritual and	1060 § 1, 3	1405 § 1, 1

canonical matters).		
A guardian or curator appointed by civil authority can be admitted by an ecclesiastical judge.	1137	1479
In matters concerning the nature and effect of an action for possession, the civil law is to be observed.	1162	1500
In an extra judicial settlement, the civil law is to be observed.	1164	1714
Public civil documents are those which are considered to be such in civil law.	1221	1540 §2
Public documents constitute reliable evidence, without prejudice to civil law which provides otherwise about civil documents.	1222	cf. 1541
Civil officials who are bound to professional secrecy are exempted from the obligation to answer to an ecclesiastical judge.	1229 § 2, 1	1548 § 2, 1
Those who in their own civil law enjoy such a favour are to be interrogated by an ecclesiastical judge at the place selected by them.	1239 §2	1558 §2
Generally cases concerning the merely civil effects of marriage pertain to the civil judge, if these civil effects are the principal object of the case.	1358	1672
A marriage can be challenged after the death of the spouses, if the question of validity is prejudicial to the resolution of another controversy either in the canonical forum or in the civil forum.	1361 § 1	1675 § 1
In the case of a person who was obliged to observe the form for the celebration of marriage but who attempted marriage before a civil official, the prenuptial investigation suffices to prove his or her free status.	1372 §2	*AA* (1984) 747
In the judgement, declaring the nullity of a marriage the parties are to be admonished of the moral and civil obligations by which they are bound.	1377	1689
Separation of spouses: under certain conditions, after weighing the special circumstances, the bishop can give them permission to approach	1378 §2	1692 §1

the civil forum.		
If a case is concerned only with the merely civil effects of marriage, the case can be deferred to the civil forum from the very beginning.	1378 §3	1692 §2
Authentic civil document is valid for the declaration of presumed death.	1383 §1	1707 §1
In the application of penal law, the ecclesiastical judge can abstain from imposing a penalty, if the guilty party has been or will be sufficiently punished by civil authority.	1409 § 1, 2	1344, 2
One who has approached the civil authority directly or indirectly to obtain through its influence sacred ordination or ecclesiastical offices is to be punished with an appropriate penalty.	1460	-
Conditions for the canonization of civil law: not contrary to divine law and canon law.	1504	22
Adoption: since canon law has no procedure for adoption, this matter is remitted entirely to civil law.	-	110
Only in ordinary public Consistories, in which some solemnities are celebrated, representatives of civil States are admitted.	-	353 §4
To the Legates of the Roman Pontiff is entrusted the office of representing him in a stable manner also in the States and public Authorities.	-	363 §1
It is the responsibility of the Legate to safeguard, so far as the rulers of the State are concerned, those things which relate to the mission of the Church and the Apostolic See.	-	364, 7
A papa Legate, who is also envoy to the State according to international law, has the special role of: 1) promoting and fostering relationships between the Apostolic See and the Authorities of the State; 2) of dealing with questions concerning relations between Church and State, especially of drawing up concordats and other similar agreements.	-	365 §1
Appointment of bishops: no rights or privileges of election, appointment, presentation or designation are conceded to civil authorities.	-	377 §5

Formation of religious: suitable ecclesiastical and civil degrees are to be obtained.	-	660 §1
Schools: Christian faithful are to strive to secure that in civil society the laws also provide a religious and moral education.	-	799
Promise of marriage: regulated only by particular law enacted in consideration of customs and civil law.	-	1062 §2
Marriage by proxy: among other ways, the mandate is also valid if it is drawn up in a document which is authentic according to civil law.	-	1105 §2
The Catholic Church has the inherent right, independent of any secular power, to acquire, retain, administer and alienate temporal goods.	-	1254 §1
Special funds for the support of the clergy are established in such a manner that they will have standing also in the civil law.	-	1274 §5
A cleric who attempts marriage, even if only civilly, incurs *latae sententiae* suspension, while a perpetually professed non clerical religious incurs *latae sententiae* interdict.	-	1394
Arbitral judgement: canonical legislation is parallel to the local civil legislation.	-	1716

5. 2. The Codes of Canon Law and the Validity of Concordats and Personal Statutes

As we have already seen, before and after the Lateran Treaty the Holy See entered into international agreements with many countries. Both Codes of canon law guarantee the validity of all concordats and other international agreements between the Holy See and political communities. We reproduce the respective canons:

CCEO, canon 4: The canons of the Code neither abrogate nor derogate from the agreements entered into by the Holy See with nations or other political societies or such agreements approved by it. They, therefore, continue in force as hitherto, not withstanding any contrary prescriptions of the Code.

CIC, canon 3: The canons of the Code do not abrogate, nor do they derogate from, agreements entered into by the Apostolic See with nations or other civil entities. For this reason, these agreements continue in force as hitherto, notwithstanding any contrary provisions of this Code.

Both Codes use the general term "agreements", which signify not only concordats in the technical sense, but also all other pacts, accords, conventions and protocols entered into between the Holy See and national States or other civil entities and political societies. Such agreements are made not only between the Holy See and national States, but also with supranational or international political societies such as the United Nations Organization (UNO), World Health Organization (WHO), International Agency for Atomic Energy (AIEA), Council of Europe, Organization of American States (OAS), etc. Similarly agreements are also made between the Holy See and infra-national entities, like different federal States within a nation or federal republic.[37]

Both Codes affirm that all such agreements and concordats remain in force, even if some of their provisions or terms may be contrary to the prescriptions of the Codes. This is in accordance with the overriding principle and cornerstone of international law that 'pacts are to be honoured' (*pacta sunt servanda*). International agreements cannot be modified by unilateral decisions of one of the contracting parties but only by their mutual consent and accord.[38]

The only juridically relevant difference between the Latin Code and the Eastern Code on this matter consists in the phrase "or such agreements approved by it" (by the Holy See), found in the latter. During the formulation of the respective canon of the Latin Code a proposal was made by a consultor to add the phrase "or approved" also in the Latin Code, since it is possible to enter into agreements between a State and a bishops' conference. The proposal was rejected stating that such an agreement can be made only in virtue of international law and only between persons who enjoy international personality.[39] Hence only the Roman Pontiff, who is at the same time the head of both the Latin Church and the Universal Catholic Church, can enter into agreements with civil States, although the beneficiary is the Church in a particular nation. Although the Latin Church extends all over the world, it remains a single Church with a single head, namely the pope; hence the bishops' conferences are excluded from stipulating agreements with the civil authorities of the respective countries. It is evident that the bishops' conferences can conduct a fruitful dialogue with the civil authorities of their country and prepare a concordat or agreement, although it will be

[37] For example, the concordats between the Holy See and some federal States in Germany. Cf. C. Corral, "Concordati vigenti", 227-229.

[38] It is surprising that at present the head of a prestigious democratic State unilaterally modifies or cancels international agreements with a tweet.

[39] *Communicationes* XXIII (1991) 113-114; cf. D. Salachas e L. Sabbarese, *Codificazione latina e orientale e canoni preliminari*, 207.

officially signed by the respective head of State and the head or representative of the Holy See.

However, in the East patriarchs and major archbishops also have the right and privilege to enter into concordats and agreements with civil authorities as heads of their respective Churches, but under some rigorous conditions.[40] In fact the Eastern Code (canon 98) lays down:

> With the consent of the synod of bishops of the patriarchal Church and the prior assent of the Roman Pontiff, the patriarch can enter into agreements with a civil authority which are not contrary to the law established by the Apostolic See; the patriarch cannot put these same agreements into effect without having obtained the approval of the Roman Pontiff.

Obviously a patriarch or major archbishop can conduct a fruitful dialogue with civil authorities of his country on relevant questions concerning the Church and common good. However, in order to enter into a formal concordat or agreement four conditions are to be met:

1) The consent of the synod of bishops of the respective Church: agreement with civil authority is something that affects the entire Church and hence the patriarch or major archbishop, who can initiate a dialogue with civil authorities, has to present the matter to the synod and obtain its consent, as in other important matters.

2) The prior assent of the Roman Pontiff: after preparing everything and obtaining the consent of the synod, before officially signing the agreement, the patriarch or major archbishop has to present the matter to the Roman Pontiff and obtain his consent. If consent is not granted the patriarch or major archbishop cannot proceed further.

3) The new agreement or concordat should not be contrary to the law already established by the Roman Pontiff. If there already exists an agreement or concordat between the Holy See and the respective country, the patriarch or major archbishop cannot stipulate a new agreement containing some provisions contrary to the former.

4) Approval of the Roman Pontiff: after signing the agreement by the patriarch or major archbishop and the civil authority, another intervention of the Roman Pontiff is necessary before its promulgation and implementation. Hence the patriarch or major archbishop has to send the agreement to the Roman Pontiff and obtain his approval.

A concordat or agreement between a patriarch or major archbishop with a civil authority according to this procedure has the same value as a

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[40] In this context it should be remembered that in the particular circumstances of the Middle East, the Eastern patriarchs were considered as the religious and civil or political heads of the respective communities.

concordat directly stipulated between the Holy See and a government. Hence, for particular circumstances of a country, even if such a concordat entered into between a patriarch or major archbishop in accordance with the aforementioned conditions contains some provisions contrary to canon law, they continue in force until another agreement has been reached between the parties and signed by them. One may keep in mind that in those countries, where there is no religious liberty, the purpose of a concordat is to obtain the minimum recognition possible for the Church and its mission.

Some States, which consider Islam to be the State religion, have established relations with the Holy See in the form of the exchange of diplomatic officials: an ambassador or a plenipotentiary on the part of the State and a nuncio or inter-nuncio on the part of the Holy See. However, the Islamic States are generally reluctant to stipulate any convention or agreement with the Holy See or patriarchs which would fix the legal status of the Catholic communities in their countries.[41] Until today the Holy See has succeeded to stipulate some kind of agreement only with two North African Islamic States: Tunisia and Morocco.[42] In spite of the aforementioned provision in the Eastern Code, no concordat is known to have been established between a civil State and a patriarch or major archbishop.

However in some Muslim countries, especially in those of the former Ottoman Empire some provisions have been made by the States in favour of religious communities, which are known as personal statutes.[43] Also in Israel personal statutes are in force, which permit various religious communities recognized by the government to profess and practise their faith.[44] As René Metz affirms: "In these circumstances it is a matter of unilateral concessions or determinations by the state and not of an

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[41] Cf. G. Nedungatt (ed.), *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches*, Rome 2002, 76.

[42] Cf. Respectively *Acta Apostolicae Sedis* 56 (1964) 917-924 and 67 (1985) 712-714; cf. also, G. Nedungatt (ed.), *A Guide to the Eastern Code*, 76. On 15 February 2000 the Holy See signed the "Basic Agreement" with the Palestine Liberation Authority (PLO, it is not a State), in which the latter pledges to uphold and observe the human right to freedom of religion and conscience. See *Acta Apostolicae Sedis* 92 (2000) 853-856.

[43] For more information about *Personal Statutes*, especially in Lebanon and Egypt, B. Basile, *Statut personnel et compétence judiciaire des communautés confessionnelles au Liban*, Kaslik 1993; R. Rowberry and J. Khalil, "A Brief History of Coptic Personal Status Law", in *Berkeley Journal of Middle Eastern & Islamic Law* 3 (2010) 81-139.

[44] Moreover, the "Fundamental Agreement" between the Holy See and the State of Israel signed on 13 December 1993 guarantees freedom of religion and conscience. *Acta Apostolicae Sedis* 86 (1994) 716-729.

agreement made between the state and the Holy See nor an agreement made between a state and a Patriarchal Church in its territory, as is possible according to c. 98".[45] According to personal statutes the religious communities recognized by the respective government can follow their own law as regards religious affairs. So Christians are subject to the law and authorities of their Churches especially in matters touching marriage and family relations.

The Eastern Code requires the patriarchs "to see to it that in the regions where personal statutes are in force they are observed by everyone" (c. 99 § 1). In countries like Egypt, Jordan, Lebanon, Syria, Iraq, Israel, etc., where personal statues are in vigour, different Catholic patriarchs have jurisdiction.[46] Hence some kind of coordination and collaboration is needed among them in the exercise of patriarchal power, also not to create problems with regard to the relationship with the civil authority. Hence the Eastern Code stipulates: "If in the same place several patriarchs exercise power which has been recognized or conceded in the personal statutes, it is expedient that in matters of greater importance they act after consulting with one another" (c. 99 § 1).

In brief, both Codes of canon law confirm the validity and stability of concordats between the Holy See and political communities in accordance with international law. Even if there are some provisions in such concordats contrary to canon law they remain in force until modifications have been made by mutual consent and agreement. Theoretically personal statutes do not prevail against canon law. However, one may remember that in those countries, where freedom of religion is very limited, the only possibility for the local Church is to accept the concessions granted by the civil authority.

5.3. Observation of Civil Law with Canonical Effects: the Basic Principle

As we have seen, Christians are at the same time members of the Church and citizens of a country. So they are subject to both canon law and civil law. The Codes of canon law recognize this reality and give some guidelines for practical life. Both Codes spell out:

CCEO, canon 1504: Civil law, to which the law of the Church remits, is to be observed in canon law with the same effects, insofar as it is not contrary to divine law and unless it is provided otherwise in canon law.	CIC, canon 22: When the law of the Church remits some issue to the civil law, the latter is to be observed with the same effects in canon law, in so far as it is not contrary to divine law, and provided it is not otherwise stipulated in canon law.

[45] R. Metz, Commentary of preliminary canons, in G. Nedungatt (ed.), *A Guide to the Eastern Code*, 77.

[46] Cf. *Annuario Pontificio 2018*, 1126-1129.

When canon law explicitly remits some issue to civil law, for Christians the latter has the same value as canon law. This is often called "canonization" of civil law, which in fact becomes supplementary source of canon law. There are two conditions for canonization: 1) the civil law should not be contrary to divine law; 2) it is not otherwise stipulated in canon law.

5.3.1. Not Contrary to Divine Law

The Church, the mystical body of Christ, is at the same time divine and human; it is a visible society or structure and a spiritual community, an earthly Church and a Church enriched with heavenly gifts. These two aspects of the Church cannot be considered as two things, but as forming one complex reality comprising a human and a divine element.[47] Corresponding to its double nature, the Church and its members are governed by a double legal system, namely divine law and human law, the latter being distinguished into ecclesiastical or canon law and civil law.

In divine law (*ius divinum*) two dimensions can be perceived: divine natural law and divine positive law. The divine natural law is inscribed on the hearts of all human beings, "to which their own conscience also bears witness" (*Romans* 2, 15). The natural law, an indissoluble part of ontological human nature, manifests the dignity of human persons and constitutes the fundamental basis of universal human rights and corresponding obligations.[48] Since natural law pertains to the essential nature of all human beings, it is common to all, irrespective of their nationality, religion, race or ethnicity. The *Catechism of the Catholic Church* confirms: "The natural law, present in the heart of each man and established by reason, is universal in its precepts and its authority extends to all men".[49]

Besides natural law, there is divine positive law, contained in divine revelation. The fundamental structure and institutions of the Church are not determined by arbitrary determinations of human beings, but by the will of its Founder, expressed in revelation.[50] However, there is no agreement among the Catholic Church, Orthodox Churches and the ecclesial communities of Reformation as regards the content of divine law.[51] The Churches of Reformation admit only Sacred Scripture as the bedrock of their faith, while Catholics adhere also to sacred tradition. As

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[47] Cf. Vatican II, *Lumen gentium*, no. 8.

[48] Cf. G. Ghirlanda, *Il diritto nella Chiesa: mistero di comunione*, Roma 1990, 33.

[49] *Catechism of the Catholic Church*, no. 1956.

[50] Cf. G. Ghirlanda, *Il diritto nella Chiesa: mistero di comunione*, 70-71.

[51] For an evaluation of this problem, see A. Dulles, "*Ius Divinum* as an Ecumenical Problem", in *Theological Studies* 38-4 (1977) 681-708.

regards the relationship between Scripture and tradition the Second Vatican Council asserts:

> Hence there exists a close connection and communication between sacred tradition and Sacred Scripture. For both of them, flowing from the same divine wellspring, in a certain way merge into a unity and tend toward the same end. For Sacred Scripture is the word of God inasmuch as it is consigned to writing under the inspiration of the divine Spirit, while sacred tradition takes the word of God entrusted by Christ the Lord and the Holy Spirit to the Apostles, and hands it on to their successors in its full purity, so that led by the light of the Spirit of truth, they may in proclaiming it preserve this word of God faithfully, explain it, and make it more widely known. Consequently it is not from Sacred Scripture alone that the Church draws her certainty about everything which has been revealed. Therefore both sacred tradition and Sacred Scripture are to be accepted and venerated with the same sense of loyalty and reverence.[52]

In fact, "Sacred tradition and Sacred Scripture form one sacred deposit of the word of God, committed to the Church".[53] Hence, for Catholics all what is contained in the Sacred Scripture and sacred tradition pertains to divine law, which is considered supreme, immutable and permanent, although human comprehension and concepts may admit progress and evolution in accordance with socio-cultural changes and signs of the time.[54] For example, according to Catholic theology the hierarchical constitution of the Church with diaconate, priesthood and episcopacy, seven sacraments, the primacy of the Roman Pontiff and the defined dogmas are of immutable divine law, which cannot be modified even by the supreme authority of the Church. However, such unchangeable institutions of divine law also contain some changeable factors, since the former are incarnated in human history and are expressed through human language, concepts and categories, which admit variations in accordance with socio-cultural and historical evolution.[55] Precisely as

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[52] Vatican II, *Dei Verbum* (Dogmatic Constitution on Divine Revelation), no. 9.

[53] Vatican II, *Dei Verbum*, no. 10.

[54] Many items, which were considered as part of divine law after the Council of Trent, now seem to pertain to mere ecclesiastical law. The Second Vatican Council itself affirms that the tradition "makes progress in the Church, with the help of the Holy Spirit. There is a growth in insight into the realities and words that are being passed on". Vatican II, *Dei Verbum,* no. 8.

[55] For a detailed discussion of this problem, see K. Rahner, *Theological Investigations*, vol. 4, London 1966, 219-243; *Theological Investigations,* vol. 14, London 1976, 3-23.

regards the incarnation of divine law in human categories Karl Rhaner affirms:

> The *jus divinum* of the Church always and wherever it exists has a concrete embodiment which is not itself *juris divini* though of course this does not mean that this *jus divinum* in the Church is not real, i.e. that it cannot be present in any effective sense. What we find ourselves directly confronted with in the constitutional law of the Church either to our joy or to our sorrow is the changeable element. And it is precisely and solely *in* this that the abiding nature of this constitutional law as given to the Church by God can be made present and effective.[56]

As Pope Francis clarifies, "The Church is herself a missionary disciple; she needs to grow in her interpretation of the revealed word and in her understanding of truth. [...] today's vast and rapid cultural changes demand that we constantly seek ways of expressing unchanging truths in a language which brings out their abiding newness".[57] Even the sacred liturgy itself "is made up of immutable elements divinely instituted and of elements subject to change".[58]

It is a basic principle that Christians cannot act against divine law. Hence they cannot comply with civil laws which are contrary to the divine law. Often modern secularized States promulgate laws contrary to divine law, for example abortion, divorce, euthanasia, etc. However, all these are only permissive laws and not imposed upon anyone. No one can be constrained to practise them, except in totalitarian States. Hence even if such laws contrary to divine law are promulgated in a country, Christians can live without implementing them in their personal life.

Not only Christians, but also all other citizens are not obliged to follow the directives of the civil authorities, when they are contrary to natural law, fundamental rights and dignity of human persons. As regards Christians, *The Catechism of the Catholic Church* establishes:

> The citizen is obliged in conscience not to follow the directives of civil authorities when they are contrary to the demands of the moral order, to the fundamental rights of persons or the teachings of the Gospel. Refusing obedience to civil authorities, when their demands are contrary to those of an upright conscience, finds its justification in the distinction between serving God and serving the political community. "Render therefore to Caesar the things that are Caesar's, and to God

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[56] K. Rahner, *Theological Investigations*, vol. 14, 20.

[57] Francis, apostolic exhortation *Evangelii Gaudium*, Vatican City 2013, nos. 40-41.

[58] Vatican II, *Sacrosanctum Concilium* (Constitution on the Sacred Liturgy), no. 21.

> the things that are God's" (Mt 22: 21). We must obey God rather than men" (*Acts* 5: 29).[59]

Christians have the right and obligation to protest against unjust and "immoral" laws, adopting ways of civil disobedience and using all peaceful means, available to them, which are compatible with the Gospel. In particular circumstances of brutal totalitarianism, even armed resistance to oppression by political authority is permitted under some very rigorous conditions.[60]

5.3.2. Not otherwise Stipulated in Canon Law

As a visible structure and human society the Church is governed also by human ecclesiastical law or canon law and even by civil law. While promulgating the Latin Code on 25 January 1983, as regards the need of ecclesiastical laws, Pope Saint John Paul II affirmed:

> And in fact a Code of Canon Law is absolutely necessary for the Church. Since the Church is established in the form of a social and visible unit, it needs rules, so that its hierarchical and organic structure may be visible; that its exercise of the functions divinely entrusted to it, particularly of the sacred power and of the administration of the sacraments, is properly ordered; that the mutual relationships of Christ's faithful are reconciled in justice based on charity, with the rights of each safeguarded and defined; and lastly, that the common initiatives which are undertaken so that Christians life may be ever more perfectly carried out, are supported, strengthened and promoted by canonical laws.[61]

In comparison with divine law, which is essentially immutable and permanent, mere ecclesiastical laws or canon laws promulgated by the authority of the Church, are subject to change according to the signs of time. For example, many canons of the Latin Code 1917, which are not enunciations of divine law, are modified, updated or abandoned in CIC 1983, in the light of the teaching of Vatican II. In fact the new Code "can be viewed as a great effort to translate the conciliar ecclesiological teaching into canonical terms".[62] Explaining the difference between divine law and canon law Karl Rahner clarifies:

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[59] *Catechism of the Catholic Church*, no. 2242.

[60] Cf. *Catechism of the Catholic Church*, no. 2243.

[61] John Paul II, apostolic constitution *Sacrae disciplinae leges*, *Acta Apostolicae Sedis* 75-II (1983) xii-xiii; English translation, *The Canon Law Letter and Spirit: A Practical Guide to the Code of Canon Law* (The Canon Law Society of Great Britain and Ireland), London 1996, xvi.

[62] John Paul II, apostolic constitution *Sacrae disciplinae leges*, *Acta Apostolicae Sedis* 75-II (1983) xi; *The Canon Law Letter and Spirit,* xv.

> Divine law and church law are not the same thing. A human authority speaks in the latter, although one which is legitimate by God's will. It speaks in laws, in regulated customs, and in the common life of the church. Although all of this lays claims upon the conscience of individuals, it is basically mutable, as distinguished from divine law, and in the first instance it is also subject to the criticism and to the desires for change on the part of the faithful. The church can only proclaim a divine law which comes from man's essence or from the intrinsic essence of the historical salvation which has been constituted in Christ. To the extent that it is possible, the church can make an effort to see that this divine law is really obeyed. But she herself stands under this law and she cannot change it. She can explain it, but she is not the lord of this law.[63]

From what we have already seen it is evident that besides the institutions and enunciations of divine law (doctrinal statements and moral precepts), the Codes of canon law contain also ecclesiastical human laws. In the last category even some civil laws can be included, with the same force and value of canon law. In many matters the Codes of canon law explicitly require the faithful to follow civil law (see the table above). While deferring a matter to civil law, canon law may establish some of its own norms and in that case both should be followed.

In addition to such explicit canonization or referral, almost all aspects of social, cultural, political, economic, financial and commercial life of the citizens are regulated only by the civil law of the respective country. Canon law does not legislate on such secular matters, unless they are related to ecclesiastical and religious affairs. Hence, like other citizens, in all matters not regulated by canon law the Christian faithful are equally obliged to comply with civil laws provided that they are not contrary to divine law (*ius divinum*), as explained above.

As the canon law respects civil law, when civil authorities happen to deal with purely religious affairs of Catholics, canon law is to be followed. If a Catholic approaches a civil court, instead of ecclesiastical forums, for religious matters, which are regulated only in canon law, a civil judge may either declare his incompetence or formulate his judgement taking into account the norms of canon law. For example, Catholic religious life in monasteries, orders and congregations (admission, formation, profession, dismissal etc.) is regulated only in canon law. If a dismissed religious approaches a civil court and if the case is accepted, the judge is to examine whether the canonical procedures for dismissal has been observed, because there is nothing in civil law concerning dismissal of a religious from a Catholic religious institute.

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[63] K. Rahner, *Foundations of Christian Faith: An Introduction to the Idea of Christianity*, New York 1978, 391.

5.4. Complementarity of Canon Law and Civil Law: Some Selected Themes

It is not within the scope of such an article to treat all aspects of complementarity and coordination between canon law and civil law. Hence, by way of example, three themes are selected for our consideration: Marriage, temporal goods and penal sanctions.

5.4.1. Marriage

For the Church the marriage is a covenant between a man and a woman, founded by the Creator and furnished with his laws, which Christ the Lord has raised to the dignity of a sacrament. So by Christ's institution a valid marriage between baptized persons is by that very fact a sacrament, having the essential properties of unity and indissolubility.[64] As regards the laws regulating the marriage of Catholics both Codes establish the following norms:

CCEO, canon 780 § 1. Even if only one party is Catholic, the marriage of Catholics is governed not only by divine law but also by canon law, without prejudice to the competence of civil authority concerning the merely civil effects of marriage.	CIC, canon 1059. The marriage of Catholics, even if only one party is a Catholic, is governed not only by divine law but also by canon law, without prejudice to the competence of civil authority in respect of merely civil effects of the marriage.

According to both Codes the marriage of Catholics is governed by divine law, canon law and civil law. The Church vindicates its right to observe divine law and canon law with regard to marriage, but recognizes the competence of the civil authority "concerning the merely civil effects of marriage". Obviously the civil State is also interested in the marriage of its citizens, since it produces many civil effects. Often the regulations of civil law concern time and place of celebration, registration, common residence, surname of children, properties, inheritance, adoption, etc. The Catholics should respect these and all other norms of civil law before, during and after marriage, which are not contrary to divine law and canon law. As regards the relationship between canon law and civil law under the aspect of marriage four systems can be identified.

1. Obligatory civil marriage: in most of the European countries (and in their ex colonies), in the continent of South America, in some African countries (especially ex colonies of France) and in other completely secularized countries the State recognizes only the marriage contracted in civil forum and generally prohibits the religious rite before civil marriage, without prejudice to the exception granted in some legislations in danger

[64] Cf. CCEO, c. 776; CIC, c. 1055-1056.

of death or in case of the impossibility to approach a civil official.[65] In these countries, prompted by an ideology of extreme secularization, the faithful of any religion are practically constrained to contract civil marriage, which seems to contradict the fundamental right of religious freedom proclaimed by the Universal Declaration of Human Rights (UNO) and other international conventions.[66] The Catholics in these countries have no choice other than to contract a civil marriage before the canonical marriage.

2. Optional religious or civil marriage: this system, accepted in the civil legislation of the vast majority of countries in the world, recognizes both the religious and the civil forms of marriage as valid, granting freedom to the spouses to select either of them. For the first time this system was introduced in England with the Marriage Act of 1836. Then the same system was extended to all the British colonies and was also received in countries like Finland, Denmark, Iceland and Sweden in Europe as well as in the United States of America, Canada, Costa Rica, Guatemala, Haiti, Panama and Brazil. Today this system, obviously with some variations, is generally followed in all the countries of British Common Wealth.[67] In many of these countries after the celebration of religious marriage transcription in civil registers is obligatory for obtaining civil effects.

3. Concordat marriage: this form can be considered as a variation of optional marriage system. In Italy, Poland (since 1998), Portugal, Spain, Dominican Republic and Colombia, the marriage of Catholics is regulated by a concordat between the Holy See and the State. Accordingly the Catholic spouses can freely select the religious form of marriage; normally the celebration is to be transcribed in civil registers. [68]

4. Marriage according to Personal Statutes: in countries like Israel, Egypt, Jordan, Lebanon, Iran, Iraq, Pakistan and Syria, personal statutes are in force. In these countries marriage of spouses belonging to religions or

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[65] J. Prader, *Il matrimonio in Oriente e occidente*, Roma 1992, 53.

[66] The countries which follow this system are enumerated in alphabetical order: Albania, Angola, Argentina, Austria, Belgium, Bolivia, Bulgaria, Czech Republic, Chile, Cuba, Ecuador, El Salvador, France, Germany, Guinea, Holland, Hungary, Honduras, Ivory Coast, Liechtenstein, Luxembourg, Mali, Mexico, Nicaragua, Paraguay, Perù, Poland (until 1998), Romania, Senegal, Slovakia, Switzerland, Tunisia, Turkey and Ungheria as well as countries of ex Yugoslavia and ex Soviet Union. Cf. J. Prader, *Il matrimonio nel mondo*, Padova 1986, 3-9; *Il matrimonio in Oriente e occidente*, 54-58.

[67] For details, J. Prader, *Il matrimonio nel* mondo, 9-10; *Il matrimonio in Oriente e occidente*, 59-60. Commonwealth is a free association of fifty sovereign independent States, which were generally former British colonies.

[68] J. Prader, *Il matrimonio nel mondo,* 11-14*; Il matrimonio in Oriente e occidente*, 60-64.

communities recognized by the State is exclusively under the religious authority and religious law, and it is celebrated only according to the religious form.[69] As far as Catholics are concerned the requirements, impediments, form of celebration, separation, declaration of nullity and dissolution of bond are regulated by canon law.

5.4.2. Temporal Goods of the Church

The Eastern Code devotes 48 canons to the temporal goods of the Church, which constitute Title 23 (cc. 1007-1054), while the Latin Code has dedicated the entire Book V (cc. 1254-1310), comprising 57 canons to the same theme. It should be pointed out that the Latin Code destined for the entire Latin Church which extends all over the world and the Eastern Code which is common to all the Eastern Catholic Churches establish only some general principles on the temporal goods of the Church, which should be further specified in particular law, taking into account also the civil law of each country. After the preliminary canons, both Codes divide the canons under four sections, which respectively treat the themes: the acquisition of temporal goods, the administration of goods, contracts and especially alienation as well as pious wills and foundations. The first canon of both Codes on temporal goods provides some basic orientational principles:

CCEO, canon 1007: In providing for the spiritual wellbeing of people, the Church needs and uses temporal goods, in as much as its proper mission demands it. Therefore the Church has an inherent right to acquire, possess, administer, and alienate such temporal goods as are necessary for its proper ends, especially for divine worship, for works of apostolate and charity, and for the fitting support of ministers.

CIC, canon 1254. § 1: The Catholic Church has the inherent right, independently of any secular power, to acquire, retain, administer and alienate temporal goods, in pursuit of its proper objectives.

§2: These proper objectives are principally the regulation of divine worship, the provision of fitting support for the clergy and other ministers, and the carrying out of works of the sacred apostolate and of charity, especially for the needy.

In spite of some variations in formulations, both canons coincide with regard to the essential content. In the course of history not only in totalitarian States which denied the ownership of private property, but also in some former Christian countries the temporal good of the Church were unjustly confiscated by civil governments or restrictive laws were promulgated. Hence the Church vindicates its inherent right to acquire, possess, administer, and alienate temporal goods for accomplishing its

[69] Cf. J. Prader, *Il matrimonio nel mondo,* 190-191, 243, 300-301, 306-307, 320-321, 369-370, 459-460, 510-511.

mission, which is mainly spiritual.[70] At present in modern democratic countries, like other religious communities and institutions, generally the Church also enjoys sufficient freedom as regards temporal goods. The Church claims the right to own and administer temporal goods for the attainment of four objectives:

1). Divine worship: the Church exists for a spiritual purpose, namely the adoration and glorification of God and the sanctification, divinization and salvation of human beings. The Church achieves this through the celebration of Divine Liturgy (holy Mass), other sacraments and sacramentals. In fact, "the liturgy is the summit toward which the activity of the Church is directed; at the same time it is the font from which all her power flows".[71] For conducting divine worship sacred places or churches, liturgical books, utensils, vestments and other materials are needed. The church-buildings are to be constructed taking into consideration the socio-cultural, architectural, economic and financial situation of each country, and observing the norms of civil law.[72]

2) Works of apostolate: include preaching of the word of God, catechetical formation, education, healing ministry or care of the sick, promotion of family, diffusion of Christian socio-cultural values, etc.

3) Works of charity: namely care of the poor, the needy, the elderly and those who are displaced dispossessed, abandoned and marginalised. Just as love of God and love of neighbour, divine worship and charity are indissolubly intertwined. In the course of the history of the Church "the exercise of charity became established as one of her essential activities, along with the administration of the sacraments and the proclamation of the word: love for widows and orphans, prisoners, and the sick and needy of every kind, is as essential to her as the ministry of the sacraments and preaching of the Gospel. The Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word".[73] These three ministries presuppose each other and are inseparable; for the

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[70] The Latin Code adds the phrase, "independently of the any secular power", which is particularly true of the sovereign Vatican State and the Holy See.

[71] Vatican II, *Sacrosanctum Concilium*, no. 10.

[72] Bombastic and monstrous church-buildings, constructed for the self-promotion, prestige and notoriety of some competitive parish priests and for the satisfaction of some opulent parishioners, in view of tourism development, cannot be justified especially in countries of the so-called third world, where thousands of people die every day because of malnutrition, lack of medicine and drinking water.

[73] Benedict XVI, *Deus Caritas Est* (Encyclical Letter), Vatican City 2005, no. 22.

Church charity is a part of her nature and an indispensable expression of her very being.[74]

4) Fitting support of the clergy and other ministers: this is essentially related to divine worship, because it is evident that without priests and other ministers the Eucharist and other sacraments cannot be celebrated. The Church needs temporal goods for the formation and instruction of ministers in seminaries, for the sustenance of the clergy, as well as for their equitable remuneration and social security.

The temporal goods of the Church are utilized for the realization of the aforementioned four purposes. Accordingly, ecclesiastical property which is not in fact devoted to one or other of these purposes is not rightly held and may therefore be reassigned.[75] However, according to gospel message priority is to be given to charity, without which all other works of the Church including divine worship may become shallow and hypocritical.[76]

The owners of the temporal goods of the Church are only juridical persons and not physical persons.[77] By law itself Churches *sui iuris*, bishops' conferences, ecclesiastical provinces, eparchies or dioceses, and parishes are juridical persons.[78] A monastery, monastic confederation, order and congregation and their provinces and houses, legitimately erected, are also by the law itself juridical persons.[79] Other juridical persons can be constituted for a purpose in keeping with the Church's mission, namely works of piety, charity or apostolate, according to the norms of canon law.[80] Civil law of the country is to be observed so that the juridical persons and their acts may obtain validity in civil forum as well. No physical person in the Church, whether patriarch or major archbishop or bishop or religious superior, is the owner of the temporal good of the Church, but only their administrator; and vice versa, the personal property of such physical persons is not ecclesiastical property.[81] So a clear distinction has to be made between temporal goods of the Church and personal property of the administrators avoiding confusion, mismanagement and possible embezzlement at all levels.[82]

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[74] Cf. Benedict XVI, *Deus Caritas Est*, no. 25.

[75] Cf. *The Canon Law Letter and Spirit,* 708.

[76] Cf. Mt 5, 21-25; 25, 31-46; 1 Cor 13, 1-13.

[77] Cf. CCEO, cc. 1008-1009; CIC, cc. 1255-1257, 1273.

[78] Cf. CCEO, cc. 280 § 3 and 921 § 2; CIC, cc. 432 § 2, 449 § 2, 515 § 3.

[79] CCEO, c. 423; CIC, c. 634 § 1.

[80] For the norms concerning juridical persons, see CCEO, cc. 920-930; CIC, cc. 113-123.

[81] Cf. G. Nedungatt (ed.), *A Guide to the Eastern Code*, 691-692.

[82] Common people are often prone to criticism, because they mistakenly think that the properties of the dioceses and parishes belong respectively to bishops and parish priests.

It is obvious that the juridical persons in the Church should observe not only canon law, but also the civil law of their own country in acquiring, possessing, administering and alienating temporal goods (see table above). Also according to the gospel spirit the administrators of temporal goods should observe complete transparency and ensure total accountability; they should also pay the taxes, dues and interests according to the civil law, and offer just remuneration for employees, setting an example for the followers of other religions and secular society. The juridical persons of the Church may not degenerate into "construction companies" or "financial conglomerates" which operate for the accumulation of wealth and profit, gaining economic and political power, as well as temporal honour and prestige, in accordance with the inordinate tendencies of modern wild capitalism, brutal competition and unbridled market, ignoring charity which pertains to the very essence of the Church. The ecclesiastical juridical persons exist for the spiritual well-being of the people and for the works of charity according to the teaching of Christ and the social doctrine of the Church.

5.4.3. Penal law

In the Eastern Code, Titles 27 and 28 are dedicated respectively to penal sanctions in the Church (cc.1401-1467) and the procedure for imposing penalties, namely the penal trial (cc. 1468-1487) and extra-judicial decree (cc. 1486-1487). In the Latin Code sanction in the Church is regulated in Book VI (cc. 1311-1398) and penal procedure in Book VII (cc. 1717-1731). Generally in the Church punishments are considered as "suitable medicine to the sickness of those who have offended" and they are imposed "with a view to healing the wounds caused by the offence", in order to lead back the erring sheep to the right path.[83]

In accordance with the teaching of Vatican II concerning the autonomy and independence of the Church and State in their own fields, the Church limits itself to the spiritual realm and punishes only the violation of divine law and canon law. In modern constitutional democratic States theoretically all the citizens, irrespective of their religion, social status and political affiliation are equal before law and it is up to the civil authorities

[83] Cf. CCEO, c. 1401; cf. CIC, c. 1312 § 1. For an evaluation of the differences between the Eastern and Western penal laws, see Thomas J. Green, "Penal Law in the *Code of Canon Law* and in the *Code of Canons of the Eastern Churches*: Some Comparative Reflections", in *Studia Canonica* 28 (1994) 407-451; C. G. Fürst, "Diritto penale e carità", in Congregazione per le Chiese Orientali, *Ius Ecclesiarum Vehiculum Caritatis*, Città del Vaticano 2004, 515-534; J. M. Pampara, "Characteristic Features of the Penal Law in the Code of Canons of the Eastern Churches", in *Iustitia*, vol. 2, no. 2 (December 2011) 267-294.

to punish the violation of civil law, eventually committed by Christian faithful, priests, bishops or cardinals.

In modern times the Catholic Church does not have any police force, military, official investigation agency, enforcement directorates or prisons in any country.[84] All these are obviously competence of the civil government. The punishments prescribed by the penal law of the Church for those who commit offences against divine law and canon law are also of a religious or ecclesial nature. They are: suspension, prohibition, deprivation, penal transfer, dismissal of clerics from clerical state or reduction to the lay state, minor excommunication or interdict, major excommunication, etc.[85]

Formerly such canonical punishments were inflicted only upon Christian faithful and priests and not on bishops who, once appointed, continued until their retirement at the completion of seventy-fifth year of age, despite some eventual offences. However, in both Codes there is an indication for a premature resignation: "a bishop, who, due to ill health or some other grave reason, has become unsuited to fulfil his office, is requested to offer his resignation from office".[86] From the time of the Pontificate of Pope Benedict XVI (2005-2013), on the basis of this provision bishops who committed errors were invited to resign or if refused to do so, have been removed.

In connection with the problems regarding sexual abuses of minors and vulnerable adults both the procedures for the removal of bishops from office and the relationship between canon law and civil law are further clarified. In the *Circular Letter* issued by the Congregation for the Doctrine of the Faith on 3 May 2011 regarding guidelines for dealing with cases of sexual abuses of minors it is affirmed:

> Sexual abuse of minors is not just a canonical delict but also a crime prosecuted by civil law. Although relations with civil authority will differ in various countries, nevertheless it is important to cooperate with such authority within their responsibilities. Specifically, without prejudice to the sacramental internal forum, the prescriptions of civil law regarding the reporting of such crimes to the designated authority should always be followed. This collaboration, moreover, not only concerns cases of abuse committed by clerics, but also those cases

[84] Since the small Vatican City is considered as a State, it is endowed with some of these provisions in a nominal manner. There is also a small prison, which is normally not populated.

[85] Cf. CCEO, cc. 1436-1467; CIC, cc. 1364-1398.

[86] CCEO, c. 210 § 1; cf. CIC, c. 401 § 2.

> which involve religious or lay persons who function in ecclesiastical structures.[87]

Since the sexual abuses of minors are not only a violation of divine law and canon law, but also a crime according to civil law, ecclesiastical authorities are invited to cooperate with the civil authorities for the prosecution of such presumed crimes.

Since transparent procedures for the removal of bishops from office, who committed offences, are not found in the Codes of canon law, on 4 June 2016 Pope Francis promulgated an apostolic letter in the form of *motu proprio*, precisely determining the process for their removal.[88] The Pope acknowledges that canon law already provides for the possibility of removal of bishops and eparchs from ecclesiastical office "for grave reasons". Hence with this letter the intention of the Pope "is to underline that among the aforesaid 'grave reasons' is the negligence of a Bishop in the exercise of his office, and in particular in relation to cases of sexual abuse inflicted on minors and vulnerable adults".[89] After the introductory part, the apostolic letter contains 5 articles, of which we reproduce the first one, part one:

> The diocesan Bishop or Eparch, or one who even holds a temporary title and is responsible for a Particular Church, or other community of faithful that is its legal equivalent, according to can. 368 CIC or can. 313 CCEO, can be legitimately removed from this office if he has through negligence committed or through omission facilitated acts that have caused grave harm to others, either to physical persons or to the community as a whole. The harm may be physical, moral, spiritual or through the use of patrimony.[90]

In this apostolic letter the Pope has laid down clear, transparent and verifiable procedures for the removal or deposition of bishops from office, at the same time guaranteeing the right of self-defence to the accused and ensuring justice to the victims.

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[87] Congregation for the Doctrine of the Faith, *Circular Letter to Assist Episcopal Conferences in Developing Guidelines for Dealing with Cases of Sexual Abuses of Minors Perpetrated by Clerics*, 3 May 2011, Ie; http://www.vatican.va/roman_curia/congregations/cfaith/documents.

[88] Francis, apostolic letter, *As a Loving Mother* (issued in the form of *motu proprio* on 4 June 2016*)*, in *Acta Apostolicae Sedis* 108 (2016) 715-717; English trans., in WWW. Vatican va\Francesco\Motu Proprio.

[89] Francis, apostolic letter, *As a Loving Mother,* in *Acta Apostolicae Sedis* 108 (2016) 717.

[90] Francis, apostolic letter, *As a Loving Mother,* Article I, § 1, in *Acta Apostolicae Sedis* 108 (2016) 717.

As we have already seen, relationship between Church and civil authorities is different in various countries. In modern democratic countries impartial investigation agencies and independent judiciary system exist and the penal law is equally applied to all citizens.[91] However, one may not forget the situation in some totalitarian, atheistic, antireligious, semi-democratic or theocratic countries, where the judiciary is often at the service of the regime or it functions according to the dictates of a single religion.

Since the Church does not possess technologically skilled investigation agencies or police force, in democratic countries even for inflicting canonical penalties on the accused the ecclesiastical authorities including the Pope often wait for the conclusions of independent civil investigation agencies and sentences of impartial civil judges, if credible and incontrovertible evidence against the accused is not available. This also demonstrates the respect, trust and esteem of the Church towards the impartial judiciary system of any country. The Church acts in this manner, in order to respect also the principle of the presumed innocence of the accused, until the contrary is proved. This principle is established by the Universal Declaration of Human Rights and received by modern democratic States and other political organizations. In fact the said Declaration (article 11) explicitly asserts:

> Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.[92]

Also other international conventions and charters of human rights confirm and strengthen the principle of innocence until one is proved guilty.[93] Even though the right to be presumed innocent is not explicitly stated in canon law the Church also respects this fundamental right in inflicting drastic canonical penalties, such as the reduction of clerics to the lay state or deposition of bishops.

Conclusion

Since the vast majority of the citizens of any country are faithful of one or more religions, a sound relationship between the State and religious communities is inevitable for ensuring peace, security and prosperity of

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[91] The fret and fury to intervene in the appointment of judges, even publically exhibited by some heads of governments or ministers, attest that the impartiality of judges may be impaired by their ideology, religious faith or allegiance to their governmental patrons.

[92] United Nations Organization, *Universal Dclaration of Human Rights*, 24.

[93] *African Charter on Human and Peoples' Rights*, article 7, 1b; *American Convention on Human Rights*, article 8, 2; *European Convention on Human Rights*, article 6, 2.

all citizens. In this article we have treated only the relationship between the Catholic Church and State, canon law and civil law, but the basic principles are pertinent to all Churches and religious communities. As we have seen, the nature and reach of such relationship depend on the political system: democratic, theocratic, confessional, secular, atheistic or totalitarian. Although Church and State are autonomous and independent in their own fields, their mutual collaboration and cooperation are necessary for common good. As members of the Church and citizens of a nation the Christian faithful live in any country observing both canon law and civil law in their respective realms. If all the States and political communities implement, which we hope to happen at least in the XXI century, the Universal Declaration of Human Rights and other international conventions and charters, which guarantee the fundamental right to freedom of religion and conscience, there will not be much difficulty for the believers of any religion to profess their faith and observe their religious law, obviously in accord with the constitution and civil law of their country.