

THE PERSON AND THE CHRISTIAN FAITHFUL IN THE CHURCH'S UNIVERSAL LEGISLATION

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Abstract

The author describes and the personality of Christian faithful in the Church's universal legislation. He invites us to focus on the human person, an issue which is at the centre of the Church's social thinking and her moral and legal teaching. Since the Second Vatican council, we can see how the Church has grown in its awareness of the concept of the human person, especially in the social-pastoral thinking of the Church. The current Code of Canon Law is the fruit of the Second Vatican Council, and reflects the anthropology that underlies it. The author explains that we must not forget that this intrinsic and essential union between the person (human being) and law is born of empirical reality. According to him, law is the fruit, to a large extent, of human life, of the human experience itself, as well as the hermeneutic principles of law and of the human person.

Keywords: Person, Human life, Legislation, Anthropological Experience, Religious, consecrated persons.

Introduction

In this article, we would like to focus on the human person, an issue at the centre of the Church's social thinking and moral and legal teachings. Since the Second Vatican Council, we can see how the Church has grown in its awareness of the concept of the human person, especially in its social-pastoral thinking.

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The person is a concept that is very present in the code of canon law, being protected by law itself as a preferential subject of current legislation. We must not forget that this intrinsic and essential union between the person (human being) and law is born of empirical reality. Law is the fruit, to a large extent, of human life, it is an authentically anthropological experience, so the perception of law as a restrictive reality, which many people have today, must lead us to examine the concept that everyone has of the human being, of the human experience itself, as well as the hermeneutic principles of law and the human person.

We have to assert that any form of legal expression must refer to the person since he or she is the first and inalienable addressee of its legal order and action.

If we look at the legislation of the Church, we see that the code (CIC) has 85 canons that refer to 'person,' 5 to the 'ecclesiastical person,' 6 to the 'human person,' and 41 to the 'juridical person.' Only one canon is dedicated to the collegial person, five to the ecclesiastical legal person, nine to the private legal person, eighteen to the public legal person, one to the secular legal person, one to the moral person, eleven to the physical person, three to the private person, and one to the religious person. This classification underlines the importance that the legislator attaches to the person in its various forms within the Church and its legislation.

We would like to begin by recalling the words that St. John Paul II addressed to the Roman Rota: "it is not enough to refer to the human person and his dignity without having made the effort to elaborate an adequate anthropological vision, which, starting from scientifically certain acquisitions, is anchored in the basilar principles of perennial philosophy and allows itself to be illuminated by the light of Christian Revelation."¹ This requires those who legislate and those who approach law to review their own anthropological conception and to be realistic about the history and culture of the human being, which affects the understanding, concreteness, and unrepeatability of each person's existence.² Still, in the words of St. John Paul II, we can say that, "it is about man in all his truth, in his

¹ Cfr. Juanuan Pablo II, *Discurso a la Rota Romana*, 10 Feb. 1995, n. 3; Juanuan Pablo II, *Discurso a la Rota Romana*, 20 Jan. 1993, n. 6.

² Cfr. P. Gherri (Ed.), *Diritto Canonico, Antropologia E Personalismo: Atti Della Giornata Canonistica Interdisciplinare*, Città Del Vaticano, 2008, 11-50.

full dimension. Non si tratta dell'uomo "astratto," ma reale, dell'uomo "concreto," "storico" ... *L'uomo così com'è voluto da Dio, così come è stato da Lui eternamente "scelto," chiamato, destinato alla grazia e alla gloria:* this is "every" man, the man "the most concrete," "the most real"; this is the man in all the depth of the mystery of which he has become a part in Jesus Christ."³

The human being created by God is a person fully inserted in an enlightened culture, evangelised by the Word of God, from which we must accept all that is good in it and which is capable of expressing the riches of Christ.⁴ It is a Christian-Catholic culture that must be above human cultures that separate, divide, and exclude.

The Human Person

Tackling this argument is not easy since each piece of legislation, whether civil or ecclesiastical, has behind it a specific and sometimes conflicting concept of the human being. For this reason, we believe that this argument cannot be tackled if we do not determine which anthropological concept underlies our canonical legislation. Being aware that the reflection of the Council Fathers recovered the cultural dimension of the human being, since it is through the culture that the human being is constructed as a person.⁵

The current Code of Canon Law is the fruit of the Second Vatican Council,⁶ and reflects the anthropology that underlies it. It is an anthropology that emphasises the person, his or her singularity, and

³ Cfr. Juan Pablo II, *Discurso a la Rota Romana*, 10 Feb. 1995, n. 3.

⁴ Cfr. P. Ghetti (ed.), *Diritto Canonico, Antropologia e Personalismo*, 11-50.

⁵ Cfr. International Theological Commission, *Dignity and Rights of the Human Person*, 1983: "It is proper to the human person not to attain a truly and fully human standard of living except by means of culture, thus making use of the goods and values of nature. [...] With the generic term "culture" we want to indicate all the means by which the human being affirms and explains the many gifts of his soul and body. [...] Consequently, culture necessarily has a historical and social aspect, and the word culture often assumes a sociological and ethnological meaning. In this sense we speak of pluralism of cultures. In fact, the different ways of making use of things, of working, of expressing oneself, of making laws and creating legal institutions, of developing science and art and of collecting beauty, have given rise to the different common living conditions and the different ways of organizing the goods of life. Thus, from the traditional uses...the historically defined environment is built, in which every man, of every age and period, is inserted, and from which he attains the benefits that allow him to promote civilization."

⁶ Let us remember that St. John XXIII wanted a revision of the Code to be carried out in the light of the Council.

not so much the generality of the human being. This implies moving away from a general legislative reading and a generic application of the law to a reading and application of the law according to each person and their uniqueness, remembering that there are no general cases but people with a specific *factispecies*.

In other words, it is necessary to be able to distinguish between a (general) legal norm and its addressee (the concrete individual person). This requires a profound knowledge of both the law and the theological and functional foundations of the person, as well as of the concrete situation of the person subject to the law. We have to be aware that the law is largely born out of jurisprudence, i.e., out of the concrete application of the norm,⁷ and that the person has to be seen in his or her singularity, as I have already stated, since no human being can exist outside of one's own space-time and therefore out of one's own culture.

The pastoral constitution *Gaudium et spes* in number 3 defines the type of person to which the Church refers: "the whole person is man, body and soul, heart and conscience, intellect and will."⁸ In number 14, we find a more precise perspective on what the Council understands by person: in the unity of body and soul, man, by his very bodily condition, is a synthesis of the material universe, which reaches its highest peak through man and raises its voice to the free praise of the Creator.⁹ Along these lines, *Lumen Gentium*¹⁰ reminds us that it is the concrete person to whom the whole ecclesial activity of sanctification is directed, to whom God himself has destined him, and therefore law, as an integral part of ecclesial activity, has as its subject the concrete person and his sanctification.¹¹

For the Council, the person is considered firstly in relation to other persons and secondly in relation to things. Following the thought of St. Thomas Aquinas, we must affirm that the human person cannot ever, as such, be a means,¹² which others can use, but is always

⁷ Cfr. P. Gherri (ed.), *Diritto Canonico, Antropologia e Personalismo*, 11-50.

⁸ GS n. 3.

⁹ GS n. 14.

¹⁰ Cfr. LG nn. 41-42.

¹¹ We could say it in the words of the last canon of the Code of Canon Law 1752: *the salvation of souls, which must always be the supreme law in the Church*. The "*salus animarum*" which is the first and ultimate aim of the Church's current legislation.

¹² In this Thomistic sense, I believe that we need to review the business language that is often applied within the Church and within Institutes of Consecrated Life and

considered as an end. The person, as such, cannot be a person and cannot achieve full development, if not in union and communication with other people. The Council and the Code invite us to recover the person (personalism), which differs from the individual (individualism), which applied to the exercise of the service of authority in Consecrated Life, leads us to remember that authority is personal, but never exercised individually, but with the help and collaboration of a council and community.

This is a paradigm shift that the Council presented to us, especially in the Dogmatic Constitution *Gaudium et Spes* and in the declaration *Dignitatis Humane*. A paradigm shift that was reflected in the criteria for the revision of the code, which distinguished in the second principle between the internal and external forum of the person,¹³ and established in the seventh criterion the protection of the rights and duties of the Christian faithful¹⁴ and the rights and duties of the religious and of all consecrated persons in general.

Societies of Apostolic Life to their members. They are defined and classified as human resources, something that is very far from the conception that St. Thomas had of the human being and that the Church manifests in her magisterial documents. To consider the person as a resource is to reify the human being and is therefore at the service of pragmatism and productivity.

¹³ *Confirmare autem oportet et indolem iuridicam nostri Codicis in his quae forum externum respiciunt, et necessitatem fori interni prout in Ecclesia optimo iure per saecula viguit. Normae igitur in recognito Codice tradentur respicientes omnia quae ad forum externum attinent atque etiam, ubi animarum salus id exigat, normae quae pertinent ad provisiones in foro interno elargiendas. Fori externi et interni optima coordinatio in Codicis Iuris Canonici existat oportet, ut quilibet conflictus inter utrumque vel dispareat vel ad minimum reducatur. Quod in iure sacramentali et in iure poenali peculiariter curandum est. Cfr. Pontificia Commissio Codicis Iuris Canonici Recognoscendo, Principi quae Codicis Iuris Canonici Recognitionem Dirigant, Typis Polyglottis Vaticanis, 1967, 9.*

¹⁴ *Neque id sufficit ut tutela iurium in iure nostro convenienter vigeat. Agnoscenda enim sunt iura subiectiva vera et propria sine quibus ordinatio iuridica societatis vix concipitur. Proclamari idcirco oportet in iure canonico principium tutelae iuridicae aequo modo applicari superioribus et subditis, ita ut quaelibet arbitrariorum suspicio in administratione ecclesiastica penitus evanescat.*

Haec finalitas, obtineri solummodo potest mediantibus recursibus sapienter a iure dispositis ut ius suum quod quis ab inferiore instantia laesum reputet, in superiore restaurari efficaciter possit.

Dum in Codice Iuris Canonici recursus et appellationes iudiciales sufficienter regulatae secundum iustitiae exigentias reputantur, e contra communis opinio canonistarum censet recursus administrativos non parum deficere in ecclesiastica praxi et administratione iustitiae. Exinde necessitas ubique persentitur ordinandi in Ecclesia tribunalia administrativa secundum gradus et species, ita ut defensio iurium in eisdem habeat propriam et canonicam proceduram quae apud auctoritates diversi gradus apte evolvat. Admisso hoc principio, potestatis ecclesiasticae clare distinguantur diversae functiones, videlicet

To these principles, we should add the third principle of revision of the Code of Canon Law, which makes direct reference to the person, when it establishes that the pastoral care of souls is to be promoted through charity, temperance, humanity, moderation, not only in the application of laws by pastors, but also in legislation itself.¹⁵

This makes the person “the first and fundamental path of the Church,” as St. John Paul II affirmed, which is why the code takes as

legislativa, administrativa et iudicialis, atque apte definiatur a quibusdam organis singulae functiones exercentur.

Nostri Codicis pariter erit statuere quatenam in concreto actiones concedantur apud tribunalia administrativa experiendae, processus administrativi regulas definire, necnon organa stabilia constituere, quae eosdem cognoscere valeant.

Facilius iustitiam administrativam ordinari quoad actus administrativos in comperto est; difficilius vero si recursus concedi debeant et applicari ipsi quoque normis gradus inferioris, si et in quantum superioribus contradicant.

In optatis est ut tamquam regula generalis habeatur quod quilibet processus sit publicus, nisi iudex propter rerum et personarum adiuncta aestimaverit, certis in casibus, secreto esse procedendum. Requiritur autem ut, in processu sive iudicali sive administrativo, recurrenti vel reo manifestentur omnes rationes quae contra ipsum invocantur. Cfr. Pontificia Commissio Codicis Iuris Canonici Recognoscendo, Principi quae Codicis Iuris Canonici Recognitionem Dirigant, 13-14.

¹⁵ *Natura sacra et organice exstructa communitatis ecclesialis manifestai indolem Ecclesiae iuridicam omnesque eius institutiones ad promovendam vitam supernaturalem ordinari. Quare iuridica ordinatio Ecclesiae, leges et praecepta, iura et officia quae exinde consequuntur, fini supernaturali congruere debent. Nam ius in mysterio Ecclesiae habet rationem veluti sacramenti seu signi vitae supernaturalis christifidelium, quam signat et promovet. Equidem non omnes omnes normae iuridicae ad finem supernaturalem vel curam pastoralem fovendam directe proferuntur; eidem tamen fini supernaturali hominum obtinendo apte congruere necesse est. Quare, in legibus Codicis Iuris Canonici elucere debet spiritus caritatis, temperantiae, humanitatis ac moderationis, quae, totidem virtutes supernaturales, nostras leges distinguunt a quocumque iure humano seu profano. In iure condendo Codex non tantum iustitiam sed etiam sapientem aequitatem colat, quae fructus est benignitatis et caritatis, ad quas virtutes exercendas Codex discretionem atque scientiam Pastorum et iudicum excitare satagat. Ne igitur normae canonicae officia imponant, ubi instructiones, exhortationes, suasiones aliaque subsidia, quibus communicatio inter fideles foveatur, ad finem Ecclesiae facilius obtinendum sufficientia appareant; neque leges irritantes actus iuridicos vel inhabilitantes personas facile Codex statuatur, nisi earum obiectum magni momenti sit, et bono publico ac disciplinae ecclesiasticae vere necessarium.*

Relinquatur Pastoribus ac animarum curatoribus congrua discretionalis potestas, qua officia christifidelium statui ac conditionibus singulorum adaequari valeant; uti v. g. factum est in Const. Apost. Paenit. emini.

Bonum praeterea totius Ecclesiae postulare videtur ut normae Codicis futuri nimis rigidae non sint. Etenim maior quaedam libertas Ordinariis concessa, praesertim in determinatis adiunctis prout in missionibus, multum conferre aestimatur ut in- doles pastoralis iuris canonici magnopere emergat. Cfr. Pontificia Commissio Codicis Iuris Canonici Recognoscendo, Principi quae Codicis Iuris Canonici Recognitionem Dirigant, 9-10.

a hermeneutic element the "*salus animarum*," which today we could call the "*salus personarum*," as the first and fundamental end¹⁶ and *ratio fundamentalis* of all ecclesial legislation.

From the ecclesial juridical perspective, we can say that the person is "every human individual (man-woman) by virtue of his or her own nature and dignity, to whom the law merely recognises that status." This recognition as a person is based on his or her dignity as a human being and, as such must be recognised in every legal system, regardless of the different conditions in which the human being may find himself or herself throughout his or her life: age, sex, profession, religion, opinion, race, health, citizenship, etc...¹⁷

The Christian Faithful as an Ecclesial Person

To be a person, in the juridical sense, is an essential and indispensable property of the human being, which the law recognises, and which makes him or her distinct from other beings created by God¹⁸. This is why we can affirm that every human being is a person for the law of the Church. An affirmation that could be contradictory to what is established in canon 96: through baptism, man is incorporated into the Church of Christ and is constituted a person in her. In other words, for canon law, only the baptised person acquires the recognition of ecclesial personhood¹⁹. This canon must be read together with canon 204 §1, which states: the Christian faithful are those who, having been incorporated into Christ by baptism, are integrated into the people of God, and having been made sharers in their own way in the priestly, prophetic and kingly function of Christ, each according to his own condition, are called to carry out the mission which God has entrusted to the Church to fulfil in the world.

In the light of what appears in current legislation, it would have to be affirmed that every human being is a person (by natural law), but not all persons are subject to rights and duties within the Church for the legislation, because this personality is only acquired with the reception of baptism. Therefore, it is one thing to be a person in the broad sense

¹⁶ Can. 1752.

¹⁷ L. Navarro, *Personé e Soggetti del Diritto della Chiesa: Temi di Diritto della Persona, Studia Canonica*, Rome 2000, 9.

¹⁸ Navarro, *Persone e Soggetti del Diritto della Chiesa*, 9.

¹⁹ In canon 87 of the 1917 Code of Canon Law it was already stated that for canon law a person is only the human being who has received the sacrament of baptism. This is therefore not a novelty in the current code.

and another to be a *Christifidelis*-person in the Church, which is acquired through baptism. The code of canon law being a legislation for the Church, it is logical to affirm that its legislation determines what a person is *ad intra ecclesiae*, without this contradicting the natural sense of person, which is assumed by the Church, as is amply demonstrated in the conciliar and post-conciliar magisterium. We could say that the person precedes and transcends the law.

Persona and *Christifidelis* give the impression of being two different qualifications with the same condition that a human being can possess in canon law. Let us not forget that the Church legislates for the faithful on the basis of divine and ecclesiastical law, without excluding the natural rights of the human being, which are undoubtedly the basis of the rights and duties of the faithful and of the physical persons of the Church. The person is present in canon law and applies to both the human being and the baptised person, but not everyone will be the recipient of the rights and duties that the code establishes since they are applied to baptised persons, members of the Church.

In the words of Gaetano Lo Castro,²⁰ “with baptism man does not acquire a subjectivity that he already has, nor does he become more of a subject, more of a person, than he was not already, but his juridical capacity is extended in relation to the faith and to his belonging to the ecclesial society, and he can be the recipient of the specific effects that relate to the baptised man and the holder of the corresponding juridical patrimony. In Canon Law there is no full correspondence between subjectivity and legal capacity.”²¹

We would like to conclude by inviting us “not to see the reality and experience of law as a mere ordering or organisation, as if it were an institution, but rather to approach law as a reality which is born in and from the person and which offers a profound relationship with God through the person, law constituting a concrete and certain possibility of knowing God’s will and fulfilling his will.”

²⁰ G. Lo Castro, *Il Mistero del Diritto: Il Persona e Diritto nella Chiesa*, G. Giappichelli (ed.), Torino, 2011, 115.

²¹ G. Lo Castro, *Il Mistero del Diritto*, 115.