

## Promotion and Protection of Rights in the Church

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Recently I was asked by a pastor of a parish whether it is licit to refuse to baptize an infant whose parents are in an *irregular* union. Presumably the parents in the case in question were willing to bring up the child in the Catholic faith. The question is, can an infant be baptized if the parents do not intend (or cannot) regularize their union according to the laws of the Church?

A little girl has been refused First Holy Communion because she has missed too many of the instructions. The mother explains to the director of religious education that being a single parent, her work schedule does not permit her to bring her child to all classes. She does bring the child to Mass every Sunday. It seems the director of religious education told her that the child perhaps should get a new mother who would fulfil her responsibilities. The mother does not know what to do next in regard to her child's First Holy Communion.<sup>1</sup>

A Sister in her late fifties came close to a nervous breakdown teaching third grade children. She was not successful in her attempt to transfer to a contemplative community. At this point, the provincial superior and the assistant brought her to her eighty-three year old mother and told to stay there for the Christmas holidays and that they would give her papers to sign which would enable her to depart from religious life.<sup>2</sup>

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<sup>1</sup> This is one of several examples given in J. James CUNEO, "Education in the Rights of Persons at Canonical Training Workshops," in *CLSA Proceedings*, 53 (1991), p. 99.

<sup>2</sup> See *ibid.*, p. 100.

Not too long ago, an Advocate of the Roman Rota was removed from the *Album* of Advocates for behaviour contravening certain norms governing the Rotal Advocates' conduct. But the Apostolic Signatura rescinded the decree of removal because "the one making the recourse was not consulted before the decree was issued." The Signatura invited the Moderator of the Tribunal to examine the matter once more according to the norm of law since there seemed to be a legitimate motive for the removal of the Advocate from the *Album*.<sup>3</sup>

On 24 June 1995, the Apostolic Signatura overturned a decision of the Bishop of Galloway, Scotland, by which he had transferred three parish priests without following the norms of law governing the process of transfer of parish priests.<sup>4</sup>

These are but a few examples which demonstrate the fact that the Christian faithful, of whatever *status* or *condition*, have rights in the Church, and these rights *cannot be* and *should not be* trampled upon by those in authority. As we shall see in this study, even though the rights and obligations in the Church are not *absolute*, they nevertheless cannot be denied or their exercise curtailed without a proportionate and just cause.

The title of this essay implies several important things: first, persons in the Church have *obligations* and *rights*, and they are *real*; second, these obligations and rights enjoy the protection of law; third, the best protection of rights is to create an environment which would enable all the Christian faithful, especially those in *authority*, to know and have a genuine appreciation of them, which in turn means that education of the Christian faithful concerning their rights and obligations is the most effective way of making them *real* in the legal system of the Church. In light of these implications, I will briefly examine

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<sup>3</sup> See *Forum*, 5 (1994) 2: pp. 24-25; see also *The Canadian Canon Law Society, Newsletter*, vol. XXI (Spring 1996), pp. 9-13, here at p. 13.

<sup>4</sup> The *In iure* section of the Signatura's decision (with English translation) has been published in *Forum*, 6 (1995) 2: pp. 117-122; see also *CLSGBI Newsletter*, No. 104 (December 1995), pp. 22-23 (where the statement by Bishop Taylor, the Ordinary of Galloway, regarding the transfer of the three priests involved is published), and pp. 24-32 (where a brief, but precise, commentary by Paul Hayward on the law governing the issue of transfer of parish priests and the role of the Apostolic Signatura has been presented). The Bishop in this case, after consulting the Council of Priests and the Diocesan Consultors, formally withdrew his decree of transfer of the three priests and pleaded with the clergy and the people of the diocese for reconciliation and healing.

three aspects of the obligations and rights of persons in the Church: their *nature* and *context*, *promotion* and *protection*.

## RIGHTS IN THE CHURCH!

In our modern cultural ethos “right” is the buzz word! More than ever before, people of the world are becoming aware of their rights and are not hesitant to claim and defend them. But what exactly is a *right*? In fact there is no single meaning or unitary theory about the concept of *right*. The very notion of right is rooted in the philosophical, ethical, political and social values that constitute a particular society. Therefore, as G.J. Robinson rightly observes, “in some societies it may be easy to determine these values, but in the pluralist and changing societies of today it is often very difficult. In the absence of an agreed basis for rights, it is often difficult even to find a common ground for discussion with many people.”<sup>5</sup>

## Definition

The term “right”, which is derived from the latin *ius*, is complex in its meaning because it conveys several different theories, e.g., from the Thomistic view that *right* is an objectively just thing, to that of Thomas Hobbes which considers *ius* as a *liberty* to exercise a subjective power.<sup>6</sup> For the Romans the concept of *right* was embedded in the notion of *justice* defined by Ulpianus as the “constant and perpetual disposition to render one’s due.”<sup>7</sup> This definition became the basis of Thomas Aquinas’ understanding of *right* as the object of justice which seeks a balance between equals.<sup>8</sup> This notion of right implies that by an act of

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<sup>5</sup> Geoffrey J. ROBINSON, “The Challenge of Justice,” in *CLSA Proceedings*, 55 (1993), p. 3.

<sup>6</sup> See Brian TIERNEY, “*Ius* and Metonymy in Rufinus,” in Rosalio I. CASTILLO LARA (ed.), *Studia in honorem Eminentissimi Cardinalis Alphonsi M. Stickler*, Roma, Libreria Ateneo Salesiano, 1992, p. 552; also see Victor G. D’SOUZA, *The Juridic Condition and Status of Minors According to the Code of Canon Law*, JCD diss., Ottawa, Saint Paul University, 1994, pp. 4-5.

<sup>7</sup> “Iustitia est constans et perpetua voluntas ius suum cuique tribuens” (*Institutiones*, 1,1, pr.).

<sup>8</sup> See *Summa theologica*, IIa-IIae, q. 57, art. 1.

justice a proper adjustment is made in human relationships so that each person gets what is rightfully his or hers, and in this way harmony between persons is maintained. In scholastic terms, therefore, a proper understanding of *right* necessarily presupposes a proper understanding of justice, because both concepts are intrinsically correlated. All genuine rights exist in an ordered relationship with each other.

In contemporary language, *right* in a concrete sense means “a power, privilege, faculty, or demand, inherent in one person and incident upon another,” and rights are generally defined as “powers of free action.” Giving to the term a juridic content, a “right” is well defined as “a capacity residing in one man controlling, with the assent and assistance of the state, the actions of others.”<sup>9</sup> This notion of *right*, besides reiterating its relative nature, also affirms the role of the state in enforcing rights. In its *subjective* sense, contra-distinguished from its normative or objective sense, “right is a legitimate and inviolable power whereby one vindicates something for himself as his own. It is power, that is, a faculty or capacity in virtue of which a person can do something in contradistinction to duty in virtue of which a person ought to do something or owes something. Where duty constricts human freedom, right confirms or enlarges it.”<sup>10</sup>

In its intrinsic nature, a subjective right represents the relationship of priority and of exclusivity grounded on the norms of objective law, and in virtue of which a person has priority, to the exclusion of others, to the things/actions determined by the objective law.<sup>11</sup>

The concept of obligation is the flip side of the same reality, that is, right. Roman law considered legal obligation as “a bond of law by which we are reduced to the necessity of paying something in compliance with the laws of the State.”<sup>12</sup> Furthermore, according to Roman law, “the essence of obligations does not consist in that it makes some property or servitude ours, but that it binds another person to give, do

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<sup>9</sup> See HENRY C. BLACK, *Black's Law Dictionary*, Sixth edition, St. Paul, MN, West Publishing Co., 1990, p. 1324.

<sup>10</sup> See Thomas J. HIGGINS, *Man as Man: The Science and Arts of Ethics*, Milwaukee, Bruce, 1949, p. 225.

<sup>11</sup> See W. ONCLIN, “Considerationes de iurium subiectivorum in Ecclesia fundamento ac natura,” in *Ephemerides iuris canonici*, 8 (1952), pp. 10-11.

<sup>12</sup> See *Institutiones*, 3, 13.

or perform something for us.”<sup>13</sup> In these notions of obligation, the emphasis seems to be more on the *legal* relationship which creates a duty and a right, the duty of the debtor to pay and the right of the creditor to be paid. The true meaning of obligation cannot be restricted to a merely legal duty towards someone, rather it embodies in itself a genuine sense of *freedom* to carry on a task with cooperation from those who are affected by the exercise of that *freedom*. This intrinsic nature of obligation introduces into the concept a moral dimension which obliges those who are bound to respect the *freedom* of another person. In other words, obligation means freedom to fulfil a task enjoined on a person by moral or positive disposition of the law, and in the exercise of this freedom other people’s rights and freedoms and common good are respected. This notion expresses the true mutuality between right and obligation.

### Priority of Obligations

Since the promulgation of the Code of Canon Law, in 1983 [= *CIC/83*], commentators have discussed at length the relevance of *rights* in the Church. Considering the unique nature of the Church, whose ontological and existential *raison d’être* is the “salvation of souls,” is it proper to speak of “rights” in the Church? Doesn’t all the fuss over “ecclesial rights” smack of *secularism* and *individualism*? J. Provost points out that there are authors who consider the existence of *rights* in the Church only in a *derived* or *secondary* sense. They argue that in the Church, which is a communion, the *obligation* to maintain communion is primary. The *duties* which flow from baptism determine and condition the rights acquired through baptism. In this sense rights in the Church are secondary. In other words, Christians cannot make a claim against God or the Church. While admitting the existence of rights in the Church, others argue that in the phrase “*obligations* and *rights*” of the Code, the supreme legislator seems to concede a priority of *obligations* over rights in the Church.<sup>14</sup>

Even though the above arguments cannot be dismissed as frivolous, they certainly do not seem to reflect the mind of the Second

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<sup>13</sup> See *Digest*, 44, 7, 3.

<sup>14</sup> James H. PROVOST, “The Nature of Rights in the Church,” in *CLSA Proceedings*, 53 (1991), pp. 4-5.

Vatican Council as well as the papal magisterium especially of the post-conciliar era.

It is true that the Church is first and foremost a communion, mystical reality animated by the Spirit of our Risen Lord, and all those who enter it through baptism are equal in dignity and function. The fundamental purpose of this communion is twofold: *achievement of personal holiness* of the individual and *enrichment* of the communion itself. This doctrine cannot be adduced in support of the view that in the Church obligations or duties have priority over rights. Even the personal rights of a Christian are essentially *communitarian* in nature because a person is baptized not only for his or her own sake but also for the enrichment of the Church. Therefore, if people properly understand the nature of rights in the Church, they cannot and should not read them in a spirit of "exaggerated individualism." The fact that Christians have rights is abundantly clear in the numerous rights explicitly or implicitly declared in the revised Latin and Eastern Codes. Does the phrase "*obligations* and rights" instead of "*rights* and obligations" justify the argument that *obligations* or *duties* have priority over *rights* in the Church? This question was raised during the revision process, and the Code Commission replied that the phraseology itself was not that significant since both rights and obligations in the Church come from the sacraments.<sup>15</sup> Moreover, both phrases, "obligations and rights" and "rights and obligations" are used interchangeably in many places in the Code, and the Eastern Code in fact consistently uses the phrase "rights and obligations."<sup>16</sup> According to R. Castillo Lara, the choice of the phrase "obligations and rights" was meant to underscore

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<sup>15</sup> PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Relatio complectens synthesim animadversionum ...*, Typis polyglottis Vaticanis, 1981, p. 62: "Loco 'de obligationibus e iuribus' dicatur 'de iuribus et obligationibus', quia est locutio traditionalis ... et melius fundata in ipsa constitutione sacramentali Ecclesiae." R. *Potest recipi*, sed non videtur necessarium: revera ex sacramentis profluunt sive iura sive obligationes."

<sup>16</sup> See *Codex canonum Ecclesiarum Orientalium*, auctoritate IOANNIS PAULI PP. II promulgatus, Vatican City, Typis polyglottis Vaticanis, 1990 (= *CCEO*), cc. 7-26 with the title "The Rights and Obligations of All the Christian Faithful"; cc. 78-101 with the title: "Rights and Obligations of Patriarchs"; cc. 190-211 titled: "The Rights and Obligations of Eparchial Bishops"; cc. 367-393 titled: "The Rights and Obligations of Clerics"; and cc. 399-409 on Lay Persons with no title as in the Latin Code, but all the obligations and rights listed in cc. 224-231 pertaining to lay Christian Faithful are included in these canons.

the principle that the Christian is called by God to form part of his people, and consequently, the fundamental duty of the Christian is to respond to that call. This necessarily entails active participation by each of the Christian faithful in the life and mission of the Church, which represents a duty before right. Yet the emphasis on obligation is not to be construed as a reason for considering rights as secondary in the Church.<sup>17</sup> E. Corecco also upholds the precedence of obligations over rights, for he says that this priority is founded on the fact that "all Christians, whatever their sacramental and canonical status, exist as Christians only by reason of their relation to the salvific vocation given by Christ, the vocation to accede to communion with the Father and with the rest of the faithful."<sup>18</sup>

The very notion of rights in the Church has a special significance in light of its principal purpose of being in this world. In a true sense the rights of the individual are subject to the rights of the Church. A person cannot be an authentic Christian outside the realm of the Church. An individual Christian has rights in the Church to the extent he or she remains in communion, which is the fundamental obligation. The phraseology utilized in the Code could only mean that the priority of obligations over rights is a genuine reminder to us that as Christians service is primary in imitation of Christ "who came not to be served but to serve." Rights, if considered purely in terms of power or a claim against the Church, would naturally create an unhealthy tension detrimental to ecclesial communion. And this kind of individualism or personalism is diametrically opposed to the very communal nature of the Church. Rights do exist in the Church, but they are essentially communal in nature, and therefore, they do not and cannot admit of absolute individualism.

### **Kinds of Rights in the Church**

The rights in the Church, as in civil society, are different in nature and kind. On the basis of their source or *fundamentum*, rights in the

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<sup>17</sup> See Rosalio CASTILLO LARA, "Some General Reflections on the Rights and Duties of The Christian Faithful," in *Studia canonica*, 20 (1986), pp. 25, 32.

<sup>18</sup> Eugenio CORECCO, "Theological Justifications of the Codification of the Latin Canon Law," in M. THÉRIAULT and J. THORN (eds.), *The New Code of Canon Law*, proceedings of the 5<sup>th</sup> International Congress of Canon Law, Ottawa, Faculty of Canon Law, Saint Paul University, 1986, vol. 1, p. 93.

Church can be grouped into six main categories: *human or natural* (source: human dignity); *ecclesial* (source: baptism); *ecclesiastical* (source: office); *communal or religious* (source: religious profession); *civil* (source: citizenship); and *contractual* (source: contract).<sup>19</sup>

a) *Natural or human rights* proclaimed in the Code but as arising from human nature (dignity) are: the right to association and assembly (c. 215)<sup>20</sup>; the freedom of inquiry and expression in sacred sciences (c. 218)<sup>21</sup>; the freedom from coercion in choosing one's state in life (c. 219)<sup>22</sup>; the right to reputation and privacy (c. 220)<sup>23</sup>; the right to vindicate one's rights in the proper forum and due process of law when using courts (c. 221).<sup>24</sup> These are only a few examples of human rights declared in the Code, but they are not creations of any positive law, for they preexist the law.<sup>25</sup>

b) *Ecclesial rights* are the direct consequences of baptism, and these, for example, are: the right to holiness of life (c. 210)<sup>26</sup>; the right to participate in spreading the Gospel (c. 211)<sup>27</sup>; the right to share in the sacramental life of the Church (c. 213)<sup>28</sup>; the right to initiate and promote apostolic action (c. 216)<sup>29</sup>; the right to a Christian education (c. 217).<sup>30</sup> Again these rights are not granted by the disposition of the

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<sup>19</sup> See John P. McINTYRE, "Lineamenta for a Christian Anthropology: Canons 208-223," in *Periodica*, 85 (1996), p. 264.

<sup>20</sup> Cfr. c. 18 of *CCEO*.

<sup>21</sup> Cfr. c. 21 of *CCEO*.

<sup>22</sup> Cfr. c. 22 of *CCEO*.

<sup>23</sup> Cfr. c. 23 of *CCEO*.

<sup>24</sup> Cfr. c. 25 of *CCEO*.

<sup>25</sup> See James H. PROVOST, "The Christian Faithful," in James A. CORIDEN, Thomas G. GREEN, and Donald E. HEINTSCHEL (eds.), *The Code of Canon Law: A Text and Commentary*, New York/Mahwah, Paulist Press, 1985, p. 139.

<sup>26</sup> Cfr. c. 13 of *CCEO*.

<sup>27</sup> Cfr. c. 14 of *CCEO*.

<sup>28</sup> Cfr. c. 16 of *CCEO*.

<sup>29</sup> Cfr. c. 19 of *CCEO*.

<sup>30</sup> Cfr. c. 20 of *CCEO*.



legislator but by Christ himself who acts in the sacraments. The Church has the power to regulate the exercise of these rights for the common good, but their existence is from Christ himself.

c) *Ecclesiastical rights* are those attached to offices within the Church. Unlike natural and ecclesial rights, which transcend every positive legal system, ecclesiastical rights (like civil rights) are conferred through an act of appointment to an office. For example, there are the rights and obligations of bishops, parish priests, parochial vicars, episcopal vicars, auxiliary bishop, etc. The same would be true of other officials, such as finance officer, chancellor, superintendent of schools, the director of religious education, tribunal officials, etc. Since ecclesiastical rights inhere in the office, they become *ius quaesitum* (acquired rights) and, hence, are protected by law (c. 192).<sup>31</sup>

d) *Communal or religious rights* derive from a person's final profession of religious vows. It seems that before the Council religious were piously exhorted, especially during their annual retreats, that in virtue of their vows they had no rights.<sup>32</sup> This is in fact far from the truth. The religious also possess, in accord with their status and condition, all rights and obligations proper to all the Christian faithful, the lay Christian faithful, and the clergy. Moreover, they also enjoy the rights and obligations explicitly and implicitly arising from their own legislation. In the present Code there are eleven canons (cc. 662-672)<sup>33</sup> which delineate the rights of religious. Even though these canons express more the obligations, rather than rights, and the word *ius* or "right" does not appear even once in these canons, religious certainly have rights corresponding to their state in life. Thus, for example, each member has the right to live communal life (c. 607, §2)<sup>34</sup>; the right to privacy as the rule provides (c. 667)<sup>35</sup>; the right to the means to fulfil their obligations; the right to live the consecrated life according to the

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<sup>31</sup> Cfr. c. 974, §1 of *CCEO*. See John P. McINTYRE, "The Acquired Rights: A New Context," in *Studia canonica*, 26 (1992), pp. 32-33.

<sup>32</sup> See James RISK, "A Bill of Rights for Religious," in *Review for Religious*, 5 (1946), p. 85.

<sup>33</sup> Not all the canons of *CIC/83* listed here have their parallel in *CCEO*.

<sup>34</sup> Cfr. c. 410 of *CCEO*.

<sup>35</sup> Cfr. cc. 477; 541 of *CCEO*.

charisms of the founder, etc.<sup>36</sup> The law for religious, both common and particular, declares several rights and obligations of individual members, of superiors and of the institutes themselves.<sup>37</sup>

e) *Civil rights* are acquired by Catholics precisely as citizens of a country. Canon 22 (c. 1504 of *CCEO*) in effect recognizes the importance of civil law. In fact, the Code defers to civil law in some 40 instances that concern financial matters (cfr. c. 492)<sup>38</sup>; property law (cfr. c. 1259)<sup>39</sup>; wages and benefits (cfr. cc. 231, §2; 1286, 2°).<sup>40</sup> Civil rights acquired by Catholics are to be respected and protected by the Church. These include entitlement programmes, health care, retirement and other benefits. For example, an individual Catholic may choose to run for an elective office. As long as the common good of the Church is not compromised, if a person meets all the legal requirements and completes the necessary formalities, then the Church must respect the acquired right to run for public office, mindful that the liberty of the Church is one thing and the liberty of an individual is another (cfr. c. 36, §1)<sup>41</sup>. Canon 4 (cfr. c. 5 of *CCEO*) protects civil rights lawfully acquired.<sup>42</sup>

f) *Contractual rights* arise from a contract or pact. The contract itself gives the title to the *ius in re* or the *ius ad rem*. In c. 1290<sup>43</sup>, the present Code canonizes the civil law on contracts. In employing personnel for diocesan offices, for example, the Code recommends agreements according to the stipulations of civil law to protect laity (c. 231, §2)<sup>44</sup>, and religious (c. 681, §2).<sup>45</sup> Not only are violations of contracts

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<sup>36</sup> See Elizabeth McDONOUGH, "The Protection of Rights in Religious Institutes," in *The Jurist*, 46 (1986), 168; Virginia BARTOLAC, "Recognition and Protection of Rights in Consecrated Life - Part II," in *CLSA Proceedings*, 53 (1991), 184.

<sup>37</sup> See CUNEO, "Education in the Rights of Persons," pp. 114-115; also see McINTYRE, "Acquired Rights," pp. 33-34.

<sup>38</sup> Cfr. c. 263 of *CCEO*.

<sup>39</sup> Cfr. c. 1010 of *CCEO*.

<sup>40</sup> Cfr. cc. 409, §2; 1030, 2° of *CCEO*.

<sup>41</sup> Cfr. c. 1512, §2 of *CCEO*.

<sup>42</sup> See McINTYRE, "Acquired Rights," p. 32.

<sup>43</sup> Cfr. c. 1034 of *CCEO*.

<sup>44</sup> Cfr. c. 409, §2 of *CCEO*.

<sup>45</sup> Cfr. c. 415, §3 of *CCEO*.

actionable in the legal domain, breach of contract can also bring the local church into great disrepute in the moral realm. In our modern culture, civil law and canon law increasingly interact, particularly in the area of contracts, and therefore, the Church has to consider it important to heed the stipulations of civil law concerning contracts and agreements.<sup>46</sup>

### Context of Obligations and Rights

In any society driven by modern liberalism, the communal or communitarian aspects of obligations and rights are likely to receive very little consideration. Such an environment is fertile for narrow individualism and privatization of rights.<sup>47</sup>

The very nature of Christian existence is communitarian. A person becomes a Christian through baptism which incorporates him or her into Christ and into the community of the faithful (c. 204).<sup>48</sup> This incorporation is the fundamental source of obligations and rights in the Church (c. 96).<sup>49</sup> In other words, the rights and obligations of a Christian have a specific source and functional context which may be expressed in five basic doctrinal principles.

The first principle which provides the most basic context for rights and obligations in the Church is *communio*. Baptism creates an intimate union between all Christians in Christ, and endows them with equality in regard to their dignity and activity (c. 208).<sup>50</sup> This fundamental equality of all the faithful enjoins on them the responsibility for sharing in the *mission* of the Church. This is a natural (Christian) responsibility or freedom. But one's rights and responsibilities can be genuinely fulfilled only within the context of *communio*.<sup>51</sup> Pope Paul VI confirmed

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<sup>46</sup> MCINTYRE, "Acquired Rights," p. 34.

<sup>47</sup> See James A. CORIDEN, "What Became of the Bill of Rights?" in *CLSA Proceedings*, 52 (1990), p. 56.

<sup>48</sup> Cfr. c. 7 of *CCEO*.

<sup>49</sup> J. Provost identifies three sources of ecclesial rights, namely *Christian dignity*, *communion*, and *faith* (the last source is taken from c. 10 of *CCEO*). See PROVOST, "The Nature of Rights in the Church," pp. 6-12.

<sup>50</sup> Cfr. c. 11 of *CCEO*.

<sup>51</sup> See Patrick VALDRINI et al., *Droit canonique*, Paris, Dalloz, 1989, no. 80, p. 53.

this principle when he said that

the baptized cannot effectively exercise their fundamental rights unless they also acknowledge the duties which baptism brings and, especially unless they are convinced that these rights are to be exercised within the *communio* of the Church. Believers must understand that rights are given for the sake of building up Christ's body, the Church, and must, therefore, be exercised in an orderly and peaceful way and may not be used to inflict harm.<sup>52</sup>

There are three important points in this papal statement concerning rights and obligations and their exercise: first, the baptized have certain fundamental rights which cannot be dissociated from duties which arise from their very nature of being Christian; second, *communio* is the framework within which these fundamental rights are exercised; and third, these rights are given for the building up of the body of Christ, the Church. In this sense, *communio* is the fundamental context wherein rights and duties of the Christian faithful are exercised.

The second principle which underlies all obligations and rights is *missio*. The Church is by its very nature *missionary*,<sup>53</sup> and all the Christian faithful have a duty and right to participate in its *mission*.<sup>54</sup> In fact, this is the basis for a number of rights and obligations related to evangelization declared in the Code.<sup>55</sup> The *mission* of proclaiming the *good news* of salvation pertains to all Christian faithful.<sup>56</sup> In his apostolic exhortation *Christifideles laici*, John Paul II explains how communion and mission are interrelated. He says:

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<sup>52</sup> PAUL VI, Allocution to the Roman Rota, 4 February 1977, in *The Pope Speaks*, 22 (1977), p. 175.

<sup>53</sup> See SECOND VATICAN COUNCIL, Decree on the Apostolate of Lay People, *Apostolicam actuositatem* (= AA), no. 2, 18 November 1965, in Austin FLANNERY (gen. ed.), *Vatican Council II: The Conciliar and Post Conciliar Documents*, Collegeville, MN, Liturgical Press, 1975, pp. 767-768.

<sup>54</sup> See c. 211 of *CIC/83*; c. 14 of *CCEO*; cfr. SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church, *Lumen gentium*, n. 33, 21 November 1964, in FLANNERY, *The Conciliar and Post Conciliar Documents*, pp. 390-391.

<sup>55</sup> Cfr. for example, cc. 215; 216; 217; 225; 229; 271 of *CIC/83*; corresponding cc. 18; 19; 20; 401; 406; 404; 360, §1; 361; 362 of *CCEO*.

<sup>56</sup> See AA, 2.

Communion and mission are profoundly connected with each other, they interpenetrate and mutually imply each other, to the point that *communion represents both the source and the fruit of mission. Communion gives rise to mission and mission is accomplished in communion.*<sup>57</sup>

This teaching affirms the intrinsic and inseparable relationship between *communion* and *mission*. Communion does not exist for itself, it exists for a mission in the world. All the obligations and rights of a Christian faithful are rooted in this twofold dimension of the Church.

The third principle which circumscribes the obligations and rights in the Church is *common good*.<sup>58</sup> Canon 223<sup>59</sup>, which concludes the list of "obligations and rights of all Christian faithful" relates the exercise of rights and obligations to the "common good" of the Church and to the rights of others as well as to their own duties toward others. The *common good* of the Church, the rights of others, and one's own duties toward others constitute the limits for the exercise of personal rights within the ecclesial community. The common good of the Church, in and for which all its members collaborate, demands that those conditions necessary for persons to enter into and participate in the life of the community are maximized. This implies that within the ecclesial communion, there is an intrinsic correlation between each member and the common good. The common good is essentially a principle of *inclusion, equality, responsibility and participation*. In this sense, J. Coriden says, "common good of the Church could simply be described as consisting in the observance of the rights and duties of the Christian faithful in the context of their local Church."<sup>60</sup>

The fourth principle which should direct the exercise of rights and obligations in the Church is the *salvation of souls*. The supreme law governing every activity in the Church is the restoration of the

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<sup>57</sup> JOHN PAUL II, Post-Synodal Apostolic Exhortation, *Christifideles laici*, 30 December 1988, Vatican Polyglot Press, (Canadian Conference of Catholic Bishops, Ottawa), 1988, p. 91.

<sup>58</sup> For a brief discussion on the different notions of *common good*, see CORIDEN, "What Became of the Bill of Rights?" pp. 53-56; MCINTYRE, "*Lineamenta* for a Christian Anthropology," p. 267.

<sup>59</sup> Cfr. c. 26 of *CCEO*.

<sup>60</sup> See CORIDEN, "What Became of the Bill of Rights?" p. 56.

divine image in every person, that is, the salvation of every human being. Therefore, every obligation and right in the Church yields to the realization of this supreme law. This necessarily implies that in the Church rights and obligations are not ends in themselves, but are means for the attainment of a higher purpose. Therefore, any attempt to interpret the rights and obligations solely in an *individualistic* sense or to *privatize* their authentic meaning and purpose is to distort and subvert their essentially communitarian value.

The fifth important principle is *coresponsibility*. Canons 209, 210 and 211<sup>61</sup> explicate the fundamental responsibilities of the Christian faithful, and these are: to maintain and foster unity; to attain personal holiness and to promote communal sanctification; and to evangelize. This is a clarion call to all Christian faithful to assume personal and corporate responsibility for the mission of the Church. R. Castillo Lara considers the principle of *coresponsibility* as one of the *cornerstones* of the canonical system.<sup>62</sup> Thus, participation in the life and mission of the Church characterizes the manner of being a genuine Christian.<sup>63</sup>

Rights and obligations in the Church, therefore, exist in the ecclesial context since they are founded on baptism and other sacraments, and they relate to the threefold functions of Christ as priest, prophet and king. As a consequence, rights cannot be considered as claims in or against the Church, rather they are a means for fostering communion, personal and communal holiness, and ecclesial mission. The principle of the common good helps in ordering obligations and rights toward the attainment of the supreme mission of the Church, that is, the salvation of souls. Therefore, obligations and rights must be understood as modes of exercising coresponsibility in the Church according to one's state and condition.<sup>64</sup>

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<sup>61</sup> Cfr. cc. 12; 13 and 14 of *CCEO*.

<sup>62</sup> See Rosalio J. CASTILLO LARA, "Some Reflections on the Proper Way to Approach the Code of Canon Law," in *Communicationes*, 17 (1985), p. 285.

<sup>63</sup> Rosalio J. CASTILLO LARA, "Some General Reflections on the Rights and Duties of the Christian Faithful," in *Studia canonica*, 20 (1986), p. 26.

<sup>64</sup> See D'SOUZA, *The Juridic Condition and Status of Minors*, p. 50.

## PROMOTION OF RIGHTS AND OBLIGATIONS

Even though the *existence* of rights and obligations does not depend on the knowledge a person has of them, their exercise or violation can certainly depend on the knowledge one has of their existence. J. Cuneo rightly observes: "It is not so much that people are deliberately abusing authority or are indifferent to persons. Perhaps in many cases the problem is simply *lack of knowledge of the existence of rights and lack of knowledge of the functioning of rights.*"<sup>65</sup>

In a similar vein, J.P. Beal says:

Ignorance of the rights can cause arbitrary exercise of authority, or it can cause impulsive reaction in the person affected. Ignorance can produce injustice by authority or unresolvable anger in the individual. Sometimes it is said that knowledge of rights can be dangerous or lead to increased litigation in the Church. On the other hand, knowledge of rights can prevent the contentions in the first place and promote harmony at the start of any action.<sup>66</sup>

Writing more specifically about the rights of religious, Elizabeth McDonough suggests that "conflicts would probably *not* arise if bishops, canonists, superiors and members of institutes were properly informed of rights and procedures involved."<sup>67</sup>

From the early 1970s, canon lawyers in the United States have tried to design and implement at the local level "due process" mechanisms to resolve conflicts arising from the alleged violation of the rights of persons. In its latest report on the outcome of this venture, the CLSA Committee concerned admits: "We recognize that one of the causes for the failure of diocesan procedures in due process in the past has been the *lack of education* on rights issues and the lack of awareness of diocesan structures available to aggrieved parties."<sup>68</sup> Similarly, the

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<sup>65</sup> CUNEO, "Education in the Rights of Persons," p. 100 (emphasis added).

<sup>66</sup> JOHN P. BEAL, "Protecting the Rights of Lay Catholics," in *The Jurist*, 47 (1987), p. 143.

<sup>67</sup> McDONOUGH, "The Protection of Rights in Religious Institutes," pp. 200-201.

<sup>68</sup> DIANE L. BARR et al., "CLSA Experiment in Due Process Committee Report," in *CLSA Proceedings*, 56 (1994), p. 76 (emphasis added).

1987 report on the due process experimentation also alluded to "inadequate catechesis about the rights of the faithful" as one of the principal reasons for the "less than overwhelming success" of due process.<sup>69</sup> Moreover, the Task Force To Survey Due Process Experience emphasized (in its recommendations) the importance of educating the Christian faithful about "due process" and about its availability to vindicate their legitimate rights.<sup>70</sup>

It seems from experience that any success or positive results in the exercise of rights in the Church would largely depend on the education of the Christian faithful about the existence, meaning and purpose of their legitimate rights and their effective vindication in a competent court of law. J. Cuneo is the only canonist I have come across who has written at length about this issue, and he confirms the usefulness of educating all the Christian faithful about their rights and obligations. He says that "in an age of greater coresponsibility, communication and participation, more attention to education in the rights of persons will serve to enhance the practice of justice in the Church and eliminate some of the violations which may otherwise be overlooked. The education would train persons to move beyond the casual, haphazard, inconsistent ways we can treat each other."<sup>71</sup> Therefore, it is imperative for canon lawyers to disseminate among all the Christian faithful the proper knowledge of their rights and obligations in the Church. Without personal knowledge and appreciation of the rights and obligations in the Church, even canon lawyers are likely to be of very little help in their promotion and protection. It is certainly not an exaggeration to say that the education process itself is the beginning of the meaningful and efficacious exercise and protection of the rights of persons in the Church.

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<sup>69</sup> See James H. PROVOST (ed.), *Due Process in the Dioceses of the United States, 1970-1985*, Washington, DC, CLSA, 1987, pp. 28, 38-39; also see John P. BEAL, "Administrative Tribunals in the Church: An Idea Whose Time Has Come or An Idea Whose Time Has Gone?" in *CLSA Proceedings*, 55 (1993), p. 52; John P. BEAL, "On Due Process: The Third Decade," in *Protection of Rights of Persons in the Church*, Revised Report of the Canon Law Society of America on the Subject of Due Process, Washington, DC, Canon Law Society of America, 1991, p. 10.

<sup>70</sup> See *CLSA Proceedings*, 49 (1987), p. 295.

<sup>71</sup> CUNEO, "Education in the Rights of Persons," pp. 106-107.



The ministry of canon lawyers is not restricted to teaching in the institutions of higher education or to work in the tribunals. Their ministry should extend to educating the Christian faithful in the parishes, religious institutes, diocesan organisms, etc. A profound knowledge of the rights and obligations in the Church and appropriate skills in interpreting and applying them in concrete circumstances is essential to achieve any success in their ministry. It is for this reason that J. Cuneo rightly points out that canon lawyers themselves should be the target of continued education in the knowledge of rights and obligations in the Church. He states:

Since most of us who are canonists do not function as professors and since most of us usually concentrate on only one aspect of the law in our daily work, such as marriage cases in the tribunal, therefore the education to rights in the Church will not come automatically to us. We will need to get to know the audience and their issues and look through the Code (in places sometimes overlooked) in order to find the rights. Perhaps we should say that we canonists ourselves are the target audience for continuing education in the rights of persons in the Church.<sup>72</sup>

What Cuneo says is true. Canonists need to be continuously educated in the existence, meaning and purpose of the rights and obligations the Christian faithful enjoy in the Church so that they will not only respect but also promote and protect those rights and obligations. This in itself is a sacred ministry, and it cannot be accomplished without a good knowledge of people's rights and obligations, and this necessarily obliges canon lawyers to further their own education in the various aspects of the issue under consideration.

Quite often the principal targets of public criticism in matters of conflicts are the bishops. Their role as pastors of the local church requires of them *to be* and *appear to be* just and equitable in all the decisions they make in their pastoral ministry. On the one hand bishops themselves are subjects of rights. Even though the Latin Code does not explicitly provide a bill of rights and obligations of the bishops, the Eastern Code contains 22 canons (cc. 190-211) under Title VII, in Art. II: "The Rights and Obligations of Eparchial Bishops." These oriental canons have their parallel canons in the Latin Code. Therefore, bishops

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<sup>72</sup> *Ibid.*, p. 111.

should be advised of their own rights in various administrative and penal procedures, which are of such great concern today, in order to protect the public good of the Church. Furthermore, as J. Cuneo succinctly puts it:

Bishops need a careful knowledge of the rights of individuals and groups over whom they exercise legislative, executive, and judicial authority. It would be important for bishops to know the norms for properly placed administrative acts, inasmuch as these norms protect their rights and the rights of others. Finally it can be suggested that bishops should know the rights of juridic persons, associations, and other entities located in the dioceses. Not only physical persons, but juridic persons also have rights and obligations that need to be properly exercised, protected, and vindicated — many times in fiscal management.<sup>73</sup>

It is beyond the scope of this study to detail the rights and obligations of the Christian faithful of which the bishops should be aware while making pastoral decisions which may affect their legitimate rights. It is important on the part of bishops to have a deep sense of justice and a spirit of wise equity, a genuine understanding of the human dimension of the persons entrusted to their care, be they clergy, religious or lay faithful. Such a spirit will certainly enable the bishops to be circumspect and prudent in making any pastoral decision that is meant to promote the good of souls.

If we expect the education of the Christian faithful concerning the rights and obligations of persons in the Church to be successful, as far as possible, all the faithful should be given an opportunity to be involved in the education. Since the *clergy* of the diocese are usually in the forefront of pastoral ministry and exercise enormous authority over the flock, they should be first on the list of students to be informed of people's rights and freedoms. They should be well-aware of the rights and obligations entailed in their pastoral ministry and sacramental law in order to understand the meaning and purpose of their pastoral authority. Their knowledge of the rights of parents for example, of children, of different associations, of the religious ministering in the parish, etc., will help them in carefully defining the issues involved in their many pastoral decisions. In many instances there is a distinct possibility for collision of rights or freedoms of several persons, and

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<sup>73</sup> *Ibid.*, p. 109.

unless those involved in making decisions in concrete cases are knowledgeable about those rights and freedoms, the decisions made are more likely to injure the legitimate rights of people. As Cuneo correctly says, a good knowledge of the rights of persons, permits the person with authority to make sound and valid decisions in the individual, pastoral situation without looking for ready-made answers which do not fit the concrete situation.<sup>74</sup>

In reporting his findings on complaints involving rights at the diocesan level in the United States, J. Beal concludes that the vast majority of the complaints arise from actions of pastors, officials in diocesan administration, school principals, directors of religious education, and other similar office holders.<sup>75</sup> This finding, which is probably true also in other countries, necessitates education of another group of people in the Church including directors of religious education, catechists, Catholic school teachers and administrators, and all those involved in assisting pastors in various capacities. In the minds of many of these professionals, the role of law in the Church and the juridic dimension of ecclesial relationships may not be that clear. It is quite possible that these people are under the impression that canon law is only of marginal relevance to the life of the Church or as a solely restrictive, authoritarian element. It is important to inculcate in the minds of these people a deep respect for the law and a proper understanding of the juridical order as a system of mutual rights and obligations within the communion of the Church.<sup>76</sup> Education of this group of people in the rights and freedoms of the Christian faithful will certainly engender in them a deep respect for them and make decisions that will not only minimize conflicts but also maximize the efficacy of their ministry.

In canonical jurisprudence we encounter instances of frequent violations of the rights of persons especially in marriage nullity procedures. In recent years, the Roman Rota has declared irremediably null a number of decisions of local tribunals at different grades of trial on the basis of violation of the right of defence. It is therefore of great importance that persons involved in tribunal ministry be adequately

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<sup>74</sup> See *ibid.*, p. 107.

<sup>75</sup> See BEAL, "Administrative Tribunals in the Church," pp. 58-59.

<sup>76</sup> See CUNEO, "Education in the Rights of Persons," p. 108.

informed of the procedural rights of persons and their implications for a valid process. Continued education of tribunal personnel should consist of an up-to-date explanation of the right of person to petition for nullity, the right of defence, the right to confidentiality where applicable, the right to information about the evidence contained in the acts, the right to appeal, etc. The acquisition of the appropriate knowledge regarding these rights will cultivate respect for and protection of these rights in those exercising ministry in marriage tribunals.

Those involved in the administration of the temporalities of the Church also need to be educated in the rights and obligations pertinent to their office. These would naturally include diocesan financial officers, all clergy and lay persons with responsibility for temporal goods of the Church, such as bishops, Rector of the Seminary, pastors, administrators of parish properties, religious superiors, Catholic school administrators, hospital administrators, civil attorneys involved with any Catholic institution, and persons concerned with civil contracts and labour-management issues. These persons should be acquainted with the pertinent general norms of Book I and those contained in Book V, governing specifically the administration of temporal goods of the Church. These concern, among other things, the rights of physical and juridic persons in fiscal matters, and they are designed to protect the rights and freedoms of all members of the Church to have proper administration of ecclesiastical patrimony which belongs to the Church and not to the hierarchy or administrators. In recent years, conflicts in the area of financial management have become frequent mainly due to the lack of proper knowledge of the rights and obligations of the persons involved.

Another target group for education in the rights and freedoms in the Church are the religious. Since Vatican II much has changed in the legislation, both common and particular, governing consecrated life. Now a bill of rights for religious has been incorporated into the revised Code.<sup>77</sup> A reading of these canons, however, reveals that they express more obligations rather than rights. Nevertheless, dispersed in the Code are several rights and freedoms of those in consecrated life. These

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<sup>77</sup> See cc. 662-672 of *CIC/83*. The *CCEO* does not have such a specific list of rights and obligations of religious. But there are in *CCEO* canons parallel to those in *CIC/83*.

rights must be studied more closely, because the religious continue to possess all the natural rights and obligations, all the ecclesial rights of the Christian faithful, as well as those rights and obligations proper to them as religious according to the norms of law; they would also have the rights and obligations that are inherent in the offices they may assume and those flowing from contracts. It is important, therefore, that superiors and members of the institute are provided with a good knowledge of their rights and obligations. There are in the Church relationships and offices which affect religious life — thus, for example, bishops, episcopal vicars for religious, vicars general, chancellors, vicars for canonical affairs and diocesan finance officers, as well as clergy and lay ministers in general. The potential for conflicts in these relationships exist and, therefore, all persons whose ministry is in some way directly or indirectly related to religious, must be apprised of the rights and obligations of institutes of consecrated life and their members.

In essence, the importance of educating all segments of the faith community is not to be underestimated. It is only when people know not only of the existence of the rights proper to them in virtue of their baptism or some other source, but also of their genuine meaning and purpose within the ecclesial context, that they will be able to exercise them in an effective way without giving rise to serious conflicts harmful to the communion and mission of the Church. Thus, the proper education of the Christian faithful in their rights and obligations could prove to be the best mode of promotion and protection of the rights of the entire Church, the people of God.

## PROTECTION OF RIGHTS

To be real, rights and obligations should be “actionable”, that is, it should be possible legitimately to *vindicate* and *defend* them.<sup>78</sup> As the Roman *dictum* goes “sine remedio, nullum est ius” (without recourse there is no right). Without the possibility of claiming one’s legitimate

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<sup>78</sup> It seems *vindication* and *defence* of rights are two distinct concepts. R. Hill explains this difference as follows: “To vindicate a right is to make or prove a claim to a right, the issue being whether the asserted right exists at all, whereas to defend a right is to resist a perceived threat to one’s right, the issue being whether an acknowledged right is threatened or violated by someone else” (Richard A. HILL, “Recognition and Protection of Rights in Consecrated Life,” in *CLSA Proceedings*, 53 (1991), p. 181.

rights or freedoms, any discussion about rights and freedoms is useless. Canons 1491 and 220 of the Code<sup>79</sup> confirm this observation, for c. 1491 states that “every right whatsoever is safeguarded not only by an action but also by an exception unless something contrary is expressly stated,” and c. 220 proclaims the fundamental basis of this principle saying, “the Christian faithful can legitimately vindicate and defend the rights which they enjoy in the Church before a competent ecclesiastical forum in accord with the norm of law.”

In any legal system, the presence of credible and effective procedures to vindicate or defend one’s rights is essential, for without such a provision, any proclamation of rights and obligations will be meaningless. This being so, does the Church have in place appropriate structures and processes whereby a person can vindicate or defend his or her rights? If yes, what are they, and whether they work?

There is no doubt that the canonical system has certain clearly defined structures and procedures for the vindication and defence of rights and freedoms in the Church. There are: the *courts*, *hierarchical recourse*, and the explicit recommendation for *alternative dispute resolutions*, such as *arbitration* and *reconciliation*.

## Courts

The very first canon of Book VII on processes (c. 1400, §1,1<sup>o</sup>)<sup>80</sup> sets down one of the principal objects of a canonical trial, that is, “to prosecute or to vindicate the rights of physical or juridic persons.” By itself this provision seems to place all cases involving controversies concerning rights within the context of a “tribunal.” But as J. Provost correctly points out, the second section of the same canon seems to withdraw from this provision all “controversies which have arisen from an act of administrative power” which “can be brought only before the superior or an administrative tribunal.”<sup>81</sup> According to Provost, this provision in effect excludes from diocesan tribunals “all administrative

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<sup>79</sup> See cc. 1149 and 24, §1 of *CCEO*, which are parallel to the above in *CIC/83*.

<sup>80</sup> Cfr. c. 1055, §1,1<sup>o</sup> of *CCEO*.

<sup>81</sup> Canon 1400, §2; cfr. c. 1055, §2 of *CCEO*. In c. 1055, §2 of *CCEO* there is no mention of “administrative tribunals,” but reference is made to cc. 996-1006 of Title XXII which provides norms for recourse against administrative decrees.

actions of clergy and lay persons who head Catholic institutions or who are involved in pastoral ministry." Therefore, Provost concludes that "in effect the courts do not exist as a means to vindicate much more than the right to marry."<sup>82</sup>

It is important to note some salient points in Provost's observations. First, the Code itself does not provide a clear distinction between "administrative acts" and "acts of administrative power." For example, according to c. 1413, 1<sup>o</sup><sup>83</sup>, "acts of administration" can be brought before a tribunal of the place where the administration was conducted. Most of the decisions involved in administration are "administrative acts." Can the bishop be brought to court for financial transactions made in violation of the rights of the diocese, of a parish or of some other persons, physical or juridical, in virtue of c. 1413, 1<sup>o</sup>?

Second, the Code itself does not provide any norms concerning administrative tribunals. Part V of Book VII on *Processes* of the 1982 *schema* of the Code included detailed norms for "Administrative Procedure" covering both "tribunal" and "hierarchic" processes.<sup>84</sup> But with the exception of its canons on hierarchic recourse, the entire section titled "Administrative Procedure" was excised from the promulgated text. Yet, one can still ask the question whether the Code excludes the possibility of constituting administrative tribunals of hierarchic grades at the local level.

The supreme legislator's intention to establish a system of administrative tribunals in the Church seems clear from the fact that a series of juridic principles for their constitution were considered during the process of the revision of the Code. Therefore the possibility of administrative tribunals in the Church has certainly not been ruled out. The episcopal conferences are empowered to constitute a viable system which can provide a legitimate forum for the vindication and defence of rights in the Church. In fact, referring to the Code's retention

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<sup>82</sup> See PROVOST, "The Nature of Rights in the Church," pp. 14-15.

<sup>83</sup> Cfr. c. 1079, 1<sup>o</sup> of *CCEO*.

<sup>84</sup> See PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Codex iuris canonici, schema novissimum, post consultationem S.R.E. Cardinalium ... Summo Pontifici praesentatum*, E Civitate Vaticana, 25 March 1982, cc. 1736-1763, pp. 300-306.

of the phrase “administrative tribunals” in cc. 149, §2<sup>85</sup> and 1400, §2, Z. Grocholewski suggests that these two references are an indication that the question of establishing local administrative tribunals at the initiative of the competent territorial authorities is very much open.<sup>86</sup> This implies that the responsibility to act on this matter falls squarely on the shoulders of the bishops.

Third, the present system of diocesan or regional/national tribunals seems totally geared toward examining rights-cases involving only marriages. This does not mean, however, that the available personnel and other resources cannot be organized to deal with cases of violations of rights by any person, including the bishop, who exercises pastoral authority in the Church. Given our present condition, one can certainly say that it is easier said than done. Nevertheless, if the Church wants to present to the world an image of herself as a “mirror of justice,” it should not only *be* just but also portray an “appearance” or “perception” of being just. Therefore, something should be done at least at the local level. The experience of establishing and efficiently directing various aspects of “due process” including “administrative tribunals” in the United States<sup>87</sup> should enable other episcopal conferences to look into the feasibility and advisability of initiating such endeavours in their own jurisdictions but suited to their sociocultural contexts. In his study on this issue, J.P. Beal convincingly argues that “an effective system of administrative tribunals is a small price to pay ... if ... respecting the rights of the faithful is important both for preserving communion and for the credibility of the Church’s proclamation of the Gospel...”<sup>88</sup> In his 1979 allocution to the Rota, John Paul II insisted: “But the task of the Church and her historical merit, which is to proclaim and defend in every place and in every age the fundamental human rights, does not exempt her but, on the contrary, obliges her to be herself a *mirror of justice* (*speculum iustitiae*) for the world. In this regard, the Church

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<sup>85</sup> Cfr. c. 940 of CCEO.

<sup>86</sup> See Zenon GROCHOLEWSKI, “Atti e ricorsi amministrativi,” in *Apollinaris*, 57 (1984), pp. 274-275; also see CASTILLO LARA, “Some General Reflections,” p. 24.

<sup>87</sup> For the latest draft of “due process” including alternate dispute resolution mechanisms and norms for administrative tribunals, see *Protection of Rights of Persons in the Church*, Revised Report of the CLSA on the Subject of Due Process, Washington, DC, Canon Law Society of America, 1991, vi-54 p.

<sup>88</sup> See BEAL, “Administrative Tribunals in the Church,” p. 69.



has her own proper and specific responsibility.”<sup>89</sup> Following up on this papal teaching, Beal suggests: “If an administrative tribunal promises to improve substantially the quality of administrative justice provided in the internal life of the particular church, a diocesan bishop, concerned that the Church be a *speculum iustitiae*, has every reason to give it a chance.”<sup>90</sup>

After several years of research, study, and experimentation in “due process,” the CLSA Experiment in Due Process Committee reported in 1994 that Milwaukee and Portland would be the sites of administrative tribunals which would be operative by the fall of 1995.<sup>91</sup> If the experience from these ventures should prove beneficial and salutary to the life of these local churches, it could provide the lead for other dioceses to set in motion appropriate systems for the resolution of conflicts and the protection of rights in their own jurisdictions.

### Hierarchic Recourse

With a surge in complaints concerning violations of rights by persons in authority, canonists have been expressing the need to establish administrative tribunals at the local level. However, as J. Cuneo rightly says, “[that] should not imply that there has not been or cannot be administrative justice without such tribunals.” “In point of fact,” Cuneo continues, “in my opinion, the vast system of hierarchic recourse operating through most of our ecclesiastical institutions has done a remarkably good job in resolving conflicts on the local level.”<sup>92</sup>

In response to the need to have in place in our canonical system definite guidelines on the process of hierarchic recourse, both Codes provide basic canons on recourse.<sup>93</sup> Because these canons are excised

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<sup>89</sup> JOHN PAUL II, Allocution to the Roman Rota, 17 February 1979, in AAS, 71 (1979), p. 423; English translation in William H. WOESTMAN (ed.), *Papal Allocutions to the Roman Rota, 1939-1994*, Ottawa, Faculty of Canon Law, Saint Paul University, 1994, p. 154.

<sup>90</sup> BEAL, “Administrative Tribunals in the Church,” p. 66.

<sup>91</sup> See BARR et al., “CLSA Experiment in Due Process Committee Report,” pp. 76-77.

<sup>92</sup> CUNEO, “Education in the Rights of Persons,” p. 106.

<sup>93</sup> Cfr. cc. 1732-1739 of *CIC/83* and cc. 996-1006 of *CCEO*.

from the context of "Administrative Procedure" of the 1982 *schema*, they seem "devoid of their proper setting" and consequently do not seem "particularly clear."<sup>94</sup> As a matter of fact, Provost calls into question the efficacy of hierarchic recourse as we have it in the Code, for he says:

The fact of appealing to a person's superior can lead to conflicts of interest, for in the Church the line between bishop and subordinates in pastoral situations is sometimes difficult to delineate. The conflicts of interest are usually unintentional and frequently unrecognized by those involved, but they nevertheless lead to a certain distrust of this approach on the part of those who feel aggrieved. For the persons taking recourse, the system can seem to be stacked against them. The appearance of impartiality is weak, even when the superior is most fair and is highly competent in dealing with the recourse.<sup>95</sup>

One cannot overlook the wisdom and merit of this statement. The heavier the responsibility and the more extensive the discretionary power, the greater should be the appreciation of the complex nature of the pastoral-administrative decisions bishops and their cooperators make in their ministry. Such decisions are not made in a vacuum, rather they concern and affect the day-to-day life of the Christian faithful. Therefore, whenever there is a possibility of conflict or violation of the rights of the Christian faithful, or even if violation has actually taken place, the persons concerned should try to resolve the situation, whenever possible, through conciliation and/or arbitration. Conflict is a fact of life.

But a peaceful resolution of conflicts not only strengthens the bond or communion between those who minister and the subjects, but also engenders greater harmony within the community. Before taking their chief shepherd to the Roman Curia, priests and parishioners should be given a forum within which conflicts can be resolved amicably. This approach presupposes the availability of alternate dispute resolution mechanisms in place in the local church.

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<sup>94</sup> See PROVOST, "The Nature of Rights in the Church," p. 15.

<sup>95</sup> *Ibid.*

## Alternative Dispute Resolution

It is evident in the canons on procedures that the Church prefers conciliation and arbitration over litigation. In this matter, the mind of the Church reflects the will of Christ who said: "If your brother should commit some wrong against you, go and point out his fault, but keep it between the two of you. If he listens to you, you have won your brother over. If he does not listen, summon another, so that every case may stand on the word of two or three witnesses. If he ignores them, refer it to the Church" (Mt 18: 15-17). Furthermore, Jesus' words, "Blest too are the peacemakers; they shall be called the children of God" have resounded down the centuries as a mandate to be followed by his disciples. Heeding her Master's mandate, the Church has always promoted reconciliation rather than judicial confrontation in times of conflicts between the Christian faithful.<sup>96</sup>

In cc. 1925-28 and 1929-32, the 1917 Code provided principles for "negotiated" and "arbitrated" settlements of dispute respectively. The canons on negotiated settlement allowed the judge to take the initiative, at any time before or during the trial, to urge the parties to come to an agreement, but required that this be done by someone other than the judge himself. The canons on arbitrated agreement provided two slightly different kinds of agreement: in one the arbitrators (called *arbitri*) determined the matter according to the norms of law, while in the other *arbitrators* (called *arbitratores*) resolved the conflict according to equity. Lay persons and religious could act as *arbitratores* in some kind of cases.<sup>97</sup> It seems these provisions were rarely used in practice. Nevertheless, they stood as official reminders of the Church's desire to resolve disputes through much simpler and conciliatory modes.

The revised Code provides the warmest kind of encouragement to use ADR methods. The very first canon (c. 1446)<sup>98</sup> under the title "The Discipline To Be Observed In Trials" urges the Christian faithful, especially bishops, to avoid lawsuits *as much as possible (quantum fieri*

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<sup>96</sup> See James A. CORIDEN, "Alternative Dispute Resolution in the Church," in *CLSA Proceedings*, 48 (1986), pp. 67-68; Joaquin CALVO, in *Codigo de derecho canonico*, Pamplona, EUNSA, 1983, p. 870.

<sup>97</sup> See CORIDEN, "Alternative Dispute Resolution in the Church," pp. 68-69.

<sup>98</sup> Cfr. c. 1103 of *CCEO*.

*possit*), and to resolve their conflicts *right away* (*quam primum*). The canon advises the judge not to neglect to encourage the parties and assist them in arriving at an equitable solution to their conflict; the judge is to suggest ways of doing so perhaps even by employing the services of reputable persons (*homines graves*) as mediators. This canon goes on to recommend a settlement (*transactio*) or reconciliation, or if necessary, a process of arbitration.<sup>99</sup>

Canons 1713 to 1716<sup>100</sup> present details concerning the ways to avoid contentious trials. The first canon names the general methods, namely *negotiation* (reconciliation) and *arbitration*.

Canon 1733, §1<sup>101</sup> also emphasizes the need to seek out an extra-judicial resolution of a dispute. The norm states: "It is desirable that whenever someone feels injured by a decree, there not be a contention between this person and the author of the decree but that care be taken by common counsel to find an equitable solution between them, perhaps through the use of wise persons (*graves personae*) in mediation and study so that the controversy may be avoided or solved by some suitable means."

J. Coriden reports that in civil law the alternative dispute resolution methods to respond to conflicts outside the judicial system is widespread. He says that various forms of ADR are being greeted with "unabashed enthusiasm." According to him some judges refuse to admit a case for trial unless and until the parties have tried first one of the ADR methods. Among the principal forms of alternative dispute resolution, Coriden lists the following: *negotiation, conciliation, facilitation, mediation, arbitration, mediation-arbitration, ombudsperson, mini-trial, and private judging*.<sup>102</sup> In all these methods, judges are not involved, rather neutral persons either facilitate or determine the process with full participation of the parties. Each of these methods can yield valuable results in resolving cases of conflicts of rights if they are properly understood and wisely used within specific sociocultural contexts.

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<sup>99</sup> See CORIDEN, "Alternative Dispute Resolution in the Church," p. 71.

<sup>100</sup> Cfr. cc. 1168; 1164; 1390; 1165; 1169; 1181 of *CCEO*.

<sup>101</sup> Cfr. c. 998, §1 of *CCEO*.

<sup>102</sup> CORIDEN, "Alternative Dispute Resolution in the Church," pp. 64-65.

What has been suggested above does not call for the setting up of elaborate and complicated systems parallel to judicial courts. In most instances ADR could be accomplished through an "office or council" at the diocesan, deanery or even parish level, which could be entirely unrelated to the tribunals. The Code leaves it up to the bishops' conferences to determine establishment of such an office or council in each diocese, or to the diocesan bishop to set one up for his own diocese. The office or council could take any form, e.g., Diocesan Conciliation Commission, Diocesan Office of Justice and Peace, Ombudsperson, Conciliator, Arbitrator, etc. Wise, prudent and knowledgeable persons can be appointed to these offices.

In a recent article, Victoria Vondenberger recounts the experience of "due process" and "mediation" in the archdiocese of Cincinnati, OH (USA). According to her report, the archdiocesan Office of Mediation, staffed mainly by several well-qualified volunteers, handled 89 cases involving different conflict issues from 1988 to 1994. The process followed by their mediation-conciliation efforts seems simple, effective and easily adaptable. The author goes on to suggest that "the Cincinnati experience illustrates that reconciliation without formal civil or ecclesiastical court processes is clearly possible."<sup>103</sup>

These alternatives could be set up even at the appeal or hierarchic levels. The third paragraph of c. 1733 directs the superior to whom recourse against an administrative decree is made to seek a similar sort of mediated or conciliated solution. This provision therefore implies that the use of ADR is not restricted only to the person aggrieved by the administrative act and the author of the act, but it invites all to seek a peaceful resolution of the conflict before employing or pursuing hierarchic recourse. All these provisions attest to the fact that both Codes offer ample opportunity for the use of alternative dispute resolution. The mind of the Church seems quite clear: avoid conflict in the first place, and if it occurs, settle it amicably so that all may live in peace and harmony with each other and thereby strengthen the *communio*.

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<sup>103</sup> See Victoria VONDENBERGER, "Effective Due Process is Possible in the Church," in *Studia canonica*, 30 (1996), pp. 163-176.

## CONCLUSION

The *Catechism of the Catholic Church* seems to summarize best what has been said so far about rights and obligations of the Christian faithful. It states:

Having become a member of the Church, the person baptized belongs no longer to himself, but to him who died and rose for us. From now on, he is called to be subject to others, to serve them in the communion of the Church, and to "obey and submit" to the Church's leaders, holding them in respect and affection. Just as baptism is the source of responsibilities and duties, the baptized person enjoys rights within the Church: to receive the sacraments, to be nourished with the word of God and to be sustained by the other spiritual helps of the Church.<sup>104</sup>

It is an undeniable fact that there are real rights and obligations in the Church. That they are *real* means they are actionable, that is, *defendable* in a competent ecclesiastical forum. In the Church, a community bound together by the life-giving Spirit of Christ, courts or other purely legal mechanisms to vindicate or defend one's rights should be the last resort. The best and most effective way to protect one's rights in the Church is to know them and exercise them within their ecclesial context. Each member of the Church, from the pope down through the bishops to all the Christian faithful, should discover first their personal obligations toward others before seeking out their personal rights. Obligations and rights lose their true meaning and purpose when they are excised from and exercised outside their communal context.

In speaking of the common good of a society, the *Catechism* says that it "consists of *three essential elements*: respect for and promotion of the fundamental rights of the person; prosperity, or the development of the spiritual and temporal goods of society; the peace and security of the group and its members."<sup>105</sup> In an analogous sense, the common good of the Church comprises: respect and promotion of the ecclesial

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<sup>104</sup> *Catechism of the Catholic Church*, Città del Vaticano, Libreria editrice Vaticana, [1992], English translation: Canadian Conference of Catholic Bishops, Ottawa, [1994], n. 1269, p. 275.

<sup>105</sup> *Ibid.*, nn. 1905-1912; 1925; pp. 398-399; 401.

rights of its members, enrichment of the *communio*, and salvation of souls. All rights and obligations are to be understood and interpreted within this context. For those who overly emphasize their claim to rights in the Church, what G. Robinson says could provide food for meaningful reflection:

Justice is not enough, for love seeks to create an attitude of unity, of belonging to each other, while justice stresses the otherness of the one to whom it is given.... Justice on its own is impersonal and impartial, bent on observing equality in human conduct. More cannot be expected of it unless it is accompanied by friendship and love. Thus there can be no true love unless it is based on true justice, but there will most probably be no true justice unless it is accompanied and motivated by love.<sup>106</sup>

Those who claim rights and those who exercise authority in the Church should carefully listen to this inspirational statement. But those who are placed in positions of pastoral leadership in the Church and whose actions and decisions are likely to affect other people's rights and freedoms, which can give rise to conflicts, should heed the reminder of the *Catechism*:

Respect for the human person entails respect for the rights that flow from his dignity as a creature. These rights are prior to society and must be recognized by it. They are the basis of the moral legitimacy of every authority: by flouting them, or refusing to recognize them in its positive legislation, a society undermines its own moral legitimacy. If it does not respect them, authority can rely only on force or violence to obtain obedience from its subjects. It is the Church's role to remind men of good will of these rights and distinguish them from unwarranted or false claims.<sup>107</sup>

What is expressed in this teaching about secular authority must be true also of the Church. Respect for and recognition of human and ecclesial dignity and rights of every Christian faithful is at the heart of the mission and purpose of the Church. The Church must lead the world in promoting and protecting human as well as ecclesial rights.

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<sup>106</sup> ROBINSON, "The Challenge of Justice," p. 11.

<sup>107</sup> *Catechism of the Catholic Church*, n. 1930, p. 400.

Therefore, it is important that all the Christian faithful be *just* in their hearts, and as far as possible, those in leadership positions should make available in their respective jurisdictions all legal, paralegal and pastoral means suitable for the promotion and protection of rights and freedoms in the Church. The Church should not only *be* just, but also *appear* to be just, and this is the responsibility of all the Christian faithful. □