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## The Law of the Church — the Law of Freedom\*

**Keywords:** law, freedom, *Dignitatis Humanae*, law of Church, religious freedom

### 1. Legislators of the Church's *ius Ecclesiae* idea today

The Study Congress, organized in the Vatican in 2008, by the Pontifical Council for Legislative Texts, entitled: “Canon Law in the Life of the Church. Investigations and Perspectives in Keeping with the Recent Papal Magisterium: On the Occasion of the 25th Anniversary of Promulgating the Code of Canon Law,” gave the highest Church legislator an incentive to deliver an occasional speech.<sup>1</sup> In what exactly does this speech’s fundamentality, and especially the power of reasoning that brings back memories of the unforgettable allocutions of the theologian of law, as Pope Paul VI was referred to, reside?<sup>2</sup> The answer proves easy: The emphasis of the vital role of the mentioned dicastery — which reminds that

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<sup>1</sup> BENEDICT XVI: *Address to the participants in the Study Congress organized by the Pontifical Council for Legislative Texts on the occasion of the 25th anniversary of the promulgation of the Code of Canon Law* [15.01.2008] — [http://w2.vatican.va/content/benedict-xvi/en/speeches/2008/january/documents/hf\\_ben-xvi\\_spe\\_20080125\\_testi-legislativi.html](http://w2.vatican.va/content/benedict-xvi/en/speeches/2008/january/documents/hf_ben-xvi_spe_20080125_testi-legislativi.html) (accessed: 14.12.2015).

<sup>2</sup> See CH. HUBER: *Papst Paul VI und das Kirchenrecht.* Essen 1999; P. CARLOS OLMOS: *La fundamentación del Derecho canónico en las alocuciones de Pablo VI.* Roma 2000.

its prerogative is watching over completeness and updating the Church's legislation, and making efforts for the cohesion<sup>3</sup> — is accompanied by the intent of the author of the jubilee speech to direct this retrospective perception, on the set of general law standards of the Latin Church (CIC 1983), toward “the changing circumstances of the historical reality of the People of God”<sup>4</sup> dynamics. These are the challenges of the future recognized “in light of the Church's living Magisterium” that make Benedict XVI once again take the issue of the troublesome features (determinants) *ius Ecclesiae*, which — contemporarily — underscore “the close link that exists between canon law and Church life in accordance with the desire of Jesus Christ.”<sup>5</sup>

To some degree the pope makes John Paul II's famous words from the *Sacrae Disciplinae Leges* constitution the starting point of this mini-lecture on the theology of law: “[...] the Church is constituted as a social and visible structure; as such the Church ‘must also have norms: in order that her hierarchical and organic structure be visible; in order that the exercise of the functions divinely entrusted to her, especially that of sacred power and of the administration of the sacraments, may be adequately organized; in order that the mutual relations of the faithful may be regulated according to justice based upon charity, with the rights of individuals guaranteed and well defined; in order, finally, that common initiatives undertaken for an ever more perfect Christian life may be sustained, strengthened and fostered by canonical norms’.”<sup>6</sup> According to Pope Ratzinger, these words make it possible to capture the rudimental thought, which gives shape to the entire canon law, in the best way. It would be a big simplification, should this law (among others the code law) be perceived exclusively as a set of standards prepared by the Church's legislator. The truth about *ius ecclesiale* is much more complex. Although its quite comprehensive display requires a more complex approach, one thing can be acknowledged at once: the thing that comes to the foreground in the relevant, that is, existential and dynamical depiction<sup>7</sup> of the said phenomenon, is well reflected by a constatation which implies that canon law is an authoritative definition of duties and rights, which have their foundations in the Word of God and sacraments, and as such — are a valid expression

<sup>3</sup> BENEDICT XVI: *Address to the participants in the Study Congress...*

<sup>4</sup> *Ibidem*.

<sup>5</sup> *Ibidem*.

<sup>6</sup> IOANNES PAULUS II: *Constitutio apostolica “Sacrae disciplinae leges”* [25.01.1983]. *Acta Apostolicae Sedis* [further: AAS] 75 (1983), Pars 2, p. XI; BENEDICT XVI: *Address to the participants in the Study Congress...*

<sup>7</sup> Cf. R. SOBAŃSKI: “Niezmiennność i historyczność prawa w Kościele: Prawo Boże i prawo ludzkie.” *Prawo Kanoniczne*, vol. 40, nos. 1—2 (1997), pp. 23—44.

of Christ's will.<sup>8</sup> In such a way, according to Benedict XVI, the truth that "the *Code of Canon Law* contains the norms formulated by the Ecclesial Legislator for the good of the person and of the communities of the whole Mystical Body,"<sup>9</sup> should be understood.

The offered introductory remarks direct the papal discourse toward an idea which constitutes the *clou* of the discussed speech, which years ago the outstanding canonist Profesor Józef Krukowski included in a well-crafted, greatly instructive dictum: the entire structure of the Church identifies, as a matter of fact, one relation: Christ's authority — Christian's freedom.<sup>10</sup> "Church's law is first and foremost *lex libertatis*"<sup>11</sup> — Benedict XVI proclaims, giving this speech — similarly to the aforementioned Polish expert in 1980 at the IV International Canon Law Congress in Freiburg<sup>12</sup> — a *par excellence* personalistic context. It means that, first of all, the Church's legal order cannot be, by the means of any measure, brought down to a set of isolated, autonomous regulations, which promulgated: officially valid and effective, should be perceived — invariably (!) — as binding.<sup>13</sup> Such reason-

<sup>8</sup> Cf. BENEDICT XVI: *Address to the participants in the Study Congress...*

<sup>9</sup> *Ibidem*.

<sup>10</sup> *Tutta la struttura della Chiesa può essere definita da un'unica relazione: autorità di Cristo — libertà del cristiano* — J. KRUKOWSKI: "Libertà e l'autorità nella Chiesa." In: *Les Droits Fondamentaux du Chrétien dans l'Eglise et dans la Société. Actes du IV<sup>e</sup> e Congrès International de Droit Canonique, Fribourg 6—11.X.1980*. Eds. E. CORECCO, N. HERZOG, A. SCOLA. Fribourg—Freiburg—Milano 1981, p. 160.

<sup>11</sup> BENEDICT XVI: *Address to the participants in the Study Congress...*

<sup>12</sup> The title of the second chapter of the mentioned Professor Józef KRUKOWSKI's congress speech is significant: "L'interpretazione personalistica della relazione: libertà — autorità nella Chiesa" — J. KRUKOWSKI: "Libertà e l'autorità..." p. 160.

<sup>13</sup> In the quoted jubilee speech, Benedict XVI falsifies the thesis which suggests that law becomes real, and thereby just, only when the formal requirements are met. Suffice it to say that to refer to a fragment of a papal comment: "[Canon law — A.P] must be bound to the theological foundation that gives it reasonableness and is an essential title of ecclesial legitimacy; on the other hand, it must keep up with the changing circumstances of the historical reality of the People of God. Furthermore, it must be formulated clearly, without ambiguity, and must always be in harmony with the rest of the Church's laws. It is therefore necessary to abrogate norms that prove antiquated; to modify those in need of correction; to interpret — in light of the Church's living Magisterium — those that are doubtful, and lastly, to fill possible *lacunae legis*. As Pope John Paul II said to the Roman Rota: 'The very many expressions of that flexibility which has always marked canon law, precisely for pastoral reasons, must be kept in mind and applied' (*Address to the Roman Rota*, 18 January 1990, n. 4) — BENEDICT XVI: *Address to the participants in the Study Congress...*; see also R. SOBAŃSKI: "Słuszność w prawie." *Państwo i Prawo* 56 (2002), no. 8 (666), pp. 3—12; A. PASTWA: "Ochrona praw podmiotowych w kościelnym porządku prawnym: w optyce systemowej zasady *aequitas canonica* (kan. 221 KPK)." In: *Problemy z sądowną ochroną praw człowieka*. Eds. R. SZTYCHMILER, J. KRZYWKOWSKA. Vol. 1. Olsztyn 2012, pp. 41—55.

ing, contaminated with a legal positivism, would introduce, in an obvious way, a disparity between law and life, and as a consequence it would “radically deny the possibility of an anthropological foundation of the law.”<sup>14</sup> Meanwhile — in his own way: competent and with a flair of a learned scholar, Professor Remigiusz Sobański expands on the magisterial thought: “argumentation from Church’s law is ultimately the argumentation from Church’s faith and practice. [...] Canonist argumentation ought to be ‘clear for values’, however, not in the static or quite declarative meaning, but in specifying goods realized by specific entities in specific circumstances. Additionally, what is crucial is to argue not only ‘from the point of view of the regulations’, but also and at the same time, from the point of view of the addressee of the standards.”<sup>15</sup> What conclusions follow from this? Canon law becomes the law of freedom to such an extent — Benedict XVI concludes the main thread of his speech — to which those who are obliged to follow it are familiar with the experience of the immediacy of law. What remains the concern of Church’s legislator is the broad exhibition of the *ius canonicum* relation with the life of the Church in *hic et nunc* “programming” of protection and promotion of subjective rights,<sup>16</sup> especially of the most vulnerable people,<sup>17</sup> but also in the system concern for the authenticity of Sacraments (which together with the Word of God constitute the “space” of realizing the personalistic *salus animarum*),<sup>18</sup> so protection “of those delicate ‘goods’ which [...] the Church cannot allow to be deprived of an adequate protection on the part of the Law.”<sup>19</sup>

From acknowledging that the law of the Church is the first and foremost *lex libertatis* there is only one step to proving the authenticity and significance of the word uttered by the blessed Antonio Rosmini (†1855). Indeed by referring verbatim to *Filosofia del diritto*, one of the most important monographs of this author, Benedict XVI ponders upon the “flagship” dictum included in it: human person is the essence of law.<sup>20</sup>

<sup>14</sup> BENEDICT XVI: “Allocutio ad Tribunal Rotae Romanae in inauguratione Anni Iudicialis [27 I 2007].” AAS 99 (2007), pp. 89, 86—91.

<sup>15</sup> R. SOBAŃSKI: “Kanonistyka i pozytywizm prawniczy.” In: „*Ecclesia et status*”. *Księga jubileuszowa z okazji 40-lecia pracy naukowej Profesora Józefa Krukowskiego*. Eds. A. DĘBIŃSKI, K. ORZESZYNA, M. SITARZ. Lublin 2004, pp. 222—223.

<sup>16</sup> Cf. A. PASTWA: “Ochrona praw podmiotowych...,” pp. 53—54.

<sup>17</sup> BENEDICT XVI: *Address to the participants in the Study Congress...*

<sup>18</sup> Cf. R. SOBAŃSKI: “Iudex veritatem de matrimonio dicit.” *Ius Matrimoniale* 4 (1999), p. 191.

<sup>19</sup> BENEDICT XVI: *Address to the participants in the Study Congress...*

<sup>20</sup> This key fragment, which the pope refers to, is as follows: “[...] la persona ha nella sua natura stessa tutti i costitutivi del diritto: essa è dunque il diritto sussistente, l’essenza del diritto” — A. ROSMINI-SERBATI: *Filosofia del diritto*. Milano 1841, vol. I, lib. I, cap. 3, p. 225.

“What this great philosopher said with profound insight of human law, we must with all the more reason reassert for canon law: the essence of canon law is the Christian person in the Church.”<sup>21</sup>

Does this Benedict XVI’s enunciation not evoke associations with John Paul II’s leading thought from his speech to the Roman Rota of 1979,<sup>22</sup> dedicated to the current legal and pastoral challenges that the Church has to face? It is enough to remind that in this speech the papal consideration concentrates around the issue of an optimal realization of — particularly promoted *in Ecclesia* (as it was highlighted beforehand) — subjective rights of Christians.<sup>23</sup> If we assume that executing these rights, in the spirit of the *salus animarum* principle, is inscribed in the context of “the unity and communion that are proper to the Church,”<sup>24</sup> then this fact determines, in an obvious way, the “comunion” profile of *exercitio iurium christifidelium*: “never in separation from Church’s *communio*” — “always in community of faith, hope, and love.”<sup>25</sup> In such a way the papal words about supporting, by the Church, the integral realization of the calling of person-Christian, which is at the same time personal and communal, should be understood.<sup>26</sup>

This constatation suggests a crucial conclusion. Not for a different reason, but due to the respect toward man — a person “equipped” in universal, inalienable, and unalterable rights, and moreover in attributes of supernatural dignity<sup>27</sup> — in pastoral understanding (and application) of law, the temptation of individualistic thought should be overcome.<sup>28</sup> It is difficult not to see that the Church’s legal order unveils its authentic countenance in this way, an order which — we can boldly say — in a broad perspective of legal culture potentially constitutes the sign for the world: model

<sup>21</sup> BENEDICT XVI: *Address to the participants in the Study Congress...*

<sup>22</sup> IOANNES PAULUS II: “Allocutio ad Decanum Sacrae Romanae Rotae ad eiusdemque Tribunalis Praelatos Auditores, ineunte anno iudiciali [17.02.1979].” AAS 71 (1979), pp. 422—427.

<sup>23</sup> Cf. Codex Iuris Canonici [further: CIC], can. 223.

<sup>24</sup> BENEDICT XVI: *Address to the participants in the Study Congress...*

<sup>25</sup> Cf. IOANNES PAULUS II: “Allocutio ad Decanum Sacrae Romanae Rotae...,” p. 422, n. 1.

<sup>26</sup> Ibidem, p. 423, n. 1.

<sup>27</sup> Cf. P.V. PINTO: *Diritto amministrativo canonico. La Chiesa: mistero e istituzione*. Bologna 2006, pp. 63—65; J. KRUKOWSKI: *Kościelne prawo publiczne. Prawo konkordatowe*. Lublin 2013, pp. 119—122.

<sup>28</sup> Cf. IOANNES PAULUS II: “Allocutio ad Decanum Sacrae Romanae Rotae...,” p. 423, n. 1. Let us recall the fact that Pope John Paul II undertook a complex critique of individualism as a harmful antipersonalism, in relation to the teaching concerning the fundamental issue “issue of human freedom,” in the *Veritatis Splendor* encyclical — IDEM: “Litterae encyclicae *Veritatis splendor* [6.08.1993].” AAS 85 (1993), pp. 1158—1161, nn. 31—34.



of civilizational advancement and highest respect toward human dignity.<sup>29</sup> To dispel all doubts it is worth to spell it out: originality and specificity of *ius Ecclesiae* (not only in the area of ideas, but also at the level of *praxis*) is presented only by the *stricte* ecclesiastic view. As John Paul II notices in his famous address to the Roman Rota of 1990, this dependence is well reflected by the pragmatics of the Church's judicature operations. The realization of this "model" judiciary will make the countenance of the Church (*speculum iustitiae*) transparent to such an extent, to which it will take place according to an immanent "community logic," that is, in the trend of communion — creating activity, evangelizational testimony of building — often reconstructing: restoring and strengthening — bonds that reside at the foundations of Church's community, so, in other words, as part of updating *ordo iustitiae*, which Christ himself laid down.<sup>30</sup> Within this optics Benedict XVI's words, which constitute a peculiar bracket fastening together all trains of the discussed speech: *ius Ecclesiae* — as in the nature of things *lex libertatis* — "should be loved and observed by all the faithful," whereas the faithful following of this law signifies, in its essence, adherence to Jesus in love, grow in a fuller meaning.<sup>31</sup>

## 2. *Ecclesia iuris* and the religious freedom

What is the point of posing a question about religious freedom inside the very Church? — by the means of this rhetorical, title question, the highly respected canonist cardinal Péter Erdö begins his remarks upon the religious freedom in a monograph entitled *Theologie des kanonischen Rechts*.<sup>32</sup> What is characteristic, the essential framework of the answer is already signalled in the first sentence of the said work: The Second Vatican Council clearly declared in *Dignitatis Humanae* that the ceremoniously proclaimed *libertas religiosa* principle constitutes, in its essence, an affirmation of God's gift of human freedom and dignity.<sup>33</sup> As the Hungarian canonist remarks, this clear stance of the Catholic Church has to be tightly connected with a broader "programme" of a consistent promotion

<sup>29</sup> Cf. IDEM: "Allocutio ad Romanae Rotae Praelatos, auditores, officiales et advocatos anno iudiciali ineunte [18.01.1990]." AAS 82 (1990), p. 876, n. 7.

<sup>30</sup> Ibidem, p. 874, n. 4.

<sup>31</sup> BENEDICT XVI: *Address to the participants in the Study Congress...*

<sup>32</sup> P. ERDÖ: *Theologie des kanonischen Rechts. Ein systematisch-historischer Versuch*. Münster 1999, pp. 163—170.

<sup>33</sup> Ibidem, p. 163.

of human rights.<sup>34</sup> To avoid any doubts, at the very beginning of the mentioned document we read: “[Considering the issue of religious freedom — A.P.] the council intends to develop the doctrine of recent popes on the inviolable rights of the human person and the constitutional order of society.”<sup>35</sup>

What is crucial is that the *Vaticanum II* fathers aim at emphasizing, in the quoted statement, the continuity of the Catholic doctrine in a subject range, and above all, the grandeur of the merits of the unnamed promoter of conciliar revival Pope John XXIII. What assures us of it — as Cardinal Péter Erdő competently emphasizes — is the provenance of the significant dictum of the second point of the declaration: “the right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself.”<sup>36</sup> Consequently, what appears to be immensely justifiable is the examination of the main and immediate (diachronically) source of inspiration of this and similar conciliar enunciations, namely: the famous *Pacem in Terris*<sup>37</sup> encyclical. It is sufficient to remind the fact that the connection of this document with the key ideas of Vatican II is so crucial and profound that the name of the above-mentioned pope should be connected with a “breakthrough” in the ecumenical council<sup>38</sup> — in relatively legal areas: ecclesiology (*Lumen Gentium* constitution), ecumenism (*Unitatis Redintegratio* decree, *Nostra Aetate* declaration), and especially of religious freedom (*Dignitatis Humanae* declaration). Taking this research trail — here, of course, quite brief, tailored to relatively narrow research needs — appears to be very promising.

The first, how suggestive words of the prologue announce the depth of the humanistic thought of the author of *Pacem in Terris*: “Peace on

<sup>34</sup> Cardinal Péter Erdő’s epistemological and methodological remark is very relevant here: “Die Konzilserklärung versucht, auf zwei miteinander zusammenhängende Grundfragen Antwort zu geben: Die erste ist die Frage nach der Freiheit der Gewissensentscheidung über die Grundwahrheit der Religion; die zweite die nach der freien Ausübung der Religion in der Gesellschaft” — *ibidem*.

<sup>35</sup> VATICAN COUNCIL II: *Declaration on Religious Freedom “Dignitatis Humanae”* [7.12.1965] [further: DH], n. 1 — [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_decl\\_19651207\\_dignitatis-humanae\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html) (accessed: 14.12.2015).

<sup>36</sup> *Ibidem*, n. 2; cf. P. ERDŐ: *Theologie des kanonischen Rechts...*, p. 165.

<sup>37</sup> JOHN XXIII: *Encyclical letter “Pacem in Terris”* [11.04.1963] [further: PT] — [http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf\\_j-xxiii\\_enc\\_11041963\\_pacem.html](http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html) (accessed: 14.12.2015); see also PONTIFICIO CONSIGLIO DELLA GIUSTIZIA E DELLA PACE: *Lettera enciclica Pacem in terris di sua Santità Giovanni XXIII e Messaggio per la Giornata mondiale della pace 2003*. Città del Vaticano 2003.

<sup>38</sup> S. BERLINGÒ: *L’ultimo diritto. Tensioni escatologiche nell’ordine dei sistemi*. Torino 1998, p. 128.



Earth — which man throughout the ages has so longed for and sought after — can never be established, never guaranteed, except by the diligent observance of the divinely established order.”<sup>39</sup> As we can see, the genius and extraordinary sensitivity to human affairs prompt John XXIII, in an exceptional peace message, to open humanism to transcendence,<sup>40</sup> bearing in mind the hermeneutic horizon of the mystery of redemption, realized in the Church and by the Church. The clear message does not leave space for any doubts: reaching true peace is a result of adopting moral order and adhering to its requirements.<sup>41</sup>

According to John XXIII, interpreting the “signs of the times” in the dialogue with the world,<sup>42</sup> peaceful sorting of interpersonal relations

<sup>39</sup> PT, n. 1.

<sup>40</sup> This value of John XXIII’s teaching is competently emphasized by Benedict XVI: “Peace concerns the human person as a whole, and it involves complete commitment. It is peace with God through a life lived according to his will. It is interior peace with oneself, and exterior peace with our neighbours and all creation. Above all, as Blessed John XXIII wrote in his Encyclical *Pacem in Terris*, [...] it entails the building up of a coexistence based on truth, freedom, love, and justice. The denial of what makes up the true nature of human beings in its essential dimensions, its intrinsic capacity to know the true and the good and, ultimately, to know God himself, jeopardizes peacemaking. Without the truth about man inscribed by the Creator in the human heart, freedom and love become debased, and justice loses the ground of its exercise” — BENEDICT XVI: “*Blessed are the Peacemakers.*” *Message for the celebration of the World Day of Peace*, n. 3 — [http://w2.vatican.va/content/benedict-xvi/en/messages/peace/documents/hf\\_ben-xvi\\_mes\\_20121208\\_xlvi-world-day-peace.html](http://w2.vatican.va/content/benedict-xvi/en/messages/peace/documents/hf_ben-xvi_mes_20121208_xlvi-world-day-peace.html) (accessed: 14.12.2015).

<sup>41</sup> See PT, n. 48. In the quoted address for the International Peace Day (2013), on the eve of the 50th anniversary of publishing *Pacem in Terris*, Benedict XVI presents a unique interpretation of the words found in this encyclical: “[...] peace presupposes a humanism open to transcendence. It is the fruit of the reciprocal gift, of a mutual enrichment, thanks to the gift which has its source in God and enables us to live with others and for others. The ethics of peace is an ethics of fellowship and sharing. It is indispensable, then, that the various cultures in our day overcome forms of anthropology and ethics based on technical and practical suppositions which are merely subjectivist and pragmatic, in virtue of which relationships of coexistence are inspired by criteria of power or profit, means become ends and vice versa, and culture and education are centred on instruments, technique and efficiency alone. The precondition for peace is the dismantling of the dictatorship of relativism and of the supposition of a completely autonomous morality which precludes acknowledgment of the ineluctable natural moral law inscribed by God upon the conscience of every man and woman. Peace is the building up of coexistence in rational and moral terms, based on a foundation whose measure is not created by man, but rather by God” — BENEDICT XVI: “*Blessed are the Peacemakers*”..., n. 2.

<sup>42</sup> PT, n. 75; cf. VATICAN COUNCIL II: *Pastoral Constitution on the Church “Gaudium et Spes”* [7. 12.1965] [further: GS], n. 11 — [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_const\\_19651207\\_gaudium-et-spes\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html) (accessed: 14.12.2015); INTERNATIONAL THEOLOGICAL COMMISSION: *Theology Today: Principles, Perspectives and Criteria*, nn. 51—58 — [http://www.vatican.va/roman\\_curia/con](http://www.vatican.va/roman_curia/con)

can be only guaranteed by: truth, justice, love, and a genuine freedom of a human being.<sup>43</sup> That is also how the latter reveals itself — hand in hand with the promotion of the law of nature (“order established by God”<sup>44</sup>) — elementary doctrinal assumption of the above-mentioned encyclical, which — it is worth to bear it in mind — impressed a personalistic stigma on the conciliar depiction of the principle of observance of the freedom of conscience and religion, in all its aspects.<sup>45</sup> The foundation of the right to freedom of religion and other rudimental human rights<sup>46</sup> within the area of religious and civic activity (both in the individual and social dimensions) is the idea of both natural and supernatural (!) dignity of a human being.<sup>47</sup> This integral image of *persona humana* was initially used by the pope to proclaim the rights related to moral and cultural values: “[...] man has a natural right to be respected. [...] He has a right to freedom in investigating the truth, and — within the limits of the moral order and the common good — to freedom of speech and publication.”<sup>48</sup> It is not difficult to guess that subsequently this *passus* was treated by John XXIII as an introduction to the exposition of the renewed idea of religious freedom.<sup>49</sup> And the memorable words could finally be uttered: “[Everyone has the right — A.P.] to worship God in accordance with the right dictated by his own conscience, and to profess his religion both in private and in public.”<sup>50</sup>

gregations/cfaith/cti\_documents/rc\_cti\_doc\_20111129\_teologia-oggi\_en.html (accessed: 14.12.2015).

<sup>43</sup> PT, n. 87.

<sup>44</sup> PT, n. 1.

<sup>45</sup> Cf. J. KRUKOWSKI: *Kościelne prawo publiczne...*, pp. 118—135.

<sup>46</sup> “Religious freedom [...] is at the basis of all other freedoms and is inseparably tied to them all” — JOHN PAUL II: “Epistula *The signal occasion* ad Conradum Waldheim, Consilii Nationum Unitarum Virum a Secretis, XXX expleto anno a *Declaratione Universalis Iurium Hominis*” [2.12.1978]. AAS 71 (1979), p. 123.

<sup>47</sup> “[...] each individual man is truly a person. His is a nature that is endowed with intelligence and free will. As such he has rights and duties, which together flow as a direct consequence from his nature. These rights and duties are universal and inviolable, and therefore altogether inalienable. When, furthermore, we consider man’s personal dignity from the standpoint of divine revelation, inevitably our estimate of it is incomparably increased. Men have been ransomed by the blood of Jesus Christ. Grace has made them sons and friends of God, and heirs to eternal glory” — PT, nn. 9—10.

<sup>48</sup> PT, n. 12.

<sup>49</sup> Here in an obvious way the papal thought is inscribed in the context of “hermeneutic of renewal in continuity,” so in this original *aggiornamento*, which — as Benedict XVI emphasized — remains the only key to understanding the thought of Vaticanum II — BENEDICT XVI: *Address to the Roman Curia offering them his Christmas greetings* [22.12.2005] — [http://w2.vatican.va/content/benedict-xvi/en/speeches/2005/december/documents/hf\\_ben\\_xvi\\_spe\\_20051222\\_roman-curia.html](http://w2.vatican.va/content/benedict-xvi/en/speeches/2005/december/documents/hf_ben_xvi_spe_20051222_roman-curia.html) (accessed: 14.12.2015).

<sup>50</sup> PT, n. 14.

The change of the paradigm is finally readable here. If so far the papal magisterium perceived the Catholic Church as the subject of religious freedom — as the only custodian of relative truth and Catholics — as its followers, and other religious Christian/non-Christian communities — and their representatives — it was right to tolerate, then from now on the abstract criterion of “relative truth” was substituted with an existential — practical criterion of “righteous conscience.”<sup>51</sup> The Vatican II doctrine and the contemporary teaching of popes<sup>52</sup> as the foundation of a renewed depiction of religious freedom — closely connected with accepting full truth about a human being (capable by nature of experiencing objective truth and its voluntary acceptance as a personal good) — in principle create responsibility in conscience for everyone for his *credo* in the area of religious and worldview beliefs. “[...] Because faith-knowledge is linked to the covenant with a faithful God, who enters into a relationship of love with man and speaks his word to him, [...] personal knowledge [that — A.P.] recognizes the voice of the one speaking, opens up to that person in freedom”<sup>53</sup> — this freedom requires wider protection in private and public life.

“It is one of the major tenets of Catholic doctrine that man’s response to God in faith must be free.”<sup>54</sup> It is how St. Augustine’s famous postulate *credere non potest homo, nisi volens*<sup>55</sup> found confirmation in conciliar declaration *Dignitatis Humanae*. By referring to the Revelation, the Vatican II fathers proclaimed the right to religious freedom rooted in *dignitas personae* — dignity, which we get to know, on the one hand through the revealed Word of God and on the other — our very mind.<sup>56</sup> However, this time, as Cardinal Walter Kasper, the recent chairman of the Pontifical Council for Promoting Christian Unity, establishes — what was clearly missing was the Christologic foundation of the Christian image of freedom, to the shape of the “model” presentation of

<sup>51</sup> Cf. J. KRUKOWSKI: *Kościelne prawo publiczne...*, p. 118.

<sup>52</sup> It is worth to emphasize that creative undertaking of these John XXIII’s ideas, subsequently developed during the Council, we will find in John Paul II’s teaching — G. FELICIANI: “La libertà religiosa nel magistero di Giovanni Paolo II.” *Rivista internazionale dei diritti dell’uomo* 12 (1999), pp. 158—167; *La libertà religiosa negli insegnamenti di Giovanni Paolo II*. Ed. A. COLOMBO. Milano 2000.

<sup>53</sup> FRANCIS: *Encyclical letter “Lumen fidei”* [5.07.2013], n. 29 — [http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco\\_20130629\\_enciclica-lumen-fidei.html](http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20130629_enciclica-lumen-fidei.html) (accessed: 14.12.2015).

<sup>54</sup> DH, n. 10; CIC, can. 748 §2: “No one is ever permitted to coerce persons to embrace the Catholic faith against their conscience.”

<sup>55</sup> S. AUGUSTINUS: *Contra litteras Petilianus*, Lib. II, cap. 83 — CSEL 52, 112; PL 43, 315.

<sup>56</sup> DH, n. 2.

the *Gaudium et Spes* constitution, but at the same time what had significantly strong foundations was Professor Peter Krämer's outlook,<sup>57</sup> in which he claims that, among others, a strong "internal" impulse to strengthen and develop the participation of followers in the mission of the Church, emerges from the conciliar declaration of the right to religious freedom.<sup>58</sup> A fundamental conclusion, which suggests itself after immersing in the crux of Catholic *de libertate religiosa* teaching, is possible to be defined as follows: remaining on the ground of Vatican II doctrine unjustified would be a distortion of the title relation: law — religious freedom, be it by the means of covering up the differences between depictions of this relation in secular legal orders and canonical

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<sup>57</sup> This expert's counter-argument can be understood: "Mir scheint diese Kritik nicht berechtigt zu sein, weil die konziliare Stellungnahme zur Religionsfreiheit keine Konstitution ist, in der eine theologische Lehre im einzelnen entfaltet wird, sondern eine an die ganze Welt gerichtete Deklaration. Diese verfolgt durch die eindrucksvollen Hinweise auf das Beispiel Christi und der Apostel lediglich die Absicht, die natürliche Argumentation zu bestätigen und zu bekräftigen, ohne das Verhältnis zwischen der allgemein menschlichen und der spezifisch christlichen Freiheit näher bestimmen zu wollen" — P. KRÄMER: "Religionsfreiheit und Absolutheitsanspruch der Religionen — aus der Perspektive des Christentums." In: *Recht auf Mission contra Religionsfreiheit? Das christliche Europa auf dem Prüfstand*. Eds. P. KRÄMER, S. DEMEL, L. GEROSA, A.E. HIEROLD, L. MÜLLER. Berlin 2007, pp. 37—38; see more — P. KRÄMER: *Religionsfreiheit in der Kirche. Das Recht auf religiöse Freiheit in der kirchlichen Rechtsordnung*. Trier 1981. However, it is worth noticing that even accepting this optics, in which the right to religious freedom is understood as an universal right of man, cannot mean omitting assumptions of an relevant anthropology and soteriology: "The truth is that only in the mystery of the incarnate Word does the mystery of man take on light. [...] For, since Christ died for all men, and since the ultimate vocation of man is in fact one, and divine, we ought to believe that the Holy Spirit in a manner known only to God offers to every man the possibility of being associated with this paschal mystery" — GS, n. 22; cf. JAN PAWEŁ II: *Encyklika „Redemptoris missio”* [7.12.1990], n. 10; see also J. KREIML: "Der interreligiöse Dialog: zum Verhältnis des Christentums zu den anderen Religionen." *Forum Katholische Theologie* 21 (2005), pp. 136—143. Within this discussion what should count is the stance of the International Theological Commission: "L'«ecclesiocentrismo» esclusivista, frutto di un determinato sistema teologico o di un'errata comprensione della frase «extra Ecclesiam nulla salus», non è più difeso dai teologi cattolici. [...] Il «cristocentrismo» accetta che nelle religioni possa esserci la salvezza, ma nega loro un'autonomia salvifica, a motivo dell'unicità e dell'universalità della salvezza di Gesù Cristo" — COMMISSIONE TEOLOGICA INTERNAZIONALE: *Il Cristianesimo e le religioni* (1997), nn. 10—11 — [http://www.vatican.va/roman\\_curia/congregations/cfaith/cti\\_documents/rc\\_cti\\_1997\\_cristianesimo-religioni\\_it.html](http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_1997_cristianesimo-religioni_it.html) (accessed: 14.12.2015).

<sup>58</sup> See P. KRÄMER: "Das Recht auf religiöse Freiheit und seine Relevanz für die innerkirchliche Rechtsordnung." In: *Annuario DiReCom 5/2006: Universalità dei diritti umani. Fra cultura e diritto delle religioni*. Eds. L. GEROSA, A. NERI, L. MÜLLER. Lugano 2006, pp. 137—152.

order, or in the area of the very *ius Ecclesiae* — through deliberate or unknowing belittling of the “system” meaning of the right to religious freedom.<sup>59</sup>

Referring to the first issue, it seems important to notice that the elementary human rights — including the right to religious freedom — to such an extent have *raison d'être* in the Church's legal order, to which they correspond with their own purpose of order and the fact of its establishment in *ius divinum*.<sup>60</sup> Taking into consideration that the *novum* of the redemptive perspective tells us to see at the foundation of *ordo iustitiae*, defined by the Christ himself, the “higher” justice,<sup>61</sup> which greatly exceeds the “clearly human” justice means — defined by the means of a fundamental principle: *suum cuique tribuere*<sup>62</sup> (the testimony of the genius of humanistic thought present in Greek philosophy and Roman law). The truth about the process of interiorization of “new Christ's law” (*ordo Caritatis*), prompts — especially in scientific contemplation — a radically different approach to the principle of freedom on the mentioned planes. In the secular order the core of the notion of freedom remains “the freedom from” (well rendered in Italian: *libertà da* or *libertà di*),<sup>63</sup> which expresses the right to independence of a subject from any interference coming from the outside — on the one hand, and on the other — to a free self-definition and self-fulfillment. Whereas freedom in the Church's order, understood as “freedom to” (*libertà a*),<sup>64</sup> has to be a sign of, achieved by the means of theonomy, eschatological freedom; its rudimentary criterion is always the anchoring in God.<sup>65</sup> If we, therefore, assume that in the Church's law there is no place for abstract, depersonalized legal precepts, since in this “area” there are people-Christians called *in concreto* to live according to specified rules, then Gaetano Lo Castro is right when he states that: “indeed, freedom does not exist, a free man exists. To respect freedom means to respect the dignity of man. And since what we face

<sup>59</sup> Cf. GS, n. 10; W. KASPER: *Wahrheit und Freiheit. Die „Erklärung über die Religionsfreiheit“ des II. Vatikanischen Konzils*. Heidelberg 1988, p. 32.

<sup>60</sup> Cf. R. BERTOLINO: *Il nuovo diritto ecclesiale tra coscienza dell'uomo e istituzione. Saggi di diritto costituzionale canonico*. Torino 1989, p. 152.

<sup>61</sup> PAULUS VI: “Allocutio ad Praelatos Auditores et Officiales Tribunalis Sacrae Romanae Rotae [8.02.1973].” AAS 65 (1973), pp. 99—100.

<sup>62</sup> Let us recall how Ulpian defines justice: *Iustitia est constans et perpetua voluntas ius suum cuique tribuens* — D. 1, 1, 10.

<sup>63</sup> Cf. J. KRUKOWSKI: “Libertà e l'autorità...,” pp. 155—156.

<sup>64</sup> Cf. *ibidem*, pp. 156—157.

<sup>65</sup> Cf. F. PIZZETTI: “L'ordinamento costituzionale per valori.” In: *Diritto 'per valori' e ordinamento costituzionale della Chiesa. Giornate canonistiche di studio, Venezia 6—7 giugno 1994*. Eds. R. BERTOLINO, S. GHERRO, G. LO CASTRO. Torino 1996, pp. 61—62.

here are not many types of freedom, but only one — of a human being, we should say: a free person.”<sup>66</sup>

It is difficult to overestimate the importance of this constatation. Its fundamental meaning can be defined as follows: In the Church’s order, in which both *persona humana* autonomy, as well as the binding power of acts, by no means find substantiation in itself, but rather in the Being, which exceeds them — rights and obligations are immanent in relation to the person. Consistently, the pastoral codification effort focused on declaring these obligations<sup>67</sup> is never, since it cannot be, an expression of arbitrary decisions of the shepherds of the Church, since the binding power of the statutory law comes from Christ (*sacra potestas*); it is in Him that both an individual person/Christian, as well as Church community of people, find its ontic foundation.<sup>68</sup>

Here the discourse logic guides us toward the key problem, exhibited in the first part of the title of this study: whereas *ius* is the internal structural dimension of Church’s communion,<sup>69</sup> the religious freedom and the integral live message *depositum fidei*, closely related with it, constitute fundamental principles of the Church’s legal order. What proves clear here is the fact that both categories *Ecclesia iuris* and *libertas religiosa* remain in a synergic relationship. Firstly, the originality of the community law is not possible to be understood without making oneself aware that its members, as having a new *esse in Christo* existence, respond with a free act of will (as free persons in Christ) to the grace of faith.<sup>70</sup> Secondly, the Church’s order, remaining in the service to freedom, has dynamism inscribed in its essence, dynamism which creates conditions to make sure that the Word of God and sacrament pass on, in an authentic and comprehensive way, participation in the life of Triune God.<sup>71</sup>

<sup>66</sup> C. LO CASTRO: “La libertà religiosa e l’idea di diritto.” In: *La libertad religiosa: memoria de IX Congreso Internacional de Derecho Canónico*. Mexico 1996, p. 23.

<sup>67</sup> “The meaning of Church’s standards and institutions rests in the promotion of followers’ participation in the mystery of redemption realized in the Church and by the Church” — R. SOBAŃSKI: “*Dispensatio gratiae* (Uwagi o stosowaniu prawa kościelnego).” In: „*Vobis Episcopus Vobiscum Christianus*”. *Księga Jubileuszowa dedykowana Księdzu Arcybiskupowi Damianowi Zimoniowi*. Eds. W. MYŚZOR, A. MALINA. Katowice 2004, pp. 33—34.

<sup>68</sup> Cf. C. LO CASTRO: “La libertà religiosa...,” p. 40; J. KRUKOWSKI: “Libertà e l’autorità...,” pp. 160—163.

<sup>69</sup> *Il diritto ecclesiale è inteso come realtà non estrinseca, ma appartiene all’essenza stessa della Chiesa* — L. GEROSA: *Introduzione al diritto canonico*. Vol. I: *Teologia del diritto ecclesiale*. Città del Vaticano 2012, p. 117.

<sup>70</sup> Cf. R. SOBAŃSKI: *La Chiesa e il suo diritto. Realtà teologica e giuridica del diritto ecclesiale*. Torino 1993, pp. 32—33.

<sup>71</sup> See J. RATZINGER: “*Freiheit und Bindung in der Kirche*.” In: *Les Droits Fondamentaux du Chrétien...*, pp. 37—53. What is worth noticing within this context is Peter



It is worth to briefly ponder upon the detailed conclusions that emerge from this constatation. The community of the Church (*communio*), boldly presented to the world by Pope Paul VI as *Ecclesia iuris*,<sup>72</sup> is such not as a result of accepting external law, but because of its own, immanent legal order. Two excerpts of the *Gaudium et Spes* constitution — put together — give this truth appropriate depth. In the 45th point the Council fathers preach: “[...] the Church is ‘the universal sacrament of salvation’, simultaneously manifesting and exercising the mystery of God’s love”; and earlier, in point 17 we read: “man’s dignity demands that he act according to a knowing and free choice that is personally motivated and prompted from within.” If today we see in these texts an invitation to an integral interpretation of system determinants of Church’s legal structure — around the triad: Church community—religious freedom—bonds of faith<sup>73</sup> — then we have to agree that an invaluable role in their recognition belonged to the initiator of the conciliar *aggiornamento* and revival of the Code of Canon Law by Pope John XXIII.<sup>74</sup>

The Church lives as a communion — a communal life of people, who through a free act of will accepted the gift of faith, the grace of redemption offered to them by Christ. His sanctifying presence *in Ecclesia* and *per Ecclesiam* — in a visible form: in the Word of God and sacraments — is a sign that manifests the love of God; this love is permanently spilt in human hearts by the Spirit of Father and Son. The answer of faith and love on the particular follower’s part<sup>75</sup> is a straightforward consequence and development of the mentioned constitutive legal event. What goes shoulder to shoulder with the acquisition of a free person’s existence, brought back to life in baptism, is obtaining own clear *esse* in the mystic body of Christ. Since the Holy Spirit incessantly gives his gifts, every

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Krämer’s remark: “Nicht trotz, sondern wegen des Absolutheitsanspruches muss die Kirche sensibel sein für religiöse Freiheit, um ihre Botschaft in glaubwürdiger Weise den Menschen von heute nahe bringen zu können” — P. KRÄMER: “Religionsfreiheit und Absolutheitsanspruch...,” p. 44.

<sup>72</sup> “In realtà, lo ‘Spirito’ e il ‘Diritto’ nella loro stessa fonte formano un’unione, in cui l’elemento spirituale è determinante; la Chiesa del ‘Diritto’ e la Chiesa della ‘carità’ sono una sola realtà, della cui vita interna è segno esteriore la forma giuridica” — PAULUS VI: *Discorso ai partecipanti al II Congresso internazionale di diritto canonico* [17.09.1973], n. 5 — [http://www.vatican.va/holy\\_father/paul\\_vi/speeches/1973/september/documents/hf\\_pvi\\_spe\\_19730917\\_diritto-canonico\\_it.html](http://www.vatican.va/holy_father/paul_vi/speeches/1973/september/documents/hf_pvi_spe_19730917_diritto-canonico_it.html) (accessed: 14.12.2015).

<sup>73</sup> Cf. P. KRÄMER: *Kirchenrecht*. Bd I: *Wort — Sakrament — Charisma*. Stuttgart—Berlin—Köln 1992, pp. 23—27.

<sup>74</sup> Cf. G. FELICIANI: *La libertà religiosa...*, pp. 158—159.

<sup>75</sup> CIC, can. 748 § 1: “All persons are bound to seek the truth in those things which regard God and his Church and by virtue of divine law are bound by the obligation and possess the right of embracing and observing the truth which they have come to know.”; cf. P. ERDÖ: *Theologie des kanonischen Rechts...*, pp. 166—167.

Christian has new areas of activity and a new dimension of tasks in the service of building unity and communion.<sup>76</sup> What is ontically inscribed in such Church's freedom order is the communication of redemptive gifts — according to the criterion of participation and principles of diaconia. Whereas the service to the communion is for a baptized individual a duty, the Church law is an indispensable tool used to formulate and organize the realization of this duty optimally.<sup>77</sup>

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The legal structure of the Church cannot allow for the universal service of redemption, which the People of God — Mystical Body of Christ fulfills for the world. Like the entire Church, also its law serves in the function of the sign. Indeed, the legal organization of Church's life should be a “clear sign of grace that lives in the community and spreads through it.”<sup>78</sup> Even if the lack, in people who do not belong to the Church, of an interpersonal relation, based on faith, to the Church's legislator, devoids the latter one of effective foundations to establish a redemptive dialogue with them on a legal plane, then we still have to assume that the legislative activity of the Church — addressed directly to the followers — always serves the entire humankind, according to a paradigm: the order of justice is the order of love. In that way the sameness of the aim of Church's law *ad intra* and *ad extra* is depicted. The Church's legislative activity — based on the assumption of the unity of God and Church's law<sup>79</sup> — serves to the work of unifying all people and everything in Christ, and through that broadening the God's communion to the entire world.<sup>80</sup>

We are free to assume that the offered remarks, although embedded in ecclesiological doctrine of the Catholic Church, have their ecumenical dimension.<sup>81</sup> Indeed it is true that every genuinely Christian activity is at the same time ecumenical, it aims at unity given and pre-defined by Christ. Completely authorized, after the Second Vatican Council, affirming of the ecclesiastic character of Churches and Christian communities (“Baptism [...] establishes a sacramental bond of unity which links all

<sup>76</sup> Cf. GS, n. 1.

<sup>77</sup> See R. SOBAŃSKI: “Recht und Freiheit des in der Taufe wiedergeborenen Menschen.” In: *La norma en el Derecho Canonico. Actas del III Congreso Internacional de Derecho Canonico*, Pamplona, 10—15 de octubre de 1976. Pamplona 1979, pp. 877—896.

<sup>78</sup> IDEM: *Kościół — prawo — zbawienie*. Katowice 1979, p. 191.

<sup>79</sup> IDEM: *Recht und Freiheit...*, pp. 883—884.

<sup>80</sup> Cf. IDEM: *Kościół...*, pp. 190—192.

<sup>81</sup> A broader exposition on this subject does not fit in the material framework of this study.

who have been reborn by it”<sup>82</sup>) means that the law of this communities constitutes *legitimum ius ecclesiale*, and what follows from it — every baptized individual is a rightful subject of Christian activity, which he should develop in his own religious homeland,<sup>83</sup> as a part of own autonomous legal order, which remains the unchangeable Church’s order of freedom.

<sup>82</sup> VATICAN COUNCIL II: *Decree on Ecumenism “Unitatis Redintegratio”* [21.10.1964], n. 22 — [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_decree\\_19641121\\_unitatis-redintegratio\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19641121_unitatis-redintegratio_en.html) (accessed: 14.12.2015).

<sup>83</sup> R. SOBAŃSKI: “Ökumenismus und Verwirklichung der Grundrechte der Getauften.” In: *Les Droits Fondamentaux du Chrétien...*, pp. 713—737.

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ANDRZEJ PASTWA

## The Law of the Church — the Law of Freedom

### Summary

What is the point in posing a question about religious freedom in the bosom of the very Church? (Péter Erdö) — this rhetorical question, which constitutes the structure of this study, directs the thought toward one of the most important documents of Vatican II. In the famous declaration *Dignitatis Humanae* the Council Fathers clearly implied that the key principle *libertas religiosa* is, in its essence, an affirmation of God’s gift of human freedom and dignity. “Church law is, first and foremost, *lex libertatis*” — Benedict XVI proclaims nowadays, giving this speech a *par excellence* personalistic context. The Church’s legal order cannot be, by the means of any measure, brought down to a set of isolated, autonomous regulations, which promulgated: officially valid and effective, should be perceived — invariably — as binding. Such reasoning, contaminated with a legal positivism, would introduce, in an obvious way, a disparity between law and life, and as a consequence it would radically deny the possibility of an anthropological foundation of the law. Whereas *ius* is the internal structural dimension of Church’s commu-



nion, the religious freedom and the integral live message *depositum fidei*, closely related with it, constitute fundamental principles of the Church's legal order. What proves clear here is the fact that both categories, *Ecclesia iuris* and *libertas religiosa*, remain in a synergic relationship. The remarks offered in this study, although embedded in ecclesiological doctrine of the Catholic Church, have their ecumenical dimension. Indeed it is true that every genuinely Christian activity is at the same time ecumenical: aims at unity given and pre-defined by Christ. Completely authorized, after the Second Vatican Council, affirming of the ecclesiastic character of Churches and Christian communities means that the law of this communities constitutes *legitimum ius ecclesiale*, and what follows from it — every baptized individual is a rightful subject of Christian activity, which he should develop in his own religious homeland, as a part of own autonomous legal order, which remains the unchangeable Church's order of freedom.

ANDRZEJ PASTWA

## Le droit de l'Église — étant le droit de liberté

### Résumé

Quel est le sens de poser des questions sur la liberté religieuse au sein de l'Église elle-même ? (Péter Erdö) — cette question rhétorique, constituant la base du présent article, dirige notre pensée vers l'un des plus importants documents du Concile Vatican II. Dans la fameuse déclaration *Dignitatis humanae*, les pères du Concile ont explicitement donné à comprendre que le principe fondamental *libertas religiosa* est dans son essence l'affirmation du don divin de la liberté et de la dignité de l'être humain. « La loi de l'Église est, avant tout, *lex libertatis* » — proclame Benoît XVI, tout en donnant à ces propos un contexte purement personnaliste. L'ordre juridique de l'Église ne peut nullement être réduit à un catalogue de règles isolées et autonomes qu'il faut considérer immuablement, en tant que promulguées (c'est-à-dire formellement importantes et efficaces), comme valides. Une telle mentalité, infectée par le positivisme juridique, introduirait de façon évidente une dissonance entre le droit et la vie, et, en effet, exclurait radicalement la possibilité d'appuyer le droit sur un fondement anthropologique. Si *ius* est une dimension structurale interne de la communion ecclésiastique, la liberté religieuse et le message intégral vivant *depositum fidei* (strictement lié à cette liberté) constituent les principes fondamentaux de l'ordre juridique de l'Église. En l'occurrence, il paraît évident que *Ecclesia iuris* et *libertas religiosa* restent dans une relation synergique de catégories. Les remarques formulées dans l'article, bien qu'enracinées dans la doctrine ecclésiologique de l'Église catholique, ont leur dimension œcuménique. Il est cependant vrai que toute activité authentiquement chrétienne est en même temps œcuménique : elle aboutit à une seule activité donnée et indiquée par le Christ. Complètement légitime après le Concile Vatican II, l'affirmation du caractère ecclésiastique des Églises et communautés chrétiennes signifie que c'est *legitimum ius ecclesiae* qui constitue le droit de ces organisations et, ce qui en résulte, chaque personne baptisée est un sujet de l'activité chrétienne jouissant de tous ces droits. Cela étant, elle devrait développer cette activité dans sa patrie et dans le cadre de son propre ordre juridique autonome qui, quant à lui, reste invariablement un ordre ecclésiastique de libertés.

**Mots clés :** droit, liberté, *Dignitatis humanae*, droit de l'Église, liberté religieuse

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## La legge della Chiesa — legge della libertà

## Sommarìo

Qual è il senso della domanda sulla libertà religiosa in seno alla Chiesa stessa? (Péter Erdö) — questa domanda retorica che costituisce la trama del presente studio, orienta il pensiero verso uno dei documenti più importanti del Vaticanum II. Nella famosa dichiarazione *Dignitatis humanae* i padri del Concilio lasciarono intendere chiaramente che il principio cruciale della *libertas religiosa* è nella sua essenza l'affermazione del dono divino della libertà e della dignità della persona umana. “La legge della Chiesa è anzitutto *lex libertatis*” — proclama nei tempi contemporanei Benedetto XVI, conferendo a tale affermazione un contesto *par excellence* personalistico. L'ordine giuridico della Chiesa non si può ridurre in alcuna misura ad una raccolta di norme isolate, autonome che, quando promulgate, formalmente valide ed efficaci devono essere considerate — immutabilmente — vincolanti. Tale modo di pensare, contaminato dal positivismo giuridico, introdurrebbe in modo evidente uno iato tra la legge e la vita, e di conseguenza escluderebbe radicalmente la possibilità di basare la legge sul fondamento antropologico. Se lo *ius* è la dimensione strutturale interna della comunione ecclesiale, allora la libertà religiosa ed il messaggio integrale vivo del *depositum fidei*, strettamente correlato alla stessa, costituiscono i principi fondamentali dell'ordine giuridico della Chiesa. Appare ora già evidente il fatto che l'*Ecclesia iuris* e la *libertas religiosa* rimangono in un legame sinergico. Le osservazioni avanzate nello studio, malgrado siano radicate nella dottrina ecclesiologica della Chiesa cattolica, hanno una loro dimensione ecumenica. È vero infatti che ciascuna attività autenticamente cristiana è al tempo stesso ecumenica: mira all'unità data ed imposta da Cristo. L'approvazione, pienamente autorizzata dopo il Concilio Vaticano II, della natura ecclesiale delle Chiese e delle comunità cristiane significa che il diritto di tali società è costituito dal *legitimum ius ecclesiale*, e ciò che ne consegue — ciascun battezzato è un soggetto in possesso di tutti i diritti all'attività cristiana che è tenuto a sviluppare nella sua patria religiosa, nell'ambito del suo ordine giuridico autonomo che rimane invariabilmente l'ordine ecclesiale della libertà.

**Parole chiave:** diritto, libertà, *Dignitatis humanae*, legge della Chiesa, libertà religiosa