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Part One

Philosophical Thought

Pavol Dancák

University of Prešov, Slovak Republic

Christian Thinking in Secular Context

Abstract: The revival of religious thinking does not amount to a simple reproduction of what preceded secularism. It rather constitutes a reference to an authentic reflection on what caused the lay movements in society. We can say it is time to try anew. In this manner, we can treat it as an opportunity, although admittedly in a very unstable situation.

Keywords: human being, Christianity, secularism, the image of God

It is impossible to imagine Europe without Christianity, churches, Christian crosses scattered along the roads, hospitals, human rights, solidarity, and care for the weakest among us. It is evident that civilization and culture have been inspired by transcendence towards the divine. Despite that, Europe witnessed the process of secularization, which started in the mid-twentieth century and worked towards pushing God and Christianity out of all areas of human life in all ways possible. This process strived for atheist secularism, which involves a complete and utter exclusion of God and the natural moral order from all areas of human life. Christian religion has been continually and with even greater vigor and subtlety restricted to the private lives of individuals. Such tendencies can be seen in the Charter of Fundamental Rights of the European Union, whose creators, irregardless of historical reality, avoided any reference to God or religion.

Many people did not theoretically justify their secular stance, but they lived as if there were no God. Some people openly rejected Christianity and others, in larger numbers, practiced their faith in God only formally. The concept of God was distorted in so many different ways, oftentimes by Christians themselves. In some instances, we have to agree with those who criticized Christians for creating God in their own human image. Oftentimes, God was presented not as a loving father and a healer of body and soul, but as a strict judge or

even as an avenger. People sometimes used the concept of God to fill the gaps of knowledge or considered God an instigator of the motion in the world. Selfish satisfying of the shadow needs resulted in a modern man gladly accepting the pagan image of God as a guarantor of some secure blessedness. To secure this, it should be sufficient to pray and offer some kind of sacrifice. God should be bound by such favor and provided he keeps his account books, he should sooner or later return the favor. The pagan division of reality into sacred and secular grew stronger in everyday life and people somehow ignored the fact that *in God we live and move and have our being* and that only *in God's grace we are who we are*. People did not recognize God at the market as the one *to be worshiped in spirit and truth*. And so we cannot marvel at the famous fool playing requiem for the dead God.

Distorted image of God has become most evident in our perception of freedom as an unlimited wilfulness. Historical experience, however, teaches us that the modern times' motto *equality, fraternity, and liberty* involved exclusion from the brotherhood, deprivation of freedom or even life to all who were not equal in the right sense of the word. History, and sadly the most current history of the twentieth century, too, prove that secularization poses a threat. Revelation of the New Testament rejected whatever sublime business figures of egocentrism and appealed to the human persons to surrender themselves and do good deeds because God is love.

Modern man, as many times before, refused to admit his/her responsibility before God. What is more, man also claimed the right to determine what is good and what is evil. Such claim, however, goes beyond the essential purpose of man, who, on the one hand, can learn about good and evil, who can, and also must, distinguish between good and evil, who can and should do what is good, but who can also do what is evil. Still, modern man cannot say that from now on good will be evil and evil will be good. Man naively assumes that it is possible to abandon his/her essentially given place and tries to turn the world upside down. But to every action there is always a reaction. If I am cutting my own throat, I should anticipate consequences. Instead of God, man placed him/herself in the center of his/her activity, yet s(he) did not succeed in creating Heaven on earth. Just the contrary, man created totalitarian regimes which, by rejecting God, brutally destroyed the dignity of man in the hellish conditions in the concentration camps and gulags. This is the main reason why we consider the times we live in as the times of the spiritual crisis, the times of breaking the established societal and cultural structures, the times to which a mood of doom and a concealed fear of the upcoming future are ascribed. This concealed fear seems to be peculiar in character. It is the fear that man feels of him/herself. There is a real danger that people would be able to turn their own creations against themselves. In current state of technology that would mean to commit a collective suicide. This rather bleak picture of the postmodern situation raises

a question: Is there anything that can protect man from such danger? A question asked in such a way directs human thinking into the realm associated with matters of God. A man of today, as a matter of fact as s(he) has always been is a searcher. In order for the search to be the strength and support for a human being, it is important to subject it to a rational reflection. Otherwise, the whole gamut of pseudoreligions comes into existence.¹ Nobody has ever seen God and therefore we can only speak of God in an anthropomorphic manner, which implies speaking of God on the basis of human experience, and, what is more, by means of analogy and metaphor.² We have to be wary not to remove what is substantially divine from the concept of God.

Postsecular philosophy has its place in a current philosophical thinking that arose from the crisis and criticism. In its wider context, it can be described as postmodern philosophy dealing with the issue of religion and secularization. Postsecular philosophy has been developed on the revelation of wrong assumption that there are irreconcilable differences between the scientific and technological progress of modern civilization and religion. And it does not concern only the United States and the Arab countries. The revival of religion is evident in Europe, too.³ At the same time, secularization takes place and it “compels to a radical reinterpretation of the nature of Christian mission in social structures,”⁴ while a theological origin of secular ideas is taken into account. Issues associated with a universal distribution of human rights, the idea of a person, autonomy of reason, freedom and solidarity, as well as an essential possibility of societal and technological progress are all parts of an original Greek, Roman, Hebrew, and Christian theological legacy. Not only was secularized European thinking tradition built on that legacy, but so were explicitly antireligious systems (the Enlightenment, Fascism, and Communism). György Geréby points out to many perils that the postsecular thinking about religion holds in itself.⁵ The concept of religion does not represent some common essence of all religions, since the concept of God in the respective religions is not formulated in the same way. Jürgen Habermas, too, openly agrees with this claim in “religious unmusicality.” In postsecular thinking, the concept of

¹ Jozef Pauer, “Náboženstvo alebo zápas o obnovu strateného,” in *Hodina filozofie filozofie (Úvod do filozofie stredne pokročilých)* ed. František Novosád et al. 71–90 (Bratislava: Iris 2004).

² Marek Rembierz, “Tropy transcendencji... Współczesne myślenie religijne wobec pluralizmu światopoglądowego i relacji międzykulturowych,” *Świat i Słowo* vol. 2, no. 23 (2014): 17–50.

³ Cf. Danièle Hervieu-Léger, “The Role of Religion in Establishing Social Cohesion,” in *Religion in the New Europe*, ed. Krzysztof Michalski (Budapest and New York: Central European University Press, 2006), 45–62.

⁴ Martin Vašek, *Kapitoly zo súčasnej filozofie náboženstva* (Bratislava: IRIS, 2012), 16.

⁵ György Geréby, “Trievo opojná idea,” in *OS Fórum občianskej spoločnosti* (Bratislava: Kaligram, 3–4/2006), 108–118.

religion alone is inaccurate from the methodological perspective and we have to be wary of its naive simplicism.

The apparent revival of religious thinking has its base in the acceptance of the fact that the crucial role in religion is played by *sensus numinis*, in other words, the sense of the divine. The numinous is a mysterious and incognizable power that inspires awe and terrifies man, but at the same time, it allures and captivates him/her.⁶ It is *mysterium tremendum et fascinorum*. Just because the numinous is both terrifying and fascinating at the same time, it is partly cognizable. This numinous is “holy”; it is “other” and “otherworldly.” It is something mysterious, yet revealing, something unknown, yet profoundly intimate. Religion as a specific human phenomenon must be grounded in the essence of man, that is, in what makes a man a man and what distinguishes him/her from all others.⁷ And thus, pondering upon the phenomenon of religion we come to issues related to knowledge and freedom, and to issues related to limited knowledge and limited freedom.

Every object of knowledge can be known in even more detail and therefore all knowledge is to some extent just the notion. The pathway to knowledge never ends.⁸ The objects of knowledge are placed before us over and over again. Especially it pertains to our knowledge of God. We are constantly on our way to him, because the facts we speak about him are taken from the world of our own experience and therefore they are limited and pertaining more to the limited than to the infinite. As a matter of fact, we would have to speak about him all that is finite. He is both *omninominabile* and *unum*. Explaining the approach to knowledge of God, Nicolas Cusanus, therefore, does not limit himself only to affirmative theology, but he also seeks the help of negative theology so that, looking through the beryl,⁹ he can attain coincidence of opposites. *Ignorantia docta* is a result of it. Knowledge of God for Cusanus is learned ignorance. It is not just any methodical aid, but it is the state of our knowledge of God. After all, all our knowledge, which always maintains its approximative character, leads to God.¹⁰ Gianni Vattimo claims that the postsecularist thinking is dominated by

⁶ Ján Komorovský, “Mircea Eliade a jeho Morfológia posvätná,” in Mircea Eliade, *Dejiny náboženských predstáv a ideí / I* (Bratislava: Agora, 1995), 18.

⁷ Emerich Coreth, *Možnosti človeka* (Banská Bystrica–Badín: RKCMBF UK, TI, 1997), 17.

⁸ “The intellect, which is not truth, never comprehends truth so precisely that truth cannot be comprehended infinitely more precisely. For the intellect is to truth as the polygon is to the circle. The more angles the inscribed polygon has, the more similar it is to the circle. However, even if the number of its angles is increased *ad infinitum*, the polygon never becomes equal [to the circle] unless it is resolved into an identity with the circle.” Mikuláš Kuzánsky, *O učenej nevedomosti*, trans. Augustín Valentovič (Bratislava: Pravda 1979), 37.

⁹ Nicholas of Cusa wrote the book “De beryllo” [On the Beryl], a brief epistemological treatise using a beryl or transparent stone as the crucial analogy.

¹⁰ “It is clear, therefore, that all we know about the truth is that the absolute truth, such as it is, is beyond our reach. The truth, which can be neither more not less than it is, is the most

negative theology emphasizing inaccessibility, void, and otherness, as it is very difficult to determine positive predicates.¹¹

Faith as a natural part of human knowledge has once again become a topic of discussion and as such represents the crucial attitude to the divine, since for us God stays radically inaccessible. It is a basic and “universal” fact which paradoxically accompanies every experience with God which is understood in the broadest sense of the word.¹² The affirmation of God’s radical inaccessibility is rooted not only in God being invisible, but also in his transcendence with respect to our possibilities of knowledge. This assumption is nothing new and it represents the oldest part of philosophical and theological thinking about God. The confirmation of it can be found in the Holy Scripture in the Gospel of John: “No one has ever seen God” (Jn 1:18); as well as in the experience of mystics in all religions. However, it does not mean that God is unattainable in any sense, otherwise it would not be possible to create a concept of God at all, we would not know his name and atheism would be a necessity. It also means that regardless of the level and quality of our intellectual capacities and profundity of our experience, we are not capable of proving God’s existence or understanding who he is. We can only “assume” in some way that the world and we alone are dependant on some powerful transcendence. But for what we “know” about him, God is somebody radically other to all that we are able to see and think of literally.

If we were able to discern him using our cognitive skills—in broader sense—by some tools, it would mean that God is equal to other facts cognizable using these tools. It would, in the end, mean idolatry.¹³

In postsecular philosophy, God is a mystery and affirmation of God has always a character of faith as an affirmation of what is divine despite the inadequacy of our cognitive and ascetic efforts. The inadequacy does not mean that the faith is something irrational. Just the contrary; it appears rational because in itself the faith is the affirmation of the truth that makes the reality of the world more comprehensible, more “illuminated.” This is why the faith itself and its content demand understanding in an essential and not an accidental manner. It is

absolute necessity, while in contrast with it, our intellect is possibility. Therefore the quiddity of things, which is the ontological truth and which has been sought by all philosophers and has been discovered by none of them is unattainable in its purity. And the more profoundly we learn this lesson of ignorance, the closer we approach the truth itself.” Kuzánsky, *O učenej nevedomosti*, 37.

¹¹ Martin Vašek, *Kapitoly zo súčasnej filozofie náboženstva* (Bratislava: Iris, 2012), 18.

¹² “He would not be apprehended in this world where we are led by reason and opinion and doctrine through the more known to the unknown in symbols. Here only where persuasions end and faith enters is he apprehended. Through faith we are ravished in simplicity so that, beyond all reason and understanding we contemplate Him [...]” Kuzánsky, *O učenej nevedomosti*, 169.

¹³ Cf. Tomáš Tatranský, “Výzvy post-sekulární filosofie,” in *Teologické texty*, 1 (2008): 23–25.

still *ides quaerens intellectum*. In Christian thinking, the essential characteristic of numinous lies in God revealing himself in a form of a loving being, as love completing the meaning of our existence. Appeal to holiness, as stipulated in the Old Testament, becomes even more pressing in the New Testament when Jesus Christ invites us to: “Be perfect, therefore, as your heavenly Father is perfect” (Mt 5:48). The faithful in Christ are hallowed by the love they experienced in Christ.¹⁴ “Follow God’s example, as dearly loved children and walk in the way of love, just as Christ loved us [...]” (Ef 5:1).

Understanding of the numinous in Christianity is greatly influenced by the fact that “Christianity is not the teaching of return such is Gnosticism and Neoplatonism, but the teaching of creation.”¹⁵ The account of man’s creation in the Book of Genesis refers to essential relationship of man to God. Adam is not an overthrown god, nor is he a particle of spirit that fell to a body from heaven. He is a free being in a constant and vital relationship to God. His origin refers to that, too. He comes from the earth, but he does not limit himself to the earth. God breathed into him the breath of life and his existence depends on it. He became a living soul, both a personal being and a being dependent on God. Religion does not step in to supplement man’s human nature that would already be complete. Religion is integrated into his structure from the beginning. It would not make sense to talk about man without placing him into the relationship with God.¹⁶

Man is bonded with God, his Creator. Man’s relationship to God is one of the original and vital dependence manifesting itself in freedom in a form of obedience. He needs the obedience as his own complement that allows him to understand that he is not God, but he depends on God for he gave him life—a breath that makes him alive, but which he is not conscious of. He holds the law of obedience deep in his heart and in his conscience. Genuine obedience is possible only in freedom and it makes a man an autonomous being. Talents were dealt, the Lord has left, but he shall return. The concept of autonomy embraces within itself opinions of Stoicism, Enlightenment, and Atheism, but most of all it embraces the profound truth about freedom. The word autonomy derives from words *autos* and *nomos*, meaning to create laws for oneself. It then implies that freedom is related to law. Autonomy does not necessarily mean anarchy. It rather points to something that limits it.¹⁷ What we have in mind is a law inscribed in the hearts and conscience of man and through which the living God speaks to those created by him. God places man into a beautiful and

¹⁴ Cf. Werner Jaeger, *Wczesne chrześcijaństwo i grecka paidei*, trans. Krzysztof Bielawski (Bydgoszcz: Homini, 1997), 103.

¹⁵ Mircea Eliade, *Dejiny náboženských predstáv a ideí / II.* trans. Ľubica Vychová (Bratislava: Agora, 1997), 299.

¹⁶ Cf. Xavier Léon-Dufour, *Slovník biblickej teológie*, 169.

¹⁷ Cf. Karol Tarnowski, *Wiara i myślenie* (Kraków: Znak, 1999), 36.

good world created for man by God to cultivate and govern. The obligation to work does not replace the obligation to obey God, but it is directed to it.

After all, man in his/her nature is a social being. The principal distinction between the sexes is both example and source of life in society which is not based on power but love. God sees this relationship as a mutual help. This principal relationship sets an ideal for every relationship with a fellowman, so God, too, expresses the concluded contract with his people in a form of an engagement.¹⁸

Man has been created in God's image. Priest's interpretation summarizes Jahvist claims and points out to the fact that the creation of the universe was crowned by the creation of man. At the same time, it keeps records of God's intention: "Let us make mankind in our image [...] Procreate [...] Let them conquer the earth and rule over all the animals" (Gn 1:26 ff). Man is created in God's image and s(he) can establish a dialog with God. Man is not God; s(he) lives in dependence on God, in a relationship which is analogous to the relationship between the father and son (cf. Gn 5:3). There is one difference though; the image cannot exist independently of the one who is depicted in the image. The expression *breath* in the account of creation refers to just that. Man fulfills his role of an image by performing two main roles: as an image of God's fatherhood, he must procreate and fill the earth and as an image of God's domination he must conquer the earth under his rule. Man is the master of the world, the God's presence on earth. That is how the God's plan looks like. It was fully accomplished, however, only in Jesus Christ, the Son of God. Adam too was created to God's image, but only Jesus Christ is "the image of God" (2Kor 4:4). Paul the Apostle explains it: "He is an image of invisible God, the firstborn over all creation. For in Him all things were created, things in heaven and on earth [...]. All things were created through *Him* and for Him. He is before all things and in Him all things hold together. And He is the head of the body, the church" (Col 1:15–18). He is not only a visible image of an invisible God, but he is forever a son joined to his Father (cf. Jn 5:18, n. 30). Jesus perfectly realizes what Adam should have been—a being in everlasting relationship of son's dependence on God. Man works, and thus does God's will. Jesus Christ does the work of his Father: "To this very day my father is at His work, and I too am working now" (Jn 5:17). All things were created through him and for him and so he rules over all creations.

Biblical message brings to every man living in history a message of salvation and in this history man shall spread the message about the world beyond history to which he belongs.¹⁹ Christian faith belongs to the realm of free and personal events unfolding between man and God as the history of salvation. Christian

¹⁸ Cf. Léon-Dufour, *Slovník biblickej teológie*, 170.

¹⁹ Cf. Jacques Maritain, *Křesťanský humanismus*, trans. Vojtěch Gaja (Praha: Universum, 1947), 254.

understanding presents a strong belief that the world does not originate in general and unavoidable necessity and it is not necessarily eternal either. The world did not emanate from some divine principle, it is not a cosmic catastrophe, but it originates in a free decision of God. Man him/herself has his/her origin in a free decision: “Let us make mankind in our image, in our likeness” (Gen 1:26). For Christian culture it is important to know that evil in the world is not rooted in metaphysical and thus imperative paraprinciple. Evil has its roots in free and personal decision of a man who rejected the command of God. Although the human history has been marked by the curse of sin from the beginning of times, it has also been full of impact of loving God who shows mercy to man. Creation, incarnation, and redemption are not rooted in the necessity but in the God’s free decision. God’s Son becomes a man in order to perform “free self-revelation of God, bring a message of salvation and in the end to freely accept the redemptive death on the Cross,”²⁰ and all of that in a personal contact with another man and a community of people.

Jesus Christ, after all, is the leader, the head of the body. Having said that, life is given by Him—“the last Adam” (1Kor 15:45), the heavenly Adam whose image we should bear (15:49). He is the head of the family, the Church—the perfect human society; or rather he is the unifying principle of the society comprised of people (cf. Ef 1:10). Adam finds the meaning of his being and his existence only in Jesus Christ, the Son of God who became a man for all of us to become sons of God (Gal 4:4a).

By calling Jesus Christ “the Last Adam,” Paul the Apostle argues that the Christian faith believes is Jesus as an exemplary man.²¹ Jesus as an example representing that a degree of man’s upbringing goes beyond the limits of the human being and only in this transcendence is s(he) the genuine exemplary man. The more man becomes him/herself, the more s(he) is with another. S(he) comes to him/herself only by distancing from him/herself. S(he) comes to him/herself only through others. Man is aimed at others—better said the Other—God. The more s(he) is him/herself, the more s(he) is with the Other—God. Man comes to him/herself only when s(he) leaves him/herself. Man is an image of God. In reality, this image is just an image as it only represents God. In only reflects its ideal’s main features and as a result of original sin is deformed, too. Such situation causes God’s activity to be, first of all, aimed at purging and healing a man and then at leading him/her to best likeness to his/her ideal as possible. This takes place in the course of long years of upbringing in which God reflects freedom and creates man.

Openness to the whole, to the infinite makes the human person a human person. Therefore, he/she is what he/she should be by transcending him/herself infi-

²⁰ Emerich Coreth, *Co je člověk?*, trans. Bohuslav Vik (Praha: Zvon, 1994), 26.

²¹ Cf. Joseph Ratzinger, *Úvod do křesťanství* (Řím: Křesťanská akademie, 1982), 153.

nately. It implies that the more human he/she is, the less withdrawn, “restricted” he/she becomes. In this way, a real human being is the one who is detached the most, who not only touches infinity—the Infinite—but who is one with God. And such is Jesus Christ. In Jesus the incarnation met its destination—the New Adam.²² The cardinal idea of the Christian education is the deification of man. God became man for man to become God. This, by no means, can be taken literally. Deification is understood as unspecified “share” in God’s nature (Western thinking refers to it as to compassion). This daring formulation confirms the presence of man’s infinite desire to be satisfied only by God who is an ultimate aim of the whole inner dynamism of man.²³ Deification represents moving towards the numinous, but, at the same time, it does not mean the destruction of man. It is his/her own realization. In doing so, man becomes man in the most ideal way. That is not through identification with God, but through getting closer to him in the greatest possible way given to the human person. The human person becomes the human person through the deepest fellowship.²⁴

Man is directed to another man and he/she finds him/herself only through another.²⁵ In giving him/herself up, man realizes his/her own being. The metaphysical basis of this fundamental structure is given by the essence of the finite spirit that realizes itself in an unconditioned and unlimited horizon of the being, truth, and good, that is, in the essential orientation towards the absolute.²⁶ Man as the finite spirit in the world does not have absolute being of God as his, immediate goal to which s(he) would direct his/her action. The absolute is not given imminently as an object of knowing, wanting, and loving. It is always mediated by the world. The world represents an immediate object area of our spiritual self-realization. In our world we should realize our being as well as essentially transcendent relationship with the absolute divine being. Therefore, in the world itself, it must be possible to realize our inner attitudes which are, in line with the transcendent nature of man, aimed at the world, and which reach their full meaning and last goal in the absolute. In our sensual world, however,

²² Cf. Ratzinger, *Úvod do křesťanství*, 155.

²³ “[...] and this craving for more will never stop: it will be stretching out to something not yet grasped: the subject of this deficiency will always be demanding a supply, always altering into the grander nature, and yet will never touch perfection, because it cannot find a goal to grasp, and cease its impulse upward. The First Good is in its nature infinite, and so it follows the necessity that the participation in the enjoyment of it will also be infinite, for more will always be grasped, and yet something beyond that which has been grasped will always be discovered, and this search will never overtake its Object, because its fund is as inexhaustible as the growth of that which participates in it is ceaseless.” *Řehoř z Nysy: Contra Eunomium I*, 290–91 /GNO I, 112, 9–20, in Lenka Karfíková, *Řehoř z Nysy* (Praha: Oikoymenh, 1999), 194–95.

²⁴ Cf. Dariusz Oko, *Łaska i wolność* (Kraków: WAM, 1997), 86–87.

²⁵ Cf. Edward Sienkiewicz, *Koncepcja „rewolucji wspólnotowej” w polskiej teologii uczestnictwa* (Poznań: Wydawnictwo naukowe UAM, 2003), 305.

²⁶ Cf. Edward Stolarík, *Filozofia náboženstva* (Košice: RCMBF UK), 54.

we encounter other personal beings towards which we can, or even must adopt certain evaluating attitude—acceptance, warm-heartedness, unselfish devotion. These are the attitudes which aim at the infinite personal value of God.

“God is love. Whoever lives in love lives in God, and God in them” (1Jn, 4:16). Love as a bond of perfection and fulfillment of law determines all means of sanctification, portrays them and brings them to the goal (LG 42). The Church in all its life confesses God as the Saint and Majestic; and especially does so in the holy liturgy to “thank to God for his indescribable gift” in Jesus Christ (2Cor 9:15), to praise his glory (Ef 1:12), with the power of the Holy Spirit (Constitution on the Sacred Liturgy, No. 6). In the Eucharistic Liturgy, the Church addresses God as: “Holy, Holy, Holy [...]” In the Eastern Liturgy, a priest says: “Holy to the Holy.” Participating in the God’s holiness, a believer unifies with Jesus Christ by receiving the Body of Christ.

The revival of religious thinking does not amount to a simple reproduction of what preceded secularism. It rather constitutes a reference to an authentic reflection on what caused the lay movements in society. We can perhaps say that now it is the time to try anew. And thus we can see it as an opportunity, although admittedly in a very unstable situation.

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Pavol Dancák

La pensée chrétienne dans le contexte laïque

Résumé

La renaissance de la pensée religieuse n'est pas une simple reproduction de ce qui précédait la sécularité. C'est plutôt le recours à une réflexion authentique sur les facteurs qui ont provoqué les mouvements laïques dans la société. Nous pouvons dire qu'il est venu le temps d'essayer encore une fois. Ainsi peut-on le traiter comme une sorte de chance, bien que cela se passe dans une situation très incertaine.

Mots clés : homme, Christianisme, laïcité, image de Dieu

Pavol Dancák

Il pensiero cristiano nel contesto laico

Sommario

La rinascita del pensiero religioso non è una semplice riproduzione di ciò che precedette il secolarismo. È piuttosto un richiamo ad una riflessione autentica su ciò che causò i movimenti laici nella società. Possiamo dire che è arrivato il momento di provare nuovamente. In tal modo possiamo trattare ciò come un'opportunità anche se in una situazione molto incerta.

Parole chiave: uomo, Cristianesimo, secolarismo, immagine di Dio

Leo D. Lefebure

Georgetown University Washington, USA

Gaudium et Spes, Nostra Aetate,
Dignitatis Humanae,
and the Opening
of the Catholic Church
to Other Religious Traditions

Abstract: In three closely related documents, *Gaudium et Spes, Nostra Aetate* (Declaration on the Church's Relation to Non-Christian Religions), and *Dignitatis Humanae* (Declaration on Religious Freedom), the Second Vatican Council called Catholics to dialogue and cooperation with all people of good will, including followers of other religious traditions. While the Catholic Church had always been concerned about the well-being of all humans, the Second Vatican Council launched a new era in Catholic relations with other religious traditions and with the entire human community. No earlier council had taken such dramatic steps to address all people of good will, to seek healing for past conflicts, to speak in positive tones about other religions, to affirm the religious liberty of all humans, and to move forward in collaboration with the entire human community. This essay explores this transformation.

Keywords: *Gaudium et Spes, Nostra Aetate, Dignitatis Humanae, Lumen Gentium*, Second Vatican Council, Judaism, Islam, Hinduism, Buddhism, Religious liberty, Pope Gregory XVI, Sikhs, Daoists, Jains, French Revolution, Napoleon Bonaparte, Pope Pius VI, Pope Pius IX, Pope Leo XII, *Mirari Vos*, Pope John XXIII, Jules Isaac, *Humanae Salutis, Pacem in Terris*, Leo Jozef Cardinal Suenens, Shoah, Pope Gregory VII, Pope Paul VI, Pope John Paul II, King Hassan II of Morocco, purification of memory, Pope Benedict XVI, Augustin Cardinal Bea, Pope Francis, *Evangelii Gaudium, Laudato Si'*

Introduction

“The joys and hopes and the sorrows and anxieties of people today, especially of those who are poor and afflicted, are also the joys and hopes, sorrows and anxieties of the disciples of Christ, and there is nothing truly human which does not also affect them.”¹ Thus begins the Pastoral Constitution on the Church in the Modern World, issued by Pope Paul VI and the Second Vatican Council on December 7, 1965, often referred to by its first Latin words as *Gaudium et Spes*. Joy and hope are both basic human experiences and also theological terms referring to gifts from God. There is nothing in the history of Catholic Church Councils that is quite like *Gaudium et Spes*. Earlier councils had condemned heresies, clarified church teaching, and issued disciplinary rules for the order of the church. But no Council had issued a document like this one, devoted to “examining the signs of the times and interpreting them in the light of the gospel.”² The Council described humanity as being in “a new stage of its history in which fundamental and rapid changes are gradually extending to the whole globe.”³ The Second Vatican council was acutely aware that its age was different from earlier ages and it sought to make sense of this situation in dialogue with all persons of good will. After reflecting on the challenging contemporary situation of humanity, the constitution closes with a moving appeal to Catholics to work with all humans to shape a better world: “Since God our Father is the origin and destiny of all things, we are all called to be sisters and brothers. Therefore, in our common human and divine vocation we can and should work together without violence and deceit, and in true peace, to build the world.”⁴

In three closely related documents, *Gaudium et Spes*, *Nostra Aetate* (Declaration on the Church’s Relation to Non-Christian Religions), and *Dignitatis Humanae* (Declaration on Religious Freedom), the Second Vatican Council called Catholics to dialogue and cooperation with all people of good will, including followers of other religious traditions. While the Catholic Church had always been concerned about the well-being of all humans, the Second Vatican Council launched a new era in Catholic relations with other religious traditions and with the entire human community. *Gaudium et Spes*, *Nostra Aetate*, and *Dignitatis Humanae* are without precedent in the history of Catholic ecumenical councils. No earlier council had taken such dramatic steps to address all people of good

¹ *Gaudium et Spes*, n. 1, in *Decrees of the Ecumenical Councils*, Vol. 2, *Trent to Vatican II*, ed. Norman P. Tanner (London: Sheed & Ward/Washington, DC: Georgetown University Press, 1990), 1069. All quotations from the Second Vatican Council will be from this collection.

² *Gaudium et Spes*, n. 4.

³ *Ibid.*

⁴ *Ibid.*, n. 92.

will, to seek healing for past conflicts, to speak in positive tones about other religions, to affirm the religious liberty of all humans, and to move forward in collaboration with the entire human community. This essay will explore some aspects of this transformation.

Earlier Catholic Attitudes to Modernity and Other Religious Traditions

To appreciate the significance of these developments, it is important to recall that prior to the Second Vatican Council, Catholic attitudes toward other religious traditions and the modern world had frequently been hostile and conflicted. The Catholic Church has traditionally had a tragic and violent relationship to all of the world's religious traditions, and this was particularly true of those religions with whom it is most closely bound in history and belief: Judaism and Islam. These three religions share many important beliefs and values, but for centuries Catholics repeatedly vilified and demonized Jews and Muslims as allies of the Antichrist.

In periods when increasing numbers of Catholics came into contact with Buddhists, Hindus, Daoists, Sikhs, Jains, and followers of indigenous traditions around the world, all too often Catholics repeated the age-old patterns of intolerance, defamation, and violence in new contexts. There were some Catholics who seriously studied other religious traditions prior to the Second Vatican Council and who undertook bold initiatives to improve Catholic relations with their followers, but for the most part these efforts did not enjoy widespread publicity or the support of the highest levels of Catholic leadership.

The Catholic Church had a troubled relationship with the modern world for historic reasons. The French Revolution and the self-proclaimed Emperor Napoleon Bonaparte posed a profoundly traumatic challenge to the Catholic Church on every level, from popes to bishops to priests to religious communities to lay Catholics. Many were killed; many were uprooted; many were dispossessed. Napoleon deliberately humiliated Pope Pius VI, who served as pontiff from 1775 to 1799, one of the most difficult periods in the entire history of the papacy. Pope Pius VI saw the French Revolution as a revolt against the order sanctioned by God, as a conspiracy against the Catholic Church, given that Catholic bishops, priests, and sisters were killed. Church property was confiscated. After Napoleon had conquered the papal states, French general Louis Berthier deposed Pius VI as head of the papal states and forced him to move to Siena and then to Florence under house arrest. Then the French were afraid that other troops might

rescue him, so they took Pope Pius to Northern Italy and then to France. Some in the French government aimed to destroy both the temporal and the spiritual power of the papacy. Through the nineteenth and much of the twentieth century, the memories of the French Revolution and other attacks on Catholic persons and institutions shaped the mentality of many Catholic leaders. To the degree that the French Revolution represented the forces of modern Western culture, it was seen as a direct threat to Catholic identity.

In the wake of the French Revolution, the relationship of the Catholic Church and the modern world was often sharply conflicted. Pope Leo XII, who reigned as pope from 1823–29, was very conservative: “He condemned religious toleration, reinforced the Index of Forbidden Books and the Holy Office (formerly the Inquisition), reestablished the feudal aristocracy in the Papal States, and confined Jews once again to ghettos.”⁵ He confiscated the property of the Jews. In the Syllabus of Errors, issued in 1864, Pope Pius IX famously condemned the notion that the pope should reconcile himself with progress, liberalism, and modern civilization. What Pius meant by “modern civilization” was the separation of Church and state, freedom of conscience in religion, rebellion against legitimate princes, “the dissolving of monasteries, the institution of civil marriage, and the destruction of the social influence of the Church.”⁶ But the statement was widely taken out of context as symbolic of a fundamentally antagonistic relationship between the Catholic Church and modern Western culture. To be sure, there were many aspects to Catholic relations with modern culture, but overall the dominant tendencies were inimical.

Exacerbating relationships with other religions and with modern Western culture was the traditional Catholic condemnation of religious liberty. For centuries the Catholic Church had insisted on the right of religious freedom for its followers when they were in a minority situation. However, it denied in principle any right to religious freedom for others because it traditionally believed that error has no rights. In 1832, Pope Gregory XVI sharply condemned “indifferentism” in his encyclical *Mirari Vos*: “This perverse opinion is spread on all sides by the fraud of the wicked who claim that it is possible to obtain the eternal salvation of the soul by the profession of any kind of religion, as long as morality is maintained.”⁷ In light of this perspective, Pope Gregory condemned the notion of liberty of conscience in religion: “This shameful font of indifferentism gives rise to that absurd and erroneous proposition which claims that liberty of conscience

⁵ Richard P. McBrien, *Lives of the Popes: The Pontiffs from St. Peter to John Paul II* (San Francisco: Harper San Francisco, 1997).

⁶ Owen Chadwick, *A History of the Popes 1830–1914* (Oxford: Oxford University Press, 2003), 174.

⁷ Pope Gregory XVI, “*Mirari Vos*: On Liberalism and Religious Indifferentism, Encyclical,” <http://www.papalencyclicals.net/Greg16/g16mirar.htm#par13>, accessed January 9, 2016. See also Chadwick, 23–25.

must be maintained for everyone.”⁸ Non-Catholic Christians and followers of other religious traditions saw this position of claiming religious freedom for Catholics and denying it to others as inconsistent, even hypocritical. This policy was a long-standing barrier to ecumenical and interreligious relations.

Pope John XXIII

After the death of Pope Pius XII, Angelo Giuseppe Roncalli (1881–1963), was elected as Pope John XXIII on October 28, 1958. Earlier in his career Roncalli had become familiar with Byzantine Orthodox Christians and Muslims when he was the Apostolic Visitor, the pope’s diplomatic representative, in Sofia, Bulgaria from 1926 to 1936. Then he served as the Apostolic Delegate to Turkey and Greece, living in Istanbul from 1936 to 1944 and deepening his familiarity with Orthodox Christian leaders and Muslims. Throughout his life, Roncalli had a deep respect for persons of differing backgrounds, including persons of other religious traditions.

Pope John XXIII powerfully prepared the way and set the tone for the developments at the Second Vatican Council. When on January 25, 1959, Pope John proposed the calling of an ecumenical council, he mentioned hopes for Christian ecumenical relations, but he did not originally intend to address interreligious relations. His mind was changed when he met the French Jewish historian, Jules Isaac, on June 13, 1960. Isaac had done an extensive study of the history of Christian contempt for Jews, and he told Pope John that the Jewish people knew his goodness and had great hopes from him.⁹ Isaac presented Pope John with a request that the upcoming ecumenical council reverse the traditional negative teaching of the Catholic Church about the Jews, especially the charge that they were guilty of the death of Jesus Christ. This request moved Pope John to set in motion a process for a statement on Catholic relations with Jews. As discussions proceeded, the scope of the statement was expanded to include all other religions as well.

On December 25, 1961, Pope issued the apostolic constitution, *Humanae Salutis*, which officially convoked the Second Vatican Council to begin on October 11, 1962. Pope John placed his call for an ecumenical council as a response to what he called “a crisis underway within society”: “It is a question in fact of bringing the perennial life-giving energies of the Gospel to the modern world,

⁸ Ibid.

⁹ Jules Isaac, *The Teaching of Contempt: Christian Roots of Anti-Semitism*, ed. Claire Huchet-Bishop (New York: Holt, Rinehart and Winston, 1964).

a world that boasts of its technical and scientific conquests but also bears the effects of a temporal order that some have wanted to reorganize by excluding God.”¹⁰ Pope John was concerned about the threat of devastation from possible nuclear conflict, the danger from atheistic materialism in the Communist world, as well as the challenge of affluent hedonism in the industrialized West stifling the Gospel. John hoped that the upcoming council could help all humans address these problems: “And finally, to a world which is lost, confused, and anxious because of the constant threat of new frightful conflicts, the forthcoming Council is called to offer a possibility for all men of good will to turn their thoughts and proposals toward peace, a peace which can and must come above all from spiritual and supernatural realities.”¹¹

John wanted to link the perennial religious mission of the Church to the concrete situation of the contemporary world, seeking to be helpful in practical ways to all humans. Of course, Pope John did not want to reduce the Church to simply a pragmatic, political reality; he wanted to bring the supernatural dimension of the Church to bear on the concrete problems and crises of the human community, trusting that the light of Christ can illumine all human situations. Pope John renewed this hope in his opening address to the Council, delivered on October 11. When the Council opened, the Council Fathers sent a Message to Humanity on October 20, 1962, which explicitly accepted the agenda of Pope John, focusing especially on the challenge of building peace.

Pope John also made a major contribution in the area of religious freedom, which is integrally related to Catholic interreligious relations. In his final encyclical, *Pacem in Terris*, which was issued early in 1963, Pope John reversed earlier Catholic teaching and clearly affirmed the right to religious freedom, making a crucial distinction between error and persons who are in error: “It is always perfectly justifiable to distinguish between error as such and the person who falls into error—even in the case of men who err regarding the truth or are led astray as a result of their inadequate knowledge, in matters of religion or of the highest ethical standards. A man who has fallen into error does not cease to be a man. He never forfeits his personal dignity.”¹² This principle prepared the way for Pope Paul VI and the Second Vatican Council to affirm the right of all humans to religious freedom in *Dignitatis Humanae*.

¹⁰ John XXIII, *Humanae Salutis*, <https://jakomonchak.files.wordpress.com/2011/12/humanae-salutis.pdf>, accessed December 14, 2015.

¹¹ *Ibid.*

¹² Pope John XXIII, *Pacem in Terris*, n. 158, http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html, accessed January 9, 2016.

Gaudium et Spes

In the initial planning for the Council, there was no document that covered the topic of the Church and the modern world directly; indeed, there was no direct precedent such as statement in the history of Catholic ecumenical councils. Traditionally, councils had ruled on questions of doctrine and had established rules for Church order, but they had not interpreted their age at length and sought a dialogue and collaboration with all people of good will. The Catholic Church councils had never before admitted that the Church had made mistakes or been partly responsible for misunderstandings. The Catholic Church had never openly stated that it could learn from the world. Councils had not directly addressed issues such as poverty, social justice, and the development of many cultures.

In the opening session in 1962, Cardinal Leo Jozef Suenens proposed a two-fold mission for the Council regarding the Church *ad intra* and the Church *ad extra*; this developed into a document on the Church in the Modern World to be issued. The method underlying the document is among its most important contributions to the Church's self-understanding. The Second Vatican Council accepted historical consciousness, the awareness that all of human life is in a constant process of development and change, including the Church and the understanding of the Gospel. This recognition opened the way to historical and literary critical studies of the Bible, to more nuanced discussions of the history of Church teaching, and to the need for interpreting the signs of the times in the present day. The Second Vatican Council changed the way the Church understands itself concretely in the world and the way the Church communicates with the world.

Gaudium et Spes looks at the entire human community in relation to Christian revelation. Revelation fosters community and helps to deepen social life. Revelation teaches humans our common origin and destiny and the command to love our neighbor; these principles support efforts to realize the unity and interdependence of the human race.¹³ The norm for all institutions is the development of the person. However, the Council is very aware that in many settings social conditions prevent people from exercising their proper place in life.¹⁴ It stresses the importance of respect and love, especially for those who are different from us, including even our "enemies."¹⁵ *Gaudium et Spes* calls for understanding and dialogue and accepts the distinction that Pope John XXIII had made: where the earlier Catholic position stressed that error has no rights, *Gaudium et Spes*, like

¹³ *Gaudium et Spes*, n. 24.

¹⁴ *Ibid.*, n. 25.

¹⁵ *Ibid.*, n. 28.

Pope John, affirms people in error do.¹⁶ On this basis, the Council condemns every form of discrimination, including those based on religious difference.¹⁷ These affirmations powerfully paved the way for better relations with followers of other religious traditions.

Nostra Aetate and Interreligious Relations

In 1960, after Pope John XXIII had announced that there would be an ecumenical council at the Vatican, Jules Isaac, a French Jewish historian who had studied the history of Catholic teaching on the Jews, obtained an audience with the pontiff on June 13, 1960. During World War II, the future pope, then Archbishop Angelo Giuseppe Roncalli in Istanbul, had worked to save Jews during the Shoah, Isaac presented to the pope a dossier containing a request that the upcoming council correct the false and unjust statements about the Jewish people in traditional Catholic teaching. Isaac referred in particular to the claim that the scattering of Israel was a punishment inflicted by God on the people of Israel for the crucifixion of Jesus. He also quoted the Catechism of the Catholic Church issued after the Council of Trent in the sixteenth century, which taught that the guilt of all human beings was the fundamental cause of Jesus's death on the cross. Isaac argued that this teaching contradicted the false accusation that the Jewish people in particular were collectively guilty of deicide, the crime of killing God. At the end of the audience, Pope John assured Isaac that he had reason for hope.

A few months later, in September 1960, Pope John commissioned Augustin Cardinal Bea, president of the Secretariat for Christian Unity, to prepare a draft of a declaration on the relationship between the Catholic Church and the people of Israel. During the often heated debates over the declaration at Vatican II, some bishops argued the church could not change its traditional teaching that Jews had completely broken off the covenant with God by rejecting Jesus and that their only hope for salvation lay in conversion to the Catholic Church. Despite the weight of traditional teachings, after the horrors of the Shoah the large majority of bishops at Vatican II believed that it was imperative that the Catholic Church express a new attitude toward the Jewish community. The painful awareness of massive, unjust suffering in the Shoah and the difficult recognition that centuries of Catholic anti-Jewish teaching and practice had fostered animosity and hatred toward the Jews motivated the search for new

¹⁶ Ibid.

¹⁷ Ibid., n. 29.

theological perspectives. In response to strong opposition, many bishops, especially from Germany and the United States, insisted on the need for a new statement of the relation of the Catholic Church to the Jews and a clear condemnation of anti-Semitism and all forms of religious discrimination, from whatever source. Turning to the Jewish people, *Nostra Aetate* notes the roots of the Catholic Church in the religion of ancient Israel. Implicitly rejecting the long history of anti-Jewish teaching, the Council recalls the apostle Paul's teaching that "the Jews still remain very dear to God, whose gift and call are without regret."¹⁸ The council rejects the charge that all Jews alive at the time of Jesus were responsible for his death, let alone Jews of later generations. The Declaration also states that the Catholic Church "deplores feelings of hatred, persecutions and demonstrations of anti-Semitism directed against the Jews at whatever time and by whomsoever."¹⁹

As discussions of the church's relationship with the Jewish people progressed, some Council fathers proposed broadening the scope of the document to include Muslims, Hindus, and Buddhists as well. The new attitude toward the Jewish community had profound implications for the church's stance toward every other religious tradition. The final text of Vatican II's *Nostra Aetate* acknowledges that in the present age the human community's ever closer contacts among nations call for new attention to other religions, especially "to what human beings have in common and what things tend to bring them together."²⁰

The opening words in Latin, "Nostra Aetate," mean "in our age." They proclaim awareness that the present age is distinctive in its responsibilities to foster harmonious relations among religions. The council notes that there is a nearly universal religious sense of an unseen power at work in the universe and human life. Since all creation comes from God, is guided by God's providence, and returns to God, the council looks in hope for a fundamental unity among the peoples of the world and calls for dialogue and collaboration to "recognize, preserve and promote those spiritual and moral good things as well as the socio-cultural values which are to be found among them."²¹

The Council noted various aspects of religious experience, mentioning Hinduism and Buddhism in particular, and set forth the fundamental principle: "the church rejects nothing of those things which are true and holy in these religions."²² By acknowledging truth and holiness in other traditions, the council opened the door to viewing other religious traditions as recipients of divine manifestation and grace. *Gaudium et Spes* clearly teaches that the Spirit of God

¹⁸ *Nostra Aetate*, n. 4.

¹⁹ Ibid.

²⁰ Ibid., n. 1.

²¹ Ibid., n. 2.

²² Ibid.

is active throughout all human life, offering grace and salvation to all humans, whether they have explicitly followed the path of Jesus Christ or not.²³

For Catholics, the Second Vatican Council marked the decisive turning point in attitudes toward Muslims. In 1964, one year before *Nostra Aetate*, *Lumen Gentium* (The Dogmatic Constitution on the Church), explicitly included Muslims in God's salvific plan, affirming that "the plan of salvation also embraces those who acknowledge the Creator, and among these the Moslems are first; they profess to hold the faith of Abraham and along with us they worship the one merciful God who will judge humanity on the last day."²⁴ The following year *Nostra Aetate* also reached out to Muslims. Aware of the centuries of conflict between Muslims and Catholics, the Council expressed its respect for Muslims and praised their worship of the one God, their veneration of Abraham, Jesus, and Mary, their expectation of a day of judgment, and their practice of morality, prayer, almsgiving, and fasting. Passing over most earlier papal statements in silence, the declaration cites a cordial letter from Pope Gregory VII to Al-Nasir, the Muslim ruler of Bijaya, in present-day Algeria in 1076.²⁵ In contrast to most conciliar documents that cite numerous earlier magisterial statements, *Nostra Aetate* refers to only this papal letter from the eleventh century, passing over other traditional teachings in silence. While aware of the history of past hostilities, the Declaration does not want to be imprisoned in a cycle of recriminations but rather urges Muslims and Catholics alike "that, forgetting past things, they train themselves towards sincere mutual understanding and together maintain and promote social justice and moral values as well as peace and freedom for all people."²⁶ While *Nostra Aetate* is very brief, it had a tremendous impact not only on Catholic relations with other religions, but also on other Christian communions who went through similar discernment in these years.

²³ *Gaudium et Spes*, n. 22.

²⁴ *Lumen Gentium*, n. 16.

²⁵ Gregory VII wrote: "Almighty God, who wishes that all should be saved and none lost, approves nothing in us so much as that after loving him one should love his fellow man, and that one should not do to others, what one does not want done to oneself. You and we owe this charity to ourselves especially because we believe in and confess one God, admittedly in a different way, and daily praise and venerate him, the Creator of the world and ruler of this world." Quoted by Pope John Paul II in his "Message to the Faithful of Islam at the End of the Month of Ramadan, April 3, 1991, in *John Paul II and Interreligious Dialogue*, ed. Byron L. Sherwin and Harold Kasimow (Maryknoll, NY: Orbis Books, 1999), 66.

²⁶ *Nostra Aetate*, n. 3.

Dignitatis Humanae and Religious Freedom

Both *Gaudium et Spes* and *Nostra Aetate* affirm the right of all humans to religious freedom, to worship God in accordance with their conscience. *Dignitatis Humanae* developed this position at greater length. It repeated the traditional teaching that all humans have an obligation in conscience to seek the truth to the best of their ability. It followed in the line of Pope John XXIII's *Pacem in Terris* by affirming that even people whom the Catholic Church views as being objectively in error nonetheless retain the right to pursue their conscience in religious matters. *Dignitatis Humanae* rejects any use of force in communicating the truth, teaching that the human person has a right to religious freedom. Such freedom consists in this, that all should have such immunity from coercion by individuals, or by groups, or by any human power, that no one should be forced to act against his conscience in religious matters, nor prevented from acting according to his conscience, whether in private or in public, whether alone or in association with others, within due limits.²⁷

The Declaration drew the further conclusion from this principle “that it is wrong for a civil power to use force or fear or other means to impose the acceptance or rejection of any religion, or to prevent anyone from entering or leaving a religious body.”²⁸ Like *Nostra Aetate*, *Dignitatis Humanae* is a very short declaration, but it had a tremendous impact on improving Catholic relations with other religious traditions.

Pope John Paul II

Since the Second Vatican Council, there have been countless dialogues of Catholics with persons of other religious traditions. Some of the most important developments have been with Muslims. The Holy Qur'an challenges Muslims to compete in virtue with followers of other religious paths: “So let your goals be everything good. Your destiny, everyone, is to God, Who will tell you about that wherein you differed” (Q 5:48).²⁹ In this spirit King Hassan II of Morocco invited Pope John Paul II to come and address thousands of young Muslims in Casablanca, Morocco on August 19, 1985. Pope John Paul accepted the invitation and told the young Muslims:

²⁷ *Dignitatis Humanae*, n. 2.

²⁸ *Ibid.*, n. 6.

²⁹ *The Qur'an: A New Translation by Thomas Cleary* (Starlatch Press, 2004), 55.

The Catholic Church regards with respect and *recognizes the quality of your religious progress*, the richness of your spiritual tradition. [...] Christians and Muslims, in general we have badly understood each other, and, sometimes, in the past, we have opposed and even exhausted each other in polemics and in wars. I believe that, today, God invites us *to change our old practices*. We must respect each other, and also we must stimulate each other in good works on the path of God. [...] Dear young people, I wish that you may be able to help in thus building a world where God may have first place in order to aid and to save humankind. On this path, you are assured of the esteem and the collaboration of your Catholic brothers and sisters whom I represent among you this evening.³⁰

No Muslim ruler in history had issued this type of invitation to a pope and had it accepted. Both the invitation and its acceptance are difficult to imagine apart from the transformation that Popes John XXIII and Paul VI and the Second Vatican Council had initiated in Catholic interreligious.

Another dramatic encounter occurred the following year, in October 1986, at a time when the tensions of the Cold War were still acute. Pope John Paul II invited religious leaders from a wide range of traditions to come to Assisi to pray for world peace. Jews and Muslims, Buddhists, Sikhs, and Hindus, representatives of traditional African and Native American religions, Shintoists and Jains all participated. The pope noted that such diverse traditions could not make a common prayer together and added “but we can be present while others pray.” In his remarks to the assembled leaders Pope John Paul stressed both respect for the differences among religious traditions and also the importance of affirming a common ground whence “to operate together in the solution of this dramatic challenge of our age: true peace or catastrophic war.”³¹

Gaudium et Spes acknowledges that Catholics have not always been exemplary witnesses to the Catholic faith.³² In 1994 Pope John Paul II challenged Catholics to celebrate the third millennium of Christian faith by undertaking a critical reexamination of the tradition with attention to the ways in which Catholics have betrayed the Gospel through violence and intolerance and pass through a “purification of memory,” acknowledging the sins committed in the name of Jesus Christ by earlier generations. In the season of Lent in the year 2000, a time when Catholics seek God’s forgiveness for their sins, Pope John Paul II led a prayer service at the Vatican during which Cardinals acknowledge past sins of Catholics against followers of other religions and prayed for recon-

³⁰ “Address of His Holiness Pope John Paul II to Young Muslims,” n. 10, http://www.vatican.va/holy_father/john_paul_ii/speeches/1985/august/documents/hf_jp-ii_spe_19850819_giovani-stadio-casablanca_en.html.

³¹ Pope John Paul II, “The Challenge and the Possibility of Peace,” *Origins* 16/21 (Nov. 6, 1986): 370.

³² *Gaudium et Spes*, n. 19.

ciliation and healing. Later that spring Pope John Paul journeyed to Jerusalem, where he placed in the Western Wall a piece of paper containing the prayer seeking forgiveness for sins against the Jewish people. Many Jews and Catholics acknowledged that this was one of the most moving moments in the entire history of Catholic-Jewish relations.

God of our fathers,
you chose Abraham and his descendants
to bring your Name to the Nations:
we are deeply saddened by the behaviour of those
who in the course of history
have caused these children of yours to suffer,
and asking your forgiveness we wish to commit ourselves
to genuine brotherhood
with the people of the Covenant.
We ask this through Christ our Lord.³³

R. Amen

The relationship between Catholics and Muslims involves special challenges because of the conflicts raging in some areas today. Pope John Paul II clearly distinguished authentic Islam from the actions of the terrorists and was a leader in developing relations with Muslims. On May 6, 2001, he became the first pope ever recorded to visit a mosque—the Umayyad Mosque in Damascus, which was built on an earlier Byzantine Christian church honoring the grave of St. John the Baptist. He commented:

It is my ardent hope that Muslim and Christian religious leaders and teachers will present our two great religious communities as communities in respectful dialogue, never more as communities in conflict. It is crucial for the young to be taught the ways of respect and understanding, so that they will not be led to misuse religion itself to promote or justify hatred and violence. [...] In Syria, Christians and Muslims have lived side by side for centuries, and a rich dialogue of life has gone on unceasingly. [...] For all the times that Muslims and Christians have offended one another, we need to seek forgiveness from the Almighty and offer each other forgiveness.³⁴

³³ <https://www.jewishvirtuallibrary.org/jsource/anti-semitism/jp.html>, accessed January 9, 2016.

³⁴ “Address of the Holy Father,” Meeting with the Muslims Leaders, Omayyad Great Mosque, Damascus, http://w2.vatican.va/content/john-paul-ii/en/speeches/2001/may/documents/hf_jp-ii_spe_20010506_omayyadi.html, accessed January 9, 2016.

Popes Benedict XVI and Francis

More recent popes have continued the interreligious outreach initiated by the Council. In his first trip to Germany since becoming pope, Pope Benedict XVI entered the synagogue in Cologne to meet the Jewish community, and he also spoke to Muslims, expressing his respect and esteem for both communities and the importance of working together to reject all forms of intolerance and shape a peaceful world. In his post-synodal apostolic exhortation, *Evangelii Gaudium*, Pope Francis has continued the call of the Second Vatican Council to reach out to followers of all religious paths. He strongly supports interreligious initiatives in the context of seeking peace and the flourishing of life for all: “An attitude of openness in truth and in love must characterize the dialogue with the followers of non-Christian religions. [...] Interreligious dialogue is a necessary condition for peace in the world, and so it is a duty for Christians as well as other religious communities.”³⁵ In the exhortation Francis explains the hoped-for result of such an attitude of openness: “In this way we learn to accept others and their different ways of living, thinking and speaking. We can then join one another in taking up the duty of serving justice and peace, which should become a basic principle of all our exchanges. A dialogue which seeks social peace and justice is in itself, beyond all merely practical considerations, an ethical commitment which brings about a new social situation.”³⁶

Pope Francis has developed the call of the Second Vatican Council to address the current ecological challenge. In his encyclical *Laudato Si'*, Francis believes that such a revolution must be informed by religious and ethical principles that go beyond the domain of empirical science. “Any technical solution which science claims to offer will be powerless to solve the serious problems of our world if humanity loses its compass, if we lose sight of the great motivations which make it possible for us to live in harmony, to make sacrifices and to treat others well.”³⁷ Francis acknowledges that believers have not always been “faithful to the treasures of wisdom which we have been called to protect and preserve,” but nonetheless he calls for a return to the sources of religious traditions in order to respond to current needs.³⁸ In this context, he calls for renewed interreligious dialogue on ecological issues.

Shaping all of Pope Francis’s papal ministry is his commitment to building a culture of encounter based upon dialogue and the recognition of the goodness

³⁵ *Evangelii Gaudium*, n. 250, http://w2.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium.html, accessed January 9, 2016.

³⁶ Ibid.

³⁷ *Laudato Si'*, n. 200.

³⁸ Ibid.

of diversity. On his trip to Paraguay in July 2015, Pope Francis set forth this vision:

Moreover, dialogue presupposes and demands that we seek a culture of encounter; an encounter which acknowledges that diversity is not only good, it is necessary. Uniformity nullifies us, it makes us robots. The richness of life is in diversity. For this reason, the point of departure cannot be, 'I'm going to dialogue but he's wrong.' No, no, we must not presume that the other person is wrong. I dialogue with my identity but I'm going to listen to what the other person has to say, how I can be enriched by the other, who makes me realize my mistakes and see the contribution I can offer. It is a going out and a coming back, always with an open heart. If I presume that the other person is wrong, it's better to go home and not dialogue, would you not agree? Dialogue is for the common good and the common good is sought by starting from our differences, constantly leaving room for new alternatives. [...] Dialogue is about seeking the common good. Discuss, think, and discover together a better solution for everybody.³⁹

In January 2016, Pope Francis released a video request for prayers on YouTube that noted the religious diversity of humans and ended with the hope: "That sincere dialogue among men and women of different faiths may produce fruits of peace and justice."⁴⁰ The impact of the Second Vatican Council's invitation to Catholics to collaborate with all humans in building a world of respect, justice, and peace has been dramatic; this challenge echoes still.

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³⁹ http://w2.vatican.va/content/francesco/en/speeches/2015/july/documents/papa-francesco_20150711_paraguay-societa-civile.html, accessed January 9, 2016.

⁴⁰ <https://www.youtube.com/watch?v=-6FFTxwTX34&feature=youtu.be&a>, accessed January 9, 2016.

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Leo D. Lefebure

Gaudium et Spes, Nostra Aetate, Dignitatis Humanae et l'ouverture de l'Église catholique à d'autres traditions religieuses

Résumé

Dans les trois documents, étroitement liés les uns aux autres, *Gaudium et Spes* (Constitution pastorale sur l'Église dans le monde de ce temps), *Nostra Aetate* (Déclaration sur les relations de l'Église avec les religions non chrétiennes) et *Dignitatis Humanae* (Déclaration sur la liberté religieuse), le Concile Vatican II a convié les catholiques au dialogue et à la coopération avec les gens de bonne volonté, sans exclure pour autant les adeptes d'autres traditions religieuses. Encore que l'Église catholique ait toujours été soucieuse du bien de l'humanité tout entière, c'est bel et bien le Concile Vatican II qui est devenu le nouveau commencement dans les relations des catholiques avec d'autres traditions religieuses et avec la communauté humaine tout entière. Jamais auparavant aucun concile n'a fait une démarche tellement radicale pour s'adresser aux gens de bonne volonté, pour chercher le relèvement des conflits du passé, pour confirmer la liberté religieuse de tout être humain et pour avancer dans la coopération avec la communauté humaine tout entière. Le présent essai a pour objectif d'examiner cette transformation.

Mots clés: *Gaudium et Spes* (Constitution pastorale sur l'Église dans le monde de ce temps), *Nostra Aetate* (Déclaration sur les relations de l'Église avec les religions non chrétiennes) et *Dignitatis Humanae* (Déclaration sur la liberté religieuse), relations entre différentes religions, liberté religieuse

Leo D. Lefebure

Gaudium et Spes, Nostra Aetate, Dignitatis Humanae e l'apertura della Chiesa Cattolica alle altre tradizioni religiose

Sommario

Nei tre documenti strettamente correlati *Gaudium et Spes* (Costituzione Pastorale sulla Chiesa nel mondo contemporaneo), *Nostra Aetate* (Dichiarazione sulle relazioni della Chiesa con le religioni non cristiane) e *Dignitatis Humanae* (Dichiarazione sulla libertà religiosa), il Concilio Vaticano II ha invitato i cattolici al dialogo ed alla collaborazione con gli uomini di buona volontà, non escludendo i seguaci di altre tradizioni religiose. Sebbene la Chiesa Cattolica si sia sempre curata del bene di tutta l'umanità, fu il Concilio Vaticano II a diventare il nuovo inizio nelle relazioni dei cattolici con le altre tradizioni religiose e con tutta la società umana. Nessun concilio aveva mai fatto in precedenza un passo così radicale per rivolgersi agli uomini di buona volontà, per cercare il risanamento dei conflitti del passato, per confermare la libertà religiosa di ciascuna persona e per progredire nella collaborazione con tutta la comunità umana. Il saggio presentato studia questa trasformazione.

Parole chiave: *Gaudium et Spes* (Costituzione Pastorale sulla Chiesa nel mondo contemporaneo), *Nostra Aetate* (Dichiarazione sulle relazioni della Chiesa con le religioni non cristiane) e *Dignitatis Humanae* (Dichiarazione sulla libertà religiosa), rapporti interreligiosi, libertà religiosa

Rudolf Dupkala

University of Žilina, Slovak Republic

Conflict or Dialogue of Cultures in the Context of Current Migrations

Today we are again a little bit afraid
of an impending clash of civilizations...

Peter Križan

Abstract: The article analyzes the present-day issue of migration and immigration from the perspective of reformulated concept of axiological pluralism and cultural pluralism. This concept is presented as an alternative to the “anachronistic” project of multiculturalism. The current wave of migration—according to the author—has a twofold effect: it contributes to the rapprochement and mutual enrichment of humanity and human cultures or the escalation of tensions and the outbreak of conflicts arising on the grounds of culture, religion and values. The leitmotif of this work is a reflection on the possibilities, conditions and limitations of the dialogue of cultures. In this context, the author distinguishes between cultures that are proportionate and disproportionate in value. Tolerant coexistence is “possible” only in the culture of commensurate value.

Keywords: human being, culture, religion, value, conflict, dialogue

Human beings are defined as migrating creatures. They migrated already at the dawn of their history, they keep migrating at present and will migrate in the future. Migration is already encoded in their gene pool.

The most important reasons for migration are as follows:

- Depletion of livelihood at the original (home) territory, possibly due to local “overpopulation”;
- Devastation of nature and climate changes (long-term drought, permanent loss of drinking water, volcanic activity, earthquakes, tsunamis, etc.);
- Military conflicts, politically, ethnically, religiously or racially motivated genocide, persecution of the population by dictatorship, etc.;

— Ever-broadening gap in living standards of the population of particular countries, escape from poverty, searching for a higher quality of life, the so-called free movement of capital, goods and services in a globalizing human space-time, etc.

Culture “migrates” together with migrants, which is visible in a constantly deepening cultural diversity. It deepens the diversity of value systems, also these value systems which constitute a component part of different cultures. The nature of such values results in a diversity of values, which is characterized by *commensurability* of cultures; it gives hope for their mutual rapprochement, or even fertilization. However, this diversity is characterized by *incommensurability* of the value systems, which could be (and generally is) the reason for tension and conflicts between cultures. Migration—as a social phenomenon—has at least two outcomes: it either contributes to bringing people closer together and to the mutual enrichment of cultures or it results in escalating tensions and conflicts of such cultures.

The leitmotif of these considerations is a theoretical reflection on the effects of the current wave of migration and immigration, especially from the territory of the Islamic culture into (our) “western,” namely “Euro-Atlantic” civilization.

The starting point for these considerations is the conviction that “we are building a democratic Europe as a worldview—neutral community, to understand equality among citizens who have religious experience and those whose experience is different.”¹

It means the “democratic Europe”—among other things—comprises the pluralism of cultures and values, which includes both cultural and value *absolutism*, as well as cultural and value *relativism*, while it does not come down to either one of them.² The importance of pluralism—as an axiological position—was already noticed by Berlin, who said: “pluralism seems to me truer and more humanist ideals, as it targets those looking for large authoritarian structures, the ideal of self-management classes, nations and of all humanity. It is truer, because at least it acknowledges the fact that there are a lot of human goals that all of them are not commensurate, and they are in constant mutual rivalry. In my opinion, to take the view that all values could be measured by one yardstick, as if it was only a matter of investigation and to determine the highest of them means to disregard the knowledge that humans are free entities and represent moral decision as an operation that is essentially carried out by a slide rule. Pluralism is more human, because it does not deprive people, in the name of

¹ Peter Križan, “Dialóg medzi kultúrami v Európe—úvod do fiskusie,” in *Medzikultúrny dialóg a migrácia* (Prešov: Vydavateľstvo Michala Vaška, 2008), 7.

² It is necessary to note that pluralism is not synonymous with relativism and that relativism semantically does not share the *nihilism*.

some distant or imperfect ideal, of those, whom they consider essential to their lives.”³

In order to point out the context of axiological pluralism, pluralism of cultures that are we are interested in, and to understand the current wave of migration and immigration, it is necessary to outline a basic definition of the concept of “value.”

With the utmost probability the term “value” is, along with the concepts of *goodness*, *truth*, *beauty*, and *love*, the most difficult term to define. In the past an ironic but also justified remark, which referred this phenomenon, was known: value does not show that it is a value, etc.⁴

If it is still true that “of all things the measure is man,” etc. (written by Protagoras), then perhaps the concept of value (and everything that belongs to it) is considered only as a “creation” of man. Each value is a value only for the person when it is in relation to him/her and with respect to him/her. In the light of this fact, a value—in its the broadest definition—is something which has significance, validity, meaning, and price for humans.⁵ A value is therefore constituted by man, his/her “vision” and “leadership,” his/her experiencing and the expectation of his/her spiritual and present-practical activity, etc. The basic source of a value is life itself. Life forces humans to satisfy their basic human needs and create or discover values at the same time. From a certain point of view it could be stated that values belong to the existential conditions of human life.

The world of values is vertically and horizontally—complexly structured, and there is a need for a presumption of reflections about the relation between means and goal of man’s efforts. “On the one hand, the values in this relationship express the desired state of being and, on the other, it suggest courses of action as a means to achieve them [...] there are things on the basis of some quality which are values per self, and things whose value is the means of achieving something that is desirable per self.”⁶ In this connection, the means is related

³ Isiaeh Berlin, “Dva pojmy slobody,” in *O slobode a spravodlivosti* (Bratislava: Archa, 1993), 68–69.

⁴ There is remark that Martin Heidegger complained about the difficulties with defining the concept of “value” when he analyzed the Nietzsche’s concept of a revaluation of all values (see Martin Heidegger, “Powiedzenie Nietzschego *Bóg umarl*,” in Martin Heidegger, *Drogi lasu*, 185).

⁵ However, Kant argued that it is not true since everything that has a price has a value; which is associated with *dignity*. It is documented by means of the following words, that is, the place of something that has some value, can substitute something else equivalent, but this goes beyond any price and therefore it does not allow any equivalent, it has dignity (see Immanuel Kant, *Základy metafyziky mravov*, 63). Kant clearly indicates that dignity (as something that cannot be replaced by any equivalent in *value*) is related to the field of morality (see Kant, *Základy metafyziky mravov*, 63–64).

⁶ Olga Sisáková, *Filozofia hodnôt medzi modernou a postmodernou* (Prešov: FF PU, 2001), 172.

to the value only if it is the result of the desired means or something that represents good. If the desired means is something *wrong*, it results in the means which cannot be a value.

The issue of values and beliefs, their validity, character, and functions, is from the period of classical Greek philosophy connected with controversy, the so-called *axiological monism* with *axiological relativism*. While monists justified the *absoluteness*, that is, eternity and constancy of values, *relativists* pointed out that those values do not have a universally valid character; values exist in their semantic diversity, uniqueness, etc.

The stance of axiological monism is usually exemplified by Plato's understanding of beauty, precisely what "beautiful" is. In Plato's dialogue *Symposium*—said by Diotima, a mantis woman—he notes: "Who on the road to love will bring up here a gradually and properly observed phenomena of beauty [...] he naturally will see something remarkably beautiful, a beauty... that is, firstly, the eternal and never arises, or destroyed, or it does not increase or be diminished, further beauty, as it is not beautiful on one side, however, ugly on the other side, not once beautiful, even once again not, it is not in beautiful in any relationship, in the second, however, ugly nor beautiful here, there turn ugly one people beautiful, others ugly. Beauty is not something like [...] something physical, it is not like some speech or science [...] but as something that is big, united in itself and with each other and all the other beautiful things participate in that, when other or they cease to exist nor increase it, neither diminished nor to it nothing happens."⁷ These "absolute values" belong—according to axiological monists—to such values as "the truth," "the good," etc. The concept of axiological monism, as it has been already underlined, constitutes an ideological and theoretical core of the so-called the cultural absolutism.

Axiological relativists sought (and still seek) arguments against the monists' definition of value as it is connected with the satisfying human needs. Whereas the process of satisfying human needs is usually unique, then what it is connected with is, *sui generis*, unique and thus what is unique is an individual set of values bound with a specific process of satisfying needs. Moreover, this process is always carried out at a specific time, in definite natural and social environment, in society with univocal cultural and religious traditions, with specific level and form of rationality and emotionality, etc.⁸ Such understanding of axiological relativism constitutes the basis of the so-called cultural relativism.

It has already been stated that in the same way that the cultural pluralism "stands" above the cultural absolutism and relativism, the plurality of values

⁷ Plato, "Symposion," in Platon, *Dialógy* Book I (Bratislava: Tatran, 1990), 707–708.

⁸ Vlastimil Rollo, *Emocionalita a racionalita aneb jak ďábel na svět přišel* (Praha: Sociologické nakladatelství, 1993), 100–105.

“stands” above the axiological relativism and monism which theoretically reflects the axiological pluralism.

Whenever this issue is analyzed there is tendency to emphasize that axiological pluralism acknowledges the absolute validity of a specific value only in a specific system of values and in a specific culture, which creates, develops and stores these values, while in relation to another system of values (if a culture is different) the validity of these values is relativized.⁹ Therefore the axiological pluralism and the pluralism of cultures, defined in such a way, are based on the fact that there is an alternative to the “naive multiculturalism” and the “cultural totalitarianism,” which implies that all cultures should be—in spite of their value diversity—understood as an anthropological equivalent.

One of the arguments in favor of the axiological pluralism is the “internal” division of values into such categories as conditional, overarching, and excess which John Kekes introduced in his scientific writings.¹⁰ Such a division of values is significant in the terms of a dialogue of cultures, which has—probably—a chance to succeed only if it pursues a value “beyond the boundaries” of the individual (involved in the dialogue) cultures.

It seems that among these values is the value of life, the value of freedom and so on. However, experience derived from conflicts between cultures suggests that even these figures may not act as a “beyond the boundaries” value for all different cultures and therefore cannot be universal. The value of life and the value of freedom can, as a matter of fact, be seen as such, precisely they could be considered contextually or situationally, so it is not surprising that there are cultures in which these values are not considered to be “excess.” These are particularly the cases and situations in which—at the expense of life—the value of “victims” is stressed, namely the so-called value of self-negation of martyrdom and so on. This was shown, for example, when the Islamic terrorists sent a message to the Western democracies (and to the entire Euro-Atlantic culture) after the events of September 11, 2001, in the United States and commented these events by saying: “We love death more than you love life.”¹¹

The real possibility and form of the coexistence of values—in terms of the plurality of values—depends on their commensurability or incommensurability, it is believed that the commensurability, precisely incommensurability of values

⁹ Therefore such understanding of the *relativism of values* should not be equated with *nihilism*, specifically with the position of “nothing is valid,” not even with *naive optimism*, namely, with a position according to which “everything is possible.” The axiological pluralism respects the hierarchy of the values in force in different value systems, however, it stresses that what is valid in one system of values may not be valid in another system, which results in the above outlined relativity of values.

¹⁰ Cf. John Kekes, *The Morality of Pluralism* (Princeton–New Jersey: Princeton University Press, 1993), 19–65.

¹¹ Quoted by Kuras, in *Jak zabit civilizaci* (Praha: Eminent, 2015), 14.

is a necessary consequence and concomitant feature of the plurality of values. There is no commensurability of values when values are diverse, different, divergent or even antagonistic. However, every difference or diversity of values is not necessarily the reason of their incommensurability and any coexisting conflicts.

It is already known that some cultures that have varied and different systems of values can coexist with each other in a tolerant way, but some of them cannot. For example, some Chinese (Confucian) or Indian (Buddhist) values are commensurate with Christian culture despite their apparent differences. The result of this fact is that there is relatively tolerant coexistence of values within one (common) political and legal system.¹² Max Weber states that “the different value systems of the world are opposite to each other in a bitter struggle.”¹³ It is true only in a case when the “value order” is incommensurable, incompatible or even antagonistic. There does not have to necessarily be the so-called implacable struggle between them in the case of a value-commensurable “world order.”

The coexistence of different values, or the “implacable struggle” between them, can meaningfully speak up when it is determined (identified and defined) by the boundaries and by their commensurability of incommensurability. The truth is that this threshold is based on a point or a in a state where the values are mutually exclusive. This is a condition in which the validity of the parallel two (different) values is practically impossible.

While commensurability of values is designated by their connectedness and functional comparability, according to some—mutually respected—standards, the incommensurability of values is based on their discontinuity. Therefore, the commensurability of values guarantees a bridge. Incommensurability of values—in a common system of values—with the commensurable values cannot build a bridge. Certain “intersections”¹⁴ between them are possible provided that their values do not exist in the common system of values, but work in parallel “side by side.” The coexistence of people who subscribe to and practically apply incommensurable values is only possible in an atmosphere of permanent tension, disagreements, and conflicts. The incommensurable values are not only the result of an incommensurable way of perception of (understanding and reflection) the facts, but also of an incommensurable relation to it and so on. There is no doubt that the outline of the relationship between commensurable and incommensurable values is fully reflected in the relationship between those

¹² This is shown by, for example, the so-called Chinatown operation in several countries of the Euro-Atlantic culture and civilization.

¹³ Max Weber, *K metodológii sociálnych vied* (Bratislava, Pravda, 1983), 244.

¹⁴ The creator (exporter and importer) of the values is “man” who is related to “generic” *commensurate* essential forces, spiritual and present-practical layout (thinking, freedom of will, satisfying basic needs) and so on. As a result, in contacts with systems of in-commensurable values some—human and existentially contingent—“intrusions” can be found.

cultures, which will—among other things—also illustrate the actual shape of the current cultural pluralism.

The presented and preferred concept of the pluralism of cultures, which was based on the concept of axiological pluralism, has no ambition to radicalize the plurality of values¹⁵ at any cost. It is, simply, a concept that respects and reflects the cultural diversity of the contemporary world. The traditional multiculturalism was based (and even still is) on the compatibility of cultures, as well as the possibility of their cohabitation. The presented pluralism of cultures, with regard to the value commensurability and incommensurability of cultures, has allowed (and has justified) coexistence of both, the conflicting and non-conflicting cultures. While cohabitation of cultures is related to commensurate value culture, the conflict coexistence of cultures is linked with the incommensurable value cultures.

A Slovak sociologist Fedor Gál suggests that multiculturalism can also lead to “hostile coexistence of cultures side by side,” which would be—according to him—“nothing pleasant.”¹⁶ In terms of the reformulated the concept of multiculturalism and pluralism of cultures he considers it important to emphasize the presented hostile coexistence of cultures “side by side.”

Perhaps, there is no doubt that value commensurate cultures can coexist “side by side” and also “together.” This is a form of coexistence of different cultures which was anticipated by “traditional” multiculturalism.¹⁷ However, it is not certain that the incommensurate value cultures can and also will “meet,” as it is proved by the current wave of the migration. Anyway, if it was also assumed, based on that belief, that the differences between cultures (and their value systems) “solve” (overcome) the one-to-one tolerance, social empathy, consensus on the so-called universal human values, we would not lack belief in the “universal” validity of the 1948 Universal Declaration of Human Rights, that is, the legal and moral norms included in this Declaration must be accepted (respected) by all particular cultures.

¹⁵ If “the plurality of values,” as Sisáková remarks, “modifies the practice of evaluation, so the fact of pluralism is perceived as a value, the hyperbole of values/means leads to a situation where final values/goals outgrow, the only absolute is relativity of things” (Sisáková, *Filozofia hodnôt medzi modernou a postmodernou*, 169). However, the plurality of values can be viewed and interpreted in other ways. Once again, it is noticed that the reformulated axiological pluralism is a concept which, on the one hand, respects axiological monism and its “absolute” validity of values in a specific value system at the specific time, but on the other, it does not exclude its relativity, if it is compared to values (and their “absolute” validity) in the other—different—system of values.

¹⁶ Fedor Gál, “Hovorte áno, áno, nie, nie,” in *Kultúra ako emócia. Multikultúrna zberka esejí nielen o „nás”* (Bratislava: Nadácia Milana Šimečku, 2006).

¹⁷ According to the traditional cultural pluralism, multiculturalism is still just as a “mixture of the cultures.” These values—an undifferentiated “mixture of cultures” is even considered as “necessary” while “modern society leads to its maturity,” etc. David Pawson, *Islam—przyszłość czy wyzwanie?* (Warszawa: Oficyna Wydawnicza VOCATIO, 2015), 36.

The early effects of the current wave of migration and immigration to Europe prove that reality “does not match” the ideas of multiculturalism. Europe has to “face” a culture with antagonistic value, which is unable to coexist in one (joint) system of political, legal, moral, and religious norms and values.

In light of the foregoing, a view is expressed which suggests that the actual cause of conflicts is not free and autonomous functioning “side by side” in incommensurate value cultures, but it is rather their coexistence in a common system of generally applicable political, legal and moral norms and values. A truly “common” system of political, legal, and moral norms and values has never been, created, namely a system that would be mutually acceptable and respectable for all current and value-antagonistic cultures as well (at least on the territory of the contemporary migration and immigration).

The original multiculturalism succumbed to the illusion that the incommensurate value cultures can merge, because, apparently, all of them follow and respect human dignity, humanism, human and civil rights and so on. However, in Europe and worldwide there is no internationally accepted declaration or legislation—formally guaranteeing respect for human rights—which would be able to *fuse the cultures* that are incommensurable when it comes to values. Perhaps that is why authors such as Jacques Derrida, Jürgen Habermas, Zygmunt Bauman, V. Bělohradský, J. Czerny and others are encouraged to search for a new form of humanism (and human dignity) and new application of the principle of holism.

Both the Christian culture and the Islamic culture are not only characterized by axiological monism, but also by the so-called situational inclination toward “totalitarianism of values.” It seems that each of these cultures tends to perceive their own values as absolute and it is convinced that their values are the “most” positive, humane, fair, moral, etc. There is no doubt that putting values of one culture over another is always dangerous and sooner or later becomes a source of conflict between them.

The conflicts between cultures can have different forms. Some of them are “solvable” by the means of a dialogue. Some of them are, *sui generis*, “unsolvable.” The above outlined understanding of the axiological pluralism—together with the understanding of the pluralism of cultures—offers “solutions” for both at the level of the dialogue of cultures and at the level of coexistence of cultures “side by side,” that is, in separate political and legal systems, on a separate territory, with a specific hierarchy of values, etc.¹⁸

“The parallel coexistence of cultures” and their coexistence “side by side” is not the happiest solution in the twenty-first century. However, if it is a manner that guarantees that the individual (incommensurable) cultures preserve their

¹⁸ The so-called territorial separation of the ethnic groups that fight with one another also enables the current political geography to solve the conflicts of ethno-cultural origin, cf. Daniel Gurňák, Tibor Blažík, and Viliam Lauko, *Úvod do politickej geografie, geopolitiky a regionálnej geografie* (Bratislava: Geo-grafika, 2007), 83–4.

identity and allows what is essential to prevent violent conflicts between them (including the so-called holy wars), then this solution is not the worst. Vice versa! In this (migration) situation and for this (specific) case (ad hoc), the solution may be quite acceptable, because it is a real solution and gives the hope of a dignified coexistence of disparate in value cultures in the future.

This form of coexistence of cultures, that is, their functioning “side by side” and independently from each other, allows them to realize their values in a full scope and without “restrictions” from each—even conflicting—culture. It is possible even without “restricting” or “capping” the concept of human rights and freedom, because at least the part of the Muslim world, which tends to a radical version of Islam, the so-called Wahhabism, has serious problem with the Euro-Atlantic concept of human rights. It neither has links with the Euro-Atlantic understanding of freedom and equality, nor with several pieces of legislation based on the understanding of Western democracy.¹⁹

“The parallel coexistence” of the incommensurable cultures, their functioning “side by side” and independently from each other has its considerable importance also in regard to theological differences between Islam and Christianity as two, although monotheistic, but not identical religions. An example of these differences may be the understanding of God, that is, its strict “oneness” in Islam and “trinity” in Christianity. Furthermore, the differences are based on the definition of the duties of man to God, on experiencing religion, on defining the so-called unbelieving ones, on conducting religious services, on the organizational and hierarchical structure of the mentioned religions, etc.

The most important (and most comprehensive) “modern” conflict of cultures, which in terms of civilizations is linked with Christianity and Islam, “began” with the terrorist attacks of Muslim extremists on targets in the USA on September 11, 2001. Although, the conflict is officially presented as clash of Western democracy with terrorism, there is no doubt that its background is a—*sui generis* historical—dispute between two cultures, which are intrinsically linked to the values of Christianity and Islam.

The escalation of the conflict was anticipated before the events of September 11, 2001, by Samuel P. Huntington, when he noted that “the conflict in the twentieth century between liberal democracy and Marxism-Leninism is only fleeting and superficial historical phenomenon in comparison with permanent and highly conflictual relation between Islam and Christianity”.²⁰

¹⁹ In other words, the culture which is based on freedom of expression, freedom of conscience and religion, gender equality, equal rights for men and women, etc. is *incommensurable* in comparison with the culture where these freedoms and rights are not respected. Cohabitation of these cultures (in one legal system) is not possible. This does not mean that the parallel coexistence of cultures “must” always have a tolerant form.

²⁰ Samuel P. Huntington, *Střet civilizací. Boj kultur a proměna světového řádu* (Praha: Nakladatelství Rybka Publisher, 2001), 248.

The term *conflict* (lat. *conflictus*, ‘collision’) is most often used to describe a *dispute*, *struggle*, *fight*, and even *war* between two and more actors (parties), which are not *consistent* (in line), they have opposing views, different opinions, namely, their values promote mutually exclusive interests, etc. Conflict actors could be individuals, social groups, ethnic communities, nations, states, and even whole civilizations.²¹

Several available statistical data present the causes and nature of the contemporary conflicts—more than 60% of them are conflicts of ethno-cultural and ethno-religious nature.²²

However, even in this case, the impact of religion—in these conflicts—is not overestimated. Hans Knippenberg points out that even these conflicts which, in the background, seem “purely” religious or are even called “Holy war” refer to “secular, political, social, and economic causes and interests.”²³

These words, in their entirety, are also applicable to the conflicts between Christianity and Islam, although, there are some religious causes in this case, namely, factors have specifically literal and “irreplaceable” importance. It stems from the fact that the *core* of the European as well as the Islamic culture is their systems of religious norms and values. Since these systems are incommensurable in Christianity and in Islam, this situation is the biggest determinant of the nature of conflicts between these cultures and religions.

A French historian, orientalist and expert in comparative religious studies Jean-Paul Roux has written in his work entitled *The Conflict of Religions. Long War between Islam and Christianity (7th–21st century)*: “Whether you admit it or not, the fact is that the West is with Muslims or with Islam at war [...] there has not elapsed year, there has not elapsed month or even week that Christian or Muslim blood will be spilled [...] the war between Islam and Christianity, both declared and overt or covert and insidious, it is the reality despite often remembered alliance between Francis I and Suleyman Gorgeous, despite long periods of the truce [...] war in fact has never actually finished.”²⁴ The fact that different religions (including Islam and Christianity), in the history of mankind, were many times in a “state of war” does not mean that such a “war” is derived

²¹ See Mitchell, 1981, 55 ff.

²² In this context, there is at least an unconvincing argument put forward by Francis Fukuyama who stated that “the liberalism prevailed in religion over Europe [...] Today it sounds bizarre that anyone, even the most avid priest, could be offended by the religious ceremonies of another church. Religion became a private matter—it seems to have more or less permanently left the European political scene that are affected only in respect of distinct themes such as the question of abortion,” Francis Fukuyama, *Konec dějin a poslední člověk* (Praha: Nakladatelství Rybka Publisher, 2002), 260.

²³ Hans G. Knippenber, *Violence as Worship. Religious Wars in the Age of Globalisation*, trans. Brian McNeil (Stanford: Stanford University Press, 2011), 13.

²⁴ Jean-Paul Roux, *Střet náboženství. Dlouhá válka mezi islamem a křesťanstvím* (Praha: Nakladatelství Rybka Publishers, 2015), 7–8.

from their substance. (The essence of religion is *faith* in God, life after death in “the second world,” etc.). “Religion”—Jean-Paul Roux writes—“may serve as a pretext for the war, it may be sacred and sometimes it may even resort to it.”²⁵ Within this context religion may become a “resort” at war for two reasons: firstly, because of the “self-salvation” and partly due to the acquisition of hegemony (domination and hegemony) over other religions and so on. It seems that the conflict between Islam and Christianity has historically covered both of these reasons, which derives from their understanding of war (violence) and peace (calm).

The conflicts between Islam and Christianity were and they are still triggered not only by the differences but also by the common features, characteristics and elements. It is remarked that both Christianity and Islam as well are classified as the so-called *monotheistic religions*, that is, religion based on faith in *the one* (and only) God, the creator of man, heaven, and earth, etc. Both religions are, along with the Jewish religion (Judaism), considered to be the so-called heavenly religions, and the all heavenly religions. Abdulwahab Al-Sbenaty, translator of the Qur’an into Slovak, wrote these religions: “come from the same source [...] the one Book which is kept in heaven.”²⁶ Christianity and Islam also have a claim for universal mission and force.

Generally, what is “common” may not be “the same,” namely, well understood, accepted, and cherished the same way and so on. It already applies to the very perspective of God (*Yahweh, Jehovah, the God-Father, Allah*) and his son as well, a messenger or prophet (*Jesus* respectively *Muhammad*).

At the beginning, it seems important to note that *monotheism* could be (and is) perceived in different forms. It has already been mentioned that Judaism, Christianity and Islam are monotheistic religions. All of these three religions believe in one God, etc. However: whereas the *Lord (Yahweh)* is God of the “chosen” (Jewish) nation in Judaism, *God* is (i.e., *God-Father* and *Allah*) God of all nations in Christianity and in Islam. Whereas God “speaks” to the people especially through the prophets, messengers (beginning with Moses and ending with Muhammad) in Judaism and in Islam, the will of God-Father is to give people (“translate”) his *son, Jesus*, who is not just a remarkable “messenger” of God, but he is *Christ*, that is, *Messiah*²⁷ (*Redeemer* and *Saviour*) in Christianity.

²⁵ Roux, *Střet náboženství*, 10.

²⁶ Therefore, all three “holy books” of these religions, that is, the Christian *Bible*, the Islamic *Qur’an* and Jewish *Torah* come from these sources (Korán, 2008, 14).

²⁷ Messianism as faith in the salvation of man, nation, respectively of all mankind through God’s chosen Messiah, that is, “Anointed” (Hebrew משיח—‘māšî‘ch,’ Aramaic משיחא—‘mēšîhō,’ Greek χριστός—‘christos’) belongs to the dominant component of the Jewish (Judaist) and Christian spirituality (see Dupkala, 2003, 7–39). In this context, Solomon wrote: “Judaism and Christianity are two common beliefs bred by common Scripture. They have a common *vocabulary* derived from the Bible, but they do not always use it in the same way. The Hebrew word *māšî‘ch*

It is important to remark that according to Judaism the “real” *Messiah* “did not come,” according to Islam he will never come, because Allah “is the only one God and he is above having a son. All belongs to Him that is in the heavens and on earth”²⁸ and “only unbelievers can say: *The Messiah, son of Mary, he is definitely the God.*”²⁹ Finally, there is a request to add that while God in Islam is explicitly (or rather unspeakably) “transcendent” (*over-terrestrial, over-naturally, over-sensory, etc.*), “three-in-one,” God of the Christian religion is also “transcendent” and “immanent” (he “transcends” the world of people and he “dwells” in this world) and so on.

It has already been mentioned that Christianity and Islam are presented as religions with a universal mission (they “turn” to the whole of humanity) and so it is not surprising that they come into competitive disputes and sometimes even direct conflicts around these ambitions and claims (“global” and “universal” human force).³⁰

The most important factors that give rise to conflicts with the Western (Christian) and Arabic (Islamic) cultures has the right to place the so-called Sharia, which—according to Islam—is a “God-given” (and therefore “immutable”) set of legal and moral norms (regulations, orders, prohibitions), which governs not only the duty of man to God, but also to relationships between humans (including family relations, the status of man and woman, father and mother, patrimonial “action,” dressing up), “right” to revenge, “right” to *vendetta* or even “right to kill” and so on. It is indicated by at least one verse, namely verse 33 of Surah (chapter) 17 about the “right to kill.” In all of the verses of the Qur’an, concerning Sharia, it is stated: “Do not kill those whom God will not allow to kill unless it is reasonable cause (followed by a footnote: death for death in case of adultery and in case of falling away from the faith). If you do that, we give the right to next of kin of power, revenge unjust death. Do not exceed his right for the killing, because the offender has some rights” (17:33).

According to it, there is, however only partial, obvious, conflict of two legal and moral value orientations that are culturally based on Christianity and Islam. On the one hand, the Christianity, which tries to “bring” the biblical commandment *Thou shalt not kill* into legislation that would prohibit the “death

(anointed), from which the word *Messiah* is derived, belongs to this dictionary. Christians apply it in the name of *Jesus*. Jews do not do that.” (Mesiáš Solomon, “Pät’ modelov a ich kritika,” in *Humanistický zborník 6—Fenomén mesianizmu II*, ed. Rudolph Dupkala (Prešov: FF PU v Prešove, 2002), 6.

²⁸ Qur’an, 4:171.

²⁹ Qur’an, 5:17.

³⁰ It is necessary to stress that the right to *universal validity* of one system of values over another system results into the so-called axiological Monism and it translates into not only a broader concept of the cultural absolutism, but also into a specific form of religious fundamentalism. There is no doubt that the claim of *universal validity* was (and is) also one of the causes of conflicts between Christianity and Islam.

penalty” and, on the other hand, Islam which through *Sharia legitimizes* the “law to kill,” namely the application of “authorized revenge.” One consequence of this incommensurability of the legal and moral values of Christianity and Islam is that “there is no Muslim country which has signed the 2nd Optional Protocol to the International Covenant on Civil and Political Rights, which expresses the will to work towards the abolition of capital punishment. The breakthrough came in Turkey in the year 2002, when the negotiations on its accession to the European Union led to passing a law abolishing the death penalty outside wartime.”³¹

Despite all the above factors that provoke (and cause) conflicts between the cultures and the religions, it may be stated that neither the Western and Arab culture nor Christianity and Islam are “fatally doomed” into a conflict (or even hostile) coexistence. In the history of the relations of these cultures there are already several “intrusions” and expressions of a mutually positive influence which give hope for their tolerant coexistence even today.

The extremists speak up more frequently and more loudly in the name of Islam right now and this fact should not be overestimated nor underestimated. We should be aware of it and adequately respond to it. It is important to differentiate between ordinary-believers, ideological fundamentalist, political radicals, restrained reformists, and fanatical extremists in Islam and the way these groups experience and practice it. Simply: there has to be a constant separation between Islam as a religion and Islam as an ideological and political tool in the hands of extremists. Thus, we have to distinguish an ordinary Muslim who looks for dignified life already here on earth when practising his faith, and does in respect of “eternal life,” which is *sub specie aeternitatis*. Such Muslims (not extremists) were previously able to enter into dialogue with the followers of other religions (including Christianity) and we want to believe that it is possible to continue that tradition the current (uneasy) times.

Once again, it would be naive to expect that all incommensurate and inconsistent values will change to commensurate and consistent in the dialogue of cultures. On the other hand, it can be assumed that incommensurate and incompatible values can get to know each other and based on it they can more or less be tolerated in the dialogue of cultures.

The dialogue of cultures will fulfil its mission when representatives of different cultures and of different value systems recognize the pluralism of cultures without having to resign from their own value orientation, etc. The dialog of cultures is not (primarily) a fact when the actors have or do not have the truth,³²

³¹ Luboš Kropáček, *Islam a Západ. Historická paměť a současná krize* (Praha: Vyšehrad, 2002), 98–99.

³² Finally, what is or what is not true might be difficult to settle by people with contradictory value orientation, because the truth is always valid and accepted only within the system of values in which it was—as truth—formulated, taken from evidence and provided by reasons.

this is about attaining a state of mutual respect toward the right of truth and its validity within the limits of a system of values in which the actor of the dialogue is anthropologically and existentially docked. The aim of the dialogue of cultures is not and cannot “overcome” or even “cancel” ideological pluralism, which is necessary in different cultures, civilizations, and value orientations of the world. On the contrary, the objective of the dialogue is to persuade the actors to acknowledge the necessity of pluralism and the need to be tolerant toward others.

In that view, it is necessary to emphasize once again that the dialogue of cultures completes its mission only if, at least, these (fundamental) conditions and criteria are respected:

- full equality of all its stakeholders,
- guaranteeing and respecting the freedom of thought,
- the ability and willingness to hear the other side,
- consensus on content, respectively thematic focus of the dialogue,
- determination the common “borders of the dialogue,” namely agreement about what should not be discussed,³³
- mutual help in dealing with acute existential problems,
- culturalism and fairness in the manner and style of communication,
- mutual tolerance, etc.

It seems that the power—purpose “experiments,” regardless of whether they are “experiments” with an all-planetary socialism, liberalism or any fundamentalism, do not save the human world. The human world will be probably culturally, religiously, socially, and politically differentiated and this differentiation may, due to global accretion of the so-called horizontal forms of social mobility, even intensify. Karl Mannheim has already stated that “horizontal mobility, that is, the human movement from one place to another or from one country to another, shows that different nations think differently. However, the tradition of national or local group remains intact; people strongly adhere to habitual ways of thinking, they observe in other groups that they see the curiosity, errors, and heresy. They have no doubt about the accuracy of their own traditions of thought.”³⁴

Therefore probably, Pilate also responded to the words of Jesus, that He, Jesus, is the truth [...] etc. by asking: “What is truth?” (Jn 18, 38).

³³ “The border” of the dialogue should be established with regard to the “borders” of freedom of expression. The freedom of one part of the conversation “ends” where the freedom of another begins. The part of the freedom of expression in the dialogue of cultures should be a right or obligation “to retain the word” especially if its “vote” led to the induction, to an escalation of tensions. This right or obligation, for example, refers to “eternal truths” like “Allah Akbar,” “Resurrection of Christian Messiah,” “four Buddha’s truths,” and so on. In this context we should apply the principles of Ludwig Wittgenstein, according to whom: “What we cannot speak about we must pass over in silence” (Wittgenstein, *Tractatus logico-philosophicus*, 29).

³⁴ Mannheim, *Ideologie a utopie. Prednášky a eseje*, in Marshall, *Global Conflict Trends* (Bratislava: Archa, 1991), 61.

The most common manifestation of the “horizontal forms of social mobility” is legal and illegal immigration. Symbolically, it can be concluded that the man—a migrant in the era of globalization—is a wandering being. Thus, a majority of people leave mainly for work and better living conditions while wandering, but there are also those who flee their homeland due to inhuman treatment, political, social, and religious discrimination, even the threat of death, starvation and so on. They leave the premises of their original ethnic, cultural, confessional, and political embeddedness. They go through various territories, countries, cultures and civilizations and they seek refuge, the so-called political asylum.

Various forms of “rights of a foreigner,” connected with such wandering of people, have been contemplated since the times of Kant (1724–1804). As Kant explains in *Perpetual Peace*, the right of a foreigner is not to be treated with hostility by others only because he entered their territory.³⁵ This right, however, should not be confused with the so-called guest’s law, but must be seen only as a “visitor’s law, which entitles all people to offer, under the law on common ownership, surface of earth, whereas the spherical surface cannot dispel forever, but finally will have to suffer along together, originally nobody has more right to be in some place than other on Earth.”³⁶

However, the visitors’ right does not justify the one who comes to visit (i.e., guest) and simultaneously with his/her visit (which, moreover, may not be “welcome”), “obtrude” upon host his/her way of life, culture, religiosity, the value orientation, etc. The visitor’s right should be adopted in a friendly way, just to establish with the host a friendly contact, and at the same time this law requires, from the first to the last minute, respect toward the host’s value system. There is a need to remark that cultural diversity, or even conflicts of different cultures, perhaps—according to Kant—may be solved only on the basis of rational reflection and are linked with the *laws of the law’s state* “within the world-civil meaning.”³⁷

Anyway: it is not a coincidence that *all theories are grey; the tree of life is green* (J. W. Goethe). This also applies to the so-called Kant’s theory of “world-civil law” because neither in Europe, nor anywhere in the world there are—according to Kant—current disputes and even conflicts of cultures, yet unaddressed and unresolved. Vice versa! The conflicts of cultures in several European Union countries, where around 20 million (indigenous) immigrants obtained citizenship, mainly from the Middle East and North Africa, are becoming more dangerous (aggressive). It is corroborated by the following words

³⁵ Kant, *K večnému mieru*, 35.

³⁶ *Ibid.*, 25.

³⁷ Cf. Peter Kyslan, “Kantovo učenie o svetoobčianskom práve a súčasnosť,” in *7. kantovský vedecký zborník*, ed. L. Belás-E. Andreanský. Prešov: FF PU v Prešove, 2010; Belás, “Kultúra, dejiny a politika vo filozofickom odkaze I. Kanta,” in *Návraty ku Kantovi*, ed. Filozofická fakulta PU v Prešove, 2011.

by Sartori: “At that moment, when the community of the Third World reaches a critical staffing level, it will claim a right to their own cultural-religious identity and they will attack their putative oppressor,” that is, the original hosts.³⁸

There is a right to a cultural identity as for the *host* and for the *guest* in the context of the ideas of the pluralism of cultures. Neither a host nor a guest has any right to inculcate his system of cultural values by the means of violence to the other. The guest (i.e., outlander, namely immigrant), must also accept the legal and political system of the host country, otherwise the so-called visitor’s right will lose, in this case, any justification. In other words, if guest’s system of value is “not compatible” with the legal and political system of the host country, then—according to Kant—“the rights of a foreigner” should be considered as inapplicable and such guest becomes a *persona non grata*.

Raymond Aron once wrote that “politics has not revealed the secret how violence can be avoided.”³⁹ It seems that this “mystery”—under certain circumstances—may be hidden between the conflicting parties in dialogue, of what the famous French humanist Jean Bodin was probably already aware when at the end of the sixteenth century, that is, in an atmosphere of religious intolerance, violence, and war, he wrote his spiritual testament—dialogue “Heptaplomeres”—also known as “The Interview of Seven Sages.” The interviewed were Catholic, Jewish, Muslim, Lutheran, Calvinist, sceptic, and a representative of the so-called natural religion. The interview has taken place in a calm atmosphere, because the participants—trying to apply tolerance—looked for (and they have found) what connects (despite of all differences) them (Bodin, 2008).

In different atmosphere, about four hundred years later, the Second Vatican Council decided to promote dialogue between religions, especially in such documents as *Lumen Gentium*, *Gaudium et Spes*, and *Nostra Aetate*. The Declaration on the attitude of the Church to Non-Christian Religions (*Nostra Aetate*) mentions:

Men expect from the various religions answers to the unsolved riddles of the human condition, which today, even as in former times, deeply stir the hearts of men: What is man? What is the meaning, the aim of our life? What is moral good, what is sin? Whence suffering and what purpose does it serve? Which is the road to true happiness? What are death, judgment and retribution after death? What, finally, is that ultimate inexpressible mystery which encompasses our existence: whence do we come, and where are we going? [...]

The Catholic Church rejects nothing that is true and holy in these religions. She regards with sincere reverence those ways of conduct and of life, those precepts and teachings which, though differing in many aspects from the ones

³⁸ Giovanni Sartori, *Pluralizmus, multikulturalizmus a přistehovalci. Esej o multietnické společnosti* (Praha: Dokořán, 2005), 71.

³⁹ Raymond Aron, *L'opium des intellectuels* (Paris: Gallimard, 1955), 205.

she holds and sets forth, nonetheless often reflect a ray of that Truth which enlightens all men. [...]

The Church regards with esteem also the Moslems. They adore the one God, living and subsisting in Himself; merciful and all-powerful, the Creator of heaven and earth, [...].

Since in the course of centuries not a few quarrels and hostilities have arisen between Christians and Moslems, this sacred synod urges all to forget the past and to work sincerely for mutual understanding and to preserve as well as to promote together for the benefit of all mankind social justice and moral welfare, as well as peace and freedom.⁴⁰

* * *

The interview,⁴¹ in which a different opinion “does not freely vibrate” is not (and cannot) be seen as a part of the dialogue of cultures. Everyone, as a being that thinks freely and responsibly, has the opportunity and obligation to be a creator and actor of that conversation, which ultimately is nothing else than his/her special and essential cultural creation and performance.

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⁴⁰ *Nostra Aetate*, nn. 1–3, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_nostra-aetate_en.html.

⁴¹ At least at the edge a Slovak philosopher and litterateur—Farkašová, highlights the importance of the *interview* as the dialogic form of communication by saying: “We achieve shaping our ideas, exchange our ideas and interact with others only in an interview, we have a chance to verify the weight of our own arguments and we get to know the weight of other arguments in a conversation, we can move into our own deeper layers in an interviews, we may adjust the mirror of self-reflection, which would not exist without the presence of others,” Farkašová, “Filozofia pre nové tisícročie,” in *Filozofia ako problém*, ed. Višňovský (Bratislava, Kalligram, 2004), 229.

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Rudolf Dupkala

Conflit ou dialogue des cultures dans le contexte des migrations contemporaines

Résumé

L'article analyse la question de la migration et de l'immigration actuelles dans la perspective de la conception reformulée du pluralisme axiologique et celui des cultures. Cette conception est présentée comme une alternative pour le projet « anachronique » du multiculturalisme. Selon l'auteur, la vague actuelle de migration produit un double effet : d'un côté, elle contribue au rapprochement et à l'enrichissement mutuel de l'humanité et des cultures de l'homme, mais de l'autre, elle provoque l'escalade des tensions et l'explosion des conflits culturels, religieux et ceux motivés par les valeurs. Les réflexions sur les possibilités, sur les conditions et sur les limitations du dialogue entre les cultures sont l'élément principal de cet article. Dans ce contexte, l'auteur distingue les cultures qui sont pareilles et dissemblables au niveau axiologique. Une coexistence tolérante est « possible » uniquement dans les cultures ayant des valeurs comparables.

Mots clés : homme, culture, religion, valeur, conflit, dialogue

Rudolf Dupkala

Il conflitto o il dialogo delle culture nel contesto delle migrazioni attuali

Sommario

L'articolo analizza la questione attuale della migrazione e dell'immigrazione dalla prospettiva della concezione riformulata del pluralismo assiologico e del pluralismo delle culture. Tale concezione è presentata come alternativa al progetto "anacronistico" del multiculturalismo. Secondo l'autore l'onda attuale di migrazione consegue un duplice effetto: contribuisce ad un avvicinamento ed a un arricchimento reciproco dell'umanità e delle culture dell'uomo oppure causa un'escalation delle tensioni e un'esplosione di conflitti culturali, religiosi e motivati dai valori. Il motivo conduttore di questo studio è rappresentato dalle riflessioni sulle possibilità, sulle condizioni e sui limiti del dialogo tra le culture. In tale contesto l'autore distingue le culture che sono conformi e non conformi ai valori. La coesistenza tollerante è "possibile" soltanto nella cultura conforme ai valori.

Parole chiave: uomo, cultura, religione, valore, conflitto, dialogo

Krzysztof Wieczorek

University of Silesia in Katowice, Poland

“Behold, Now Is the Acceptable Time for a Change of Heart” A Christian Response to the Migration Problem

Abstract: The 50th anniversary of the announcement of the Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*, raises the questions of to what extent the global community of Catholics adopted the teachings included in *Vaticanum II*, and to what extent we, the Catholics of the day, are willing to follow the indications of this document in our lives. Currently, one of the most difficult challenges the international community faces, especially the people of Europe, is the problem of refugees from areas affected by war and terror caused by militants of the so-called Islamic State. Governments of different countries make political decisions dictated by both their *raison d'état* and the desire to defend particular interests of their own citizens. In these decisions, the good of the most deprived persons, banished from their homes and deprived of their livelihood, remains a secondary issue. This state of affairs can be considered reasonably justified from the point of view of the absolute rules that govern the political game of the world, but it creates a clear discord with the *Magisterium Ecclesiae*, especially with the moral teaching from *Gaudium et Spes*. The present text is to analyze selected parts of the pastoral constitution regarding the application of its indications in light of the challenges raised by the issue of refugees.

Keywords: refugee, *Gaudium et Spes*, mature love of fellow human being, change of heart, borders of responsibility

The problem of a mass influx of people to Europe, people who lost everything they had and despairingly seek an opportunity for a new beginning, putting their life at stake and often losing it during extremely dangerous crossings of the Mediterranean Sea, constitutes not only a historical, but also a political,

cultural, and moral precedent. Europe, for ages immersed in a replete and uncritical self-worship, turned out to be completely unprepared for the gruesome scenario that we are currently witnessing. Neither the attempts of a cowardly concealment of the tragedy of millions of people, nor the attempts, undertaken finally under the pressure from the growing international tension, of reacting to the Middle Eastern and North African humanitarian calamity, brought any results commensurate with the expediency. Together with the lapse of time and an escalating phenomenon of a great migration, we can see more explicitly that the entire Europe, in order to rise to the occasion as a solidary community, ready to deliver selfless aid to those who are threatened with cruel death or slow dying in conditions that are beneath human dignity, needs a fundamental transformation. We already know that emergency activities and cunctatious decision of politicians, who care, first of all, about their popularity among constituents, are insufficient. The great and proud community of Europeans will not pass the historical exam if a change of hearts does not occur in its members.

Fifty years ago in Vatican the worldwide Council of the Catholic Church was concluding its proceedings. Its participants represented a high level of understanding of the needs, problems, and threats of the then contemporary world and expressed it a great many times during the conciliar sessions. Also, in the final documents, published after the conclusion of the Second Vatican Council, the pastoral concern of the people of the Church for the lot of an enormous population of the underprivileged, suffering, stricken with disability and those devoid of possibilities of a full-fledged life, was audible. One of such documents is the Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*, announced by Pope Paul VI on December 7, 1965. It includes, among others, an appeal that refers to St. Paul's words inscribed in the Second Letter to the Corinthians: "Behold, Now is the Acceptable Time for a Change of Heart."¹

Today, in the context of the unprecedentedly difficult challenges that the humanity is facing in connection with the crisis in Syria, Iraq, Sudan, and many other countries, these words have to be repeated with a full conviction. The aim of the following reflections is to bring closer the answer to the question what inspiration for the realization of the assignment of the change of hearts we can trace in the teachings of the Catholic Church—both in its official documents, words of individual popes, as well as in the first and the most fundamental source for every Christian which is the Bible, and also in reflections offered by Catholic philosophers and determination of the Catholic social ethics.

Luke the Evangelist described the following conversation Jesus had with the Pharisee—a rare example of a harmonious dialogue between the Old and New Testament in the Holy Bible: "And, behold, a certain lawyer stood up, and tempted him, saying, Master, 'what shall I do to inherit eternal life?' He said

¹ *Gaudium et Spes*, n. 82.

unto him, 'What is written in the law? how readest thou?' And he answering said, 'Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy strength, and with all thy mind; and thy neighbor as thyself.' And he said unto him, 'Thou hast answered right' (Lk 10:25–28). A similar scene, however with reversed role, can be found in the Gospel according to Matthew: "The Pharisees [...] were gathered together. Then one of them, which was a lawyer, asked him a question, tempting him, and saying, 'Master, which is the great commandment in the law?' Jesus said unto him, 'Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and great commandment.' And the second is like unto it, 'Thou shalt love thy neighbor as thyself.' On these two commandments hang all the law and the prophets" (Mt 22:34–40).

We really have to notice that also in Islam the command to love your neighbor has a very important role: in both hadiths²—Al-Bukhari and Muslim—we can trace Prophet Muhammad's words: "No person is a true believer unless he desires for his brother that which he desires for himself."³ While, the Quran includes a message about the love of God, expressed, among others, in the following words: "If you should love Allah, then follow me, [so] Allah will love you and forgive you your sins. And Allah is Forgiving and Merciful" (Quran 3:31).

All the quoted texts of the Holy Books prove explicitly that the element which constitutes the common denominator for the followers of the Old and New Testament, as well as the followers of Islam, is an absolute predominance of the commandment to love the Lord and the neighbor. The above-mentioned element is extremely crucial within the context of a reflection upon the European identity. Since Europe emerged on the foundations of the Judeo-Christian tradition,⁴ and for over one thousand years has remained in close (although not always amicable and peaceful) relations with the Muslim world. We also are the inheritors of this tradition. The awareness of this fact is different in various circles and social formations, but, according to Samuel Huntington,

in many modernizing countries [of the world] an unusual revival of the religious life is observed [...] it is also difficult to say about Europe that it

² "These sayings, called in the plural *ahadith*, were assembled after his [Muhammad] death and, after much critical study, collected in canonical collections by both Sunni and Shi'ite scholars. They form, after the Quran, the most important source of everything Islamic and constitute, in fact, the first commentary upon the Quran. Technically, the *Hadith* is part of the *Sunnah*, which means all the doings or wonts of the Prophet. The *Sunnah* is the model upon which Muslims have based their lives." Hossein Nasr Seyye, *The Heart of Islam. Enduring Values for Humanity*. An e-book excerpt from Perfect Bound, p. 37, online, accessed July 29, 2016.

³ Ibid.

⁴ See: Hugh Trevor-Roper, *The Rise of Christian Europe* (London: Thames and Hudson, 1965).

lost its Christian identity. One hundred years ago instead of talking about the Western Europe we would talk about western Christianity. Also today Christianity is deeply ingrained in the western identity. [...] Religious tradition defines identity even in these societies which seem to be completely secularized.⁵

We are, therefore, obliged not to succumb to, no matter how strong, Faustian temptations of living in present, rejecting the emotional baggage, and shaping the contemporary countenance of civilization (or at least own, private existence) without having regard for the cultural, and especially ethical achievements of the bygone generations.

Even though Europe is an “unfinished adventure”⁶ it does not justify the drive towards discontinuing the cultural continuity. Quite the opposite: the European identity is deeply ingrained in the collective past and, at the same time, belongs to the paramount values, which we should protect at any price. The environment which consistently supports and animates attitudes of faithfulness towards constitutive moral norms is the Catholic Church. Its standpoint, related to this matter, was explicitly formulated by John Paul II in his encyclical *Veritatis Splendor*:

The Church’s firmness in defending the universal and unchanging moral norms is not demeaning at all. Its only purpose is to serve man’s true freedom. Because there can be no freedom apart from or in opposition to the truth, the categorical—unyielding and uncompromising—defence of the absolutely essential demands of man’s personal dignity must be considered the way and the condition for the very existence of freedom. This service is directed to *every man*, considered in the uniqueness and singularity of his being and existence: only by obedience to universal moral norms does man find full confirmation of his personal uniqueness and the possibility of authentic moral growth. [...] These norms in fact represent the unshakable foundation and solid guarantee of a just and peaceful human coexistence.”⁷

In a different place we read:

The relationship between faith and morality shines forth with all its brilliance in the *unconditional respect due to the insistent demands of the personal dignity of every man*, demands protected by those moral norms which prohibit without exception actions which are intrinsically evil. The universality and the

⁵ Samuel Huntington, *Rozważania na beczce prochu*. Jacek Żakowski interviews Samuel Huntington, 1998, in Jacek Żakowski, *Trwoga i nadzieja. Rozmowy o przyszłości* (Warszawa: Sic! 2003), 201–2.

⁶ Cf. Zygmunt Bauman, *Europe: An Unfinished Adventure* (Cambridge: Polity 2004).

⁷ John Paul II, *Veritatis Splendor*, n. 96.

immutability of the moral norm make manifest and at the same time serve to protect the personal dignity and inviolability of man, on whose face is reflected the splendour of God.⁸

European identity, based on respect of personal value and dignity of every single human being, nobody excepted, is nowadays in danger due to at least two reasons. The first of them is the invasion of an alien culture, which, according to a great many civilization experts and theoreticians, impends over us. In the face of a global clash of civilizations,⁹ predicted by Samuel Huntington, it is possible that Europe will have to face a radical alternative: "Either Islam gets Europeanized, or Europe gets Islamized. A third option does not exist"—Bassam Tibi claims.¹⁰ The second menace is embedded inside Europe and consists in the loss of cultural identity in the way of a renouncing own ideals and values. In 1996 Ralf Dahrendorf formulated the following forecast:

We Europeans have to face great, new problems—economic, social, and also political, which require a serious review of our beliefs. [...] Global competition of the 1920s, between economic systems, states, big corporations, but also between us all and every single one of us individually, rocked the value system and the entire European model of life to its foundations [...]. The disintegration of the social bonds constitutes a threat to our democracy, to our European values. [...] A conflict between the prosperity and social solidarity. [...] The following decades will bring phenomena, in the face of which it will not be easy to defend prosperity and freedom at the same time. We will also find it difficult to defend the twenty-century-long canon of European values. [...] A new vision of life, a new concept of our social bond is being imposed on people.¹¹

The second scenario—of an internal disintegration of the idea of European-ness—is similarly probable as the first one and also similarly dangerous. In order to protect ourselves against it, we need a genuine reflection. In the con-

⁸ Ibid., n. 90.

⁹ In 1996 Huntington wrote: "In the emerging world, the relations between states and groups from different civilizations will not be close and will often be antagonistic. Yet some intercivilization relations are more conflict-prone than others. At the micro level, the most violent fault lines are between Islam and its Orthodox, Hindu, African, and Western Christian neighbors. At the macro level, the dominant division is between "the West and the rest," with the most intense conflicts occurring between Muslim and Asian societies on the one hand, and the West on the other. The dangerous clashes of the future are likely to arise from the interaction of Western arrogance, Islamic intolerance, and Sinic assertiveness." Samuel Huntington, *The Clash of Civilisations and the Remaking of World Order* (New York: Simon & Schuster 1996), 182.

¹⁰ Bassam Tibi, "Muzułmańscy obywatele Europy," *Więź*, no. 7/537 (2003): 106.

¹¹ Ralf Dahrendorf, *Nie o takiej śniłiśmy Europie*. Jacek Żakowski interviews Ralf Dahrendorf, in Jacek Żakowski, *Trwoga i nadzieja*, 26–32 *passim*.

temporary political and cultural situation the fundamental aim ought to be the creation of, on a great many planes of social life, conditions that would make a peaceful integration of all those whose complicated fortune threw them onto the European soil possible. One of the tools applied to realize this aim is education and intercultural pedagogy, concentrated on educating towards a “change of heart.”¹² As a part of this strategy of operations, what is indispensable is the necessity to prepare such a model of interhuman relations, embracing all people we meet on our path of life, which would be based on an observance of precisely these universal and rudimentary values, to the cultivation of which Europe owes its extraordinary cultural face. As archbishop Józef Życiński remarked: “I do not think we will have to accept one ontology of value in order to agree to the necessity of an affirmation of humanity in the European culture, to the protection of dignity and human rights [since] we intuitively feel a certain axiological horizon established by truth, hope and sacredness.”¹³ Bassam Tibi, professor (currently retired) of international relations at the University of Göttingen, who introduces himself as a “Muslim with Oriental origins [he was born in 1944 in Damascus in Syria—author’s note], who after making a conscious decision became a citizen of Europe—so in this way belongs to both civilizations,”¹⁴ notices in the European Culture “a leading thread” (*Leitkultur*), which consists of the following elements: tolerance, religious and cultural pluralism, modern country with democratic foundations and a civil society.¹⁵

Talking about pluralism as a European model of referring to religious and cultural values, it is worth to take into consideration inspirational Józef Tischner’s remarks related to the necessity of deepening and differentiating the reflection upon the relations between pluralism and fundamentalism. Tischner points out that even if the idea of pluralism is nowadays unambiguously understood and generally accepted—“we can say: pluralism consists in the fact that people reciprocally acknowledge their rights to differences,”¹⁶ then we have a problem with our approach to fundamentalism: “so far the notion of fundamentalism seemed quite pleasant to us. It put forth the image of the fundament and encouraged to a concern for elementary values. We were aware: we should not build a house on the ground without a foundation. Recently, however, this word begins to look gloomy and sound menacingly. This more likeable semantic content was hidden in a shadow and a negation came to the fore: all that averts

¹² Cf. *Gaudium et Spes*, n. 82.

¹³ Józef Życiński, *Aksjologiczna perspektywa dialogu Kościoła ze światem w myśli ks. Józefa Tischnera*, in *Człowiek wobec wartości*, ed. Jarosław Jagiełło and Władysław Zuziak (Kraków: Znak 2006), 167.

¹⁴ Tibi, “Muzułmańscy obywatele Europy,” 105.

¹⁵ Cf. *ibid.*, 104–5.

¹⁶ Józef Tischner, *Nieszczęsny dar wolności* (Kraków: Znak 1993), 151.

from the fundament is a departure and treachery."¹⁷ Therefore, the author suggests that we should distinguish 'good' and 'bad' fundamentalism. Referring to the latter one he says: "the negative meaning of fundamentalism would not be the acknowledgement of the right to differences, but a denial of this right. Let us imagine Saint Peter, who announces: 'Only my experience of Christ is authentic, all others are unimportant'. [...] Fundamentalism understood as a negation of pluralism is closely connected with the desire of power and resorting to violence."¹⁸ Something completely different, according to Tischner, is the "good fundamentalism," about which he says:

Seeing the peril of negative fundamentalism, we should not, however, overlook the positive meaning of this notion. First of all, we have to realize that the final source of understanding man is and will remain love toward him. Love enables understanding. [...] Fundamentalism in the positive context means: all has to be brought to the fundament of all understanding, which is love.¹⁹

This perspective, imbued with a deep concern for values and respect towards man, cautions against a simplified and thoughtless perception of a complex axiological map in our culture. Not every understanding of the notion of 'fundamentalism' refers to the dangerous attitudes that demand condemnation. Analogically, not all that is embedded in the content of the notions of 'pluralism' and "tolerance" is suitable for an unconditional acceptance, since a too flexible understanding of these notions can expose our attitude toward these values, which we do not have a right to relativize, to danger. Since love and respect toward people who practice a different religion and a different system of value is something different than a conviction, which results from an improper understanding of the idea of pluralism, that individual beliefs and systems of value are, in substance, not different and the choice of any of them is solely a matter of personal inclinations and subjective outlooks. The principles of pluralism and tolerance understood that way would hinder the creation of any axiological community, leading inevitably toward an atrophy of the European ethos and a crush of societies into a loose sum of autonomous individuals, following in their lives individual aims and subjective grading criteria.

However, if we acknowledge the rightness of the statement which suggests that the existence of an international community of countries, nations, and various social groups requires a common, extrasubjective reference to clearly defined fundament, then it is difficult to find a better one than the one indicated in Rev. Tischner's statement, and simultaneously the deepest rooted, both in this general axiological intuition, which bishop Życiński evoked, and in the Eu-

¹⁷ Ibid., 150.

¹⁸ Ibid., 151.

¹⁹ Ibid., 152.

ropean *Leitkultur*, which Bassam Tibi indicated in his text. It is about love, which in case of the broadly understood interhuman relations spanning people of different cultures and religions, races and customs emerges in the form of the love of neighbor, to which every human being, and especially a Christian that believes, is called and obliged in his conscience.

In order to look closer and more precisely into the Christian understanding of the idea of the love of neighbor, let us analyze an extract from Antoni Siemianowski's book *Zrozumieć Miłość. Fenomenologia i Metafizyka Miłości*. In the chapter entitled "Miłość bliźniego," Siemianowski writes: "Love of neighbor [...] cannot be exclusive and restricted to a narrow group. It would be a terrible mistake if I could choose and select people whom I would love like my neighbors. [...] Every man, who stands in our life path, is my neighbor. [...] Since the foundation of love of neighbor is humanity in every one of us, the solidarity of an earthly filiality with every human being."²⁰ What follows is a characteristic of a specific Christian approach to this category: "Jesus Christ went even further. Answering the question, in the Parable of the Good Samaritan, who is my neighbor, he did not really broaden our perception of a neighbor, but he changed its direction. According to this parable [...] the accent is not placed on the other human being as an object of love, but on me as its subject, on my reference to the other, on my attitude and behavior toward him, namely, on the way and quality of my being for the other human. Neighbor is not this or that man. I become the neighbor toward the one whom I show my heart and toward whom I serve. So it is when I notice the presence of the other man and express interest in his situation, when I go out to meet him and I open my heart and I welcome him with open arms."²¹

As it can be concluded from the quoted description, to be a neighbor, against all appearances, is not easy. The term neighbor, in the meaning which Siemianowski derives from the Parable of the Good Samaritan, indicates toward a relation, which, similarly to Emmanuel Lévinas's category of meeting, is by no means symmetrical. Since the answer to the question who is my neighbor (and the answer is: every man) looks different from the question what it means for me to be a neighbor for the other. The following are the most important features of this 'vector' of love of neighbor, which stems from me as a subject and is deliberately directed at different people: (1) contrary to different forms and varieties of love, "can be a subject of a command and obligation"²²; (2) has an unlimited range, since I cannot exclude anyone; (3) is not restricted to verbal declarations, but it should bear practical, measurable fruit, becoming a service to the neighbor: "Love is not merely a sentiment. [...] It is characteristic of ma-

²⁰ Antoni Siemianowski, *Zrozumieć miłość. Fenomenologia i Metafizyka Miłości* (Bydgoszcz: Labirynt, 1998), 243.

²¹ *Ibid.*, 243–44.

²² *Ibid.*, 243.

ture love that it calls into play all man's potentialities; it engages the whole man. [...] Only my readiness to encounter my neighbor and to show him love makes me sensitive to God as well. Only if I serve my neighbor can my eyes be opened to what God does for me and how much he loves me"²³; (4) when I experience a calling to its practical realization, I am simultaneously faced with the problem of the limits of responsibility, which can be expressed in the famous question by Immanuel Kant: "What should I do?"

Especially the latter problem, with a view to avoiding hasty judgments and actions, should be treated with utmost seriousness. Józef Tischner rightly pointed out that "the issue of a proper perception of what is and what is not within the scope of responsibility, is a fundamental issue of human life. Therefore, it should be a topic of a frequent critical reflection."²⁴ Let us, thus, follow for a while this reflection, which the author of the quoted words suggests: "Even though man's good will, his moral sense and his conscience constitute conditions that are essential for the feeling of responsibility to appear in man, these conditions are not enough for this experience. Additionally, in order to secure the development of this sense, man has to be aware (have a conviction) that in a particular situation that he found himself in, not only did he know what to do, but he really could do something. [...] 'to want' is something else than 'to be able to.' Good will, moral sense, preferences, and conscience are on the 'to want' side. The sense of responsibility emerges not only on the foundation of 'to want' something, but also on the foundation of the possibility to act. Man's responsibility does not reach beyond the limits of the possibilities of an effective acting, albeit it emerges on a groundwork directed toward the good or the evil of the desire."²⁵ Creating specific action projects as an individual or communal answer to the sense of responsibility, born from the experience of the love of neighbor, we have to, on the one hand, avoid the manifestations of 'moral oversensitivity,'²⁶ which—paradoxically—effectively hampers bringing help to those in need, since it "gives birth to a peculiar type of suffering referred to as a moral impotence."²⁷ On the other hand, we should, with a full determination, strive for eliminating from our inside, and also from those manifestations of public life, over which we have influence, attitudes of egoism, insensitivity, indifference, and first and foremost—bureaucratic heartlessness. Since it is very likely that such attitudes lead to generating solutions ostensibly optimal, fulfilling the required norms and procedures, but in fact professing conservative ideals, so in reality protecting exclusively the interest of ingenious Europeans, and even

²³ Benedict XVI, *Deus Caritas est*, pts. 17 and 18.

²⁴ Józef Tischner, "Etyka wartości i nadziei," in *Wobec wartości*, ed. Józef Tischner and Jan Andrzej Kłoczowski (Poznań: W Drodze, 2001), 75.

²⁵ *Ibid.*, 71–2.

²⁶ Cf. *ibid.*, 73.

²⁷ *Ibid.*

only its privileged strata, at the expense of unnecessarily exposing to suffering those who with hope and determination expect from us support in providing at least the simplest material and psychical conditions, which would make a life adequate for a human being possible.

A Christian should strive for the issue of refugees (both those who come to the European continent, as well as those who are stuck in extremely primitive conditions in camps in Middle East countries) to be examined, discussed, and solved within the perspective of personalistic ethics. Naturally, it is neither obvious, nor easy, since it is connected with looking for strategic solutions, effectively influencing the fate of millions of people. It surpasses the possibilities of an individual human imagination.

In 2015 a movie by László Nemes *Son of Saul* was released in European cinemas. The movie in an excellent way tells a story of one of Jewish prisoners of the Auschwitz concentration camp. Asked about the reason for focusing on this topic, the director answered: "It is not possible to tell a story about six million Holocaust victims. However, it is possible to tell a story of a one man." It can be also understood on the way of a rational reasoning (although it slips out both emotions and imagination) that a group of several million refugees from countries stricken with a humanitarian disaster is nothing else than a sum of single, individual fate, suffering, and tragedy, out of which every single one deserves attention and interest, love and respect. Therefore, we must not lose sight of this inconceivable and impossible to embrace with empathy, however, surely real, personal aspect of the issue.

We know more than enough, on the basis of a great many painful historical experiences, that whenever governments and state institutions made decisions in the administrative mode concerning large population of people, who found themselves in extraordinary life conditions, the social consequences of such decisions brought—instead of relief and improvement—intensification of personal disasters and suffering of people, who had to comply with heartless, bureaucratic regulations. There is also today a real danger that the decision making and undertaking activities, as a part of the official competences in a case, in which the results of such decisions and activities can have a principal influence over the living conditions of large masses of people—predominantly composed of people who have no personal affiliation with decision-makers, and especially belonging to the dramatically alien environment, not evoking any positive associations or emotions—will plant in the people responsible for the shape of this decisions a temptation to eliminate from their motivational sphere a moral feeling of responsibility to the benefit of an artificially created principle of official obedience and compliance. Such a scenario is forecasted by Neil Postman in his book *Technopol*. Referring to Adolf Eichmann's trial in Jerusalem, he writes about a corrupting function of a bureaucratic way of work and management:

The bureaucrat considers the implications of a decision only to the extent that the decision will affect the efficient operations of the bureaucracy, and takes no responsibility for its human consequences. Thus, Adolf Eichmann becomes the basic model and metaphor for a bureaucrat in the age of Technopoly. [...] Although the jobs of bureaucrats in today's Technopoly have results far less horrific, Eichmann's answer is probably given five thousand times a day in America alone: I have no responsibility for the human consequences of my decisions. I am only responsive for the efficiency of my part of the bureaucracy, which must be maintained at all costs.²⁸

Referring to Frederick W. Taylor's work *The Principles of Scientific Management* (New York and London: Harper 1911), Postman claims that in a technocratic society (such one like the contemporary western society) "the primary, if not the only, goal of human labor and thought is efficiency; that technical calculation is in all respects superior to human judgment," so "that the affairs of citizens are best guided and conducted by experts."²⁹

Commenting on this fragment of Postman's book, Rafał Włodarczyk remarks:

it is not that the Postman's specialist is not responsible. However, it is a restricted responsibility and often a formal one, which happens within the limits of law and internal regulations defining the scope of duties. Nevertheless these duties—as general and subjected to incessant changes—are not so accurate as to every single time put them on a par with a specific case, as well as so coherent with one another as to exclude the possibility of their collision. A civil servant referring to the letter of law, displaying his own obedience and professionalism, concealing this side of his activity, which is connected with judging and making decisions, so also responsibility for them.³⁰

The aim of Christian ethics and pedagogy is taking countermeasures in the face of the danger of reaching out for technocratic, so dehumanized, methods of solving problems which Europe has to cope with in connection with the escalating migration crisis. Within this scope what becomes a pressing subject of reflection is the attempt to find effective ways of stimulating in people, who make decisions, a feeling of responsibility in the moral and personal dimension, and not only legal and professional. Such responsibility should, on the one hand, span the ability of a sensible assessment of possibilities and ways of acting, and on the other, not lose sight of the human, personalistic dimension of the problem.

²⁸ Neil Postman, *Technopoly: The Surrender of Culture to Technology* (New York: Vintage Books, 1992), 86–7.

²⁹ *Ibid.*, 51.

³⁰ Rafał Włodarczyk, *Lévinas. W stronę pedagogiki azylu* (Warszawa: Wydawnictwo Uniwersytetu Warszawskiego, 2009), 219.

The range of the indispensable organizational activities spans a set of crucial sectors, among others: economic (how to secure sufficient financial means for the aid for refugees), organizational (what people and institutions are supposed to take care of particular sets of designated tasks, what procedures should be introduced, etc.), informational (how to secure a reliable and credible flow of information about the problem for the widest possible audience) and educational (how to shape proper attitudes, not allow the irrational fear to spread and eliminate the symptoms of hatred, aggression, and unfounded hostility). Further reflection will concentrate on the last area.

Seeing a human being, a person, a subject of inalienable personal values and dignity in every refugee is an obligation of not only committed Christians. Even though the notion of personal dignity emerged in the current of Christian reasoning, when it comes to its range it is not restricted exclusively to the representatives of this religious outlook. Rev. Antoni Siemianowski sheds more light on the meaning of this notion:

We will see now how, in the light of theoretical reflections, the status of Christian values look like. What are these values characterized by? What does their Christian character consist in? [...] the other human being [...] has a value in his own as a human being, without reference to anything or anyone. The value of a human being—we can also say “dignity”—does not depend on whether someone believes in Jesus Christ or not. When we are talking about man’s dignity, about his right to freedom, generally about human rights, then it is always about something that is effectively vested in a human being just because he is a human being, and not because of the outlook, agreement or a resolution of some parliament. No one bestows dignity on man, man has this dignity from the very moment he was born. [...] At the same time we cannot say that the understanding of dignity for a Christian is different from the understanding of dignity for a non-believer. Dignity understood that way in the European culture, is a fundamental value and its recognition and observance definitely distinguishes the Western culture from different ones.³¹

Refugee—is the newcomer, about whom we read in the Gospel according to Saint Matthew:

Then shall the King say unto them on his right hand, Come, ye blessed of my Father, inherit the kingdom prepared for you from the foundation of the world: For I was an hungred, and ye gave me meat: I was thirsty, and ye gave me drink: I was a stranger, and ye took me in [...] Then shall he say also unto them on the left hand, Depart from me, ye cursed, into everlasting fire,

³¹ Antoni Siemianowski, “O wartościach—w tym także chrześcijańskich—z filozoficznego punktu widzenia,” in *Usilnie myśleć i poszukiwać. Studia i eseje filozoficzne*, ed. Antoni Siemianowski (Poznań: Wydawnictwo Uniwersytetu Adama Mickiewicza, 2012), 348.

prepared for the devil and his angels: For I was an hungred, and ye gave me no meat: I was thirsty, and ye gave me no drink: I was a stranger, and ye took me not in. (Mt 25:34–35; 41–43)

He is a neighbor and a person, object of love, and bearer of personal value and dignity. Educational effort has to be directed toward defying dehumanization and depersonalization of the image of a refugee. Media persist in creating an image of an enormous mass of anonymous figures, the uninterrupted wave of those who flow through the borders of European countries and ignite an entire set of real risks. It sometimes resembles the wartime propaganda and is conducive to perceiving the oncoming migrants as a sort of an enemy army, which violently invaded our territory and unlawfully strive for our property. Creating such an image can lead to triggering off, in the recipients, a set of negative emotions, such as fear, sense of threat, anger, hostility, and aggression. These feelings are aimed at all newcomers, regardless of the reason and intents they had to get on the road. These symptoms escalate even more as a result of the fact that media reports on real acts of terror and violence carried out by people often referred to as of 'Arab origin' appear more and more frequently.

What constitutes a problem is the fact that these pieces of information carry in their, the so-called peripheral route of perception,³² a clear and readable presupposition: they are all bad, dangerous, and have evil intentions toward us. The results of research conducted, among others, by Elizabeth Loftus and in Poland by Józef Maciaszek, show that people tend to perceive presuppositioned information as true ones, especially in situations when it is difficult to compare to content of presupposition with impartial facts.³³ As a result, such information, which reaches recipients who lack genuine knowledge about the true situation and who are not interested in obtaining objective information, contributes to creating an undesired atmosphere of fear and tension, which can unfavorably impact the condition of future relations, which will inevitably be established between the inhabitants of the European continent and the newcomers. In the light of the inhibitions acquired today, tomorrow it will be difficult to see in the newcomer a human being, someone who deserves respect and many a time needs our specific help.

Taking every man into our confidence, when establishing a relationship, is not, however, tantamount to a naive conviction that we can expect from him only goodness and kindness. In every group and human society, and especially

³² Richard E. Petty and John T. Cacioppo, *Communication and Persuasion: Central and Peripheral Routes to Attitude Change* (New York: Springer, 1986).

³³ Cf. Elizabeth Loftus, "Reconstructing Memory. The Incredible Eyewitness," *Psychology Today* 8 (1974), 116–19; Józef Maciaszek, *Automatyzmy i bezrefleksyjność w kontekście wywierania wpływu społecznego: o przetwarzaniu negacji, metafor, wieloznaczności i presupozycji* (Warszawa: Wydawnictwo Naukowe PWN, 2012).

such which suffered traumatic experiences, like those who having experienced torment in their fatherland are looking for a new place to live, there are people who turn to violence and are ready to fight for their rights or claims. For such situations, which already happen and will undoubtedly still happen, we also have to be prepared. Not only public servants appointed to protect the safety of the citizens, but also believers, who want to voluntarily engage in solving the problems of migration, ought not to forget about the principle of social justice. This obligation is explicitly inscribed in the fundamentals of the Catholic ethics.

Rev. Jan Piwowarczyk writes,

Catholic social ethics compartmentalizes all social rights and duties according to two principles: social justice and love. [...] The term ‘justice’ includes the term ‘law,’ which Polish word ‘justice’ superbly reflects (*sprawiedliwość, prawo*—translator’s note). Law, therefore, is the subject of justice, which means that in the legal relationship one party is entitled to something [*ius suum*], whether the other has an obligation [*debitum*]. Whenever such an arrangement of relations happens, in which someone does not fulfill his duty towards someone else, who had a right to demand this duty to be fulfilled, we will be able to speak about a violation of justice.³⁴

Therefore, a fundamental and inalienable duty of every man is both observing the rule of justice, but also demanding its observance from other people, including those who are at a territory, where specific norms and regulations that normalize the social order exist. It would be absurdity to allow to create, within a territory of a ‘state of justice,’ enclaves inhabited by people who represent different culture and are used to different rules, toward whom the same laws and norms, which bind together the conduct of all citizens of a given country, would not apply. Even allowing individual exceptions would constitute a dangerous infringement of the jurisdiction system. Therefore, under no circumstances should we resign or cushion the consistent requirement, which assumes that everyone who is a guest in the territory of a given country must be obliged to observe rules of law in the same way that people who have a citizenship and permanent residence are.

Bassam Tibi, already quoted in this study, promoter of the idea of intercultural and interreligious integration, based on the principles of peaceful coexistence, remarks:

I have to admit that a lot of my brethren and sisters in the faith do not accept my concept. I, however, repeat that the alternative [...] is a Muslim ghetto

³⁴ Jan Piwowarczyk, *Katolicka etyka społeczna*, vol. 1 (London: Veritas, 1960), 59–61 *passim*.

[in Europe]. If they prefer the second option, then they will remain strangers in Europe, simultaneously depriving themselves of the right to complain about their fate. Furthermore, we have to notice that the opponents [of integration] act to the advantage of Islamic fundamentalists, who—by making religion political—do harm to religion, drive a wedge between the Western world and that of Islam, which, in turn, makes it practically impossible for Muslims to integrate with the remaining part of the society.³⁵

As an example of a difficult, confrontational situation, which needs to be resolved exclusively by way of mutual understanding and recognition of the right to distinctness, Bassam Tibi concentrates on the condition of the two-way relations between Germans and Muslim immigrants, who live in this country, at the beginning of the first decade of the twenty-first century:

In Germany the equivalent of the [European] chauvinism is the ethnic and religious fundamentalism of the immigrants. Muslims constitute one third of all immigrants in this country. Confirming that among them are also fundamentalists and subsequently compartmentalizing them the same way as the representatives of radical right wing is breaking a certain taboo subject. Since the German public opinion is dominated by the "dictate of love toward strangers," which is the aftermath of the modern history of this country and does not allow it to notice some issues. Fundamentalists make use of this fact and treat every form of criticism aimed at them as a proof of a negative attitude toward Islam as such. However, from the point of view of the enlightened Islam it is the fundamentalists who are the real enemies of this religion.³⁶

As we can see, on the basis of this, balanced and conciliating, comment of a representative of moderate circles of Muslim intellectuals, a radical confrontation of two different civilizational patterns, which gives birth to a mutual hostility and hatred, is not the only possible scenario of Europe's encounter with the problem of the influx of masses of people of Muslim denomination. There are many different, more or less possible, scenarios of the turn of events. Until we have influence over it, we should definitely aim at—as long as possible—implementing peaceful solutions and creating favorable conditions that will be conducive to the integration of the newcomers with the local population. A very bad solution is intensifying (both on one and the other side) two-way hostility by disseminating harmful stereotypes.

Some degree of attention should be given to the issue of the attitude toward the cultural norms, customs, and moral tenets that prevail in the community which accommodates the newcomers. In some cases it would be an overuse of the principle of hospitality to demand the guests to abandon their own tradition,

³⁵ Tibi, "Muzułmańscy obywatele Europy," 105.

³⁶ *Ibid.*, 105–6.

customs, religious beliefs, and the norms regulating the everyday life that result from them, and completely adapt to the life style of the community, which they found themselves among. In such cases, what is necessary is to work out the ability of a practical application of the norms of coexistence that stems from the principle of pluralism, understood as a mutual recognition of the right to disparity.³⁷ On the other hand, we should not absolutize such disparities. The indispensable condition of the process of building reciprocally acceptable principles of integration is respecting constant, unchangeable and universal moral norms, which have its roots in the natural law and in the common history of the entire humankind. Only something that is built on a common foundation can guarantee, in a longer perspective, a fair and peaceful coexistence of people of different cultures, denominations, and outlook. Within this context worth recalling are Pope John Paul II's words he addressed in 2004 to the European Union ministers of internal affairs: "we are one family of people called to build a more just and brotherly world."³⁸

In 2015 we celebrated the fiftieth anniversary of the declaration of the Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*. This document includes many indications, which can prove extremely timely and inspiring for someone who is looking for an optimal model of relations between the community of believing Christians, who live in Europe, and microcommunities, which are created within the borders of the continent, fed by the influx, uninterrupted for several years, of people from the countries of Africa and Middle East, as well as countries that have unstable political systems. Because of this practical context, the preferred form of reading the conciliar constitution will be the application of a hermeneutical method of reading and interpreting the text, taking into consideration the notion of hermeneutical situation, introduced by Hans-Georg Gadamer. An important interpretative indicator for Catholics is the current Holy Year of Mercy, declared by Pope Francis on December 8, 2015. In the papal bull *Misericordiae Vultus*, published in connection with the Year of Mercy, the pope emphasized:

Mercy: the fundamental law that dwells in the heart of every person who looks sincerely into the eyes of his brothers and sisters on the path of life. [...] I have chosen the date of 8 December because of its rich meaning in the recent history of the Church. In fact, I will open the Holy Door on the fiftieth anniversary of the closing of the Second Vatican Ecumenical Council. The Church feels a great need to keep this event alive. With the Council, the Church entered a new phase of her history. The Council Fathers strongly perceived, as a true breath of the Holy Spirit, a need to talk about God to men

³⁷ Cf. Tischner, *Nieszczęsny dar wolności*, 151.

³⁸ John Paul II, "Speech Given to European Union Ministers of Internal Affairs," *L'Osservatore Romano*, no. 3 (2004): 19–20.

and women of their time in a more accessible way. The walls which for too long had made the Church a kind of fortress were torn down and the time had come to proclaim the Gospel in a new way. It was a new phase of the same evangelization that had existed from the beginning. It was a fresh undertaking for all Christians to bear witness to their faith with greater enthusiasm and conviction. The Church sensed a responsibility to be a living sign of the Father’s love in the world.³⁹

In the further part of the document the pope evokes the statements of his predecessors in the Holy See, whose pontificate is closely connected with the historic event of the Second Vatican Council—John XXIII and Paul VI. The first of them, at the beginning of the Vatican Council, said: “The Catholic Church [...] wants to show herself a loving mother to all; patient, kind, moved by compassion and goodness toward her separated children.”⁴⁰ Then Pope Francis quoted Paul VI’s stance:

Blessed Paul VI spoke in a similar vein at the closing of the Council: “We prefer to point out how charity has been the principal religious feature of this Council... the old story of the Good Samaritan has been the model of the spirituality of the Council... a wave of affection and admiration flowed from the Council over the modern world of humanity. [...] all this rich teaching is channeled in one direction, the service of mankind, of every condition, in every weakness and need.”⁴¹

Gaudium et Spes read within this context, proves extremely helpful, since the indications it includes are not only a set of advice dedicated to our ancestors more than fifty years ago, but bear a surprising currency. What we need to do is to make an effort to read them in the horizon of the present challenges, which shape the contemporary nature of the world and define the most important field of activities, in which we are obliged in our conscience to practice the evangelical virtue of mercy.

Let us dwell for a while on Pope Paul VI’s words evoked by Pope Francis: “The old story of the Good Samaritan has been the model of the spirituality of the Council.” The question which we should ask ourselves is: to what extent can the Parable of the Good Samaritan be capable of becoming an interpretation key to the encounters with migrants, who come to Europe, which we are currently participating in? How much truth is in the statement which suggests that nowadays we are witnessing a peculiar realization of this Jesus’s parable?

³⁹ Pope Francis, *Misericordiae Vultus*, https://w2.vatican.va/content/francesco/en/apost_letters/documents/papa-francesco_bolla_20150411_misericordiae-vultus.html, accessed February 7, 2016.

⁴⁰ Ibid.

⁴¹ Ibid.

The truth is that on our everyday path we meet—not a single one, but several dozen and hundreds of thousands, and soon millions—neighbors, victims of bandits, and those devoid of all they had in their life. These people definitely need help. The question is: Do they need our help? What should we do in the face of this situation?

The strongest temptation is to behave like the first heroes of the mentioned parable: the priest and the Levite. They were, after all, commonly respected members of the community, equipped with prestige and esteem. They for sure had important and sufficient arguments to do what they did. Undoubtedly, no one would dare to reproach them for that. Samaritan is something else: indeed, his act was surely noble and praiseworthy, but, at the same time, insane and unpredictable. Is someone like that a proper model of behavior for all people in every single situation?

The next reflection which can come into our head is the incomparability of the two situations. Jesus Christ talked about establishing a personal relation between me and you; neighbor manifests, in my presence, his unique, only face—a face of human in need, in a direct threat to his life. Therefore, I am the participant of the epiphany of the face of the other, and that is what introduces me into an ethical relation. As a participant of the meeting I become the addressee of the call to act: through his nakedness and defenselessness he seems to be saying: “You can save me.”⁴² Since I was called to act, directly touched in my subjectivity, a personal responsibility for my neighbor rests with me, from now on whatever I do, it will be subjected to a judgment within the vista of this responsibility. Refraining from acting, resigning from the engagement in the work for the well-being of the encountered neighbor in need, will no longer be a morally neutral decision, but an attempt at escaping from responsibility, which will burden my conscience. Therefore, we can say: yes, yes it is all true, our moral sensitivity is capable of accepting the Lévinas’s concept of responsibility ethics; however, under the condition that it concerns one neighbor in need, and not an exorbitant number, the abstract size of which exceeds the limits of our imagination. We can say like that: we are law-abiding citizens, we pay taxes, owing to which the country maintains its specialized institutions; it will be enough if the country takes care of those problems and we concentrate on our business.

The above-delineated defense of the calmness of our conscience does not, however, stand the confrontation with the arguments enumerated in the previous parts of this text. We are called to realize the evangelical idea of the love of neighbor not in declarations that sound perfect and are unfounded, but in specific existential situations—to the extent of the sensible possibilities and

⁴² Cf. Emmanuel Lévinas, *Totality and Infinity. An Essay on Exteriority*, trans. A. Lingis (Pittsburgh, PA: Duquesne University Press, 2011), 234.

realistically defined sense of responsibility. We are, at the same time, authorized to, in every need, reach for auxiliary means, which the Catholic Church has at its disposal. Among them we have the teaching of the Second Vatican Council, including the text of the *Gaudium et Spes* constitution. The editors of the text declare in the Introduction: "This sacred synod [...] offers to mankind the honest assistance of the Church in fostering that brotherhood of all men."⁴³

As Christians we are called to follow the example of Jesus Christ. In what? Conciliar constitution suggests: in aiming at the fellowship of all people, also different races, cultures, and denominations, since no one should be a priori eliminated from the common fellowship; including, to save, and not judge, serve, and not allow to be served. Therefore to serve means: to actively meet the real human needs, especially the most basic ones, like protection of life and health, respect of human dignity, providing the minimum conditions for human existence.

Our Christian obligation toward those in need in *Gaudium et Spes* is as follows: "Developing nations should take great pains to seek as the object for progress to express and secure the total human fulfillment of their citizens."⁴⁴ "It is the role of the international community to coordinate and promote development, but in such a way that the resources earmarked for this purpose will be allocated as effectively as possible, and with complete equity" [86 c]. We must not promote such technical solutions, which influence exclusively the material realm of human life, but "contrary to man's spiritual nature and advancement" [86 d]. We should deepen the community with different cultures on the spiritual plane, since "every sector of the family of man carries within itself and in its best traditions some portion of the spiritual treasure entrusted by God to humanity."⁴⁵

The pastoral constitution encourages all Christians to an active participation in building a just, peaceful system of relations between people, nations, and countries:

Christians should cooperate willingly and wholeheartedly in establishing an international order that includes a genuine respect for all freedoms and amicable brotherhood between all. This is all the more pressing since the greater part of the world is still suffering from so much poverty that it is as if Christ Himself were crying out in these poor to beg the charity of the disciples. Do not let men, then, be scandalized because some countries with a majority of citizens who are counted as Christians have an abundance of wealth, whereas others are deprived of the necessities of life and are tormented with hunger, disease, and every kind of misery. The spirit of poverty and charity are the

⁴³ *Gaudium et Spes*, n. 3.

⁴⁴ *Ibid.*, n. 86 a.

⁴⁵ *Ibid.*, n. 86 d.

glory and witness of the Church of Christ. Those Christians are to be praised and supported, therefore, who volunteer their services to help other men and nations. Indeed, it is the duty of the whole People of God, following the word and example of the bishops, to alleviate as far as they are able the sufferings of the modern age. They should do this too, as was the ancient custom in the Church, out of the substance of their goods, and not only out of what is superfluous.⁴⁶

“This will come about more effectively if the faithful themselves, conscious of their responsibility as men and as Christians will exert their influence in their own milieu to arouse a ready willingness to cooperate with the international community.⁴⁷

The realization of these indications requires the development of the virtue that John Paul II referred to as the “imagination of mercy,” which makes it possible to broaden the spiritual outlook on reality and rise above particular interests. This need is also emphasized by the following fragment of the *Gaudium et Spes* constitution:

Today it certainly demands that they extend their thoughts and their spirit beyond the confines of their own nation, that they put aside national selfishness and ambition to dominate other nations, and that they nourish a profound reverence for the whole of humanity, which is already making its way so laboriously toward greater unity. [...] It does them [i.e. political or spiritual leaders] no good to work for peace as long as feelings of hostility, contempt and distrust, as well as racial hatred and unbending ideologies, continue to divide men and place them in opposing camps. [...] the Church of Christ [...] intends to propose to our age over and over again, in season and out of season, this apostolic message: “Behold, now is the acceptable time for a change of heart; behold! now is the day of salvation.”

The conclusion of the Pastoral Constitution *Gaudium et Spes* leaves no room for doubt when it comes to the scope of our obligation of love of neighbor. It includes a declaration which implies that the Church feels called to initiate and conduct a dialogue with “all people, of any nation, tribe or culture.” We are supposed to “foster [...] mutual esteem, reverence and harmony, through the full recognition of lawful diversity [...] let there be unity in what is necessary; freedom in what is unsettled, and charity in any case.”⁴⁸ Today it is not about a verbal dialog, considering arguments and shaping beliefs—time has come for a dialogue of heart and act, for a sacrifice of our own comfort and prosperity, which we are not given forever, but we are given to make a good use of them. It is clearly

⁴⁶ Ibid., n. 88.

⁴⁷ Ibid., n. 89.

⁴⁸ Ibid., n. 92.

illustrated by pt. 93. It includes an explicitly formulated call to act: Christians cannot yearn for anything more ardently than to serve the men of the modern world with mounting generosity and success [...] the Father wills that in all men we recognize Christ our brother and love Him effectively, in word and in deed."

Such are our duties as Christians. We are called to the acts of mercy by the utmost important documents of the Church, the importance of which, in the spiritual life of the believers, has been emphasized by popes of the last decades—from John XXIII to Pope Francis.

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Krzysztof Wiczorek

«Le voici maintenant le temps favorable de la conversion des csurs»
La réponse chrétienne au problème de migration

Résumé

Le jour du cinquantième anniversaire de la publication de la Constitution pastorale sur l'Église dans le monde de ce temps *Gaudium et Spes* naît la question à quel degré la communauté mondiale des catholiques a assimilé le contenu de l'enseignement du Concile Vatican II et à quel degré nous, les catholiques d'aujourd'hui, sommes enclins à appliquer dans notre vie les indices de ce document. Aujourd'hui, l'un des plus difficiles défis auquel fait face la communauté internationale—et en particulier les habitants de l'Europe—est le problème de réfugiés provenant des régions envahies par la guerre et la terreur provoquée par les militants du soi-disant État islamique. Les gouvernements des pays particuliers prennent dans cette affaire des décisions politiques dictées par la raison d'État ainsi que par la volonté de protéger les intérêts individuels de leurs propres citoyens. Dans ces décisions, le bien des personnes les plus sinistrées, congédiées de leurs domiciles et dépourvues de moyens de vie reste une question secondaire. On peut considérer cet état de choses comme rationnellement motivé du point de vue des règles intransigeantes du jeu politique mondial, mais il reste en désaccord explicite avec *Magisterium Ecclesiae*, en particulier avec l'enseignement découlant de *Gaudium et Spes*. L'objectif du présent texte est d'analyser des extraits choisis de la Constitution pastorale sous l'angle de l'application de leurs contenus à la lumière des défis lancés par le problème lié aux réfugiés.

Mots clés: réfugié, *Gaudium et Spes*, amour mûr pour autrui, conversion du cœur, limites de la responsabilité

Krzysztof Wiecek

«Ecco ora il tempo favorevole per trasformare i cuori»
La risposta cristiana al problema della migrazione

Sommario

Nel cinquantenario della promulgazione della Costituzione Pastorale sulla Chiesa nel mondo contemporaneo *Gaudium et Spes* sorge la domanda su quanto la comunità mondiale dei cattolici abbia assimilato il contenuto dell'insegnamento del *Vaticanum II* ed in quale misura noi, cattolici di oggi, siamo disposti a farci guidare nella vita dalle indicazioni di quel documento. Attualmente una delle sfide più difficili dinanzi alla quale si trova la società internazionale, ed in particolare gli abitanti dell'Europa, è rappresentata dal problema dei profughi provenienti dai territori colpiti dalla guerra e dal terrore causato dai militanti del cosiddetto Stato Islamico. I governi dei diversi stati intraprendono in tal merito decisioni politiche dettate dalla ragion di stato e dalla volontà di difendere gli interessi particolari dei propri cittadini. In tali decisioni il bene delle persone maggiormente danneggiate, cacciate dalle case e private dei mezzi di sostentamento, rimane una questione secondaria. Si può considerare tale situazione razionalmente argomentata dal punto di vista delle regole spietate del gioco politico mondiale, ma rimane in netta dissonanza con il *Magisterium Ecclesiae*, in particolare con l'insegnamento morale che scaturisce dalla *Gaudium et Spes*. Lo scopo del presente testo è rappresentato da un'analisi di brani scelti della Costituzione Pastorale dal punto di vista dell'applicazione del loro contenuto alla luce delle sfide portate dal problema dei profughi.

Parole chiave: profugo, *Gaudium et Spes*, amore maturo del prossimo, trasformazione del cuore, limiti della responsabilità

Witold Kania

University of Silesia in Katowice, Poland

Gaudium et Spes on Human Dignity and Its Implications in Bioethics

Abstract: Promulgation of *Gaudium et Spes* coincided with the beginnings of bioethics as well as the cultural and technological revolution of the late 1960s. In this way, the teaching of the Church has become a prophetic voice on many contemporary crimes against humanity. In the first part, the article presents the conciliar anthropology which is based on the Bible along with classical philosophy and constitutes the foundation for dignity. According to it, every human person, as a corporeal and spiritual being created in God's image and likeness, is endowed with dignity. In this philosophical idiom, the aforesaid dignity can be defined as ontological. It belongs to every human person and is inalienable and inviolable. The second part of the text shows the historical and geographical development of new challenges that threaten the human dignity. In many countries, national legislation supports abortion and euthanasia. It creates a new mentality: "the culture of death." In its last part, the article examines the paradigm of modern "progressive" moral decadence: the Dutch legislation on euthanasia of new-borns. The so-called Groningen Protocol is an example of the erroneous belief that "death is more humane than continued life in suffering." The only means to healing the mentality affected by "the culture of death" is respect for human dignity: the sanctity of human life.

Keywords: *Gaudium et Spes*, human dignity, abortion, euthanasia, Groningen Protocol, bioethics

When we reflect on more than fifty years that have passed since the promulgation of the Pastoral Constitution *Gaudium et Spes* in 1965, we can see how certain topics presented in this document have gained prophetic importance in the modern world. Not only are they the proper reading of the signs of the times and description of the most urgent issues of the humanity (promotion of marriage and family, development of the culture, peace and community of the nations), but most off all, the fundamental reflection on what it means to be human

today became an obligatory point of reference in contemporary philosophical and theological discourse.

Reflecting on the importance of *Gaudium et Spes*, John Paul II stated that the essence and needs of men could be discovered only in light of the crucified and resurrected Christ. The discovery of man under this light is the *magna carta* of human dignity.¹ Undoubtedly, *Gaudium et Spes* has helped to form the conscience of humanity regarding the dignity and value of human life. The clear voice of the Church resounds at the break of a day that promises great advances in medicine and represents the emerging years of bioethics.² It was absolutely necessary for the realization of how sacred human life is. The Church *expressis verbis* denounced offences and crimes against humanity:

Furthermore, whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia or willful self-destruction, whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself; whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children; as well as disgraceful working conditions, where men are treated as mere tools for profit, rather than as free and responsible persons; all these things and others of their like are infamies indeed. They poison human society, but they do more harm to those who practice them than those who suffer from the injury. Moreover, they are supreme dishonor to the Creator.³

Not all of the above-mentioned transgressions are related to the realm of bioethics. Some have undoubtedly social and political dimensions. But a half-century later, unfortunately, all these infamies occur in our world and there is a strong impression that their frequency is increasing. The judgment against crimes, presented in *Gaudium et Spes* has a Biblical and also a classical philosophical background. On the one hand, we are directed to the Decalogue and Christ's law of love (cf. Mt. 25:40; Jn 13:34), on the other, we can recall ethics of Aristotle and of Plato.⁴

¹ John Paul II, "Gaudium et Spes: The Council Took Place, Hope for the World," *Tertium Millennium*, no 2. (1997), http://www.vatican.va/jubilee_2000/magazine/documents/ju_mag_01051997_p-28_en.html, accessed June 4, 2016.

² Cf. Edmund D. Pellegrino, "The Origins and Evolution of Bioethics: Some Personal Reflections," *Kennedy Institute of Ethics Journal* 9, no. 1 (1999): 73–88.

³ II Vatican Council, Pastoral Constitution on the Church in the Modern World: *Gaudium et Spes*, December 7, 1965, n. 27, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html, accessed June 4, 2016.

⁴ The conclusion given by the Council after mentioning offenses against human dignity states that "all these things and others of their like are infamies." This phrase brings to mind a classical passage from *Nicomachean Ethics* which describes the vicious attitude of man: "But not every action nor every passion admits of a mean; for some have names that already imply badness, for example, spite, shamelessness, envy, and in the case of actions adultery,

It is good to see what kind of anthropology supports this condemnation of crimes against humanity.

The Council's Anthropology and Vision of Human Dignity

The second chapter of *Gaudium et Spes* (points 12–22) underlines that man is the center and crown of all Creation. Man was created “to the image of God.” He is able to know God and to stay in a loving relationship with him. All earthly creation is subdued to him and he should be its master. God created man as “male and female” (Gen. 1:27), thus by his nature man is a social being. The simultaneous creation of man and woman produces the primary form of interpersonal communion. From the very beginning of his history, man rebelled against God and began to seek his goal apart from God, because the first people committed the sin of abusing their liberty to choose between good and evil. Because of the sin man is split within himself. The consequences of this sin are visible in an individual and collective dimension. But the Lord did not leave man alone in his dramatic struggle between good and evil. He became a man to free and strengthen man and to reveal to him the plenitude of human existence.

The very nature of man is the unity of living body and soul. The living body is good because it is created by God and will be raised up to live again on the day of resurrection. From this fact springs the dignity of man and the postulate to glorify God in one's living body and to do this despite all evil inclinations of the human heart wounded by sin. People are able to recognize in themselves a spiritual and immortal soul. By their intellect—one of the elements of their nature as an image of God—the human beings are aware that they surpass the material world. In this universe people are meant to search

theft, murder; for all of these and suchlike things imply by their names that they are themselves bad, and not the excesses or deficiencies of them. Nor does goodness or badness with regard to such things depend on committing adultery with the right woman, at the right time, and in the right way, but simply to do any of them is to go wrong” (Aristotle, *Nicomachean Ethics*, translated by William D. Ross. Oxford: Clarendon Press, 1925), II, 6, 1107a, 6–18). This classical assertion of Aristotle has undoubtedly a normative dimension, although it is based not on Biblical, like *Gaudium et Spes*, but on a metaphysical foundation. Another statement of the constitution pointing that infamies “do more harm to those who practice them than those who suffer from the injury” recalls a passage from Plato's *Gorgias*. In a dialogue between Socrates and Polus the first emphasizes that doing injustice is worse than suffering it (cf. Plato, *Gorgias*, 469b.)

and discover the truth and, by means of faith, through the gift of the Holy Spirit they come to recognize in the realization of the truth the divine plan of creation.

The most secret sanctuary of each person is his/her conscience. In it the voice of God is reflected and human beings are able to distinguish between good and evil. This law is written by God in each human's heart, and by obeying it an individual expresses his/her dignity. Christians as well as the followers of other religions who are faithful to their conscience and who search for the truth in life are able to solve many problems that society has to confront. However, there is also the risk of falling victim to invincible ignorance that can lead a conscience to err, and thus the voice of conscience can become flawed as a result of habitual sin. Nonetheless, the human does not lose his/her dignity. Each person is able to choose freely, and freedom signals that he/she is a divine image and a proof of his dignity. Nevertheless, human freedom is often damaged by sin, therefore, God's grace is needed to restore it.

In Christ man can obtain an answer to the most difficult question regarding life after death. People are created to live an immortal life after their life earth ends—a state that cannot be reached even by all advances of technology promised by the new day. Divine life is given to humans by Christ who triumphed over death by rising to life. Faith endows man with the power to be united in Christ with his/her loved ones who passed away. Thus, in Christ the quest of man for the meaning of suffering and death is solved.

The final point of anthropology presented by *Gaudium et Spes* can be summarized in the following statements: "The truth is that only in the mystery of the incarnate Word does the mystery of man take on light. [...] Christ, the final Adam, by the revelation of the mystery of the Father and His love, fully reveals man to man himself and makes his supreme calling clear. [...] By His incarnation the Son of God has united Himself in some fashion with every man."⁵ "[...] Man, who is the only creature on earth which God willed for itself, cannot fully find himself except through a sincere gift of himself."⁶

The truth that *Christ reveals man to man himself* and that *man cannot fully find himself except through a sincere gift of himself* are the most pivotal statements of the anthropological message of the Council. These phrases are at the same time the two most-quoted passages from *Gaudium et Spes* in the magisterium of John Paul II, one of the most influential coauthors of the constitution.⁷

In his commentary to these statements, Weigel observed that both are expressing the Law of the Gift. This law is rooted in the inner life of the Holy Trinity which is reflected in a human person as the *imago Dei*. This law can

⁵ *Gaudium et Spes*, n. 22.

⁶ *Gaudium et Spes*, n. 24.

⁷ Cf. George Weigel, *Witness to Hope: The Biography of Pope John Paul II* (New York: Cliff Street Books 2001), 169.

be also perceived in the philosophical vision of the human person. As Weigel pointed out: “[...] One could get to the Law of the Gift, rationally and reasonably, through a serious reflection on human moral agency: a turn-to-the-subject that did not lead to solipsism and “autonomy,” but to love and responsibility. Freedom, lived according to its proper dignity, is always freedom tethered to truth and ordered to goodness.”⁸

The human person, created in God’s image and likeness is corporal and spiritual. The soul is a form of the living body. Spirit and the matter of the living body are not two separate natures which are juxtaposed, but rather their union forms a single nature.⁹ The relationship between body, soul, and life is so profound that it is impossible to reduce the living human body to an organic structure. Both the spirit and the living body are united in one nature. Human life exceeds the biological dimension. “In the human being the body *is* the person and the life *is* personal. The human being can be defined as *animated body or incarnate spirit*.”¹⁰

To summarize the teaching of *Gaudium et Spes* on human dignity we have to distinguish different levels of its understanding.¹¹ There are two basics: the first one is related to the ontological dimension of a person and the second is based on the conscious actualization of the person. In the first case, we can talk about the ontological dignity of the human person. Theologically, in Christian perspective, this dignity springs from the fact that each person is created as an *image of God*. Philosophically, the ontological dignity comes from the very nature of a human person. Classically, the person can be defined not only as *individual substantia rationalis naturae* but also as *proprietate distincta ad dignitatem pertinente*.¹² This means that the person is a substance whose peculiar feature is something pertaining to dignity. In Aristotelian terms, the substantial being of a human, together with his/her potencies, lay foundations for this dignity—not only their accidental actualization. The ontological dignity is an intrinsic and objective value. It does not depend on subjective preferences. It is not an object of our feelings and consciousness. People possess this dignity when they are sleeping, and also when they fall into a state of unconsciousness, for example, coma. Both the human embryos and anencephalic babies,

⁸ George Weigel, “Rescuing *Gaudium et Spes*: The New Humanism of John Paul II,” *Nova Et Vetera* (English Edition) 8, no. 2 (2010): 264.

⁹ Cf. *Catechism of the Catholic Church*, no. 365, accessed June 20, 2016, http://www.vatican.va/archive/ENG0015/_INDEX.HTM.

¹⁰ Augusto Sarmiento, “El servicio de la teología moral a la bioética,” *Scripta Theologica* 40, no. 3 (2008): 786.

¹¹ To achieve this goal I will use some thoughts forwarded by Josef Seifert. Cf. Joseph Seifert, *The Philosophical Diseases of Medicine and Their Cure: Philosophy and Ethics of Medicine. Vol. 1: Foundations* (Dordrecht: Springer, 2004): 89–138.

¹² Thomas Aquinas, *Summa Theologiae*, 1a, q. 29, a. 3, ad. 2.

people with severe intellectual disability and the seriously demented are also endowed with such dignity because, with no exceptions, they are all human by nature.

This dignity is inalienable and inviolable. It is inherent to each human person. One can never lose it. No action can destroy it. In a moral sense, nobody can violate someone else's dignity, for example, treating someone as means for other ends. The ontological dignity prohibits killing the innocent or torturing. This dignity is independent of age, consciousness, and illness.

When *Gaudium et Spes* mentions the conscience and all kinds of conscious acts, including freedom of choice, it describes the second level of human dignity. The dignity of the conscious person is different from the ontological dignity. As Joseph Seifert precisely stressed: "The dignity of awakened rational conscious life is so essential for the human person, though not indispensable at each phase of human life, that the ordination of the person to rational life, the faculties that enable her in principle to perform rational acts, do belong to the essence of a person."¹³

The anthropology of *Gaudium et Spes* gives a solid foundation for dealing with a wide spectrum of issues in bioethics. Undoubtedly, its Biblical and theological core of anthropology is able to illuminate complicated problems arising from technological and medical progress.

New Challenges to Human Dignity

Thirty years after the promulgation of *Gaudium et Spes* Saint John Paul II wrote an Encyclical letter *Evangelium Vitae*.¹⁴ In the encyclical, the pope realistically pointed out that crimes against human dignity enumerated in *Gaudium et Spes* are increasing. But, sadly, there is something even more dramatic. This is a change of mentality, a new cultural climate which is called a *culture of death*. John Paul II described it in the following words: "Broad sectors of public opinion justify certain crimes against life in the name of the rights of individual freedom, and on this basis they claim not only exemption from punishment but even authorization by the State, so that these things can be done with total freedom and indeed with the free assistance of health-care systems. [...] The fact that legislation in many countries, perhaps even departing from basic principles of their constitutions, has

¹³ Joseph Seifert, *The Philosophical Diseases of Medicine and Their Cure*, 125–26.

¹⁴ John Paul II, Encyclical letter *Evangelium Vitae*, March 25, 1995, accessed June 20, 2016, http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html.

determined not to punish these practices against life, and even to make them altogether legal, is both a disturbing symptom and a significant cause of grave moral decline. Choices once unanimously considered criminal and, rejected by the common moral sense, they are gradually becoming socially acceptable.”¹⁵

The pope did not mention what kind of practices against human dignity are legal now and socially acceptable. But obviously there are two major ones—abortion and euthanasia—which are related to the beginning and to the end of human life.

Gaudium et Spes and consecutive documents of the Church including the Catechism of the Catholic Church have condemned abortion.¹⁶ However, the Church probably did not expect that in a short time it would be so extended and sanctioned by legal regulations. The historical overview on this issue is very illustrative.¹⁷ In 1920, the abortion law was introduced in Soviet Russia for the first time. During the Nazi regime abortion was allowed and proposed to the conquered nations, in reference to Jews and to those who might produce “inferior” offspring.¹⁸ In the 1950s, it was introduced by communist regimes in the Middle and Eastern parts of Europe. Two years after the promulgation of *Gaudium et Spes* the English Abortion Act was passed. In 1973, the US Supreme Court’s *Roe vs. Wade* decision opened doors to abortion in the USA. That same year abortion was introduced in Germany and Denmark. The following years it was allowed by the laws of Sweden, France, Luxembourg, Greece, Portugal, Spain, Belgium, etc. Surprisingly, the United Nations and its agencies are involved in the expansion of abortion laws all over the world. The UN is pushing the abortion agenda significantly.¹⁹ It is done in the name of the protection and improvement of human reproductive rights.

Regarding euthanasia, this practice is not legally as extensive, although it is gaining more and more support, especially in the USA and in Europe.²⁰

¹⁵ *Evangelium Vitae*, n. 4.

¹⁶ Cf. Sacred Congregation for the Doctrine of Faith, *Declaration on Procured Abortion—Quaestio de abortu*, November 18, 1974, accessed June 20, 2016, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19741118_declaration-abortion_en.html; Catechism of the Catholic Church, no. 2270–74.

¹⁷ Cf. Julián Herranz, “The Dignity or the Human Person and Law: Fundamental Rights in Classical Culture,” in *The Nature and Dignity of the Human Person as the Foundation of the Right to Life. The Challenges of the Contemporary Cultural Context: Proceedings of the Eighth Assembly of the Pontifical Academy for Life*, edited by Juan Vial Correa and Elio Sgreccia (Città del Vaticano: Libreria Editrice Vaticana, 2003), 13.

¹⁸ Richard Weikart, *Hitler’s Ethic: The Nazi Pursuit of Evolutionary Progress* (New York: Palgrave Macmillan 2011), 8.

¹⁹ Cf. Kelsey Zorzi, “The Impact of the United Nations on National Abortion Laws,” *Catholic University Law Review* 65, no. 2 (2015): 409–28.

²⁰ Giza Lopes, *Dying with Dignity: A Legal Approach to Assisted Death* (Santa Barbara—Denver: Praeger, 2015), 2.

The first legal act allowing assistance in committing suicide was introduced in 1942 in Switzerland. In the USA, the first state which introduced euthanasia was Oregon. In 1997, it passed the *Death with Dignity Act*. It was followed by similar regulations in the State of Washington (2009), Vermont (2013), and California (2016).²¹ By the decision of judges, euthanasia is permitted in Montana (Bexter vs. Montana 2009) and in New Mexico (Morris vs. Brandenburg 2014). In 2016, Canada has passed the law to legalize physician-assisted death.²² In Europe, the Benelux countries gave legal permission to euthanasia.²³ In 2002, the Netherlands established the *Termination of Life on Request and Assisted Suicide Act*. The same year Belgium published the *Act of Euthanasia*, while Luxembourg introduced the *Euthanasia and Assisted Suicide Law* in 2009.

Groningen Protocol: The Paradigm of Decadence

One of the most drastic examples of the legislation which allows the death of innocent people is present in the Netherlands. In this country infanticide is allowed although the official name of this procedure is “euthanasia of severely ill newborns.” Proponents of the termination of the life of a newborn claim that they are doing it in the best interest of such children. For procedural reasons infants and newborns are classified into three different categories.²⁴ The first group are those who will die shortly despite the use of continued invasive medical technology (e.g., children with severe lung hypoplasia). Their death is inevitable although some can be kept alive for a short period of time. The second group are infants who are dependent on intensive care but may potentially survive after the intensive care period (e.g., infants with severe congenital intracranial abnormalities, or severe acquired neurologic injury: asphyxia). Nevertheless, their expected quality of life is assessed as very low. The third group

²¹ Lisa Aliferis, “California to Permit Medically Assisted Suicide as of June 9,” accessed June 30, 2016, <http://www.npr.org/sections/health-shots/2016/03/10/469970753/californias-law-on-medically-assisted-suicide-to-take-effect-june-9>.

²² Cf. Susan Stefan, *Rational Suicide, Irrational Laws: Examining Current Approaches to Suicide in Policy and Law* (New York: Oxford University Press, 2016): 206–11. Merrit Kennedy, “Canada Legalizes Physician-Assisted Dying,” accessed 30.06.2016, <http://www.npr.org/sections/thetwo-way/2016/06/18/482599089/canada-legalizes-physician-assisted-dying>.

²³ Lopes, *Dying with Dignity*, 2.

²⁴ A. A. Eduard Verhagen and Pieter J. J. Sauer, “End-of-Life Decisions in Newborns: An Approach from the Netherlands,” *Pediatrics* 116, no. 3 (2005): 736–37.

includes children who are physiologically stable and do not depend on technology but their suffering is severe and without any hope of improvement. In this group there are infants with serious congenital malformations or diseases that cannot be treated (e.g., the most serious form of spina bifida or epidermolysis bullosa, a type Hallopeau-Siemens) or children from group two who were expected to die after the intensive care treatment was withdrawn but remained alive with suffering.

A specific approach to justify the ending of life is proposed for each group. The reason for terminating the life of infants from the last group is described in the following way: “There are [...] circumstances in which, despite all measures taken, suffering cannot be relieved and no improvement can be expected. When both the parents and the physicians are convinced that there is an extremely poor prognosis, they may concur that death would be more humane than continued life.”²⁵ The decision must be made by both parents and supported by diagnosis and prognosis of the competent physicians. After the death of the child, a legal investigation should determine whether the decision was justified and all necessary procedures have been followed.

When we approach the question of Groningen protocol from the conviction of the inviolability of human dignity, the key problem lies in the permission of killing the innocent. Each life is valuable. The death of the innocent and suffering infant requested by parents is the tragic fruit of a wrongful mentality. The main reason to terminate life is expressed in the statement: “the death is more human than the continuation of life full of suffering.” But who can assess the value of life and death and say that one is more human than the other? Yes, it is true that severe, unbearable suffering, dependency on medical and technical support can be something extremely difficult. Nevertheless, many adult people are in these conditions and they are not requesting death but try to live their lives up to the natural end. It is striking that supporters of infanticide repeatedly offer a false alternative: “either allow the baby to suffer or intentionally kill the infant. No mention is made of a third alternative: making use of drugs to relieve suffering even if the dosage must be high enough to induce deep sleep.”²⁶

Another reason given in defence of killing disabled newborns is the quality of life: “Not only survival of the infant but also the condition in which the child will survive, the quality of life, is extremely important. Quality-of-life considerations were operationalized [...] in terms of the child’s expected ultimate level of functioning in a number of distinct aspects: communication, suffering,

²⁵ Eduard Verhagen and Pieter J. J. Sauer, “The Groningen Protocol—Euthanasia in Severely Ill Newborns,” *The New England Journal of Medicine* 352, no. 10 (10 March 2005): 960.

²⁶ Christopher Kaczor, *The Ethics of Abortion: Women’s Rights, Human Life, and the Question of Justice* (New York–London: Routledge, 2010), 34.

dependency on others, autonomy, and personal development.”²⁷ These criteria seem to be really difficult to assess. Someone should be a prophet to see all these different aspects of life and to judge them. “Communication,” “autonomy,” “personal development” are such general notions that it is difficult to be objective in referring to them. The quality of life is a sociological concept and can be eventually discussed with competent patients who are able to identify the values and goals of life and determine if they are satisfied. It is impossible in the case of infants. It is not difficult to notice that “prognostic judgments about quality of life are conceptually plausible; their failing is simply that, given the available evidence, they do not appear to be reliable. The self-reported quality of life of children with handicaps does not differ from that of children without disabilities.”²⁸

It is noted that in the Groningen protocol the decision to kill an ill newborn child is made by the autonomous decision of parents. This fact creates a very dangerous pattern which resembles the tragic experience of a Nazi totalitarian system. The infamous program of genocide of handicapped children in the Third Reich began with the request of the father who appealed to Hitler to grant permission to have his infant killed. The permission was granted and the child was killed. After this case on September 1, 1939, Hitler authorized a program of killing mentally and physically handicapped children.²⁹

This crime was condemned at the Nuremberg Trials and it does not need to be discussed again. The lesson that should be learned from this tragic experience that people seem to have forgotten is that everyone is endowed with inalienable human dignity. A few years after the trial, Leo Alexander, a medical expert in the Nuremberg Trials, brought to attention the fact that a tragedy of massive killing of the innocent began with a change in the mentality of physicians who accepted euthanasia:

Whatever proportions these crimes finally assumed, it became evident to all who investigated them that they had started from small beginnings. The beginnings at first were merely a subtle shift in emphasis in the basic attitude of the physicians. It started with the acceptance of the attitude, basic in the euthanasia movement, that there is such a thing as life not worthy to be lived. This attitude in its early stages concerned itself merely with the severely and chronically sick. Gradually, the sphere of those to be included in this category was enlarged to encompass the socially unproductive, the ideologically unwanted, the racially unwanted and, finally, all non-Germans. But it is

²⁷ Verhagen and Sauer, “End-of-Life Decisions in Newborns,” 739.

²⁸ Frank A. Chervenak, Laurence B. McCullough and Birgit Arabin, “Why the Groningen Protocol Should Be Rejected,” *Hastings Center Report* 36, no. 5 (2006): 31.

²⁹ Henry Friedlander, *The Origins of Nazi Genocide: From Euthanasia to the Final Solution* (Chapel Hill–London: The University of North Carolina Press, 1995), 39.

important to realize that the infinitely small wedged-in lever from which this entire trend of mind received its impetus was the attitude toward the non-rehabilitable sick.³⁰

Verhagen and Sauer in the answer to the critical notes which appeared after publishing the Groningen protocol stated that the protocol “was designed to motivate physicians to adhere to the highest standards of decision making and to reduce hidden euthanasia by facilitating reporting.”³¹ We can say that this reason is praiseworthy. And indeed, after the publication on the Groningen protocol in 2005, in the Netherlands only two cases of euthanasia in five years were reported. Before the publication there were about 20 cases of euthanasia per year.³² However, the most dangerous factor still remains—the acceptance of euthanasia of children whose lives are judged not to be worthy of living (“the death is more human than the continuation of life full of suffering”). Yes, the reason to kill is different—mostly what seems to be compassion toward non-rehabilitable sick. But the outcome is the same: the death of innocent children who did not participate in the decision to terminate their lives. Acceptance of infanticide of the ill newborns leads to a slippery slope. It is possible to logically prove that if abortion at any stage of development, and regardless of health condition, is possible and that both fetuses and newborns do not have the same moral status as actual persons, then killing newborns should be permissible in all cases, including those when the newborn is not disabled.³³

Final Remarks

The conclusions that spring from the analysis of the Groningen protocol are catastrophic. They are a consequence of the rejection of intrinsic human dignity. The fruit of this reductionist vision of a human being, whose ultimate ontological

³⁰ Leo Alexander, “Medical Science under Dictatorship,” *The New England Journal of Medicine* 241 (1949): 44.

³¹ Verhagen and Sauer, “Correspondence: Drs. Verhagen and Sauer Reply,” *The New England Journal of Medicine*, 352, no. 22 (2005): 2354.

³² A. A. Eduard Verhagen, “Neonatal Euthanasia: Lessons from the Groningen Protocol,” *Seminars in Fetal and Neonatal Medicine* 19, no. 5 (2014): 296–99. Verhagen who published the protocol suggested that the lower rate of reported deaths based on Groningen protocol might be partly caused by the lack of consensus about the dividing line between euthanasia and palliative care.

³³ Alberto Giubilini and Francesca Minerva, “After-birth Abortion: Why Should the Baby Live?” *Journal of Medical Ethics* 39 (2013): 261–63.

foundation is rejected, results in authoritarian decisions over life and death. Many times the legislation of states, which for many is the only objective norm, invites to participate in these practices that go against the inalienable dignity of man. As boldly pointed out by Robert Spaemann: “To grant to the state, [...] the right to arbitrarily determine who is human in the legal sense and who is not, means to take from human rights their character as fundamental rights. Indeed, the state could at any time restrict, by the particular definition of human being it adopts, who may lay claim to these rights. Whoever in this case actually joined in and represented part of the people could alone reserve to himself this right to life.”³⁴ The catastrophic dimensions of the “culture of death,” with abortion, euthanasia, and infanticide, invite humanity to a change of mentality. Fifty years after the promulgation of *Gaudium et Spes* the words of the Church that every man is created as an “image of God” and that human life is sacred are acutely needed. The proposal of an anthropology based on the Biblical vision of man, and complemented by classical metaphysics, offers a true remedy for humanity. The model of dignity offered by Christ who *reveals man to man himself* is timeless and if it confronts the decadence of the “culture of death,” it can bring about a true revolution.

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³⁴ Robert Spaemann, “An End to the Debate on #218 of the German Criminal Code (1974),” accessed 30.08.2016, <https://alexanderschimpf.wordpress.com/2013/03/24/robert-spaemann-on-abortion-a-full-translation-of-one-of-his-1974-articles/>.

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Witold Kania

Gaudium et Spes sur la dignité humaine : implications dans la bioéthique

Résumé

La promulgation de *Gaudium et Spes* a concouru avec les commencements de la bioéthique et la révolution culturelle et technologique de la fin des années soixante. En l'occurrence, l'enseignement de l'Église est devenu une voix prophétique dans la question concernant de nombreux délits commis contre l'humanité. L'article présente tout d'abord l'anthropologie de concile, fondée sur la Bible et sur la philosophie classique qui est le fondement de la dignité. D'après elle, toute personne humaine, en tant qu'être charnel et spirituel créé à l'image et selon la ressemblance de Dieu, est gratifiée de dignité. Dans la langue philosophique, cette dignité peut être définie comme ontologique. Elle appartient à toute personne humaine, elle est inaliénable et inviolable. Par contre, la deuxième partie présente le développement historique et géographique de nouveaux défis qui porte atteinte à la dignité humaine. Dans bien des pays, la législation nationale autorise l'avortement et l'euthanasie. Cela crée un nouveau type de mentalité : « culture de la mort ». La dernière partie analyse le paradigme de la décadence morale « progressiste » contemporaine : loi hollandaise concernant l'euthanasie des nouveau-nés. Le soi-disant « Protocole de Groningen » est l'exemple d'une conviction erronée que « mourir est plus humain que continuer à vivre une vie pleine de souffrance ». Le seul moyen qui puisse guérir la mentalité atteinte de « la culture de mort » est le respect pour la dignité humaine, c'est-à-dire pour le caractère sacré de la vie.

Mots clés : *Gaudium et Spes*, dignité humaine, avortement, euthanasie, Protocole de Groningen, bioéthique

Witold Kania

Gaudium et Spes sulla dignità umana: implicazioni nella bioetica

Sommarío

La promulgazione di *Gaudium et Spes* coincide temporalmente con gli inizi della bioetica e della rivoluzione culturale e tecnologica della fine degli anni '60. In tal modo il magistero della Chiesa sulla dignità dell'uomo divenne la voce profetica che indicava molti crimini contemporanei contro l'umanità. L'articolo presenta prima l'antropologia conciliare basata sulla Bibbia e sulla filosofia classica, che è il fondamento della dignità. Conformemente alla stessa ciascuna persona umana come essere corporale-spirituale, creato ad immagine e somiglianza di Dio, è provvista

di dignità. Nel linguaggio filosofico tale dignità può essere definita come ontologica. Appartiene a ciascuna persona umana ed è inalienabile e inviolabile. La seconda parte mostra lo sviluppo storico e geografico delle nuove sfide che insidiano la dignità umana. In molti paesi la legislazione nazionale sostiene l'aborto e l'eutanasia. Ciò crea un nuovo genere di mentalità: „la cultura della morte“. L'ultima parte esamina il paradigma della decadenza morale moderna „progressiva“: il diritto olandese relativo all'eutanasia dei neonati. Il cosiddetto „Protocollo di Groningen“ è l'esempio della convinzione errata secondo la quale „la morte è più umana della continuazione di una vita piena di sofferenza“. L'unico mezzo per risanare la mentalità interessata dalla „cultura della morte“ è il rispetto della dignità umana: della santità della vita umana.

Parole chiave: *Gaudium et Spes*, dignità umana, aborto, eutanasia, protocollo di Groningen, bioetica

Jan Koblížek

Palacký University in Olomouc, Czech Republic

Evaluating Political Society in *Rerum Novarum* in the Context of Francisco Suárez's Social Doctrine and Its Development in *Gaudium et Spes**

Abstract: Drawing on an analysis of two well-known documents of the social teachings of the Church (*Rerum Novarum* and *Gaudium et Spes*), this paper aims to demonstrate a noticeable conceptual development of the notion of politics and political authority which occurred between the end of the nineteenth century and the Second Vatican Council. The criterion used in the analysis was Francisco Suárez's political writing of the Enlightenment period. It is argued that politics was defined not only in relation to natural familial community and to the separation of ecclesiastical and secular authority, but also in relation to the return to traditional Aristotelian and Thomistic notions.

Keywords: politics, authority, society, Second Vatican Council, patriarchalism, family, nature, war, law

The aim of this paper is to show that understanding of political power and its principles progressed significantly between *Rerum Novarum* and *Gaudium et Spes*. The benchmark for our reflections and analyses will be the Early Modern second-scholastic doctrine of political power, natural and positive human law, represented by Francisco Suárez. The doctrine will serve as a tool or a timeless formal criterion for the assessment of both the documents, and implicitly for the description of the history of political doctrine in Church documents, from

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Leo XIII until the Second Vatican Council. Thanks to the Suárez's doctrine we will see that the concept of political power not only fundamentally changed since the late nineteenth century, but with the last council it restores the second scholastic idea.

In general, initially Francisco Suárez and scholasticism had very little influence over the developments of social teachings of the Catholic Church, which emerged in the late nineteenth century with *Rerum Novarum*, an encyclical of Pope Leo XIII.¹

This first social encyclical that Pope Leo XIII wrote in 1891 was intended as a critique of socialism and a defence of workers.² It defended the idea of private ownership and certain natural inequality among people, reflected on the economic and social level. The pope also fought for good social and working conditions for labor. While the Holy Father frequently refers to Thomas Aquinas, Aquinas himself did not directly focus on social affairs and political science. The only text of his that deals with this area is the slim and incomplete *De Regimine Principum*, along with several references, found especially in *Summa Theologica* (I–II, 90–109) in the passage on laws. The pope's text would certainly have gained much more from scholastic authors of the sixteenth and seventeenth centuries, such as Francisco de Vitoria, Dominic de Soto, Juan de Mariana, and Francisco Suárez, who faithfully developed the Aristotelian-Thomist theology and specialized in political science, which was given a brand new perspective in their time. Perhaps due to the contemporary climate of the late nineteenth century, no accurate picture of either Thomas or other great scholastic authors was available.³ This is not meant to be a critique of the deficiency in the first social encyclical of Leo XIII, only a simple statement of facts. Leo XIII himself revived the study of Thomism, and it is to his credit that today we are able to discuss political Thomist philosophy and theology in a great detail.

¹ Cf. René Brouillard, "Suárez. Théologie pratique. Influence," in *Dictionnaire de théologie catholique*, XIV, Vol. 2, ed. Jean Michel Alfred Vacant and Eugène Mangenot (Paris: Librairie Letouzey et Ané, 1941), 2725–26. Suárez's influence was enormous outside the Catholic region in the area of law and philosophy. Cf. José Pereira, *Suárez between Scholasticism and Modernity* (Milwaukee: Marquette University Press, 2007), 179–90; Barbero Félix Rodríguez, "Suárezianismus," in *Mají jezuité vlastní morálku? Studie o Franciscu Suárezovi (1548–1617), právníkovi, filosofovi a teologovi*, ed. Michal Altrichter (Olomouc: Refugium, 2004), 27–39; Jan Koblížek, "O principech politické moci u Františka Suáreze. Suárezův pojem souhlasu v kontextu společensko-smluvních teorií 16–18. století" (PhD diss., Catholic Theological Faculty of Charles University in Prague, 2012), 159–61.

² The introductory study for the last collected edition of social encyclicals and introductions to the individual encyclicals were written in Czech by Tomáš Halík. Cf. Tomáš Halík, "Sociální nauka katolické církve ve společensko-dějinném horizontu," in *Sociální encykliky (1891–1991)* (Praha: Zvon, 1996), 7–17.

³ Cf. Stanislav Sousedík, introduction to *Základy aristotelsko-tomistické filosofie*, by Joseph Gredt (Praha: Krystal OP, 2009), 15–27.

One of the basic ideas of the encyclical is that private ownership is part of human nature. It is a question of family life: children inherit what their parents have accumulated. The pope thus sees family as a basic and natural human society that precedes the state. That is why the state does not have the right to interfere with the family and substitute its function, as requested by the socialists. A doctrine built on the idea of human nature is highly logical, free of any major controversy. Yet, there is an inaccuracy that is worth mentioning. In paragraph 10, the pope discusses the relationship between the family and the state: “A family, no less than a State, is, [...], a true society, governed by an authority peculiar to itself, that is to say, by the authority of the father.”⁴

While no objections are raised against the claim that family is governed by the authority of the father, it is not acceptable that the state should be governed by the authority of the father. Perhaps all Leo XIII wanted to say was that the state depends upon on the family institution, which is governed by the authority of the father. In this sense we could perhaps argue that the state builds, or rather draws on this authority of fathers. If this, however, was understood as a reference to “patriarchalism,” which was nourished in the Middle Ages and early Modernism by various thinkers in an attempt to support the sovereign rule of monarchs, it needs to be rejected. An example of such a court philosopher was Sir Robert Filmer (1588–1653), whose work *Patriarcha* defends the idea that God gave Adam dominion over the whole earth, and this has been handed over to his first-born sons to this day. This theory served to defend the sovereignty of King James I of England. Filmer’s theory was rejected and criticized by the Enlightenment movement beginning in the sixteenth century, as evident from, for example, John Locke’s *First Treatise of Government* (Rousseau did not comment on the critique at all as he considered it closed)⁵ as well as by late scholastic tradition, in particular the Spanish doctrine. Francisco Suárez is strongly opposed to the idea in his *De Legibus, Defensio Fidei*, and other writings.⁶ This is why Sir Filmer, who is about thirty years younger, criticizes Suárez in *Patriarcha*, declaring him a freethinker of the sixteenth century. In other words, Leo XIII probably did not fully realize the implications of connecting the idea of the state with paternal authority. He had based his assumption on Thomas Aquinas, who saw a direct analogy between the family and the state. The pope thus did not fully reflect the later development of this political and legal theory, seeing that Leo XIII himself implicitly rejects patriarchalism, as in paragraph seven he affirms that God gave the earth to the entire humankind. Although the pope uses this second

⁴ Cf. Lev XIII, “Rerum Novarum” 10, in *Sociální encykliky (1891–1991)* (Praha: Zvon, 1996), 30.

⁵ Cf. Jean-Jacques Rousseau, *Du contrat social*, III, 6 (Paris: Flammarion, 2001), 113–15.

⁶ Cf. Jan Koblížek, *Pojem společenského souhlasu u Františka Suáreze. O principech politické moci* (Olomouc: Refugium, 2014), 73–5.

reference in a completely different context (i.e., in a debate with the Socialists), this is also an argument that Locke or Suárez use against the supporters of patriarchalism, who claimed that God gave dominion over the earth to Adam and his successors, that is, individuals. This brief excursion hopefully also shows that patriarchalism definitely cannot be confused with Catholicism or the medieval and early modern scholasticism.

Having covered the most important issues in the tenth paragraph of the encyclical, still other points remain to be analyzed in a greater detail. The pope continues: “Provided, therefore, the limits which are prescribed by the very purposes for which it exists be not transgressed, the family has at least equal rights with the State in the choice and pursuit of the things needful to its preservation and its just liberty. We say, “at least equal rights”; for, inasmuch as the domestic household is antecedent, as well in idea as in fact, to the gathering of men into a community, the family must necessarily have rights and duties which are prior to those of the community, and founded more immediately in nature.”⁷

We do not, of course, intend to overanalyze the pope’s words or subject them to acerbic criticism. Yet it seems that the concepts of the family and the state are not fully aligned in this paragraph. The impression is almost of viewing two opponents. If each of these wholes has its “own purpose,” as the pope mentions, they need not vie for equal rights. We believe that the discourse should instead involve “different” rights. For example, an individual who defends his life, or the father of a family, are never entitled to kill or wage a war on anyone. The state, however, has this right! Consequently, the family and the state may never have “equal” rights. Although the family and the state are closely related, they represent two levels. The pope is certainly right in saying that the family precedes the state conceptually and historically, and that the rights and obligations of the family are more natural. Yet Aristotle and Thomas, whose tradition Leo XIII wishes to follow, view the state as natural and consider man a naturally “political” being. For them, it is only this civil state that is the full stature of man. This is *causa finalis* of human nature. This however means that in some respects the state precedes the family!⁸ Therefore, claiming that the civil state or duties and rights should be less natural than the family state appears to be inaccurate in this case. Additionally, when discussing the relationship between the working class and the capitalist class in the state, the pope himself claims that these groups are balanced by nature itself.⁹

The passage in the tenth paragraph of *Rerum Novarum* should thus be supplemented by an explanation of the difference between the family and the state, which is what the pope might have had in mind. The state differs from the

⁷ *Rerum Novarum*, n. 10.

⁸ Cf. Koblížek, *Pojem společenského souhlasu*, 27–35.

⁹ Cf. *Rerum Novarum*, n. 15.

family in that, besides the natural character it entails, it also requires a certain legal act from those who wish to be part of the state body. Since the sixteenth century, many various authors thus speak of a “social contract.” In Scholasticism this was for example Francisco Suárez. However, already Aristotle in the first book of his *Politics* describes a legal act, claiming that political society exists for the sake of a “good life,” while the family serves to preserve the life of the human race.¹⁰ This means that the state is obviously not as natural as the family, which is in this respect similar to any other species. In contrast, the state counts with the free will of people, and is made by these people. For scholastic authors, this human engagement and conduct is nothing artificial; they mention human nature, in which there is place for human reason. Scholasticism later promoted the distinction between *societas perfecta* “perfect society,” which is synonymous with the state, an independent body, and *societas imperfecta* “imperfect society,” which refers to the family, because it is not an independent and sovereign entity. We believe that Leo XIII wanted to highlight this very difference.

Despite challenging the text of the Holy Father to some degree, we need to underline that his concept of human nature is definitely a concept of social man. In the eleventh paragraph he refers to Thomas Aquinas, who goes as far as claiming that “children carry on, so to speak, and continue [the father’s] personality,”¹¹ and hence the family is the foundation of the state, and not human individuals as proposed by, for example, Thomas Hobbes, John Locke, and Jean Jacques Rousseau.

Another important aspect is that Leo XIII supports the principle of natural inequality of all people and denies the idea of class struggle, preached by socialists. Concerning the first issue, Leo XIII encourages realism, saying that humans are naturally different: they have different talents, health, strength, etc., which also leads to differences in ownership.¹² Each person also has different needs of varied intensity, “appropriate to his situation.”¹³ This inequality is not inherently bad—it is natural, and therefore the pope believes even civil society should accept it. This does not preclude people from enjoying the same dignity before God and themselves. This concept differs from, for example, Rousseau, who also admits that by nature, there are many differences among people.

¹⁰ Cf. Aristotelés, *Politika*, I, 2 (Praha: Petr Rezek, 2009), 38–40; Aristotle draws attention to this fundamental difference between the family and the state in Chapter 1, asserting a difference between the king, statesman, household manager, and master. This difference does not lie in quantity (i.e., ruling over a large or small number of people), but in quality. Cf. Carnes Lord, “Aristote,” in *Histoire de la philosophie politique*, ed. Leo Strauss and Joseph Cropsey (Paris: Quadrige/PUF, 1999), 148–49.

¹¹ Thomas Aquinas, “Summa theologiae,” II–II, q. 10 and 12, in *Rerum Novarum*, n. 11.

¹² Cf. *Rerum Novarum*, n. 14.

¹³ Cf. *Rerum Novarum*, n. 19.

Specifically, this includes strength and other natural capacities of the body and intellect. However, for Rousseau, civil society should eliminate this inequality and establish legitimate and legal equality between all citizens. In this respect, civil society represents for Rousseau a certain negation of the natural condition. This is even more evident for example in Thomas Hobbes or even Immanuel Kant, where the natural state of man and the civil society stand in hostile opposition.¹⁴ Clearly, Leo XIII here continues the Aristotelian tradition of politics as a positive and natural state. This is related to the idea of natural inequality, also developed by Aristotle in Book One of his *Politics*. Also, Suárez views civil society as a “natural moral organism.”

As mentioned above, the pope sees the inequality of people and of ownership as natural¹⁵; therefore he considers collaboration between social classes also natural. Leo XIII absolutely rejects the socialist idea of an ongoing hostility and struggle between classes. While the pope does not deny that the relationship between labor and capital is often tense, these tensions could be solved in the spirit of the Gospel. What matters is that both sides need each other, which is why collaboration needs to be a much stronger bond.¹⁶

In the next step of his solution of the social issue, Leo XIII discusses the role of the state. As the pope believes, the state refers primarily to actions taken by every human and to the common good.¹⁷ It is important to bear in mind what this concept means for the Holy Father. In the first place, Leo XIII names moral rule, well-regulated family life and religion, followed by justice, the moderation, and fair imposing of public taxes, and concluding with the development of the arts and of trade and agriculture.¹⁸ On the one hand, we need to appreciate the pope as a good shepherd concerned for humanity worldwide. On the other hand, another minor dispute should be raised. Is it truly the role of the state, that is, civil and civic rulers to ensure religion and morals? We can certainly wish that they as individuals were concerned, and were always an example of upstanding and moral citizens with high values. From Plato to Machiavelli, regents were to possess the virtue of justice and competence

¹⁴ Kant’s concept of human nature builds on Thomas Hobbes, defining the principle of human society as negative. According to Kant, humans are naturally hostile to each other, and, ultimately, so are states. The only solution is a treaty, the basis of law, which protects individuals or states against their neighbors. Kant’s elementary premise is that all people who could come into any type of interaction, need to belong to some civic establishment. The philosopher applies this to the three levels of relationship to public law: the Right of the State (*ius civitatis*), the Right of Nations (*ius gentium*), and Cosmopolitical Right (*ius cosmopoliticum*). Cf. Immanuel Kant, *K věčnému míru* (Praha: Oikoymenh, 1999), 15.

¹⁵ According to the pope, this inequality should lead to the wealthier contributing more to the state coffers. Cf. *Rerum Novarum*, n. 27.

¹⁶ Cf. *Rerum Novarum*, nn. 15–17.

¹⁷ Cf. *Ibid.*, n. 25.

¹⁸ Cf. *Ibid.*, nn. 26, 29.

to rule. The question is what this entails. Should the monarch be moral and pious, in particular? We believe that a political career cannot be conditioned by concern for religious faith and morality, or that politicians should be obliged to be pious. The nature of state authority is focused exclusively on temporal and practical affairs of the state. Leo XIII discusses this in paragraph 33 of his encyclical, stating that state authority concerns the “protection of the bodily and external goods.” Specifically he states that it is necessary to protect workers and the poor from the recklessness of various blackmailers, usurers, and those who would abuse them for their profits and treat them as a mere commodity. Therefore, he then examines the important issue of a worker’s wages, encouraging them to be fair and adequate so that it would secure the worker and his family a dignified life.¹⁹

We cannot fully agree with paragraph 33, though, where the pope claims that the state is obliged to protect workers in spiritual matters. Instead of protecting religious freedom, the pope charges politicians with ensuring that religious and sacred commandments are observed. We cannot stress enough that we are not against the idea that state officials should be pious and moral and campaign for the freedom to live a religious life in private and in public; we simply believe that the nature of state authority is not related to the promotion of spiritual matters or religion, as Suárez agrees. The pope, of course, in our opinion rightly says that the ultimate goal for man cannot be found on this earth, that temporal life is but a journey and the means to eternal life. This is a theological discourse of a priest. Consulting the writings of Francisco Suárez, we find that he was very consistent in differentiating between temporal and spiritual authority.²⁰ In *De Legibus* he discusses whether a secular monarch should be religious and moral.²¹ At his time, this was not solely an academic question, as was often the case in scholasticism, but a search for an answer to the Waldensians, John Wycliffe and Jan Hus, who professed that a ruler who is not religious or moral, is *de facto* not a monarch, and therefore does not need to be obeyed. Suárez maintains the opposite position: political power does not depend on any supernatural gifts, but is a necessary characteristic of any political body, just as any other human community, for example, family or marriage, is necessarily endowed with its authority and power. Those who head the state do not need to be religious or even moral to be recognized as the actual authorities. He illustrates his proposition with, for example, the fact that in his time, sometimes even those who could not use reason, such as children or temporarily the mentally challenged were appointed the rightful rulers. If reason is not required in a ruler, nor is, then, faith in God,

¹⁹ Cf. *Ibid.*, n. 34.

²⁰ Cf. Koblížek, *Pojem společenského souhlasu*, 111–24.

²¹ Cf. Francisco Suárez, “Tractatus de legibus ac Deo legislatore in decem libros distributus,” III, 10, 1–2, in *Opera Omnia*, V (Paris: Vivès, 1856).

Suárez insists.²² Another analysis of his also shows that state power is entirely of a temporal, laic, and public nature!

Connected with the above-mentioned problem that concerned the general welfare, political authorities and their relation to religion, is also paragraph 28 of *Rerum Novarum*: “As the power to rule comes from God, and is, as it were, a participation in His, the highest of all sovereignties, it should be exercised as the power of God is exercised—with a fatherly solicitude which not only guides the whole, but reaches also individuals.”²³

The quote indicates that Leo XIII was inspired by Thomas Aquinas, who held that political power has its origin in God and that in his state every monarch is analogous to the Lord, who rules the world as a good father. At the same time, however, he ignores all the subsequent developments of the constitutional question, as was discussed at the beginning of this paper. The Holy Father is right in claiming that every power has its origin in God’s power. This view is supported by Suárez, who is closely following Thomas in this respect. However, there is something missing. Leo XIII overlooks an individual human will that shows through either a clear choice or at least tacit affirmation.

This inaccuracy relating to the establishment of political body and principles of political authority is also documented in the previous paragraph, where the Holy Father says: “The members of the working classes are citizens by nature and by the same right as the rich; they are real parts, living the life which makes up, through the family, the body of the commonwealth.”²⁴

The pope’s words need to be once again contested from the professional perspective. As mentioned before, civil society develops upon a legal (i.e., positive) act made by humans.²⁵ Most often, it is a “social contract.” For this reason, one does not become a citizen based on natural law or a natural right. While it is true that earlier we demonstrated that the civil state is the fulfillment of human nature, but this natural aspect of civil society is not a natural aspect of a family, which would only grow greater. Citizenship thus has its motive not only in the sociability of man, which is an affair of his nature, but also in positive law! We believe that the Holy Father should have said that “by positive law, which develops natural law, such and such become citizens [...]”

In conclusion, the entire text of the encyclical shows Leo XIII speaking more from the position of a Christian pastor than from the position of a political theorist. After all, this is perfectly appropriate. The final words of the encyclical only attest to his position: “[...] and since religion alone, [...], can avail to destroy the evil at its root, all men should rest persuaded that main thing needful is to

²² Suárez states that even King Saul did not cease to be king the moment he rebelled against the Lord. Neither did David cease to be king after having sinned.

²³ *Rerum Novarum*, n. 28.

²⁴ *Ibid.*, n. 27.

²⁵ Cf. Aristotelés, *Politika* I, 1 and 2, 37–41.

re-establish Christian morals, apart from which all the plans and devices of the wisest will prove of little avail.”²⁶

Our evaluation of *Rerum Novarum* touched upon the definition of political society in relation to family, upon the principles of political authority—human nature created by God and human free will, and lastly, it discussed the relationship of secular and spiritual authority. We saw that, on the one hand, Leo XIII refers to the natural law and aims to follow Thomas Aquinas, and on the other, he is oblivious to the positive human right and its articulation with natural law. His thinking is more intuitive and in his conclusions the pope often finds himself in the position of a catechist and preacher. His distinction between family and political community is not very clear. In the relationship of secular and spiritual authority, the pope tends to subordinate secular authority to spiritual authority, and their mutual alignment is again unclear. The constitution of the Second Vatican Council, *Gaudium et Spes*, discusses similar issues. Continuing the concern for Christian community and well-being of the entire world, the constitution, however, brings a fundamental shift in the approach to politics. Firstly, the concepts are much more precisely defined, and secondly, the position of the Second Vatican Council is extremely close to the second-scholastic sophisticated understanding.

Gaudium et Spes comments on political society and authority primarily in paragraphs 73 to 76, but paragraphs 77 to 90 are likewise related to politics, mentioning peace, war, and international community. As pointed out earlier in the text, unlike *Rerum Novarum*, the constitution offers a concept that is very similar to the doctrine of Suárez. This similarity is evident already from the general statement at the end of paragraph 73, which says that the political community has a nature and objectives, and that it includes public authority that must be exercised properly and has its limits. In particular, paragraph 74 exemplifies this Aristotelian-Thomist doctrine of political power. The constitution provides an excellent link between two aspects of human society, studied by Second Scholasticism. Firstly, it is the idea of natural human sociability, whose final cause lies in the political community. This statement is found already in Aristotle’s *Politics*, as stated above. No individual or family are able to live alone a fulfilled human life and achieve human happiness, as it is related to the common good. These require a broader political community that makes life easier and adds other qualities, for example education and science.²⁷ It is important that people, despite being different, are not made up of a sum of individuals, an “aggregate” or a random group; instead they naturally form a community referred to as “commune.” By nature, this commune requires an

²⁶ *Rerum Novarum*, n. 45.

²⁷ Cf., for example, Thomas Aquinas, “De Regimine Principum,” I, 1, in *Texty k studiu dějin středověké filosofie*, ed. Stanislav Sousedík (Praha: Karolinum, 1994), 27–29.

authority to manage, direct, and protect the entire commune and to care for the common good.²⁸

Another principle of human society is a specific human will of all those who wish to be part or are part of this political community, and who accept their share. This is a positive legal aspect of human society. As evident earlier, *Rerum Novarum* did not manage to view this aspect adequately. Specific human will is important for the selection of a particular political authority at all levels. *Gaudium et Spes* 74 formulates this doctrine of synergy of the above aspects as follows: “It is clear, therefore, that the political community and public authority are founded on human nature and hence belong to the order designed by God, even though the choice of a political regime and the appointment of rulers are left to the free will of Citizen.”

As indicated earlier in the text, Francisco Suárez understands the act of human will as a second principle of political authority (in addition to the principle of human nature), that is, human choice is reflected in the choice of a ruler and government as *causa efficiens*.

We must not overlook the fact that this very position, maintained by both Suárez and the Second Vatican Council, is in clear opposition to the liberal concept of human society (Thomas Hobbes, John Locke, Jean Jacques Rousseau), which views man as an unsocial individual, and thus human society as unnatural. Based on this concept, human society is merely a product of the human mind, denial of human nature, and hence authority in such society has only a positive-legal basis. Its principle is only a momentary agreement of individuals. Defending the natural law position, *Gaudium et Spes* refers to Paul the Apostle in Rom 13:1–5. In our opinion, this reference, however, came only later to support the original synthesis of Aristotle’s idea about the natural human society and the early modern doctrine of the social contract. Although this synthesis is implicitly present already in Aristotle’s writings,²⁹ it is particularly widely used by Francisco Suárez (*De Legibus*, *Defensio Fidei*) and other writers of the second scholastics such as Dominic de Soto (*De Justitia et Jure*) or Juan de Mariana (*De Rege*). Thanks to this synthesis of Aristotle’s thinking and modern concepts of the social contract, the Spanish Scholastics were able to open Christian thinking to new challenges of liberal and democratic societies, while anchoring the whole doctrine in traditional metaphysics and natural law.

Based on the above, Natural Law and a reference to God the lawgiver become an internal definition of positive political authority exercised by representatives elected by the people. As *Gaudium et Spes* states, their service is “necessary”³⁰ and these people are essential to human society. They are to be

²⁸ Cf. Koblížek, *Pojem společenského souhlasu*, 75–76.

²⁹ Aristotelés, *Politika* I, 2, 38–40.

³⁰ Cf. *Gaudium et Spes*, n. 75, in *Dokumenty II. vatikánského koncilu* (Praha: Zvon, 1995), 249–50.

a “moral force,”³¹ and people are bound in conscience to obey. However, this applies only if these political authorities faithfully perform their service by striving for the common good and respecting the natural law, and thus the law of God. The moment they fail this service, *Gaudium et Spes* (74) explicitly offers the option of legitimate resistance and civil disobedience, leaning on the natural law and the Gospel. At the same time, *Gaudium et Spes* encourages citizens to carefully discern what serves the common good in an unjust regime and what is worthy of respect, and what they need to confront. Paragraph 75 calls on honourable politicians to oppose the arbitrariness of an individual or a party with their “moral integrity and deliberateness.” This is related to Suárez’s question whether the mere fact that people live and work under an oppressive regime, also implies their collaboration with the regime.³² Suárez disagrees. Society as a natural body is able, even through a despotic regime to ‘generate’ and exercise authority as its natural and necessary characteristic. For this reason, citizens are obliged to distinguish what is harmful and what is not in the dictatorship, and obey laws governing everyday social life, such as transportation, trade, distribution of bread, etc.

An important passage of the encyclical is paragraph 76, which addresses the relationship of the political community and the Church. Consistent with Suárez’s concept,³³ the state and the Church, and the political and spiritual authorities are clearly distinguished. This was not quite the case with *Rerum Novarum*. In *Gaudium et Spes*, the two levels are independent and autonomous. Both should work together and strive for the good of humankind. A similar idea, even if only outlined, of the two authorities, had been proposed by Thomas Aquinas.³⁴ The position of having the two spheres—politics and spiritual authority—separated is characterized by the rejection of patriarchalism and refusal to condition secular political government by its affiliation to the Church (Suárez, Vitoria). The refusal to merge the secular authority with the spiritual one, however, does not prevent GS 76 from saying that the Church is competent for freedom, to freely preach evangelism and pass her judgement on public affairs, including their moral evaluation. This view resembles what Suárez referred to as the “indirect power of the Church.”³⁵

Gaudium et Spes (77–90) examines the problem of war and peace and the international community. These issues had been highly topical since the sixteenth

³¹ Cf. *Ibid.*, n. 74, 248.

³² Suárez, *De Legibus* III, 10, 8–9.

³³ *Ibid.*, 11, 5; Francisco Suárez, “Defensio fidei catholicae et apostolicae adversus anglicanae sectae errores cum responsione ad apologiam pro juramento fidelitatis, et praefationem monitoriam Serenissimi Jacobi Magnae Britanniae Regis,” III, 3, 13, in *Opera Omnia*, XXIV (Paris: Vivès, 1861).

³⁴ Cf. Aquinas, *De Regimine Principum*, I, 15–16.

³⁵ Suárez, *De Legibus* III, 6, 6.

century, the time when most European countries fought for sovereignty and independence against papal or imperial power. Another major issue at this time was the colonial rule and the legal nature of new nations and their leaders on the discovered continents. Again, *Gaudium et Spes* adopts a stance similar to that of the sixteenth century Scholastics (Vitoria, Suárez, Mariana, Soto). Firstly, *Gaudium et Spes* mentions pluralism and diversity within human society.³⁶ This involves different views as well as various faiths and traditions. Therefore it is impossible to build a political society on a single opinion, morality, or even one religion, as was the custom at least seemingly until the discovery of America; Europe was seen as a single monolith united under the rule of the pope. The only common platform could be (over the last half millennium) the reference to human nature, as upheld by Suárez, other scholastics, and *Gaudium et Spes*. Just as human nature and the natural law are decisive for national politics so are they for international politics. Both the sources (Spanish scholasticism and *Gaudium et Spes*), nevertheless, make a clear distinction between these two levels. While the state is sovereign, and thus de facto the supreme political unit, the international community has a lower ontological status and lacks true political authority.³⁷ This deficiency of international politics is also reflected in the latest papal encyclical *Laudato Si'*.³⁸

Similarly, the issue of just war, addressed by *Gaudium et Spes*,³⁹ also builds on scholastic doctrine. The doctrine allows war under precisely defined conditions: declaration by a lawful public authority, a just cause, and observation of rules adopted by the warring parties.⁴⁰ *Gaudium et Spes* made a significant progress in this respect. Paragraphs (80–82)—referring to the speeches and radio messages of Pius XII and *Pacem in Terris* by John XXIII—encourages absolute prohibition of wars. Not because it would disagree with the above principles, but because of today's technical sophistication, as the warring parties possess weapons of mass destruction that could destroy everything. The victory of either party would have fatal consequences for all.

We could continue commenting on *Gaudium et Spes* but the brief outline of issues related to political life hopefully shows that the wording of *Gaudium et Spes* (74–76, 77–90) is accurate and faithful to the view of politics of the Second Scholasticism, as is evident from the comparison with Francisco Suárez. Above all, this involves the definition of the political community compared with the family, and the clear delineation between political and spiritual authorities. If we realize the differences observed between *Rerum Novarum* and Suárez, we

³⁶ Cf. *Gaudium et Spes*, nn. 73, 84, 85, 90.

³⁷ Cf. *Ibid.*, n. 82; Suárez, *De Legibus* II, 17–20; III, 2, 6; Francisco Suárez, “De caritate,” disputatio 13, in *Opera Omnia*, XII (Paris: Vivès, 1858).

³⁸ Pope Francis, *Laudato Si'*, 164–75 (Praha: Paulínky, 2015), 105–111.

³⁹ Cf. *Gaudium et Spes*, n. 79.

⁴⁰ Cf. Suárez, *De caritate*, 13, 2.

also note an important shift in the perspective on politics and social life that the Church made between the late nineteenth century and the Second Vatican Council. A seemingly surprising conclusion that is explained following a thorough analysis is that in terms of assessing politics, the Church is much more conservative at the Second Vatican Council compared with the time of the first social encyclical.

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Jan Koblížek

Évaluation de la politique sociale
dans *Rerum Novarum* à la lumière
de l'enseignement social
de Francisco Suárez et son développement
dans *Gaudium et Spes*

Résumé

En s'appuyant sur l'analyse des deux documents connus concernant l'enseignement social de l'Église (*Rerum Novarum* et *Gaudium et Spes*), on a essayé de présenter dans l'article l'évolution conceptuelle patente de la compréhension de la politique et du pouvoir politique qui s'est produite entre la fin du XIX^e siècle et le Concile Vatican II. L'enseignement sur la politique de Francisco Suárez, auteur de l'époque des Lumières, nous a servi de critère dans notre étude. Nous y constatons que l'on a eu affaire à la définition de la politique envers la communauté familiale naturelle et à la séparation des pouvoirs ecclésiastique (spirituel) et laïc, mais également au retour aux notions aristotéliennes et thomistes traditionnelles.

Mots clés: politique, pouvoir, société, Concile Vatican II, patriarcat, famille, nature, guerre, droit

Jan Koblížek

Valutazione sulla problematica
della politica della società nella *Rerum Novarum* alla luce
dell'insegnamento sociale
di Francisco Suarez e il suo sviluppo
nella *Gaudium et Spes*

Sommario

Nello studio presentato, sulla base dell'analisi di due documenti noti dell'insegnamento sociale della Chiesa (*Rerum Novarum* e *Gaudium et Spes*) si è cercato di indicare lo sviluppo concettuale visibile della concezione di politica e di potere politico che ebbe luogo tra la fine del XIX secolo e il Concilio Vaticano II. Come criterio abbiamo usato l'insegnamento sulla politica di Francisco Suarez, autore del periodo dell'Illuminismo. Constatiamo che ebbero luogo non solo la definizione della politica rispetto alla società naturale familiare e la separazione del potere ecclesiastico (spirituale) e laico, ma anche il ritorno alle concezioni aristotelico-tomiste tradizionali.

Parole chiave: politica, potere, società, Concilio Vaticano II, patriarcalismo, famiglia, natura, guerra, diritto

John P. Hittinger

University of St. Thomas, Houston, TX, USA

Three Dimensions of Catholic Political Participation: Dignity, Secularity, and Witness

Abstract: The laity, however, are given this special vocation, that is, to make the Church present and fruitful in those places and circumstances where it is only through them that she can become the salt of the earth. Thus, every lay person, through those gifts given to him, is at once the witness and the living instrument of the mission of the Church itself “according to the measure of Christ’s bestowal” (Eph. 4: 7) (*Lumen Gentium*, 33).

Keywords: politics, democracy, participation, witness, *Gaudium et Spes*

Introduction

Political participation, particularly the strong encouragement for the Catholic laity to participate in political affairs, is the central theme of *Gaudium et Spes*, part II chapter IV. This teaching on political life in *Gaudium et Spes* represents one of the finer achievements of the Second Vatican Council and it has emerged as the issue of greatest urgency for the Church in the modern world. This teaching follows the lead of Popes Pius XII¹ and John XXIII in proposing

¹ “We were anxious, Beloved Sons and Daughters, to take the occasion of Christmastide to point out along what lines a democracy befitting human dignity can, in harmony with the law of nature and the designs of God as manifested in Revelation, secure happy results. Indeed, we are deeply convinced of the supreme importance of this problem for the peaceful progress of mankind,” Pius XII, *Christmas Message*, 51 (New York: National Catholic Welfare Conference, 1944). See John XXIII, *Pacem in Terris*, nn. 60, 67, 77.

a respect for human rights based upon the dignity of the human person and an endorsement of a democratic aspect to politics in the modern world, especially to counter the growing menace of totalitarian political ideologies. The document lays out an agenda for the Church to encourage the renewal or restoration of political order along democratic lines and to “invigorate basic convictions about the true nature of politics: its proper end, right use, and limits.”² Most of all, it establishes the crucial role of the Church as “the sign and safeguard of the transcendence of the human person” in such an order.³

It is remarkable that such an achievement was almost an afterthought, for this section on politics was not initially a part of the initial schema; it was added between the sessions of the council.⁴ It is the shortest of the sections. The other sections devoted to “problems of special urgency” seemed to have in fact greater urgency. As we know, the section on family and marriage came out with a footnote promising that the most controversial issue of the time, artificial birth control, would be addressed by a special papal commission. The Church and the world eagerly awaited this finding, and *Humanae Vitae*, issued in 1968, simply intensified and furthered the urgency of the issue which is debated to this day, if not simply ignored by many faithful, scorned by the secular world, and finessed with theological subtleties by the theologians. Of course, Pope John Paul II has done much to defend and amplify the teaching of *Humanae Vitae*. He has shown its inner connection to *Gaudium et Spes* and refuted the false alternatives in *Reflections upon Humanae Vitae*; he has developed the theological anthropology of *Gaudium et Spes* into a theology of the body revealing the essential humanity of a consistent respect for the virility and fertility of spousal partners; and finally, he demonstrated the vital links between this openness to life and the Gospel of Life as well as those between the contraceptive mentality and the culture of death. Similarly, the chapter on peace and the community of nations, received a boost because of the pressing issues surrounding the Vietnam war and peace movements as well as the special problems of deterrence and weapons of mass destruction. Recent events in Iraq continue to bring these issues to the forefront of discussion. The chapter on economics has also had reasons for special attention, and the continuing theme of economic equity found synergy in the work of John XXIII, continued apace in the letters of Paul VI and John Paul II. Perhaps the section on culture has not had quite the same urgency, but nevertheless it

² *Gaudium et Spes*, n. 73; John P. Hittinger, “*Gaudium et Spes* and the Importance of Political Philosophy,” *Pontifical College Josephinum Journal of Theology* 20, no. 2 (2013) (Aquinas and the Philosophical Training of Theologians): 279–306.

³ *Gaudium et Spes*, n. 76; John Paul II, *Redemptor Hominis* (Boston: Daughters of St. Paul, 1979), § 13 and John Paul II, *Centesimus Annus* (Boston: Daughters of St. Paul, 1991), 3, 38, 55.

⁴ See Herbert Vorgrimler, ed., *Commentary on the Documents of Vatican II* (New York: Herder and Herder, 1967–1969), five volumes, Vol. 5. Pastoral Constitution on the Church in the Modern World.

has received due attention, especially in the issue of Catholic education. Chapter four, on the life of political community, the afterthought of the council's session, became a central theme for Pope John Paul II throughout his many travels and his addresses to international bodies and to heads of state. As a philosopher and bishop, Karol Wojtyła was deeply aware of the issue of participation throughout social forms, including the political: "The central problem of life for humanity in our times, perhaps in all times, is this: participation or alienation? This problem seems to take on sharper contours today. It is also one that is very much alive in people's minds."⁵ Why is participation so crucial to political life in general, and also for Catholic presence in the modern world? How is this role for Catholics in the modern world to be understood and lived?

Participation and the Dignity of the Person

What is the meaning and importance of political participation in *Gaudium et Spes*? The theme is anticipated in the sections on culture and economics. The council fathers call for efforts to promote greater participation in the benefits of culture by groups often left out, such as workers, farmers, or women. The lack of fundamental culture, literacy, is an impediment to cooperation in "promotion of the common good."⁶ So culture is both an intrinsic good, as well as an instrumental one leading to political participation. The chapter on economics has extensive references to the good of participation of workers in the economic activities of the factory or corporation.⁷ This limited participation must be complemented by political participation. Political participation includes first and foremost, an active role in shaping the political sphere and public. Second, participation means that all should benefit materially and spiritually from the common good. Third, the extent of participation ranges from participation in elections for holders of public office, to fundamental vote for the shape of the constitution and the arrangement of office. Fourth, political participation signifies the intrinsic "bias" of politics towards democracy, an idea originating in

⁵ Karol Wojtyła, "Participation or Alienation," in *Person and Community. Selected Essays* (Catholic Thought from Lublin) (New York: P. Land, 1993), 206. See John Hittinger, "Alienation," in *New Catholic Encyclopedia* Supplement 2012–2013, edited by Robert Fastiggi, 1, 55–56 (Washington, D.C.: Gale Cengage Learning, 2013).

⁶ *Gaudium et Spes*, n. 60

⁷ *Ibid.*, n. 65—the largest possible number of people have an active share in directing development; *Gaudium et Spes*, n. 68—the active sharing of all in the administration and profits of the enterprise in ways properly determined is to be promoted, *Gaudium et Spes*, n. 71—private property is a condition for civil liberty).

Plato and Aristotle's *Politics* and culminating in the Thomistic tradition, for example, transmission theory of political authority, brought to fruition by Belarmine.

The most fundamental reason for the endorsement of political participation is the dignity of the human person. This truth, of course, is fundamental to the thrust of the council in general and *Gaudium et Spes* in particular:

At the same time, however, there is a growing awareness of the exalted dignity proper to the human person, since he stands above all things, and his rights and duties are universal and inviolable. Therefore, there must be made available to all men everything necessary for leading a life truly human.⁸

These conditions for a human life range from basic necessities of life to education and the search for God. The crucial passage concerning the light that Christ shines on the dignity of the human, revealing man to man himself⁹ provides an even deeper and broader foundation for human dignity. Pope John Paul II connects the Gospel itself with the respect for dignity and the promotion of human rights:

in this light, *and only in this light*, does it concern itself with everything else: the human rights of the individual, and in particular of the 'working class,' the family and education, the duties of the State, the ordering of national and international society, economic life, culture, war and peace, and respect for life from the moment of conception until death.¹⁰

Common to the areas of concern and the respect for rights may be found the call to participate in the life of society: "the will to play one's role in common endeavors should be everywhere encouraged. Praise is due to those national procedures which allow the largest possible number of citizens to participate in public affairs with genuine freedom."¹¹ Although the council fathers outline a brief and sober list of basic civil rights such as free assembly, association, expression of opinion, and religious profession, they converge on the critical role of participation for each person and citizen. In an interesting turn of phrase the protection of these rights are said to be "a necessary condition so that citizens, individually or collectively, can take an active part in the life and government of the political association."¹² In other words, these rights are to be understood as something more than a system for establishing a realm of privacy, but rather

⁸ *Gaudium et Spes*, n. 26.

⁹ *Ibid.*, n. 22.

¹⁰ John Paul II, *Centesimus Annus* (Boston: Daughters of St. Paul, 1991), 54. See the section on rights in his *Crossing the Threshold of Hope* (New York: Knopf Publishing Group, 1994).

¹¹ *Gaudium et Spes*, n. 31.

¹² [*cives actuose participare in rei publicae vitae*], *Gaudium et Spes*, n. 73.

they serve as a reminder for the crucial importance of social and political participation as in keeping with human nature and dignity.¹³

This strong encouragement for political participation means that Catholics should fully embrace their role as citizens. As citizens they are invited to use the normal or regular means of government and to make use of the privileges and rights afforded to any citizen. Within such means they are obligated to vote for what is the right thing to do, to embody Catholic conscience in political form in policy, law, and representation. The entire account turns upon that simple but profound notion of conscience in politics: the proper autonomy of the political order frees the Christian citizen to act on his/her “own responsibility” guided by “the dictates of a Christian conscience.” The confusion surrounding this term, conscience, or the unwillingness to abide its dictate, has come to the point of special urgency.

The crisis led Cardinal Ratzinger to issue the *Doctrinal Note on Some Questions Regarding the Participation of Catholics in Political Life*.¹⁴ He identifies the confusion that lies at the very heart of its achievement. He writes that “the rightful autonomy of the political or civil sphere” is a value attained and recognized by the Catholic Church:

For Catholic moral doctrine, the rightful autonomy of the political or civil sphere from that of religion and the Church—but not from that of morality—is a value that has been attained and recognized by the Catholic Church and belongs to inheritance of contemporary civilization.¹⁵

Prior to Vatican II the full differentiation of the political, a relative autonomy, had not been decisively attained nor fully recognized. Of course, the achievement is the fruition of centuries of development in Catholic doctrine and papal social teaching and the outcome of the important work of the prior fifty years in Catholic political thought by such thinkers as Maritain, Simon, Rommen, Sturzo, Murray and colleagues,¹⁶ and many others. Thus, it consolidates

¹³ The passage in full reads as follows: “The present keener sense of human dignity has given rise in many parts of the world to attempts to bring about a politico-juridical order which will give better protection to the rights of the person in public life. These include the right freely to meet and form associations, the right to express one’s own opinion and to profess one’s religion both publicly and privately. The protection of the rights of a person is indeed a necessary condition so that citizens, individually or collectively, can take an active part in the life and government of the state.”

¹⁴ Congregation for the Doctrine of the Faith, *Doctrinal Note on Some Questions Regarding the Participation of Catholics in Political Life*, November 24, 2002, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20021124_politica_en.html.

¹⁵ *Ibid.*, n. 6.

¹⁶ See my article “Jacques Maritain and Yves R. Simon’s Use of Thomas Aquinas in Their Justification of Democracy,” in *Thomas Aquinas and His Legacy*, ed. David Gallagher (Wa-

these gains and makes them available to Catholics as they face new conditions and circumstances in the modern world. Its urgency is also gathered from the very need to issue such a *Doctrinal Note* and it is stated explicitly that “the presentation of the fruits of the spiritual, intellectual and moral heritage of Catholicism in terms understandable to modern culture is a task of great urgency today, in order to avoid also a kind of Catholic cultural diaspora.”¹⁷ The *Doctrinal Note* was issued to confront explicitly the widespread error of a liberal denial of morality in the political realm, thus failing to open the doors of politics to Christ. The great achievement pertaining to the recognition of the proper differentiation and separation of Church and state became obscured by a false appeal to pluralism, or worse religious indifference, leading to the position that morality has no claim on political life and action. Many Catholics pushed to side the light of moral conscience. Cardinal Ratzinger warned Catholics to avoid being absorbed into the dominant liberal culture, but also to avoid a “diaspora” by the failure to engage modern culture and politics. The Catholic presence must be both light and salt. The liberal error loses the flavor of salt, and others may just withdraw from political order and fail to bring light to the world. The broad purpose of the intervention was to encourage meaningful participation in the political sphere, retaining the distinctive witness of Catholic conscience.

Participation and Secularity

For Catholics to successfully engage the cultural and political challenges of the day, the members of the Church must also appreciate the theology of the laity that provides the wider context for the Ratzinger intervention. The life of the citizen as such pertains to a task assigned to the lay people: “the laity, however, are given this special vocation: to make the Church present and fruitful in those places and circumstances where it is only through them that she can become the salt of the earth.”¹⁸ Indeed “secularity” is the very mark of the layman—“secular duties and activities belong properly to laymen” and they should work according

shington, D.C.: Catholic University of America Press, 1994), 149–72; John P. Hittinger, *Liberty, Wisdom, and Grace: Thomism and Modern Democratic Theory* (Lanham, MD: Lexington Books, 2002).

¹⁷ *Doctrinal Note*, 7.

¹⁸ II Vatican Council, Dogmatic Constitution on the Church: *Lumen Gentium*, November 21, 1964, 33, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html.

to the “laws proper to each discipline” and yet seek to inscribe the divine law into the very life of the earthly city—by way of their own conscientious action.¹⁹ The very secular work of the layman accomplishes both a religious mission and a temporal mission, to the benefit of both:

Even by their secular activity they must aid one another to greater holiness of life, so that the world may be filled with the spirit of Christ and may the more effectively attain its destiny in justice, in love and in peace. The laity enjoys a principle role in the universal fulfillment of this task. Therefore, by their competence in secular disciplines and by their activity, interiorly raised up by grace, let them work earnestly in order that created goods through human labor, technical skill and civil culture may serve the utility of all men according to the plan of the creator and the light of his word [...]. Thus, through the members of the Church, will Christ increasingly illuminate the whole of human society with his saving light.²⁰

It is part of the universal call to holiness that the layman receives such an important new emphasis according to Vatican II. No longer is the notion of holiness to be reserved for the priests, the religious. And yet the layman is not called to holiness by a secondary imitation of the religious by a flight from the world or by an explicitly ecclesiastical mission; rather it is through unity of life, unity of religious devotion and professional energy, the former illuminating and purifying the latter, that the layman achieves holiness of life. It may be called a sanctification of the world, a sanctification of the temporal order itself, in terms of the proper finalities and autonomy of the temporal order itself.

The Church will fulfill this mission, this benefit to the earthly city, not by assuming temporal power or by using the means proper to the earthly city such as coercion or political power. Rather, through the very means proper to the Gospel, through the inspiration of conscience and through a sacramental approach to life. The laity can become the source for a new politics supporting the dignity of the human person because of their unity of life. It is the same person who is a member of the Church and who is also a member of the political community. The burden of unity falls upon the individual person, the individual

¹⁹ Thanks to the lay faithful, “the presence and mission of the Church in the world is realized in a special way in the variety of charisms and ministries which belong to the laity. Secularity is the true and distinctive mark of the lay person and of lay spirituality, which means that the laity strive to evangelize the various sectors of family, social, professional, cultural and political life.” John Paul II, *Ecclesia in America* (Boston: Daughters of St. Paul, 1999), 44. Hereafter *Ecclesia in America*.

²⁰ *Lumen Gentium*, n. 36; on the positive meaning of “secularity” for the laity see Pope John Paul II, Post-synodal Apostolic Exhortation *Christifideles Laici* (Washington D.C.: United States Catholic Conference, 1989). Hereafter *Christifideles Laici*, 9, 15, 17.

Christian, who is a member of both societies.²¹ But such unity does not come without effort and spiritual growth. Catholics after the Council have simply failed to understand the principles and conditions for political life, or they have been unwilling to live them out. The Council, issuing no anathemas, finds the grave error on the side of Catholic witness, or its failure. “This split between the faith which many profess and their daily lives deserves to be counted among the more serious errors of our age.”²² A Christian may not claim a warrant to neglect or to shirk their earthly duties because of a concern with the otherworldly. In fact, such a Christian “jeopardizes his eternal salvation.” But neither should they separate temporal matters from the light of faith. The council fathers call for Christian laymen to gather into a “vital synthesis with religious values” all their earthly activities—humane, domestic, professional, social and technical enterprises. Secularity must be permeated by the radical newness of life derived from baptism:

The lay faithful’s position in the Church, then, comes to be fundamentally defined by their newness in Christian life and distinguished by their secular character. The images taken from the gospel of salt, light and leaven, although indiscriminately applicable to all Jesus’ disciples, are specifically applied to the lay faithful. They are particularly meaningful images because they speak not only of the deep involvement and the full participation of the lay faithful in the affairs of the earth, the world and the human community, but also and above all, they tell of the radical newness and unique character of an involvement and participation which has as its purpose the spreading of the Gospel that brings salvation.²³

In this passage John Paul II brings together the two essential conditions for a fruitful participation of Catholics in political life, namely, an appreciation for the value of the secularity of the lay apostolate, but also, and more crucially, the newness of baptism and the gifts of the Holy Spirit.

²¹ John P. Hittinger, “The Cooperation of Church and State: Maritain’s Argument from the Unity of the Person,” in *Reassessing the Liberal State: Reading Maritain’s Man and the State*, ed. John P. Hittinger and Timothy Fuller (Washington, D.C.: Catholic University of America, 2001).

²² “This council exhorts Christians, as citizens of two cities, to strive to discharge their earthly duties conscientiously and in response to the Gospel spirit. They are mistaken who, knowing that we have here no abiding city but seek one which is to come, think that they may therefore shirk their earthly responsibilities. For they are forgetting that by the faith itself they are more obliged than ever to measure up to these duties, each according to his proper vocation. Nor, on the contrary, are they any less wide of the mark who think that religion consists in acts of worship alone and in the discharge of certain moral obligations, and who imagine they can plunge themselves into earthly affairs in such a way as to imply that these are altogether divorced from the religious life,” *Gaudium et Spes*, n. 43.

²³ *Christifideles Laici*, n. 15.

Participation and Witness

The newness of baptism gives to each a prophetic witness to the truth of Christ: “the lay faithful are given the ability and responsibility to accept the gospel in faith and to proclaim it in word and deed, without hesitating to courageously identify and denounce evil.”²⁴ The prophetic role of the Catholic should become manifest most of all in the realm of political affairs. Pope John Paul II said that the laity are “called to allow the newness and the power of the gospel to shine out everyday in their family and social life, as well as to express patiently and courageously in the contradictions of the present age their hope of future glory even ‘through the framework of their secular life.’”²⁵ In an age of relativism and consumerism, when the voice of conscience is regularly ignored or denied, the prophetic role of the laity becomes particularly important. Relativism is a dangerous way to explain toleration and respect for the dignity of the person. Indeed, the very foundation of the modern state and its legitimacy to protect the rights of the person rest upon morality. Cardinal Ratzinger mentioned the hostile and “disingenuous” use of the rhetoric of toleration which seeks to ban Christian conviction or even moral conviction from having an impact on public reason and public action. The appeal to conscience is not an act of sectarian or confessional politics because conscience has a source in rational moral law and deliberation. Catholics for their part must understand the realm for autonomy and legitimate freedom of opinion concerns for the most part the question of means and technical solutions to the end of human flourishing. Cardinal Ratzinger acknowledged that there can exist a plurality of parties and opinions based on the development of different strategies for achieving our goals, even from a range of interpretation of the fundamental principles, and of course a pluralism deriving from different technical solutions to a given set of problems. But he says that one cannot compromise the fundamental dignity of the person. This not only threatens the foundation of free government and democratic regimes, but it also jeopardizes the integrity and unity of Catholic life. To compromise on such basic principles would threaten the witness of faith and the “unity and interior coherence” of faith. In other words, Catholics are living a lie when they profess the faith on Sunday and act in direct opposition to it in the political arena.

There cannot be two parallel lives in their existence: on the one hand, the so-called spiritual life, with its values and demands; and on the other, the so-called secular life, that is, life in a family, at work, in social relationships, in the responsibilities of public life and in culture. The branch, engrafted to the vine

²⁴ *Ibid.*, n. 15.

²⁵ *Ibid.*, n. 14.

which is Christ, bears its fruit in every sphere of existence and activity. In fact, every area of the lay faithful's lives, as different as they are, enters into the plan of God, who desires that these very areas be the "places in time" where the love of Christ is revealed and realized for both the glory of the Father and service of others. Every activity, every situation, every precise responsibility—as, for example, skill and solidarity in work, love and dedication in the family and the education of children, service to society and public life and the promotion of truth in the area of culture—are the occasions ordained by Providence for a "continuous exercise of faith, hope and charity."²⁶

The deepest appeal made in this doctrinal note is that of understanding political action as form of Christian witness and a way of living that is coherent. So in a way, we must say that political success is not the primary issue here at all; the failure of Catholic political action is a failure of personal integrity and a failure to show forth the truth of God's good creation and the redemption of Christ. Invoking Thomas More at the outset of the document, Cardinal Ratzinger clearly means to convey the notion that unity of life and witness to faith are the primary values at stake in political action. And that is not to say that we do not strive to "win" elections or guarantee that certain candidate or party is victorious. But the venture is more fundamentally about integrity and witness; as John Paul II explained, "whenever men or women heed the call of truth, their conscience then guides their actions reliably towards good. Precisely because of the witness which he bore, even at the price of his life, to the primacy of truth over power, St. Thomas More is venerated as an imperishable example of moral integrity."²⁷

Political action is a form of Christian witness if it is based upon a way of living that is consistent with the faith and coherent in its witness. The life and death of St. Thomas More shows us that unity of life and witness to faith are the primary values at stake in political action. It is a mode of evangelization, by which the Catholic citizen gives witness to fundamental truths concerning the dignity of the human person and the goodness, justice and mercy of the Triune God.

The challenges for such political participation to be a true witness are very great: "What is expected from the laity is a great creative effort in activities and works demonstrating a life in harmony with the Gospel."²⁸ Such effort must be prepared through formation of the laity. What is demanded of the lay person is a "vital synthesis" of "humane, domestic, professional, social and technical enterprises" with religious values, under whose "supreme direction all things are harmonized unto God's glory." In *Apostolicum Actuositatem* the formation of lay

²⁶ Ibid., n. 59.

²⁷ John Paul II, *Apostolic Letter Issued Motu Proprio Proclaiming Saint Thomas More Patron of Statesmen and Politicians* (October, 21, 2000), 1.

²⁸ *Ecclesia in America*, 44.

people requires “an integral human education.”²⁹ The foundation for this education must be “living by faith in the divine mystery of creation and redemption.” The knowledge of revelation through scripture and tradition must come first in the education for lay apostolate. In addition, the lay faithful need to be educated in theology, ethics, and philosophy.³⁰ Most of all, the lay people need “an exact knowledge of the Church’s social teaching.”³¹ Lay apostolate is the “fruit of a transfigured existence and a commitment to transforming the world in accordance with the Gospel.”³² All things are made new through Christ present in the Eucharist—the faithful are transfigured and can transform the world. The call of the lay faithful to apostolate through participation in political life is ultimately to be the fruit of the Eucharist. The world is good and has a “proper autonomy” deriving from its creaturely status. False autonomy asserts that created things do not depend on God, and that man can use them without any reference to their Creator. The proper framework for apostolate is to understand the proper origin and end of creation in the God. Without the creator, the creature is lost and becomes unintelligible. The Eucharist therefore leads us to a deep affirmation of the goodness of God’s creation. Through the Eucharist the lay faithful bring to the altar God’s good creation, now wounded by sin, but redeemed by the sacrifice of Christ. John Paul says that the Eucharist should “spur us on our journey through history and plants a seed of living hope in our daily commitment the work before us.”³³ As participants in the Eucharist the faithful develop a greater sense of responsibility for the world. Summarizing the rich detail of Vatican documents, the pope mentions as few key areas for our special concern—to defend human life from conception to its natural end, to attend to the plight of the poor, and the urgent need to work for peace, justice, and solidarity.

Conclusion

The call to greater social and political participation explained in *Gaudium et Spes*, Part II must be understood in the context of *Gaudium et Spes*, Part I.

²⁹ II Vatican Council, Decree on the Apostolate of the Laity *Apostolicam Auctositatem*, November 18, 1965, n. 29, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19651118_apostolicam-actuositatem_en.html. Hereafter *Apostolicam Auctositatem*.

³⁰ *Ibid.*

³¹ *Christifideles Laici*, n. 61.

³² John Paul II, Encyclical Letter *Ecclesia de Eucharistia* (April 17, 2003), 20, http://www.vatican.va/holy_father/special_features/encyclicals/documents/hf_jp-ii_enc_20030417_ecclesia_eucharistia_en.html.

³³ *Ibid.*

Pope John Paul II made it clear in his various writings how section § 22, “Christ reveals man to man himself and makes his supreme calling clear” helps the Church to realize her role in the modern world in politics, and in the other areas of urgent concern, family, culture, economics, and international relations. There are three aspects of authentic participation that must be understood and realized in practice: (1) the respect for human dignity and the rights that flow from that dignity; (2) the laity’s distinctive feature of secularity and engagement with temporal affairs understood in its theological significance, namely as the sign of God the creator and redeemer, who has handed over the world to women and men, so that they may participate in the work of creation, free creation from the influence of sin and sanctify themselves in such work; and (3) the newness of baptism and the ongoing renewal of the mind and heart of the believer so as to be a witness to the truth and love of the divine Trinity. Such a venture will require the ongoing formation of the lay faithful and the ongoing implementation of Vatican II as envisioned by Cardinal Wojtyła in his book *Sources of Renewal*.³⁴ We need nothing less than a profound deepening awareness of faith and the renewal of attitudes in each member of the Church. Pope John Paul II said that we have entered a great moment in history, crossing the threshold of the Third Millennium. “A new state of affairs today both in the Church and in social, economic, political and cultural life, calls with a particular urgency for the action of the lay faithful.”³⁵ Using the gospel parable of the owner of the vineyard sending forth workers, John Paul II sets before our eyes the Lord’s vast vineyard and the multitude of persons, both women and men, who are called and sent forth by him to labor in it. “The vineyard is the whole world (cf. Mt 13:38) which is to be transformed according to the plan of God in view of the final coming of the Kingdom of God.”

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³⁴ Karol Wojtyła, *Sources of Renewal: The Implementation of the Second Vatican Council*. 1st U.S. ed. (San Francisco: Harper & Row), 1980.

³⁵ *Christifideles Laici*, n. 3.

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John P. Hittinger

Trois dimensions de l'engagement politique des catholiques :
dignité, sécularité, témoignage

Résumé

Dans le présent article, j'étudie la question de l'engagement qui apparaît dans *Gaudium et Spes* en tant que nouvelle caractéristique essentielle de l'Enseignement catholique social. L'article examine aussi les raisons de l'intervention de la part de la Congrégation pour la Doctrine de la Foi/du cardinal Ratzinger en 2002 dans la matière de l'engagement. Elle a été exprimée dans la «Note doctrinale concernant certaines questions sur l'engagement et le comportement des catholiques dans la vie politique». La clé, que l'on propose, permettant de comprendre l'engagement dans la vie des catholiques réside dans une approche convenable de l'apostolat laïc et du témoignage chrétien spécifique donné dans la vie politique.

Mots clés : politique, démocratie, engagement, témoignage, *Gaudium et Spes*

John P. Hittinger

Le tre dimensioni della partecipazione politica dei cattolici:
dignità, secolarità, testimonianza

Sommario

Nel presente articolo mi occupo dello studio dell'argomento della partecipazione che appare nella *Gaudium et Spes* come caratteristica nuova essenziale della Dottrina Sociale della Chiesa Cattolica. L'articolo esamina anche le cause dell'intervento da parte della Congregazione per la Dottrina della Fede/del cardinale Ratzinger nel 2002 sulla questione della partecipazione. È stato espresso nella "Nota dottrinale circa alcune questioni riguardanti l'impegno e il comportamento dei cattolici nella vita politica". La chiave proposta per la comprensione della partecipazione nella vita dei cattolici sta nell'approccio appropriato all'apostolato laico e al genere specifico di testimonianza cristiana data nell'ordine politico.

Parole chiave: politica, democrazia, partecipazione, testimonianza, *Gaudium et Spes*

Part Two

Juridical Canonical Thought

Stanislav Příbyl

University in České Budějovice, Czech Republic

Gaudium et Spes: Between Pastoral Character and Prescriptive Obligatoriness

Abstract: In the 1983 Code of Canon Law, Pope Saint John Paul II states that the Code is especially inspired by the Second Vatican Council constitution, that is, the Dogmatic Constitution *Lumen Gentium* and the Pastoral Constitution *Gaudium et Spes*. The second constitution does not have to be a source of inspiration to the formulation of legal norms. However, we can find there some support for future canonical regulations. This concerns, in particular, the extension of the idea of marriage which inspired the Code that defines, anew, the dissolution of marriage and clarifies the relations between the state and the Church on the basis of which the concordate law is developed in the post-Second Vatican Council times.

Keywords: Council, constitution, the Church, canonical law, marriage, concordate

The Church's Attitude towards the World

The Pastoral Constitution *Gaudium et Spes* “On the Church in the Modern World,” promulgated on December 7, 1965¹ is, in a certain way, an antipole to the Dogmatic Constitution *Lumen Gentium*.² While the latter is oriented *ad intra*, that is, to the inner organization and life of the Church, *Gaudium et Spes* is oriented to the world outside, *ad extra*. In fact, the Church at Vatican II wanted

¹ *Gaudium et Spes*, in *Acta Apostolicae Sedis* [henceforth: AAS] 58 (1966): 1025–120.

² *Lumen Gentium*, in AAS 57 (1965): 5–71.

to show its sensitivity towards the world outside, in which especially those who are poor and afflicted experience their “joys and hopes, griefs and anxieties.”³ Nevertheless, it is clear that incautious openness to the world could and still can result in renouncing the mission entrusted to it by Christ. The balance between being faithful to its own mission and being sensitive to the pressing needs of the world is aptly formulated as “not being identified,” while “not being closed” to the world.⁴ Despite its clear openness, the constitution did not want to deny the very identity of the Church: “To a large extent, the Pastoral Constitution represents the principal line of the Council: finding the identity of the Church in relation to modernity. *Gaudium et Spes* can be understood as a programmatic expansion and methodological grasp of the *aggiornamento* as the crucial idea of the Council.”⁵

However, one cannot assume that prior to Vatican II the Church did not seek to accommodate to the civil society in a progressing world. Nevertheless, the presupposition of this accommodation was the a priori acknowledgement of the principles proclaimed by the Church. In the anti-Modernist decree *Lamentabili* (1907), the Holy Office under the pontificate of Pius X rejected the idea that the Church fails to accommodate to contemporary progress: “Scientific progress demands that the concepts of Christian doctrine concerning God, creation, revelation, the Person of the Incarnate Word, and Redemption be re-adjusted.”⁶ We should also add that Pope John XXIII in his Apostolic Constitution *Humanae Salutis*, by which he summoned the Second Vatican Council, did not judge the world in a very optimistic way, rather, the contrary:

Today the Church is witnessing a crisis underway within society. While humanity is at the threshold of a new age, immensely serious and broad tasks await the Church, as in the most tragic periods of her history. It is a question, in fact, of bringing the perennial life-giving energies of the Gospel to the modern world, a world that boasts of its technical and scientific conquests but

³ *Gaudium et Spes*, n. 1.

⁴ “This Council represents a milestone in the life of the Church as regards the attitude to the world. Following the Council’s declarations, the Church is in no way identical with the world; however, she is not withdrawn from it. As it is expressed in the first paragraph of the constitution, the Church shows solidarity with the world: ‘The joys and the hopes, the griefs and the anxieties of the men of this age, especially those who are poor or in any way afflicted, these are the joys and hopes, the griefs and anxieties of the followers of Christ. Indeed, nothing genuinely human fails to raise an echo in their hearts.’” Aleš Opatrný, Kardinál Tomášek a pokoncilní proměna pražské arcidiecéze (Kostelní Vydří: Karmelitánské nakladatelství, 2002), 51.

⁵ Ansgar Kreutzer, “Die Bedeutung von, *Gaudium et spes* zur Auslegung und Aktualisierung des II. Vatikanums,” in *Geist in Form. Facetten des Konzils*, ed. Thomas Dietrich, Thomas Herkert, and Pascal Schmitt (Freiburg im Breisgau: Herder, 2015), 124.

⁶ Decree *Lamentabili*, 64, in Heinrich Denzinger, *Kompendium der Glaubensbekenntnisse und kirchlichen Lehrentscheidungen* (Freiburg im Breisgau: Herder, 1991), 939.

also bears the effects of a temporal order that some have wanted to reorganize by excluding God.⁷

Openness and Obligatoriness of the Constitution

In contrast to the previous practice, the document changes the addressees to whom it is intended. In fact, the last encyclical published prior to Vatican II and dealing specifically with the Church, *Mystici Corporis* of Pope Pius XII (promulgated in 1943),⁸ is addressed to the “venerable brethren, patriarchs, primates, archbishops, bishops and other local ordinaries enjoying peace and communion with the Apostolic See,” whereas *Gaudium et Spes* declares the following:

Hence this [...] Council, having probed more profoundly into the mystery of the Church, now addresses itself without hesitation, not only to the sons of the Church and to all who invoke the name of Christ, but to the whole of humanity. For the council yearns to explain to everyone how it conceives of the presence and activity of the Church in the world of today.⁹

This formulation “mystery of the Church” is an allusion to the encyclical *Mystici Corporis*; however, in this context it is primarily related to the constitution *Lumen Gentium*. Due to its explicitly dogmatic character, this constitution on the Church presents the most important source of inspiration of the Code of Canon Law (*Codex iuris canonici*), promulgated by Pope John Paul II in 1983.¹⁰ The papal apostolic constitution *Sacrae Disciplinae Leges*, by which the Code is promulgated, states that “this new Code could be understood as a great effort to translate the same doctrine, that is, the conciliar ecclesiology, into canonical language.”¹¹ Together with the norms of the previous Code of Canon Law from 1917,¹² *Lumen Gentium* is the most frequently used source of the actual legal norms in the Code of John Paul II.

⁷ *Humanae Salutis*, in AAS 54 (1962): 6.

⁸ *Mystici Corporis*, in AAS 35 (1943): 193–248.

⁹ *Gaudium et Spes*, n. 2. “There is a certain claim behind it, because the explanation says that this mission addressed to all people refers to God’s salvific will which has manifested itself in history and is still there ‘today,’” Johannes Schelhas, *Das Zweite Vatikanische Konzil. Geschichte—Themen—Ertrag* (Regensburg: Pustet, 2014), 89.

¹⁰ CIC, in AAS 75, Pars II (1983), 1–317; further CIC/1983.

¹¹ *Sacrae Disciplinae Leges*, in AAS 75, Pars II (1983): VII–XIV, XI.

¹² CIC, in AAS 9, Pars II (1917): 5–593.

Gaudium et Spes, however, is a specific type of a document: it transcends the bounds of the possible implementation into the canonical or into any other legally normative regulation, which would distinguish between those standing “outside” and those remaining “inside” and thus determine obligatory rules of conduct to both of these groups.¹³ Nevertheless, we need to point out that even such a “wide astridish” and in many ways historically conditioned document¹⁴ presents the doctrine of the Church, to which the Canon Law ascribes obligatory status for the Catholic faithful:

Although not an assent of faith, a religious submission of the intellect and will (*religiosum intellectus et voluntatis obsequium*) must be given to a doctrine which the Supreme Pontiff or the college of bishops declares concerning faith or morals when they exercise the authentic magisterium (*magisterium authenticum*), even if they do not intend to proclaim it by definitive act; therefore, the Christian faithful are to take care to avoid those things which do not agree with it.¹⁵

Individual Conscience

The constitution *Gaudium et Spes*, however, transcends the visible boundaries of the Catholic Church also in such a private thing, as the human conscience. It respects its dignity in a way unheard of in the magisterial documents until that time: “In fidelity to conscience, Christians are joined with the rest of men in the search for truth, and for the genuine solution to the numerous problems which arise in the life of individuals from social relationships. [...] Conscience frequently errs from invincible ignorance without losing its dignity.”¹⁶

¹³ “The Church as People of God is, therefore, not a certain caste, which distances itself from the world because it is aware of its dignity, or which is immersed in itself and it ‘cultivates’ a dialogue or similar relations with the outside (the humanity). Rather, the Church is humanity itself inasmuch as it is incorporated into Christ and united with Him and inasmuch as this incorporation spreads to other people,” Karel Skalický, *Radost a naděje* (Rome: Křesťanská akademie, 1968), 228.

¹⁴ “In more than a single example, the Council shows how trivially it uses its own criteria which it formulated. This was the case of the impact of the media on the modern society. Similarly, in a major part of the constitution *Gaudium et Spes* it adopted cheap historical optimism of the ‘Western’ type and the very same document also superficially declared the Gospel appeal of the nations for peace in the world,” Giuseppe Alberigo, *Stručné dějiny II. Vatikánského koncilu* (Brno: Barrister & Principal, 2008), 157.

¹⁵ CIC/1983, Can. 752.

¹⁶ *Gaudium et Spes*, n. 16.

Such a courageous formulation, however, required necessary clarification in accordance with the traditional Catholic approach: “The same cannot be said for a man who cares but little for truth and goodness, or for a conscience which by degrees grows practically sightless as a result of habitual sin.”¹⁷ A concretization of the requirement to seek the truth and goodness may be seen in the insistence of the Declaration on Religious Freedom *Dignitatis Humanae*¹⁸ of the same Council to seek the truth, especially “religious truth.”¹⁹

The legal-canonical transpositions of the fundamental principles of the declaration represents one of the programmatic norms of the Code of John Paul II: “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.”²⁰ In contrast to it, the 1917 Code obliged all people to “be immersed in the doctrine of the Gospel.”²¹ The Church and the state found it sufficient to just kindly tolerate the churches and worldviews whose positions the Church could not accept, whereas positive support was supposed to be manifested exclusively to the right religion (*vera religio*), preached by the Catholic Church. The view of the Declaration on Religious Freedom, however, is based on the understanding of conscience we find in *Gaudium et Spes*, that is, its attention is drawn towards individual human person and his/her conscience seeking the truth.²²

¹⁷ *Gaudium et Spes*, n. 16. “The presence of two models joined into a single whole is probably a consequence of two streams at the Second Vatican Council—a traditional and a progressive one, respectively. One of them wished to join conscience with the obedience to the law, the second one with the sincerity of the person,” Ivan Kútňny, “Svedomie—nescudziteľná svätýňa človeka—prvý zo všetkých Kristových zástupcov I,” *Teologický časopis* 1 (2015): 63–64.

¹⁸ *Dignitatis Humanae*, in AAS 58 (1965), 929–46.

¹⁹ Cf. *Dignitatis Humanae*, nn. 2, 3.

²⁰ CIC/1983, Can. 748 § 1.

²¹ Cf. CIC/1917, Can. 1322.

²² “In the course of the conciliar discussions, many people eagerly defended the concept of mere tolerance with the help of a logical argument: only the truth has rights; a blunder has no right at all. The Declaration on Religious Freedom chose a different principle as a point of departure: the dignity of human person (*Dignitatis Humanae*, 2). As the human person is endowed with reason and free will, he/she is bound to steer his/her behaviour as the highest instance of human conduct even in a case, in which the decision of the conscience would be—when judged objectively—at odds with the moral norms,” Johannes Mühlsteiger, “Glaubens und Religionsfreiheit,” in *Grundriß des nachkonziliaren Kirchenrechts*, ed. Joseph Listl, Hubert Müller, and Heribert Schmitz (Regensburg: Pustet, 1979), 436–37.

Doctrine of the Ends of Matrimony

Gaudium et Spes had a remarkable impact on the canonical treatment of the basis of Christian marriage. The 1917 Code distinguished between primary ends of marriage, that is, procreation and education of the offspring (*procreatio atque educatio prolis*), from the secondary ends, namely, mutual help of the spouses and allaying concupiscence (*mutuum adiutorium et remedium concupiscentiae*).²³ Nevertheless, even prior to Vatican II, the idea of marriage was not fully exhausted in such a schematical concept. This can be documented by the encyclical of Pope Pius XI *Casti Connubii*:²⁴ “This mutual moulding of husband and wife, this determined effort to perfect each other, can in a very real sense, as the Roman Catechism teaches, be said to be the chief reason and purpose of matrimony, provided matrimony be looked at not in the restricted sense as instituted for the proper conception and education of the child, but more widely as the blending of life as a whole and the mutual interchange and sharing thereof (*vitae communio, consuetudo, societas*).”²⁵

In contrast to its predecessor, the 1983 Code does not hierarchize the ends of marriage, but presents two equally valuable goals of marriage, namely, the “good of the spouses” (*bonum coniugum*)²⁶ and “the procreation and education of offspring.”²⁷ *Gaudium et Spes* understands marriage primarily as an “intimate partnership of married life and love”²⁸; nevertheless, the term “good of the spouses” appears here not only in relation to the ends of marriage: “For the good of the spouses and their off-springs as well as of society, the existence of the sacred bond no longer depends on human decisions alone.”²⁹ Such a concept of marriage refers more to the close connection between the private life of the

²³ Cf. CIC/1917, Can. 1013 § 1.

²⁴ *Casti Connubii*, in AAS 22 (1930): 541–73.

²⁵ *Casti Connubii*, n. 24.

²⁶ “In accordance with the concept of Vatican II (at least from a formal point of view), the new Code got away with the hierarchization of the ends of marriage. Moreover, ‘the good of the spouses’ was made equivalent to ‘procreation and education of the offspring.’ This duly emphasised the mutual perfection of the spouses in accordance with modern ways of thinking and with the actual progress of biological, psychological, anthropological and other sciences,” Luigi Chiappetta, *Il matrimonio nella nuova legislazione canonica e concordataria. Manuale giuridico-pastorale* (Roma: Edizioni Dehoniane, 1990), 13–14.

²⁷ Cf. CIC/1983, Can. 1055 § 1.

²⁸ *Gaudium et Spes*, n. 48. “This made the personal aspect of marriage the decisive point in the doctrine of the Church. Postconciliar theology of marriage has not dropped it, and so it has remained—even though with a certain degree of weakening—anchored in the foundations of new marriage law.”—Otto Hermann Pesch, *Das zweite Vatikanische Konzil. Vorgeschichte—Verlauf—Ergebnisse—Wirkungsgeschichte* (Kevelaer: Topos, 2012), 336.

²⁹ *Gaudium et Spes*, n. 48.

spouses and their integration into the tissue of social relationships. We can, therefore, observe a certain affinity between the terms “good of the spouses” and “common good” or “common welfare” (*bonum commune*), which traditionally belong to the terminology of the Christian tradition or the social doctrine of the Church.³⁰ In a section specifically devoted to the ends of marriage, *Gaudium et Spes* names only a single one: “By their very nature, the institution of matrimony itself and conjugal love are ordained for the procreation and education of children, and find in them their ultimate crown.”³¹ Such a married love, however, is “eminently human one since it is directed from one person to another through an affection of the will; it involves the good of the whole person.”³² The mutual connection between the two ends of marriage is delineated already in the very constitution of the Council and the legislator of the Code creates a felicitous synthesis of the two. As for the contractors of marriage, the good of the spouses presupposes certain natural human qualities which the Canon Law expects.³³ According to *Gaudium et Spes*, impossibility or absence of procreation for legitimate reasons do not hinder the marriage contract:

Marriage to be sure is not instituted solely for procreation; rather, its very nature as an unbreakable compact between persons, and the welfare of the children, both demand that the mutual love of the spouses be embodied in a rightly ordered manner, that it grow and ripen. Therefore, marriage persists as a whole manner and communion of life, and maintains its value and indissolubility, even when despite the often intense desire of the couple, offspring are lacking.³⁴

³⁰ “Since the good of the spouses transcends the good of the individual, it also becomes common good, although on a very elementary level. In this way, the expression acquires a firmer anchoring, because common good is an established term both in political philosophy, but also in the social doctrine of the Church. Thus the good of the spouses can be analysed in more detail as a particular type of common good,” Dominik Opatrný, “Dobro manželů v kontextu biblické etiky,” *Revue církevního práva* 57 (2014): 53–54.

³¹ *Gaudium et Spes*, n. 48.

³² *Ibid.*, n. 49.

³³ “Minimal requirements regarding the good or welfare of the spouses require sufficient use of reason to understand what marriage and family mean; further, it presupposes satisfactory judgement to assess the major rights and obligations which characterise family relations, and also inner psychic capabilities to live these relations in a permanent way while not refusing the mutual good of the spouses as the end of marriage,” Jiří Kašný, *Manželství v západní tradici. Soubor kanonických studií* (České Budějovice: Jihočeská univerzita, 2006), 35.

³⁴ *Gaudium et Spes*, n. 50.

The Role of Lay Christians

The constitution *Gaudium et Spes* allows for the existence of a pluralistic society, in which the Church acts both as a whole, but also as individual citizens of the state who are Christians. Under these circumstances, one needs to distinguish the following things: “It is very important, especially where a pluralistic society prevails, that there be a correct notion of the relationship between the political community and the Church, and a clear distinction between the tasks which Christians undertake, individually or as a group, on their own responsibility as citizens guided by the dictates of a Christian conscience, and the activities which, in union with their pastors, they carry out in the name of the Church.”³⁵ In this context, the Code of John Paul II considered it fitting to include the requirement of the constitution not to confuse individual opinions with the message of the Gospel³⁶ into the list of the obligations and rights of the lay Christian faithful: “They are to take care that their actions are imbued with the spirit of the gospel and are to heed the doctrine set forth by the magisterium of the Church. In matters of opinion, moreover, they are to avoid setting forth their own opinion as the doctrine of the Church.”³⁷

Although the attention paid by the Council to the lay Christians is manifested in a concentrated fashion in an independent decree *Apostolicam Actuositatem*,³⁸ the programmatic document in this context is again the constitution *Gaudium et Spes*: “Since they have an active role to play in the whole life of the Church, laymen are not only bound to penetrate the world with a Christian spirit, but are also called to be witnesses to Christ in all things in the midst of human society.”³⁹ This teaching of the Council later helped a more demonstrative differentiation of the actual grounds of the constitutional embedding of the “People of God” in the Code of John Paul II. Purely juridically speaking, the Code stipulates the following: “By divine institution, there are among the Christian faithful in the Church sacred ministers who in law are also called clerics; the other members of the Christian faithful are called lay persons.”⁴⁰ This definition is logically correct, however, lay persons are defined here negatively, only as “non-clerics.” Only in the catalogue of obligations and rights of lay Christian faithful, one can find the

³⁵ *Gaudium et Spes*, n. 76.

³⁶ Cf. *Ibid.*, n. 43.

³⁷ CIC/1983, Can. 227.

³⁸ *Apostolicam Actuositatem*, in AAS 58 (1966): 834–64. “Further implementing regulations is given by the decree on the apostolate of the lay Christians. When judged by the statements of the constitution on the Church, quite a few things may seem more reserved, colourless and ‘balanced.’” Otto Hermann Pesch, *Das zweite Vatikanische Konzil*, 206.

³⁹ *Gaudium et Spes*, n. 43.

⁴⁰ CIC/1983, Can. 207 § 1.

specific role of lay persons in the Church, inspired by the postulates of the constitution *Gaudium et Spes*: “According to each one’s own condition, they are also bound by a particular duty to imbue and perfect the order of temporal affairs with the spirit of the gospel and thus to give witness to Christ, especially in carrying out these same affairs and in exercising secular functions.”⁴¹

The Relations between the State and the Church

The constitution also comes up with a new formulation of the relation between the state and the Church. The basic thesis—inspired by the Constitution of the Italian Republic⁴²—is the following:

The Church and the political community in their own fields are autonomous and independent from each other. Yet both, under different titles, are devoted to the personal and social vocation of the same men. The more that both foster sounder cooperation between themselves with due consideration for the circumstances of time and place, the more effective will their service be exercised for the good of all.⁴³

Such an equivalence of the secular and spiritual power does not correspond to the ideas of the Church from the time prior to Vatican II. The superiority of the Church in its relation to the state was justified by the higher supernatural purposes, for which the Church was constituted.⁴⁴ The state was understood as a contractual partner on the basis of the “concept of a privilege grounded in the theory of the mediating role of the Church in temporal issues (*teoria potestatis indirectae Ecclesiae in temporalibus*); the basis of such a concept was the understanding of the Church and the state as perfect communities, where the Church is—given its higher mission—a superior community. Such a theory

⁴¹ CIC/1983, Can. 225 § 2.

⁴² The Constitution of the Italian Republic, Art. 7, https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.

⁴³ *Gaudium et Spes*, n. 76.

⁴⁴ “We neither grant the subordination of the Church to the state, nor their mere coordination; since where coordination is, there is also subordination. In the same way, we do not demand the subordination of the state as regards its power, but distinctly require its right to conduct temporal issues, which are necessary to the spiritual ones, from which they can be distinguished only with great difficulty, if at all,” Silvestr M. Braito, *Církev. Studie apologeticko-dogmatická* (Olomouc: Dominikánská edice Krystal, 1946), 442.

stipulates that at the moment of contracting an agreement the sovereign Church concedes certain privileges to the state (e.g., the influence on the appointment of bishops).⁴⁵ In *Gaudium et Spes*, the Church tends to “purify” its spiritual mission, which may be compromised by an overt favor of the state: “She, for her part, does not place her trust in the privileges offered by civil authority. She will even give up the exercise of certain rights which have been legitimately acquired, if it becomes clear that their use will cast doubt on the sincerity of her witness or that new ways of life demand new methods.”⁴⁶ This approach subsequently influenced the practice of concluding contracts of the concordat type. In the period prior to Vatican II, the Church was forced to frequently adjust their relations with authoritative regimes, as it was the case of Italy (1929), Germany (1933), or Spain (1953). The increase in the number of concordats since the 1960s and their character is a testimony to the application of the principle of the relations between the state and the Church in accordance with the teachings of the constitution *Gaudium et Spes*.⁴⁷

Conclusion

It is clear that certain topics of *Gaudium et Spes* are—despite the pastoral character of the Constitution—juridically understandable. Moreover, the constitution itself represents an obligatory document of the Magisterium. Even though the respect to the sovereignty of each person’s conscience, even in the case of a conscience erring due to invincible ignorance, stands aloof from the possibilities of immediate legal regulation, the obligation to seek and find the truth about God and His Church has become a postulate, which has found its essential and programmatic place in the initial canons of the third book of the Code of Canon Law on the teaching function of the Church. Postconciliar development of concordat law is then an application of the principles of the relations between the state and the Church, as formulated precisely by the constitution *Gaudium et Spes*. The constitution had a significant impact also on the church doctrine

⁴⁵ Damián Němec, *Konkordátní smlouvy Svatého stolce s postkomunistickými zeměmi (1990–2008)* (Bratislava: Ústav pre vzťahy štátu a cirkvi, 2010), 16.

⁴⁶ *Gaudium et Spes*, n. 76.

⁴⁷ “Approximately 70 percent of the countries concluded their international treaties with the Holy See after Vatican II, i.e. in the second half of the 20th century. Overall, it comprises about a half of all the treaties,” Marek Šmid, “Medzinárodnoprávna subjektivita Svätej stolice: bilaterálne medzinárodné zmluvy,” in *Clara pacta—boni amici. Zmluvné vzťahy medzi štátom a cirkvami*, ed. Marek Šmid and Michaela Moravčíková (Bratislava: Ústav pre vzťahy štátu a cirkvi, 2009), 352.

regarding marriage and contributed—amongst other things—to a deeper understanding of the end of marriage, which was subsequently reflected in the marriage law of the Code. It is, therefore, no coincidence that the Apostolic Constitution *Sacrae Disciplinae Leges*, by which the Code of Canon Law was promulgated, states that “from this there is derived that character of complementarity which the Code presents in relation to the teaching of the Second Vatican Council, with particular reference to the two constitutions, the Dogmatic Constitution *Lumen Gentium* and Pastoral Constitution *Gaudium et Spes*.”⁴⁸

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⁴⁸ *Sacrae Disciplinae Leges*, XII.

Sacrae Disciplinae Leges. In AAS 75, Pars II (1983): VII–XIV.

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Stanislav Příbyl

Gaudium et Spes:
entre caractère pastoral et obligation imposée

Résumé

Dans la constitution apostolique du Code de droit canonique promulguée, Jean-Paul II constate que le code est inspiré particulièrement par les constitutions du Concile Vatican II, c'est-à-dire par la constitution dogmatique *Lumen Gentium* et la constitution pastorale *Gaudium et Spes*. La deuxième constitution n'est pas en elle-même la source d'inspiration pour formuler des normes juridiques. On peut néanmoins y trouver un certain appui pour les réglementations canoniques futures. Cela concerne en particulier l'étude de la notion de mariage qui a inspiré la création du Code tout en redéfinissant les fins du mariage et la nouvelle organisation des relations entre l'État et l'Église, sur la base desquelles le droit de concordat est développé à l'époque de l'après-concile.

Mots clés : Concile, constitution, Église, droit canonique, mariage, concordat

Stanislav Příbyl

Gaudium et spes:
tra il carattere pastorale ed il dovere imposto

Sommarío

Nella costituzione apostolica proclamata del Codice di Diritto Canonico il Papa Giovanni Paolo II afferma che il codice è ispirato particolarmente dalle costituzioni del Concilio Vaticano II ossia dalla Costituzione Dogmatica *Lumen Gentium* e dalla Costituzione Pastorale *Gaudium et Spes*. La seconda costituzione non può essere di per sé la fonte di ispirazione per la formulazione di norme giuridiche. Tuttavia è possibile trovarci un certo sostegno per le future norme canoniche. In particolare ciò riguarda l'approfondimento della concezione di matrimonio che aveva ispirato la creazione del Codice con una nuova definizione dei termini del matrimonio, e una nuova organizzazione dei rapporti tra lo stato e la Chiesa sulla base dei quali il diritto concordatario viene sviluppato nei tempi post-conciliari.

Parole chiave: Concilio, costituzione, Chiesa, diritto canonico, matrimonio, concordato

Tomasz Galkowski

University of Cardinal Stefan Wyszyński, Warsaw, Poland

Correlation of Rights and Duties of the Faithful in the Constitution *Gaudium et Spes* and Its Influence on the Formulations in the Code of Canon Law

Abstract: The *Gaudium et Spes* Constitution names a lot of rights and duties of a human person. They have emphasized the constant teaching of the Church on the interdependency of rights and duties. This paper poses a question about the possible influence of the Constitution on the formulation of the rights and duties of the faithful which were laid down in the Code of Canon Law. This influence can be noticed, in particular, in the ideological layer of the unshakable conviction of the Church about the interdependency of rights and duties, in the possibility of limiting the rights and, to a lesser degree, in the relation to specific formulations of the rights and duties, which stems from the diversity of the addressees of both documents.

Keywords: *Gaudium et Spes*, the faithful, rights, duties, Code of Canonical Law

The social teaching of Church concerning the rights and duties of the person dates back to the times of Pope Leon XIII. His teaching, bearing in mind earlier aversion to the Declaration of the Rights of Man and of the Citizen beginning with Pius VI, should be regarded as crucial in the approach of Church to human rights. In one of his letters he wrote: “The reason why we addressed our encyclicals to the bishops [...] lies in the interest of people, so that they can learn to assess their own rights and duties and be duly responsible for their own

salvation”¹ [trans. T.G]. Leon XIII gave a strong incentive to the social teaching of Church concerning the rights and duties of man. The encyclical *Rerum Novarum*, despite the common belief, cannot be regarded as a declaration of rights of man, but only as a call for respecting his social rights (worker’s rights). Its meaning is based on the fact that the pope emphasizes in it two basic principles which will constitute a permanent point of reference for further statements of the Magisterium of Church. The first of them is the dignity of the person as a foundation of his inviolable rights and duties. The latter concerns the functions of the state which bears responsibility for respecting, protecting, and promoting human rights, rooted in human dignity which every man deserves as a person.

Beginning with the pope’s first positive statements concerning the rights of man one can notice an element which distinguishes them from secular approach. Legal documents of the 18th and 19th centuries formulated first of all the rights of individuals and, in negative form, duties of the state towards its citizens.² The duties of an individual towards other people or community and the state were formulated to a much smaller extent. Today’s statements on human rights refer to the duties of man, though in a very limited way.³ The responsibilities are formulated by means of separate documents in the form of charters of duties, independently of declaration of the rights of man.⁴ However, the Catholic social teaching from the very beginning highlighted close correlation between rights and duties of man, simultaneously emphasizing the significance of awareness of the duties.⁵

¹ Leon XIII, “Litterae ad Ministrum generalem Ordinis Fratrum Minorum de doctrina divi Thomae aquinatis sequenda” (25.11.1898), *Acta Sanctae Sedis* [henceforth: AAS] 31 (1998–1999): 266.

² Leon XIII spoke in the same manner about the duties which lay above all on the state. The responsibility of the state is taking care of the common weal. The pope wrote about duties of the state towards the individual. The first statements about mutuality of rights and responsibilities concerned bilateral relation, in which the eligible and the obliged side are mutually an employer and a worker. Tomasz Gałkowski, *Prawo-Obowiązek. Pierwszeństwo i współzależność w porządkach prawnych: kanonicznym i społeczności świeckiej* (Warszawa: Wydawnictwo UKSW, 2007), 244–45.

³ Daniel Collard, “Essai sur la problématique des devoirs de l’homme,” *Revue des droits de l’homme* 5 (1972): 335.

⁴ There are few documents whose title proves that they are dedicated to the issue of rights and duties of man, such as, *Déclaration des devoirs fondamentaux de peuples et des états asiatique* (9.12.1983). In international acts of human rights we can find merely single references to the duties of man. Most important of them are: *The Universal Declaration of Human Rights* (1948), Art. 29; *International Covenant on Civil and Political Rights* (1966), preamble; *Declaration of the Rights of the Child* (1959), principles 6, 7. There exist declarations of local scope, for example: *American Declaration of the Rights and Duties of Man* (1948) or *Charte africaine des droits de l’homme et de peuples* (1981).

⁵ “A sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man, and the demand is increasingly made that men should act on their own judgment, enjoying and making use of a responsible freedom, not

Foundation and Origin of Interrelationships of Rights and Duties in the Teaching of Church

Foundation is the kind of reality which is prior to origin, it constitutes its beginning. The origins are the consequence of the existing basis providing principles which do not contradict their existence. In accordance with this distinction, the basis (foundation) of the whole creation is personal God who reveals himself in history to man and in whom everything has its beginning and fulfillment, whereas man as his/her creation is the source of all relations and references first of all to the other man, created like him/herself, in the image and likeness of God. A characteristic of social ideology of Church concerning rights and duties of the person is the fact that it is not confined to the real aspect of describing reality, but explains it in the light of the revealed truth. The Magisterium of Church captures the rights and duties of man in a wider perspective than secular science. John XXIII in his encyclical emphasized that they have their foundation in God, who introduces order among his creatures. The consequence of the existence of order is the duty to keep it, which contributes to salvation of man but, at the same time, is the guarantee of achieving and maintaining peace.⁶ The order represented in the natural law (*lex naturalis*) has its basis in God's conception and his eternal law. The natural law shows the human a way of life, simultaneously expressing his rights and duties. They are not merely the result of rational decisions of the person or the product of his resolutions.⁷ It was highlighted by John XXIII who taught that "the order which prevails in human society is wholly incorporeal in nature. Its foundation is truth, and it must be brought into effect by justice. It needs to be animated and perfected by men's love for one another"⁸ because it "finds its source in the true, personal and transcendent God."⁹ Justification of rights and duties of man significantly differs from their justification in the secular doctrine. Church justifies them referring to two basic dimensions: the natural law and personal dignity of man, at the same time pointing out at an inextricable connection between rights and duties.

driven by coercion but motivated by a sense of duty." Vatican Council II, "Declaration on religious Freedom: *Dignitatis Humanae*," n. 1, accessed December 29, 2015, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html.

⁶ John XXIII, *Pacem in Terris*. Encyclical of Pope John XXIII on Establishing Universal Peace in Truth, Justice, Charity, and Liberty (April 11, 1963), nn. 1–7, accessed December 29, 2015, http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html.

⁷ Galkowski, *Prawo-Obowiazek*, 291–92.

⁸ *Pacem in Terris*, n. 37.

⁹ *Ibid.*, n. 38.

John XXIII in the encyclical *Pacem in Terris*, broke the silence of Pius XII around the Universal Declaration of Human Rights from 1948¹⁰ and acknowledged it as a decisive step on the way to creating an international, political, and legal organization, and as a space for dialogue between Church and the world.¹¹ He drew attention to the inextricable connection between rights and duties as well as their correlation. Formulating in the encyclical an array of responsibilities of man, the pope exposed himself to accusations that talking about the rights of man he exaggerates the significance of his duties.¹²

Pointing out at the inextricable connection between rights and duties John XXIII wrote that “the natural rights of which we have so far been speaking are inextricably bound up with as many duties, all applying to one and the same person. These rights and duties derive their origin, their sustenance, and their indestructibility from the natural law, which in conferring the one imposes the other.”¹³ At the same time the pope indicated another kind of correlation between rights and duties which refers to their legal interdependence, that is: “In human society one man’s natural right gives rise to a corresponding duty in other men; the duty, that is, of recognizing and respecting that right. Every basic human right draws its authoritative force from the natural law, which confers it and attaches to it its respective duty.”¹⁴ The interdependence the pope talks about does not concern only the natural order. It constitutes the foundation of social life—“since men are social by nature, they must live together and consult each other’s interests. That men should recognize and perform their respective rights and duties is imperative to a well ordered society.”¹⁵ Mutual respect for respective rights and duties is not just a form of organizing social life—“it must also provide men with abundant resources”¹⁶ so that it ensures “the involvement and collaboration of all men in the many enterprises which our present civilization makes possible, encourages or indeed demands.”¹⁷

¹⁰ About the silence of Pius XII cf. among others Paul-Emile Bolté, *Les droits de l’homme et la paupaté contemporaine* (Montreal: Editions Fides, 1975), 134–41.

¹¹ Tomasz Gałkowski, “Prawo a obowiązek w społecznym nauczaniu Kościoła,” in *Semel Deo dedicatum non est ad usum humanos ulterius transferendum. Księga pamiątkowa dedykowana ks. prof. dr. hab. Julianowi Kalowskiemu MIC z okazji siedemdziesiątej rocznicy urodzin*, ed. Józef Wroceński, Bożena Szewczul, Andrzej Orczykowski (Warszawa: Wydawnictwo UKSW, 2004), 86.

¹² Franciszek Janusz Mazurek, *Prawa człowieka w nauczaniu społecznym Kościoła (od papieża Leona XIII do papieża Jana Pawła II)* (Lublin: Redakcja Wydawnictw KUL, 1991), 234.

¹³ *Pacem in Terris*, n. 28. Explaining his idea the pope also gives examples: “the right to live involves the duty to preserve one’s life; the right to a decent standard of living, the duty to live in a becoming fashion; the right to be free to seek out the truth, the duty to devote oneself to an ever deeper and wider search for it” (*Pacem in Terris*, n. 29).

¹⁴ *Pacem in Terris*, n. 30.

¹⁵ *Ibid.*, n. 31

¹⁶ *Ibid.*, n. 33.

¹⁷ *Ibid.*

The inextricable connection between rights and duties is of ontic character, whose source is the human nature and foundation in God. However, it is not always obvious, which is proved by violation of rights or not fulfilling duties. The world of human rights pushes into the background the necessity of fulfilling duties. That is why John XXIII indicates and emphasizes that the awareness of rights should, in consequence, give rise to the awareness of duties. The starting point of such reasoning is becoming conscious of one's rights. Due consciousness concerns not as much the fact of the coexistence of rights and duties as their correlation, which was expressed by Paul VI in the formula that man equals right and duty. The duty emerges in man when he/she sees the value of respective rights as a requirement and expression of his/her dignity. "The possession of rights involves the duty of implementing those rights, for they are the expression of man's personal dignity. And the possession of rights also involves their recognition and respect by other people."¹⁸

Divine order of the natural law lies at the foundation of Catholic social teaching about the correlation of rights and duties in a man as their subject and in interpersonal relations. Secular conceptions of the so-called fundamental rights do not make any reference to the natural law. However, Church by adopting and using the notion of fundamental rights highlights their strong connection with the natural law as they are natural rights despite the fact that they are remote from Cartesian subjectivism and human decision-making. Using worldly language, Church conveys its own interpretation of rights and duties. The teaching of Church explicitly relates human nature to its divine foundation, by which it gains a new character. Without its reference to God it does not constitute the norm of existence and activity. It is not merely an indicative point of reference for human rights and duties but constitutes the imperative force of human judgements and actions. The theistic idea of the world, which is the result of God's rational conception and activity and in which a man exists and submits himself to the existing order, is justified by the statement of Pius XI that "the right of paramount importance is performing one's duty" [trans. T.G].¹⁹ This duty results from a binding aim of human life, which is the possibility of uniting with God offered to him. If duty is understood in this way, it is prior to all other rights. We can find this way of thinking in the works of the precursors of Catholic social thought, who put more stress on the category of duties than on the rights themselves.²⁰

¹⁸ Ibid., n. 44.

¹⁹ Pius XI, *Non Abbiamo Bisogno*. Encyclical of Pope Pius XI on Catholic Action in Italy to Our Venerable Brethren the Patriarchs, Primate, Archbishops, Bishops, and Other Ordinaries in Peace and Communion with the Apostolic See (June 29, 1931), AAS 23 (1931): 297.

²⁰ Vittorio Possenti, *Katolicka nauka społeczna wobec dziedzictwa oświecenia* (Kraków: WAM, 2000), 195.

Rights and Duties of Man in *Gaudium et Spes*

The Council's teaching concerning correlation of rights and duties develops in the direction pointed out by John XXIII. The main texts that discuss these issues are the Declaration on Religious Freedom *Dignitatis Humanae* and the Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*.²¹ In numbers 12–22 of the constitution fundamental lines of Christian anthropology are highlighted, which constitute the foundation of the subsequently listed rights and duties of man. At the basis of teaching about the rights and duties of man there are: (1) acknowledging fundamental equality of all people in the diversity of personal capabilities and abilities²²; (2) emphasizing personal freedom, which should express itself in the service to the community and fulfill the need to perform the duty of conscience and responsibility.²³

The Council, pointing out at the transcendental dimension of a man, depicts the issues concerning human rights against the background of historical processes as well as social and cultural factors taking into consideration the growth of awareness in individuals in reference to dignity which is “proper to the human person, since he stands above all things, and his rights and duties are universal and inviolable.”²⁴ It is one of the few excerpts in the constitution in which one can find a clear statement about the coexistence of rights and duties in one person. In another fragment one may read that “Citizens [...] should remember that it is their right and duty, [...] to contribute to the true progress of their own community according to their ability²⁵ and in yet another that they “should be mindful of the right and also the duty to use their free vote to further the common good.²⁶ The subsequent statements of the constitution mention the rights and duties which result from human dignity.

The Council, following the direction set by John XXIII, confirms the inextricable unity of both these realities. The statements concerning the rights of man also refer to his duties. Expressions widely accepted as common, fundamental, inviolable are used to define them.²⁷ In the context of previous teaching it does not mean, however, that these rights do not refer to the reality desired and created by God.

²¹ Vatican Council II, “Pastoral Constitution on the Church: *Gaudium et Spes*,” AAS 58 (1966): 1025–115. Additionally, formulations concerning the duties of the person together with his rights can be found in *Ad Gentes* (n. 13); *Gravissimum Educationis* (n. 1); *Inter Mirifica* (n. 5).

²² *Gaudium et Spes*, n. 29.

²³ *Ibid.*, n. 31.

²⁴ *Ibid.*, n. 26.

²⁵ *Ibid.*, n. 65.

²⁶ *Ibid.*, n. 75.

²⁷ Mazurek, *Prawa człowieka w nauczaniu społecznym Kościoła*, 61.

Rights and duties are also described as absolute as far as fulfilling the vocation of the person is concerned. However, the Council notices some boundaries concerning the possibility of using them when it comes to communal life. It results from the hierarchy between rights and duties in reference to values and objectives they are subordinated to. The first boundary is the rule concerning true protection of freedom of an individual in the society, which “is to be respected as far as possible and is not to be curtailed except when and insofar as necessary.”²⁸ The second criterion is due relation between rights and duties. The rights of man involve the fundamental duty to respect and preserve them as “the obligations of justice and love,”²⁹ which goes hand in hand with noble, courageous conduct and evangelical commitment. Another criterion is the duty which lies with every person to respect and not violate the fundamental rights and duties of all people without exception for one’s own benefit. In this respect, the principle demanding that we treat another person as we treat ourselves is embodied. Its foundation lies in moral, personal, and social responsibility, since “in the exercise of their rights, individual men and social groups are bound by the moral law to have respect both for the rights of others and for their own duties toward others and for the common welfare of all. Men are to deal with their fellows in justice and civility.”³⁰ Therefore, one cannot demand respecting and protecting his/her rights without behaving in the same way towards others. The fourth criterion giving the possibility of curtailing rights and duties is an exceptional situation which occurs in public life and concerns the position of some religious community or the situation of restricting the rights of others by violating one’s own rights and duties (the natural and moral right to defend oneself, the principle of the universal destination of material goods).³¹

Emphasizing the unshakeable teaching of Church so far, the fathers of the Council highlight the following duties of the person correlated with his/her rights:

- of every person (to maintain the fullness of human personality³²; to do one’s job dutifully³³; moral duties³⁴; contributing to real progress of one’s society³⁵; taking part in free elections for the benefit of the common good³⁶; material

²⁸ *Dignitatis Humanae*, n. 7.

²⁹ *Gaudium et Spes*, n. 30. Cf. 26; 29–31.

³⁰ *Dignitatis Humanae*, n. 7.

³¹ *Gaudium et Spes*, nn. 27; 29; 31; 63; 66; 68; 69.

³² *Ibid.*, n. 61.

³³ *Ibid.*, n. 67.

³⁴ *Ibid.*, n. 43.

³⁵ *Ibid.*

³⁶ *Ibid.*, n. 75.

- and personal provision for the benefit of one's own country³⁷; to justice³⁸; to fulfill earthly duties, also by Christians³⁹;
- of a worshipper, resulting from the fact of being a Christian and testifying with one's own life and apostolate of the professed faith (duties of spouses towards family and society⁴⁰; children towards parents: the duty to sanctify them⁴¹; to fight with evil⁴²). The duties incumbent on all people are also Christian duties. They "unite with the rest of people in search of truth and solving in truth [...] moral problems."⁴³
 - of state and international community (to issue statements maintaining the right to personal and social propriety corresponding to the dignity of the person without any distinctions⁴⁴; to help citizens find jobs⁴⁵; to ensure civil liberties and regulate relationships between citizens and with state authorities⁴⁶; to exercise power within moral order for the common good⁴⁷; to take active part in enacting new laws of a political community and for managing the country⁴⁸; to acknowledge, support, and exercise the rights by citizens without detriment to anyone.⁴⁹

The above catalogue of rights concerns only those mentioned in *Gaudium et Spes*. They are not a confined area. Many other duties of each person, worshipper or social, public, and international organizations were included in the remaining documents, such as, for example, the duty to search for the truth, spread faith, fight with evil, help the poor or the educational duties. The Council's texts also mention the duties of particular groups of people: priests, consecrated persons, deacons, catechumens, papal legates, the youth.

The teaching of the Council reflects the statements of the Magisterium concerning close interdependence of rights and duties. It was distinctly emphasized by Paul VI on the occasion of 25th anniversary of adopting the Universal Declaration of Human Rights. In his message he drew attention to the fact that talking about the fundamental rights of the person means at the same time proclaiming his/her duties, irrespective of whether it was mentioned

³⁷ Ibid.

³⁸ *Gaudium et Spes*, n. 30.

³⁹ Ibid., n. 52.

⁴⁰ Ibid., nn. 48–52.

⁴¹ Ibid., n. 48.

⁴² Ibid., n. 22.

⁴³ Ibid., n. 16.

⁴⁴ Ibid., n. 60.

⁴⁵ Ibid., n. 67.

⁴⁶ Ibid., n. 73.

⁴⁷ Ibid., n. 74.

⁴⁸ Ibid., n. 75.

⁴⁹ Ibid., nn. 73; 75.

in the solemn acts or not.⁵⁰ The articulation of duties is not of utmost importance to the pope. He stresses that most significant is gaining awareness of this undeniable fact. Thus, he referred to the Declaration on Religious Freedom, in which we read: “A sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man, [...] and the demand is increasingly made that men should act on their own judgment, enjoying and making use of a responsible freedom, not driven by coercion but motivated by a sense of duty.”⁵¹

On account of the fact that the message of the constitution is addressed to all people, to whom the Council wishes “to explain [...] how it conceives of the presence and activity of the Church in the world of today,”⁵² we do not find there direct reference to worshippers of Christ, their rights and duties within the community of Church. In all the documents issued by the Council the rights and duties of the faithful in Church, apart from the natural rights and duties of man which were not clearly referred to by the Council to the members of Church, can be presented as follows⁵³: (1) the right and duty to actively participate in the liturgy⁵⁴; (2) the right to preach the word of God and administer sacraments⁵⁵; (3) the duty of obedience to shepherds, which concerns all the believers except for the pope⁵⁶; (4) the right and duty to state one’s own needs to the shepherds⁵⁷; (5) the right and duty to publicly express one’s own opinions, also by new organizations set up for this purpose by Church authorities⁵⁸; (6) the right and duty to one’s own spirituality⁵⁹; (7) the right and duty to support the building of the Mystical Body⁶⁰; (8) the right and duty of apostolic work⁶¹; (9) the right and duty to act upon one’s own charisms⁶²; (10) the right and duty to form unions⁶³; (11) the right to theological formation⁶⁴; (12) the right to freedom of searching and teaching within the scope of theological science.⁶⁵

⁵⁰ Paolo VI, “Poussé par la conscience” (December 10, 1973), in Paolo VI, *Insegnamenti* (Vaticano: LEV, 1974), vol. XI, 1184–88.

⁵¹ *Dignitatis Humanae*, n. 1.

⁵² *Gaudium et Spes*, n. 2.

⁵³ Paul Hinder, *Grundrechte in der Kirche, eine Untersuchung zur Begründung der Grundrechte in der Kirche* (Freiburg: Universität Freiburg Schweiz, 1977), 98–101.

⁵⁴ *Sacrosanctum Concilium*, n. 14.

⁵⁵ *Lumen Gentium*, n. 37.

⁵⁶ *Ibid.*, n. 37.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, nn. 12, 41.

⁶⁰ *Christus Dominus*, n. 16.

⁶¹ *Apostolicam Actuositatem*, n. 25.

⁶² *Ibid.*, n. 3.

⁶³ *Ibid.*, n. 19.

⁶⁴ *Gaudium et Spes*, n. 62.

⁶⁵ *Ibid.*, n. 62.

Rights and Duties in the Code of Canon Law

The teaching of Church contained in the constitution *Gaudium et Spes* is addressed to all people of good will. Doing so, the Church is convinced of the truth of its teaching, which is based on the Divine Revelation. However, in the first place, Church aims this teaching at its members, since the task of the community is to bear testimony to the truth of the Divine Revelation. What is expressed about any other community outside Church is already fulfilled in this community. It is the witness of the truth and fulfillment of the Divine Revelation.

It was under the influence of the Council that the catalogue of rights and duties of the person following the example of analogous catalogues of human rights and fundamental rights constitutionally guaranteed was shaped. *Gaudium et Spes*, due to its orientation towards the contemporary world does not contain many formulated rights and duties of the faithful concerning their life in the community of Church. It dedicates most attention to the institution of marriage, which is regulated by different legal orders, including the Code of Canon Law. Additionally, the constitution mentions the right to theological formation and freedom to search and preach within the scope of theological sciences. This issue was regulated in canon 218 of the Code of Canon Law.

Undoubtedly, the document is specific in its character. Its influence on the rights and duties of the faithful formulated in the Code is slight. The Code, which is the Code of the Second Vatican Council, still contains all the rights and duties of the faithful expressed in the documents of the Council apart from the right and duty to practice one's own charism. However, they are implicitly present in another right and duty, namely, the right to practice one's spirituality.

Nevertheless, it is impossible not to stress the importance of the document in the ideological aspect. In no other Council document is the issue of coexistence of rights and duties emphasized as strongly as in the constitution. It results above all from its character, since it is the constitution that describes most rights and duties concerning different subjects of social life, both secular and connected with Church. This is particularly significant because it addresses all people of good will living in different social and political circumstances. The problem of coexistence and interdependence of rights and duties in the secular legislation in the times of the Council was not as clearly defined as in the teaching of Church. What should be stressed is the fact that the influence of the constitution on the rights and duties of the person formulated in the Code of Canon Law was exerted mainly in the sphere of ideas. However, it took place to a smaller extent as far as positive references of the Code statements to the definitions of the document are concerned. A sign of belief in the existence of close correlation of rights and duties in the community of Church are the formulations included in Book II of the Code of Canon Law, where the rights and duties of

all the faithful (canons 208–223) as well as secular believers (canons 224–231) or clergymen (canons 273–289) are expressed inseparably.

Another influence of the constitution can be observed in reference to the possibility to restrict the rights and duties of the faithful in Church community, which was expressed in canon 223. The criterion which allows to limit a believer's rights and duties due to internal reasons, that is, by him/herself and due to external causes, that is, by Church authority is the common good of Church. The reason for curtailing rights and duties is protecting the community from abuse which might occur under the pretence of exercising rights the faithful are entitled to. Such restrictions might take place only when there are important causes, including the common good of Church and duties of the faithful with regard to the rights of other people.

Gaudium et Spes was addressed “not only to the sons of the Church and to all who invoke the name of Christ, but to the whole of humanity.”⁶⁶ The Council there explains the way in which it understands the presence and activity of Church in the world engaging in a concomitant dialogue and cooperation with it for the common good of man and humanity. On the one hand, it provides mankind with “saving resources,”⁶⁷ and on the other, studies the signs of the times, gains insight, and seeks to understand the world in which it lives. It steps into the world and offers to make it more comprehensible by relying on its own experience, including the one which concerns the rights and duties of man.

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⁶⁶ *Gaudium et Spes*, n. 2.

⁶⁷ *Ibid.*

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Tomasz Gałkowski

La corrélation des droits
et des obligations d'un fidèle
dans la Constitution *Gaudium et Spes* et son influence
sur les formulations dans
le Code de droit canonique

Résumé

La Constitution *Gaudium et Spes* énumère beaucoup de droits et d'obligations de l'homme. Avec eux, on a souligné l'enseignement continu de l'Église concernant les corrélations des droits et des obligations. L'auteur pose la question concernant l'influence possible de la Constitution sur la formulation des droits et des obligations des fidèles à l'Église, qui ont été exprimés dans le Code de droit canonique. Il aperçoit cette influence avant tout dans la couche idéologique de la conviction inébranlable de l'Église à propos de la corrélation des droits et des obligations et dans la possibilité de limiter les droits. Il l'aperçoit également, mais à un plus faible degré, dans la référence à des formulations concrètes des droits et des obligations, ce qui résulte de la diversité des destinataires des deux documents.

Mots clés : *Gaudium et Spes*, fidèle, droits, obligations, Code de droit canonique

Tomasz Gałkowski

La correlazione dei diritti
e dei doveri del fedele
nella Costituzione *Gaudium et Spes*
e la sua influenza sulle formulazioni
nel Codice di Diritto Canonico

Sommario

La Costituzione *Gaudium et Spes* menziona molti diritti e doveri dell'uomo. Con essi è stato sottolineato l'insegnamento permanente della Chiesa riguardante la dipendenza reciproca dei diritti e dei doveri. L'Autore dello studio si chiede quale sia l'influenza possibile della Costituzione sulle formulazioni dei diritti e dei doveri dei fedeli nella Chiesa che sono stati espressi nel Codice di Diritto Canonico. Scorge tale influenza soprattutto nello strato ideologico della convinzione irremovibile della Chiesa sulla dipendenza reciproca dei diritti e dei doveri e nella possibilità di limitare i diritti ed in misura minore, invece, rispetto a formulazioni concrete di diritti e doveri, cosa che risulta dalla varietà dei destinatari di entrambi i documenti.

Parole chiave: *Gaudium et Spes*, fedele, diritti, doveri, Codice di Diritto Canonico

Damián Němec

Palacký University in Olomouc, Czech Republic

Specific Accents in the Rights and Obligations of Christian Faithful in the CCEO and Their Actual Relevance

Abstract: The article deals with the rights and obligations of the Catholic faithful, as specified in the Code of the Canons of the Eastern Churches (CCEO), compared with the Code of Canon Law from 1983 (CIC). It pays particular attention not only to the legal differences arising from the different legal schemes of matter and from different legal solutions, but traces the diverse theological accents contained in CCEO. These theological accents are enriched by brief description of the social accents, assessed in the light of the social doctrine of the Catholic Church, and this leads to a description and recognition of the very topical relevance of the legislation of the CCEO, focusing on life in a pluralistic society coupled with a high degree of intra-ecclesial, ecumenical, interreligious, and social cooperation.

Keywords: Catholic Church, Eastern Churches, Canon law, CIC, CCEO, ecumenism, Catholic social doctrine, pluralism

Introduction

I would like to take up the contribution of Professor Gałkowski, regarding the influence of the Second Vatican Council's constitution *Gaudium et Spes*¹ on the

¹ II Vatican Council, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*, accessed February 15, 2016, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html.

rights and obligations of the faithful in the actual Code of Canon Law (henceforth CIC),² which I will compliment by looking at the canonical legislation concerning Eastern Catholic Churches. Therefore, I will present particular fragments in the rights and obligations of the Christian faithful in the Code of Canons of Eastern Churches (henceforth CCEO),³ with an ongoing comparison to occidental legislation, and stress their actual relevance.

I point out the differences in the systematisation of legal norms in the CCEO in the first section. The second section describes the meritorious differences, while the third one proceeds to illustrate the broader ecclesiastical context of the life of Eastern Catholics. Subsequently, I will try to offer a reflection on the social context of the life of Eastern Catholics focusing on the actual relevance of discovered differences especially with connection to *Gaudium et Spes* (n. 76) which contains an explicit and wilful acceptance of social pluralism. In the conclusion, I will summarize the achieved findings.

Differences in the Systematization of the Description of Rights and Obligations of the Faithful in the CCEO

Dissimilitude of the Ecclesiastical Approach

As the representative of occidental legislation, the CIC indicates the division of the faithful in canon 207:

§ 1. Among the Christian faithful by divine institution there exist in the Church sacred ministers, who are also called clerics in law, and other Christian faithful, who are called laity.

§ 2. From the both groups there exist Christian faithful who are consecrated to God in their special manner and serve the salvific mission of the Church thorough the profession of evangelical counsels by means of vows or other sacred bonds recognized and sanctioned by the Church; although their state does not belong to the hierarchical structure of the Church, they nevertheless do belong to its life and holiness.

² *Code of Canon Law. Latin-English edition* (Washington: Canon Law Society of America, 1995).

³ *Code of Canons of the Eastern Churches. Latin-English edition* (Washington: Canon Law Society, 1995).

The CIC connect to the constitution *Lumen Gentium* of the Second Vatican Council,⁴ n. 10:

Though they differ from one another in essence and not only in degree, the common priesthood of the faithful and the ministerial or hierarchical priesthood are nonetheless interrelated: each of them in its own special way is a participation in the one priesthood of Christ. The ministerial priest, by the sacred power he enjoys, teaches and rules the priestly people; acting in the person of Christ, he makes present the Eucharistic sacrifice, and offers it to God in the name of all the people. But the faithful, in virtue of their royal priesthood, join in the offering of the Eucharist. They likewise exercise that priesthood in receiving the sacraments, in prayer and thanksgiving, in the witness of a holy life, and by self-denial and active charity.

On the other hand, the CCEO—as the representative of Eastern legislation—indicates the division of the faithful in another way especially in canon 399 which describes the definition of the laity:

The designation of “lay persons” is applied in this Code to the Christian faithful whose proper and specific quality is secularity and who, living in the world, participate in the mission of the Church, but are not in sacred order nor ascribed in the religious state.

Such a description corresponds fully to the constitution *Lumen Gentium* n. 31:

The term laity is here understood to mean all the faithful except those in holy orders and those in the state of religious life specially approved by the Church. These faithful are by baptism made one body with Christ and are constituted among the People of God; they are in their own way made sharers in the priestly, prophetic, and kingly functions of Christ; and they carry out for their own part the mission of the whole Christian people in the Church and in the world.

Therefore it is necessary to state, that the ecclesiastical approach of both codes results from the doctrine of the Second Vatican Council, but each code makes it in a different way.

The CIC accentuates the essential difference between clergymen as wearers of the seal of the sacrament of orders and laymen as non-wearers of this seal; therefore, the description of laymen in the CIC is basically negative.

⁴ Vatican Council II, Dogmatic Constitution on the Church *Lumen Gentium*, accessed February 15, 2016, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html.

The CCEO emphasizes the traditional conception of three states of life (*status*) of the faithful, being clergymen, laity, and consecrated persons, which seems to be more practical criterion allowing a rather practical approach to their life (and to its legal regulation). It is important to add that the practical approach stressing three states of life of the faithful is preferred by the consecutive documents of the Church magisterium, as we can see very clearly, for example in the Catechism of the Catholic Church⁵ (n. 897) and in the post-synodal apostolic exhortation *Vita Consecrata*⁶ (n. 31).

Differences in the Systematisation of the Catalogues of the Rights and Obligations of the Faithful

Coming from the ecclesiastical approach, the CIC indicates in book II, part I, title I, the obligations and rights of all Christian faithful (cann. 208–223), title II depicts the obligations and rights of lay Christian faithful (cann. 224–231), and title III, chapter III defines the obligation and rights of clerics (cann. 273–289). Only much later, in book II, part III, section I, title II, chapter III can we find the enumeration of the obligations and rights of religious institutes and their members (cann. 662–672), which belongs *mutatis mutandis* to all *de iure* consecrated persons.

However, the CCEO is arranged in a different order in the description of obligations and rights of the faithful. The CCEO indicates at the very beginning in title I the obligations and rights of all Christian faithful (cann. 7–26), later in title X, chapter III, the obligations and rights of clerics (cann. 367–393) and in title XI, which is dedicated only to laymen, the obligations and rights of lay Christian faithful (cann. 399–409). It is not possible to find a specific list of obligations and rights of consecrated persons there; the singular provisions are dispersed throughout chapter I, title XII (i.e., in cann. 410–553).

⁵ *Catechism of the Catholic Church*, accessed February 15, 2016, http://www.vatican.va/archive/ENG0015/_INDEX.HTM.

⁶ John Paul II, Post-Synodal Apostolic Exhortation *Vita Consecrata* of the Holy Father John Paul II to the Bishops and Clergy, Religious Orders and Congregations, Societies of Apostolic Life, Secular Institutes and All the Faithful on the Consecrated Life and its Mission in the Church and in the World, accessed February 15, 2016, http://www.vatican.va/roman_curia/congregations/ccsclife/documents/hf_jp-ii_exh_25031996_vita-consecrata_en.html.

Description of the Meritorious Differences in the Rights and Obligations of the Faithful between the CCEO and CIC

The description of the differences in the rights and obligations of the faithful in the two codes can be envisaged in several ways. It is useful to focus on the integral catalogues of the obligations and rights: of all the faithful, of clerics, and of lay Christian faithful (using the order in the CCEO).

Meritorious Differences in the Rights and Obligations of All Faithful

The comparison of the catalogue of the obligations and rights of all faithful in the CIC and the CCEO does not find any meritorious difference. It is possible to observe the influence of the unrealized project *Lex Ecclesiae Fundamentalis*; even more: the formulation of the singular provisions is nearly identical.

It is possible to find there only one phrasing difference connected with the more accurate language of the CCEO: in can. 214 of the CIC is the guarantee of the right to worship God according to the prescripts of their own rite (*iuxta praescripta proprii ritus*), whereas in can. 17 of the CCEO the right to worship God is warranted according to the prescriptions of their own Church *sui iuris* (*secundum praescripta propriae Ecclesiae sui iuris*)—this difference is in accordance with the very clear distinction between the rites and Churches *sui iuris* in the CCEO, which is not found thoroughly in the CIC.⁷

Meritorious Differences in the Rights and Obligations of Clerics

The catalogue of the obligations and rights of clerics in the CCEO is much different from the one in the CIC.⁸

⁷ Pio Vito Pinto, *Commento al Codice dei Canonici delle Chiese Orientali* (Città del Vaticano: Libreria Editrice Vaticana, 2001), 24–25.

⁸ Andrés Gutiérrez, “I chierici nel Codex Canonum Ecclesiarum Orientalium e nel Codex Iuris Canonici,” in *Il Diritto Canonico Orientale nell’ordinamento ecclesiale*, ed. Kuriakose Bhranikulangara (Città del Vaticano: Libreria Editrice Vaticana, 1995), 128–12; Dimitrios Salachas, *Istituzioni di diritto canonico delle chiese cattoliche orientali* (Bologna: Edizioni Dehoniane Bologna, 1993), 278–85.

The main practical differences are connected with the fact of priestly ordination of married men. Therefore, it is possible to find in can. 373 of the CCEO—beyond the appreciation of the celibate—the positive estimation of the life of married clerics,⁹ whereas in can. 375 the requirement of an exemplary marital life and the education of children on the part of married clerics, and in can. 371 § 3—the possibility of exercising a civil career as well. Such provisions are missing in the CIC.¹⁰

Regarding the description of the proper life of clerics, the CCEO offers several times a more able and richer wording, for example, in can. 367—a theologically richer description of the style of life of clerics, in can. 376—a better explanation of the advantages of common life of clerics (which can be realized rather exclusively by celibate clerics), in can. 380—the postulate of the stimulation and cultivation of vocations to the state of clerics or consecrated persons (missing in the CIC), in can. 381 § 1—stronger accent on apostolic zeal, especially towards social groups in danger, in can. 393—an emphasis upon missionary sending especially through providing help in regions with the lack of clerics (missing in the CIC), and finally, in can. 397—the postulate of cooperation between the clerics of several Churches *sui iuris* in the same territory.

In the CCEO, there are often better expressed provisions regarding the relationship between clerics and their superiors, that is, in can. 371 § 1, describing the right to adequate help for the work of clerics on the part of eparchial bishop, in can. 371 § 2, making a stronger demand of accepting and faithfully carrying out every office, ministry, or function committed to them by the competent authority whenever, in the judgment of the same authority, the needs of the Church require it (without the limitation *nisi legitimo impedimento excusatur* expressed in can. 274 § 2 of the CIC), and in can. 389, the postulate to refer controversies arising among them or between clerics and other faithful to the forum of the Church (missing in the CIC).

According to can. 388 of the CCEO, clerics must not use special rights and insignia connected with granted dignity outside of the territory where the authority who granted the dignity exercises its competence.¹¹ The CCEO is missing the provision of can. 274 § 1, that only clerics can obtain offices for whose exercise the power of orders or the power of ecclesiastical governance is required.

⁹ Very broad description of the legal evolution of the state of married priests in the Eastern Catholic Churches and its possible limitations can be found in the last-mentioned book by Dimitrios Salachas, *Istituzioni di diritto canonico*, 281–85.

¹⁰ Dimitrios Salachas and Luigi Sabbarese, *Chierici e ministero sacro nel Codice latino e orientale. Prospettive interecclesiali* (Roma: Urbiana University Press, 2004), 126–28.

¹¹ Salachas and Sabbarese, *Chierici e ministero sacro*, 131–32.

Meritorious Differences in the Obligations and Rights of Lay Christian Faithful

There is a very basic difference between the regulation of the CIC and the CCEO, that is, title XI which is dedicated specially to the laity but is missing in the CIC.¹²

Therefore, it is comprehensible that the wording of the CCEO is clearer and theologically richer. As examples can serve: can. 399, containing a positive definition of lay persons and can. 401, bringing a far better description of the proper vocation of lay persons (both texts arise from *Lumen Gentium* n. 31 and from the post-synodal exhortation *Christifideles Laici*, especially n. 7).¹³

In the CCEO, there are three other important provisions for lay persons missing in the CIC: in can. 403—the right and obligation to observe everywhere their own rite, in can. 405—the requirement of a mutual esteem and unity of action between the lay members of different Churches *sui iuris* for the common good of the society in which they live, and in can. 408 § 3 the obligation of full subjection to ecclesiastical authority in respect of the exercise of ecclesiastical functions.¹⁴

Another difference is apparent in assigning specific tasks: while the CIC can. 230 § 1 and § 2 talk about the services of lector and acolyte and the provisional authorization to operations connected with these and other liturgical services, the equivalent can. 403 § 2 allows authorization to similar activities only for a shortage of clergy and can. 709 § 2 speaks specifically on extraordinary minister of the Eucharist.¹⁵

¹² Cf. Pinto, *Commento al Codice dei Canonici delle Chiese Orientali*, 349–60.

¹³ John Paul II, Post-Synodal Apostolic Exhortation *Christifideles Laici* of his Holiness John Paul II on the Vocation and the Mission of the Lay Faithful in the Church and in the World, accessed February 16, 2016, http://w2.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_30121988_christifideles-laici.html.

¹⁴ Pinto, *Commento al Codice dei Canonici delle Chiese Orientali*, 353–54, 356, 358.

¹⁵ *Ibid.*, 354; Jean Gaudement, “Laypeople,” in *A Guide to Eastern Code*, ed. George Nedungatt (Roma: Pontificio Istituto Orientale, 2002), 338.

The Broader Context of the Ecclesial Life of the Eastern Catholics

The Emphasis on the Cooperation of Several Churches *sui iuris* for the Same Territory

Unlike the Latin Church, Eastern Catholic Churches are generally far less populous, and so rarely is one of them in a given territory clearly the dominant Church. Usually these Churches make up a minority in a particular country, and, moreover, frequently there coexist in the same territory several Eastern Catholic Churches, often along with the Latin Church.¹⁶

The CCEO takes into account the far greater variability of Catholic communities in the same territory, and therefore it provides important guidelines for the necessary cooperation.

Can. 379 includes a requirement for the greater cooperation of the clerics of several Churches *sui iuris* in the same territory¹⁷ and can. 405 requires a mutual appreciation of the life of the various Churches *sui iuris* connected with unified apostolic efforts in favor of the society in which they live.¹⁸

As structural means for this goal, can. 322 provides the possibility of an assembly of local hierarchs of the various Churches *sui iuris*, even of the Latin one.¹⁹ These hierarchs are to see most carefully to the faithful protection and accurate observance of their own rite without admitting changes in it except for when it is by reason of its organic progress, and keeping in mind, however, the mutual goodwill and unity of Christians (can. 40), therefore it is necessary that they know thorough the rites of other Churches *sui iuris* in its territory and take care of their development, which is specifically emphasised for the Latin Church as one of the churches *sui iuris* there (can. 41).²⁰

The Postulate of Ecumenical Cooperation

Unlike the CIC, the CCEO strongly emphasizes ecumenism even dedicating the whole of title XVIII to this matter (cann. 902–908), while the CIC dedicates to

¹⁶ This reality is very minutely described in Paul Pallath, *Local Episcopal Bodies in East and West* (Roma: Pontificio Istituto Orientale, 1997), 456–61.

¹⁷ Pinto, *Commento al Codice dei Canonici delle Chiese Orientali*, 330.

¹⁸ Gaudement, “Laypeople,” 339.

¹⁹ Pallath, *Local Episcopal Bodies*, 461, 464–67.

²⁰ *Ibid.*, 470–72.

this theme only one can. 755, dealing with the promotion and governance of ecumenical efforts.²¹

The CCEO in can. 903 accentuates the special ecumenical significance of Eastern Catholic Churches (albeit these Churches are mostly vigorously denied by the Eastern non-Catholic Churches). As means to this, can. 903 of the CCEO mentions: the example of life, fidelity to the ancient traditions, greater mutual understanding, mutual cooperation, and fraternal valuation.²²

Can. 904 § 2 requires the existence of a special committee on ecumenical issues for individual Churches *sui iuris*, or eventually in the cooperation of several Churches *sui iuris*. Likewise, in accordance with § 3, there should exist a similar commission at the level of eparchy or of more eparchies if necessary. Compared to that, can. 905 emphasizes the need for adequate discretion to avoid erroneous irenicism, indifferentism, and immoderate zeal.²³

Can. 906 gives emphasis to the education of the faithful towards ecumenism, even using the media; can. 907 stresses the same thing for schools, hospitals, and similar institutions. The final can. 908, accentuates the point that ecumenical cooperation is not to be organized only individually, but together, especially in the field of charity, social justice, the defence of the dignity of the human person and its fundamental rights, promoting peace on national holidays and memorable days.²⁴

Besides title XVIII, there are other provisions regarding ecumenism in the CCEO. In the field of education, the spirit of ecumenism is to be present in the teaching of every theological discipline (can. 350 § 4), in the institution of clerics (can. 352 § 3) and in catechetical instruction (can. 816). Even more, in the case of mixed marriages it is necessary to take the pastoral care also of the non-Catholic spouse (can. 816—identical to can. 1128 of the CIC).²⁵

Neither of the codes contains provisions for interreligious dialogue nor dialogue with non-believers, and both codes only require that bishops and priests take appropriate pastoral care for non-believers too.

²¹ Cf. Dimitrios Salachas, “Ecumenism,” in *A guide to Eastern Code*, ed. George Nedungatt (Roma: Pontificio Istituto Orientale, 2002), 607–18.

²² Salachas, “Ecumenism,” 610–12; Pinto, *Commento al Codice dei Canonici delle Chiese Orientali*, 778–79.

²³ *Ibid.*, 612–14; Pinto, *Commento al Codice dei Canonici delle Chiese Orientali*, 779–81.

²⁴ *Ibid.*, 614–16; *Ibid.*, 781–82.

²⁵ Pinto, *Commento al Codice dei Canonici delle Chiese Orientali*, 685.

The Social Life Context of the Eastern Catholics, Especially Regarding Pluralism

On the basis of the comparative analysis realized in the previous chapters we can proceed to fundamental and important findings regarding the legislation in the CCEO.

Firstly, there is no trace of the tendency, quite present in the older traditional Latin Catholicism, to create a homogeneous Catholic society there. It is recognized, however, that even in this, the Second Vatican Council greatly changed the attitude of the Catholic Church.²⁶ The first very explicit expression of such a change in an official Church document can be found in the Pastoral Constitution of the Second Vatican Council *Gaudium et Spes*, where n. 76 reflects upon and positively assessed pluralism; it can be described as a ground-breaking reality:

It is very important, especially where a pluralistic society prevails, that there be a correct notion of the relationship between the political community and the Church, and a clear distinction between the tasks which Christians undertake, individually or as a group, on their own responsibility as citizens guided by the dictates of a Christian conscience, and the activities which, in union with their pastors, they carry out in the name of the Church.

This attitude has been further developed in the social teaching of the Church, which is clearly and comprehensively expressed in the Compendium of the Social Doctrine of the Church, especially in nos. 16, 151, 187, 417, 552, and 572.²⁷

Secondly, the CCEO takes more into account the minority status of Eastern Catholics, which corresponds to their percentage representation not only in the Catholic Church, but very often in the society.²⁸

Thirdly, the CCEO underlines the cooperation of several Churches *sui iuris* in the same territory, including the Latin Church. Therefore, it is possible to include the hierarchs of the Eastern Catholic Churches as members of the conferences of bishops according to the provision of can. 450 of the CIC—this is designated for territories with a prevalent presence of Latin Catholics. In the territories with a clear dominance of Eastern Catholics, there is the possibility to create a special structure for this purpose according to can. 322 of the CCEO:

²⁶ Paweł Sobczyk, *Kościół a wspólnoty polityczne* (Warszawa: Santiago, 2005), 79–86.

²⁷ Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, accessed February 18, 2016, http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html.

²⁸ Cf. Pallath, *Local Episcopal Bodies in East and West*, 456–61.

the Assembly of Hierarchs of several Churches *sui iuris*; and—if it is suitable—the Latin hierarchs can be included in such assemblies as members.

Fourthly, last but not least, the CCEO gives priority to ecumenical cooperation much more than the CIC, underlining the importance of the formation to ecumenism, too.

In the present period, characterized by globalization, interreligious dialogue becomes more important. Although neither of the two Codes contain any provisions for such a dialogue, it is certainly possible to start with the principles indicated for ecumenism.

It is therefore clear that the CCEO envisages a diversified, therefore pluralistic society. This acceptance and recognition of pluralism, not only as an irreversible social fact, but as a fact having a theological justification, albeit with its pitfalls and limitations too, has become the basis for specifying the principles governing the relationship between the state and religious authority, or—as can be said—the relationship between Church and state.

Conclusion

It can be summarized that specific accents in defining the rights and obligations of the faithful, and especially strongly in the case of clerics and laymen, together with an emphasis on the cooperation of several Churches *sui iuris* in the same territory and on ecumenical cooperation, lead to, in conformity with the spirit of the pastoral constitution of the Second Vatican Council *Gaudium et Spes* (and of the declaration *Dignitatis Humanae* of the same council), a greater appreciation of diversity in society and also, therefore, lead to living with a pluralistic society. There is also an emphasis not only on increasing knowledge, appreciation, and mutual cooperation, but also on maintaining their Churches' own identities.

In understanding pluralism, the Catholic Church has taken a balanced position between the desire for a homogenous, unified society and ideological indifference. On the one hand, it stresses man's allegiance to objective truth (which is reflected in his/her conscience) and to true values, and on the other hand, accentuates the diversity of people and of the conditions in which they grow, as a result of the diversity embedded in the order of Creation. Neither the Church nor the state should seek to homogenize or unify society, while they ought to allow the free development of individuals and communities towards a common good, which, however, has its basis in human nature (this view is based on the understanding of man, as is shown in God's revelation).

This is very important not only in Eastern countries, those for which the CCEO is primarily intended, but also in Western culture, which is character-

ized by a very considerable variability and, therefore, by far-reaching pluralism, indeed; moreover, because of the enormous influx of refugees, mainly from Muslim countries.

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Damián Němec

Accents spécifiques dans les droits et obligations des catholiques de CCEO ainsi que leur relevance actuelle

Résumé

L'article analyse les droits et les obligations des fidèles catholiques inclus dans le Code des canons des Églises orientales (CCEO) tout en les comparant avec le Code de droit canonique de 1983 (CIC). On y porte une attention particulière non seulement sur les différences du droit résultant d'une autre systématique de la matière juridique et de différentes solutions juridiques, mais en plus, tout en les analysant, on cherche à identifier différents accents théologiques inclus dans le CCEO. À ces accents théologiques, l'auteur ajoute des accents sociaux évalués à la lumière de l'enseignement social de l'Église catholique. Cela conduit à la description et à la connaissance de la relevance actuelle de la normativité de CCEO adressée à la vie dans une société pluraliste, y compris le haut degré de la coopération œcuménique, interconfessionnelle, sociale ainsi que celle à l'intérieur de l'Église.

Mots clés: Église catholique, Églises orientales, droit canonique, CIC, CCEO, œcuménisme, enseignement social catholique, pluralisme

Damián Němec

Gli accenti specifici nei diritti e doveri dei cattolici nel CCEO la loro rilevanza attuale

Sommario

L'articolo tratta i diritti ed i doveri dei fedeli cattolici, come specificato nel Codice dei Canoni delle Chiese Orientali (CCEO), in confronto al Codice di Diritto Canonico del 1983 (CIC). Viene prestata particolare attenzione non soltanto alle differenze giuridiche risultanti da una diversa sistematica giuridica della materia e da differenti soluzioni giuridiche, ma partendo dalle stesse cerca di identificare diversi accenti teologici compresi nel CCEO. A questi accenti teologici aggiunge per sommi capi gli accenti sociali, valutati alla luce della dottrina sociale della Chiesa cattolica, e ciò porta alla descrizione e al riconoscimento di una rilevanza molto attuale della normativa del CCEO, rivolta alla vita nella società pluralistica unita all'elevato grado di collaborazione intraecclesiastica, ecumenica, interconfessionale e sociale.

Parole chiave: Chiesa Cattolica, Chiese orientali, diritto canonico, CIC, CCEO, ecumenismo, dottrina sociale della Chiesa cattolica, pluralismo

Józef Krukowski

The John Paul II Catholic University of Lublin, Poland

Culture and Law in Pluralistic Society*

Abstract: The current debate on family is subject to rapid social changes which have had colossal negative impact on economy itself and on the economy of entire countries. The purpose of social and family life is not to bound, but to develop the human being. Thoughts about the future of the family are associated with education in the very sense that is pointed out by human experience. It can be said that Aristotle's legacy is as follows: for subject, it is necessary to reflect *pro futuro* basic demand of to be "together with others," to act "with others" and, on which depends realization and completion of the subject's being.

Keywords: *polis*, family, man

Introduction

The Second Vatican Council in its Pastoral Constitution *Gaudium et Spes*, devoted a special chapter to the "proper development of culture" (*De cultural progressu rite promovendo*). This chapter has crucial importance for defining the aptitude of the Church towards culture. What is significant is the ascertainment that "the feature of the human person is that it comes to full and true humanity

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only through culture, that is, through the cultivation of the goods and values of nature.”¹ The humanity develops through culture.

The organizers of the present conference asked me to try to answer, on basis of the *Gaudium et Spes* constitution, what the relations between culture and law in fact are. The answer to this question involves several issues which cannot be sufficiently explained in just a single lecture. This necessitates that I concentrate on the main issues only. They are the following:

- what is culture?;
- what is law?;
- what are values and what is their connection with the stature law?;
- what are the rules (patterns) for participation of Christians in building the culture in a pluralistic society?.

What Is Culture?

Culture is the complex reality of human existence that is understood in different aspects, and particularly in sociological, philosophical, and theological ones.

In the sociological aspect, culture is a social phenomenon that includes two elements: material and formal. The material element comprises all products of human activity (both material and spiritual), events and most of all human behaviors that form specific patterns that are popularized in the society in form of rules of conduct that may take the form of habitual, moral, and legal rules. The formal element of culture is the ascertainment of meanings—namely, what values stand behind those phenomena? How are they connected and how are they conditioned? Such a search for meaning of the researched cultural phenomena gives the possibility of identification of the following elements:

1. Features of the culture, that is, the repeated behaviors of people from the respective social group that can be differentiated from others;
2. Cultural patterns that are close to the notion of ethos, lifestyle. These are the dominant behaviors among the humans, in the aspect of set values, in form of habits, moral and legal norms that are present in the respective society;
3. Cultural theme—postulate or a stance that is declared and suggested—either in an explicit or implicit way, usually controlling human behavior or stimulating their actions that are tacitly accepted or openly suggested in the society (e.g., tolerance, emancipation of women, euthanasia);

¹ *Gaudium et Spes*, n. 53.

4. Cultural focus—understood as a complex of values that are tightly bound with each other, that shape the behavioral patterns and bind them in social institutions;
5. Cultural center—integral collection of basic (root) cultural values that solidifies the products of human activities (art, literature) and the interpersonal relations, thought structures, interpersonal patterns in the society that are shaped in connection therewith. Such a center is shaped throughout the whole history of the society; forming the basis for its integration into a nation, for its endurance and development. As a matter of fact, those elements determine the identity of a given culture and differences among them.

Philosophy of culture—an autonomous discipline aiming at learning the essence of cultural products, their causes, ascertaining the objective values and also their proper course of their development. Philosophy does not stop with the description of cultural phenomena, as sociology does, but connects them with affirmation of the human being, understood as a person, and the values contained in the various rules of conduct. Among the supporters of this concept we will find: Max Scheler, Bogdan Nawroczyński, and Karol Wojtyła. Philosophy treats the human being as a creator of culture, but at the same time its recipient. Pope John Paul II postulates the primacy of the existential-axiological culture. According to this viewpoint, the essence of culture is the coexistence of humans concentrating on the values of truth and love.

Theology of culture—science of culture, its genesis, essence, functions, values, aims, and also its significance in the religious life, is cultivated not just in the light of the mind alone, as philosophy is, but also in the light of the Holy revelation, spanning onto the whole of human life.

As far as the subject is concerned, there are two main approaches towards culture. The first one lists only the human cultural activity, thus making culture an intentional and accidental being (J. Maritain, A. M. Krąpiec, P. Jaroszyński, Z. Zdybicka). The other is the integral approach towards human being that is through extension of theological anthropology (John Paul II, F. Bednarski, Cz. Bartnik, W. Kasper). Such an approach towards culture, even without stating its name, was the approach of the Second Vatican Council.²

What Is Law?

Next, in order to explain the relations between culture and law we need to define law. Usually, law is understood in the positivistic aspect, that is, the rules

² *Ibid.*, nn. 53–62.

of conduct imposed by sovereign authority with due procedure. But such an understanding of law is not sufficient to ascertain the relations between culture and law. We need to differentiate between the subjective and objective understanding of law.

Objectively, law is the norm, that is, a pattern of conduct or a complex of such norms imposed on a society by its higher authority in order to achieve certain required aims, and most of all to secure harmony and order of the public life. This complex of norm includes: sanctioned and sanctioning norms. The sanctioned norms set the rules of conduct for achievement of such goods as life, health, freedom, while the sanctioning norms set the competences of state authorities to make decisions on how to recognize the possibilities of securing those goods for people, especially when they are threatened or infringed by other members of society. Still the objective definition of law is controversial when it comes to setting the aim (sense) of law in discontinuity with the common good. The positivist concept of law sets the crucial importance of adherence to procedure in making and applying law; with the omission of the axiological sense of the disposition. If we satisfy ourselves with just the objective approach to law, it would be difficult to explain the connection between law and culture in categories of values.

The explanation of this connection becomes possible if we understand the law in a subjective way. What is important in defining the law in this approach is the attention directed towards the participants of social relations, and indirectly towards the very bases of the whole order of social life that have moral and legal dimensions. This applies to this category of relations, that have people as participants, people understood as persons, that is, subjects of laws and obligations. It is worth observing that the concepts of subjective laws are construed on the bases of different philosophical assumptions. Broadly speaking, we can distinguish the positive and axiological (natural law) approaches.

The positivist concept of law says that what is subjective is the creation of the lawmaker. A special type of those laws are the citizen's rights and obligations, that find their justification solely in the will of the constitutional legislator. This concept of subjective laws is favored by totalitarian regimes.

The axiological concept states that subjective laws depend not just solely on the will of the state lawmaker. Their source of existence is not just the disposition of stated law, but also the superior value—inherent to human being, its nature and personal structure. In the axiological aspect the source of laws is found in the value of human being and its ability to respond to values. Among the subjective laws we have the special category of human rights, stemming from the person's innate dignity.

What Are Values?

Next we should turn to the notion and types of values. What we have to take into account is the whole range of interconnected issues. Most of all, we have to learn that the value of each individual existence is set in relation to other beings. In particular, the value of a person as a being endowed with reason, free will, and conscience, is learned in relation to all other living beings in the world that have no such features. And the very discovery of this value takes place in human consciousness. Therefore, value is an intentional entity, yet it is rooted in the objective reality.

Searching for answers to the following questions: Are there, apart from the system of law established by people and made for people, other benchmarks for its evaluation? Are there objective evaluation criteria of legal law? The fundamental question concerns the value as a substantial element of legal norm. In fact, these questions touch upon the relation between statutory law and moral law, that is, natural one—imprinted in the human nature. The answers to those questions depend on one of the two opposing law concepts adopted: (1) the positivist concept that assumes the moral neutrality of statutory law; and (2) the concept assuming axiological justification of law.

The first one is supported by those who favor axiologically neutral law. They assume that there is no connection between the statutory law and objectively existing ethical values. This group of concepts includes:

1. The supporters of extreme legal positivism, who claim that the benchmark for the statutory law is just the hierarchically ordered set of rules of conduct, procedural in its character, that ensures the instrumental efficiency of the legal order.
2. Supporters of limited legal positivism who see the connection between the statutory law and values, but at the same time assume the primordial character of the norms of statutory law in relation to the realm of values. These values—according to them—are set down by statutory law, that is, by a legislator. They believe that of value are such actions that are in accordance with statute law; although they do not completely deny the relation to universal ethical values, that stand above the constitutional law. What remains unsolved is the hierarchy of these values.
3. Supporters of the pantheist model of democracy who believe that the will of the people—expressed directly in a referendum or indirectly through its parliamentary representatives—is law, and thus sets what has value and what is devoid of value. There is no benchmark in this case that would relate the will of lawmaker to the objectively existing values. Such a lack of benchmark can, and even has to, lead to outgrowth of values. It marks the complete lack of criteria for their limitation, apart from procedural ones, that can easily be

lifted or modified. The legal order that is based on this model is the result of outgrowth of democracy and leads to the degeneration of democracy and its transformation in an order that is characteristic for the authoritarian state, or even a totalitarian one. Pope John Paul II warns us against the construction of such a democracy, stating that “democracy without values is easily transformed into totalitarianism” (John Paul II, enc. *Centesimus Annus*).

The other group is that of the supporters of the axiological justification of law. They state that every order of law that is stated—both by state authorities and international ones (e.g., the authorities of the European Union)—has to be based on a system of objective values. Every legal order, regardless of the legislator’s awareness of the that fact, is based on a set system of values. Most of all the legal order should be based on the set concept of human being and the hierarchy of values that is connected with this concept. A rational legislator states laws that take the relation between the behaviors of addressee as described by law to a set object into account, thus marking the value of the law. The sense of each law is the value that this law relates to. This makes the axiological neutrality of statutory law order and their autonomy in relation to the ethical norms impossible.

Another problem is connected with the issue of how consistent the system of statutory law should be with the system of moral values? Two models were developed in answer to that question.

The first model assumes the full conformity of the legal order with the moral one, as accepted by the lawmaker. We may say that there is a logical relation of the stated law resulting from the system of ethical values.

The other model assumes that there are two parallel systems of norms that result from the system of values. They are: the system of norms of morality and the system of norms of statutory law. Whereas, the latter one, there is no relation between the system of moral norms and the system of law, the concurrence of law with the system of values lays the grounds for the evaluation of justness of the legal order and may lay the groundwork for *de lege ferenda* postulates. This gives rise to another issue, namely: Shall there be a contradiction between the statute law and the order of values? Does this pave the way for questioning the very force of the law? There are two answers to this question. According to the first one — represented by G. Radbruch—the contradiction between the system of law and the system of morality makes the system of law basically cease to be binding. According to the other conception, such a contradiction does not render the binding force of system of law void, but inevitably leads its questioning (A. Zoll).

What are the consequences of adopting the first of the aforementioned models? Accepting full conformity of the statutory law with the system of values accepted by a legislator makes the lawmaker is simply limited, in the process of lawmaking, to the reading of a set moral order and to making laws that sanction the moral norms. This makes the lawmaker give a state sanction to the moral

norms. This gives rise to the following question: Is such a model possible for adoption in a legal system of a democratic state?

Taking up the question the supporters of liberal ideology—who refer to the philosophy of Emmanuel Kant—point to the impossibility of legal norms resulting from moral norms due to the following reasons: both systems of norms fulfill basically different—but not necessarily contradictory—functions. The system of moral norms teaches the person to tell the good from the bad and its aim is to perfect the human being. And the system of legal norms is here to provide internal and external safety of the society and safeguarding its free development.

There can be just one system of statutory law within a set territory. But in social reality the same territory may at the same time host people—who according to their conscience—accept different moral systems. They may accept different values, and especially give them a different hierarchical structure. A legislator who makes one system of moral norms sanctioned by the state would be enslaved in its will by people who accept other system of moral norms. This model is characteristic for totalitarian states based on atheist ideology or religious fundamentalism. In a democratic state the state sanction may only be connected with a legal norm issued by the state, which does not exclude that at its base there is a moral norm relating to a set ethical value, accepted also for religious motives.

The other model is based on the assumption that legal norms of statutory law resulting entirely from moral norms would not be useful in the democratic society. Supporters of this concept reject the rule of axiological neutrality of the legal system, and at the same time try to set the following issues: What are the limits to which the legislator should take the moral norms into account, that are here in place, regardless of its will; and what values and which moral norms are universal and binding regardless of the will of the legislator, who has to act in accordance with them, which places them above the constitution.

What is important in selecting legal norms in a democratic state is their justification. For people accepting religious values this justification of the norm is, most of all, God, as the supreme being, timeless and perfect existence, the Creator of the whole order on earth, including the norms that form the moral order. This is a metaphysical or theological justification. And in case of all people—both believers and the non-believers—according to the axiology of the democratic state—the justification of a norm that stands above the constitution has to be based on cultural values that are typical for the respective culture. We can also see that for believers these two types of norms are supplementing each other.

The notion of value is universally bound with culture and religion. We have to differentiate between religious and cultural values. This differentiation is required not for practical reasons only. Although religion and culture influence

each other, they cannot be related to each other or treated as substitutes. It is true that religion is expressed through culture, but there is a significant discrepancy between them, that is, culture concerns the human development in the horizontal plane, in the natural order, whereas religion concerns the vertical development of human being in the transcendental (eschatological) order.

What Are the Christian Values?

Then we should turn our attention to the notion of Christian values and their types. Christians had an enormous influence on the development of cultures of European nations. That is why to define these values underlying the European culture, shaped in large proportion by the Christians, we use the term *Christian values*. In a pluralistic reality, Christians, who in different institutions and environments play the roles of leaders of social, political, and economic life, are confronted with people who resort to other concepts of values, especially the liberal values. This frequently leads to stresses and misunderstandings, especially when trying to answer the following question: Should the law stated by a democratic state, in which Christians are the majority, respect the Christian values?

Total negation of respect for Christian values in the order of statute law first appeared in France during the liberal revolution, then—with the spreading of the liberal ideology—it was transformed to other countries. The radically secular state, under the slogan of neutrality towards religious and world beliefs, made the aim of uprooting Christian values from the legal order—together with a ban on their expression in public life. This aversion to Christian values was the aftermath of the adoption of an ideological assumption that respect for Christian values does necessarily involve imposing a religious character of the state. In order to question this assumption we have to set apart two sets of values within the Christian values, that is:

- the set of the specifically Christian values;
- the set of universal values that have the character of basic human values, which the Christian religion helped to bring to our attention.

The foundations of those two subsets of Christian values are ontological and epistemological criteria. Both subsets of values are called Christian, as they were taught by Jesus Christ in his teaching, deeds, and example of life, as the basic human values for those who willingly want to shape their lives according to the Gospels. These values form the foundation of the Christian humanism, as they, prior to the culture created by Christians, were inspired by the Gospels. The misunderstanding is thus the result of lack of understanding of

the fact that the system of Christian values also accumulated the influences of the Judaist culture, as accepted by Jesus Christ (Decalogue) and elements of Greek philosophy and Roman law. The common denominator of this culture is the cognition (awareness) and respect for general humane values such as: the indispensable dignity of each person and the basic human rights and freedoms that every person has.

Characteristic of the Christian humanism is the fact that it does not rely objective human values without making it dependent on the free will of a state legislator, nor the will of the majority of society, but instead, it accepts them as a reality depicting the ontological structure of human being.

The Specifically Christian Values

The specifically Christian values are based on theological assumptions. They are formed by truths that human person learns in the light of Revelation and accepts them voluntarily by an act of faith, and the rules of conduct connected with them that differentiate the Christian ethics from all other ethics. This subset of Christian values includes the truth about the endowment of human person with divine dignity that was granted by Christ by his sacrifice on the cross salvaging the sinners. The person becomes a participant of this dignity through rebirth that takes place during baptism. This category of values also includes ethical rules that are based on respect and love of every human being, which also includes one's foes. This concept of life was defined by Jesus Christ in his Sermon on the Mount, in which he set the pattern for the people "who suffer oppression in the name of justice," and remain faithful to the adopted ideals. Jesus turns to the human being with a proposal of self-sacrifice; calls for love of foes and overcoming of evil by good. This subset of specifically Christian values shall not be imposed on anyone, as one shall not order one to love or be heroic.

The specifically Christian values should not be imposed by means of the state-executed sanctions. The Church is not willing to impose them with force, proposing the people the ideal of life shown on the pages of Gospels.

When it comes to respecting the specifically Christian values in the order of statute law, the Church demands public respect towards them and the state authorities to guarantee their manifestation by every person in its public life, on the principle of equality with all other citizens of a pluralistic society.

Universal Ethical Values

The other group of Christian values comprises the universal ethical values, forming the humanistic social order. Important elements of those values are the

fundamental human values, as respected in every social system and every legal order pretending to be democratic. These are:

- respecting the hierarchy of values;
- accepting that the human has the first place in this hierarchy;
- accepting that the inherent dignity of a person forms the source of fundamental rights and freedoms that belong to each human being.

The truth about the exceptional value of the dignity of a person played an important role in shaping, within the European culture, the rule stating that the dignity of humans is the source of their basic rights and freedoms. The awareness of the exceptional dignity of the human within the created world paved the way for the development of a doctrine of brotherhood of the whole human family and the need of common solidarity of mankind. This truth includes the acceptance of the existence of objective universal human values that should be respected in every social order. The rule of respecting the dignity of the human person as the foundation of every legal order of a state pretending to the name of a democratic one, is the achievement of twentieth-century legal culture, with universal reach.

The inherent dignity of a human person is a basic value which means that all other human values are derived from it. In consequence, the dignity of the human being is the source of all fundamental rights and freedoms that are proper to every human being. These values are ordered hierarchically. This hierarchy should be respected and protected by every system of statutory law.

The rule of respecting the dignity of the human person, as the basic principle of every legal order is coupled with the principles concerning the respecting of the hierarchy of values in every situation and the basic principles of social life. Actions of individuals and public authorities leading at shaping public life should be guided by those principles. These are the principles of: common good, subsidiarity, solidarity, and social justice.

Rules for Catholic Participation in a Civil Society in the Light of Religious and Worldview Pluralism

The answer to this issue can be found in the documents of the Second Vatican Council and the Code of Canon Law formulated on their basis (can. 227 of the 1983 Code of Canon Law, cann. 401 and 402 of the Code of Cannons of the Eastern Churches). These rules apply to internal relations between the Christian faithful and non-Christians in the civil society:

1. The Christian faithful participating in the construction of political community have the right to freedom that is due to all citizens, that is, without privileges and discrimination in public life.

2. The Christian faithful differ from people of other religions in that they are guided by the spirit of Gospels and the principles of the social teachings of the Magisterium of the Catholic Church.
3. The Christian faithful have the right, in such social questions that allow different opinions, to make decisions in their own name (on their own responsibility), directing themselves with their Christian conscience.

In relation to the state, the Church is represented by bishops; and the lay people can only represent it if they are authorized by the bishops. The clergymen have the right and duty to participate in public life and appear in matters connected with keeping peace and justice. But they should refrain from holding state offices and membership in political parties. These measures aim at the Church not being identified with the state, and the clergy not being identified with members of any political party in public life. Still in public life of every state, regardless of its political system, the clergy and the laymen have the same freedom rights as any other citizen.

The above principles of participation of Christians in the development of political culture are universal, that is, common for all citizens creating a political commonwealth in every single cultural circle.

Conclusions

The model of relations between the system of Christian values and the statutory law, as characterized above, can be easily utilized when the law is stated and applied by people who have sufficient knowledge regarding the values that are to be attained by means of that law. Still, a liberal democracy is unable to secure the statement and application of law by only such people who possess the necessary knowledge of values that are to be protected by the respective regulations, and the good will to apply them to public life. As a matter of fact, the majority of cases show the opposite. It is frequently the case that the law is passed by votes of people who have very little knowledge of the ethical content of the act, and the consequences that its application will have for the protection of goods that convey the values. Representative democracy requires that parliamentary majority express its political will in a vote in order to pass a law. However, what they vote for is usually in the hands of the leaders of political parties.

Frequently, even the draft acts that were well prepared in their axiological dimension fail to win the majority of votes due to pressures exercised on MPs not only by leaders of the respective parties, but also by the interest groups lobbying to achieve their own particular interests, which are contrary to the hierarchy of universal ethical values rooted in the European culture. In this way, the

legislatures of the European Union member states differ largely in their views of protection of fundamental rights, such as: the right to live for every human being from the conception to natural death (abortion, euthanasia); the protection of family as the basic unit of social life, based on a marriage of man and woman.

It is worth observing that in the European Union as a transnational structure based on a system of statutory law—there is an acute cultural crisis, directed by the majority of the political elites that worship the extremely liberal ideology. Its particular manifestation is seen in new regulations, passed mostly in the form of European Commission or European Parliament Commissions Directives, ordering the member states to introduce regulations that contradict the respect for the basic human values—concerning the protection of human life, freedom of conscience, freedom of speech, protection of marriage understood as a relation of man and woman, respecting the right of parents to bring up their children according to their beliefs within the public education system. The situation becomes dramatic due to the collision between the positive law and the system of universal ethical values, rooted in the natural law that St. Paul described as “engraved on their hearts, to which their conscience bears witness” (Rom. 2,15).

We have to remember that Christians, as citizens of any civil society, may not be treated as passive observers of uprooting of Christian values from public life by means of the applications of statutory law, for example, European Union Law.

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Józef Krukowski

La culture et le droit dans la société pluraliste

Résumé

L'article concerne le problème de la relation entre la culture et le droit dans la société pluraliste contemporaine où existent les différences idéologiques considérables liées à la perception des valeurs humaines de base. Le droit positif devrait servir à atteindre ces valeurs. Au début, l'auteur analyse la conception personaliste de la culture exprimée dans la constitution du Concile Vatican II, disant que « c'est le propre de la personne humaine de n'accéder vraiment et pleinement à l'humanité que par la culture, c'est-à-dire en cultivant les biens et les valeurs de la nature » (*Gaudium et Spes*, n° 53). Le développement de l'humanité se produit alors par la culture.

Afin d'expliquer ce problème—à l'avis de l'auteur—, il faut considérer : qu'est-ce que c'est que le droit, les valeurs et quel est leur rapport avec le droit positif, qu'est-ce que c'est que les valeurs chrétiennes, quelles sont les règles de la participation des chrétiens à la construction de la culture juridique dans la société pluraliste ?

Dans la partie finale, l'auteur dirige son attention sur le conflit dramatique concernant les systèmes juridiques des États membres de l'Union européenne—étant la conséquence des ordres de comportements inclus dans la loi écrite par les organes de l'Union européenne—qui sont en contradiction avec le système des valeurs chrétiennes enracinées dans la culture des nations européennes. D'après l'auteur, les chrétiens—en tant que citoyens de l'Union européenne ayant tous les mêmes droits—ne peuvent pas être traités comme des observateurs passifs de l'élimination de ces valeurs de la vie publique.

Mots clés : culture, droit, dignité de la personne humaine, valeurs chrétiennes, société civique

Józef Krukowski

La cultura e il diritto nella società pluralistica

Sommario

L'articolo riguarda il problema delle relazioni tra la cultura e il diritto nella società pluralistica contemporanea in cui esistono notevoli differenze ideologiche nella percezione dei valori umani fondamentali. Il diritto positivo deve servire a conseguire tali valori. Nell'introduzione l'Autore sostiene la concezione personalistica della cultura espressa nella costituzione del Concilio Vaticano II secondo la quale: « è proprio della persona umana il non poter raggiungere un livello di vita veramente e pienamente umano se non mediante la cultura, coltivando cioè i beni e i valori della natura » (*Gaudium et Spes*, n. 53). Lo sviluppo dell'umanità avviene quindi attraverso la cultura.

Al fine di chiarire tale problema, secondo l'Autore, occorre ponderare cosa sia il diritto, cosa siano i valori e quale sia il loro legame con il diritto positivo, cosa siano i valori cristiani, quali siano le regole di partecipazione dei cristiani alla costruzione della cultura giuridica nella società pluralistica.

Nella conclusione l'Autore fa notare il drammatico conflitto nei sistemi giuridici dei paesi membri dell'Unione Europea, conseguenza delle imposizioni dei comportamenti inclusi nel diritto stabilito dagli organismi dell'Unione Europea che sono in contraddizione con il sistema dei

valori cristiani radicati nella cultura delle nazioni europee. Secondo l'Autore i cristiani, in quanto cittadini dell'Unione Europea che godono della parità dei diritti, non possono essere trattati come osservatori passivi dell'eliminazione di tali valori dalla vita pubblica.

Parole chiave: cultura, diritto, dignità della persona umana, valori cristiani, società civile

Mirosław Sitarz

The John Paul II Catholic University of Lublin, Poland

Relations between Church and State in *Gaudium et Spes*

Abstract: The Second Vatican Council in the Pastoral Constitution on the Church in the Modern World *Gaudium et Spes* concluded teaching relating to ecclesiastical public law. The Council, in a new way, read out the relations between the Church and the political community, defining the basic principles on which these two different types of communities should arrange their mutual relations. In the center of these references has been the human with his/her adherent and inalienable dignity that is the source of all rights and freedom. For this reason, the Council described the catalog of principles in accordance with which they are to be laid the Church–state relations. Among the four principles, the principle of respect for pluralistic society was not mentioned directly in *Gaudium et Spes*, but taking into account the nature of the Church and the history of mutual relations between her and the state, this principle should be considered as a point of departure for the directly indicated by the Council: religious freedom, autonomy and independence of Church and state and the mutual cooperation between them.

Keywords: principles, ecclesial community, political community, pluralism, religious freedom, autonomy and independence, cooperation

Introduction

Making an actualization of the existing teaching and its reference to the world the Second Vatican Council courageously undertook the question of the Church–state relations, which has always been delicate and complicated. The Council made an attempt to introduce the issue from two perspectives, that is, stability and variability. The stability of these relations consists in the fact that these ones

were based on the principles which have been present in the Church from the beginning. Whereas their volatility is based on a new reading, which is required by modernity.¹ At the time of deepening and developing the modern doctrine of the Church and the state by the Second Vatican Council, a separate document regulating this issue was not originally envisaged. However, in the end, the conciliar commissions, in charge of the preparation of the Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*,² have developed even 17 schemes of the constitution's number 76³—which is still the current position of the ecclesial community to the state. This teaching is not only binding, but it also takes a new meaning in the context of the situation in which the world is found after more than 50 years after the Council announced the principles in accordance with which the relations between the Church and the political community should be laid. Although explicitly proclaimed three principles: (1) religious freedom, (2) autonomy and independence of Church and state, and (3) the cooperation of the two communities for the good of humanity and the common good, it also refers to the phenomenon of pluralism, and respect for a pluralistic society through the prism of the said basic principles of Church–state relations. Currently, when one of the most important topics in the world is a phenomenon of migration, which in Christian Europe has grown even to the level of a problem, it is worth to recall one of the participants, and also eyewitnesses of Vatican II—Bishop Walenty Wójcik. He stated:

Pluralistic type of society becomes something normal today. Each group, although in different ways expressed therein their belief, have equal rights. Former scheme [...] distinguishing the religion of the majority becomes outdated. Recognition of this phenomenon puts the state (or rather political community) in a new situation and the Church makes it difficult and complicates existing relationships. For the state, it is necessary to keep certain distance from different groups of society, in order to give everyone equal opportunity. What is needed is neutrality, that is, refraining from identification

¹ Wiesław Łużyński, “Soborowa koncepcja relacji między państwem a Kościołem. Otwarcie epoki pokonstantyńskiej,” in *Studia soborowe. Historia i nauczanie Vaticanum II*, ed. Michał Białkowski (Toruń: Oficyna Wydawnicza FINNA, 2013), 510.

² Sacrosanctum Concilium Vaticanum II, “Constitutio pastoralis de Ecclesia in mundo huius temporis *Gaudium et spes*” (7.12.1965), *Acta Apostolicae Sedis* [henceforth: AAS] 58 (1966): 1025–115.

³ On the projects and editorial of *Gaudium et Spes*, see: Janusz Zabłocki, *Kościół i świat współczesny. Wprowadzenie do soborowej konstytucji pastoralnej “Gaudium et spes”* (Warszawa: Ośrodek Dokumentacji i Studiów Społecznych, 1986), 51–153; Raúl Berzosa Martínez, “Relacja Kościół–wspólnota polityczna w świetle Soboru Watykańskiego II („*Gaudium et spes*” nr 76),” trans. Janusz Lekan, in Rada Naukowa Konferencji Episkopatu Polski, *Kościół w życiu publicznym. Teologia polska i europejska wobec nowych wyzwań*, t. I: *Wykłady i wprowadzenia do dyskusji grupowych* (Lublin: Wydawnictwo KUL, 2004), 332–50.

with any group or intervention which infringes the objectivity and justice distribution to all citizens without exception. For the Church, the recognition of the pluralistic society imposes the need to reduce their intervention and attitude to the service towards the general in implementing their principles in worldly life. The concern of the political community and the religious community at pluralism is the common good of the people professing different views.⁴

Before analyzing the existing principles of ecclesiastical public law formulated by the Second Vatican Council in the form of demands addressed to states, it is necessary to indicate the legal and theological basis for Church–state relations and clarify and explain their evolution in history.

Theological Foundations of Church–State Relations

A theological and legal foundations between Church and state can be found in the Holy Bible. Jesus Christ, the founder of the Church, said: “Then repay to Caesar what belongs to Caesar and to God what belongs to God” (Mt 22, 21). That is why the Church from the beginning of her history has expressed the opinion that there are two separate, original, and independent communities—Church and state.⁵ Both communities, come from God; the first one—directly, the other one—indirectly, as a consequence of the social human nature (Rom 13,1–2; 1 Pet 2,13–17). Both of them serve the man; the first one leads to the supernatural aim, the second one enables the realization of temporal purposes. The common origin from God and the service to humanity demands the existence of harmonious cooperation between those two communities. If this cooperation were in conflict with the law of God, that is, the secular power in contradistinction with the will of God, then the human beings should obey rules given by God rather than by people (Acts 5,29).

⁴ Walenty Wójcik, “Wytyczne w układaniu stosunków Kościół–Państwo według Vaticanum II,” *Duszpasterz Polski Zagranicą* 26, n. 1 (1975): 41–42.

⁵ Tarcisio Bertone, “Il rapporto giuridico tra Chiesa e Comunità politica,” in AA.VV., *Il Diritto nel mistero della Chiesa*, t. IV: *Diritto patrimoniale tutela della comunione e dei diritti Chiesa e comunità politica* (Roma: Pontificia Università Lateranense, 1980), 295–494; Lorenzo Spinelli, *Il diritto pubblico ecclesiastico dopo il Concilio Vaticano II. Lezioni di diritto canonico* (Milano: Giuffrè, 1985).

The history of relations between Church and the state knows various forms of mutual interconnection of those two communities. Also, many viewpoints concerning these relations have been expressed over the centuries. The year 380 is considered as the first official interference of the state in the affairs of the Church – it was the moment of the announcement of Christianity as the state religion by Emperor Theodosius the Great. Although this recognition led to the development of Christianity within the boundaries of the Roman Empire, it gave rise to danger of *caesaropapism*, according to which the civil authority and Church powers rest in the hands of the monarch.⁶ This system was adopted in the East, whereas in the West the view of the close relation between Church and state strengthened. Christian emperor was treated as the God anointed. The emperor by liturgical coronation obtained a certain participation in the spiritual power. In turn, the attempt to impose caesaropapism took other forms. As a result of the struggle for investiture⁷ at the time of Pope Innocent III (1161–1216) it came to *popecaesarism*—accumulation of spiritual and temporal power in the hands of the pope.⁸ The doctrine of the Church on the mutual independence of the ecclesiastical and state orders expounded in 494 (a letter of Pope Gelasius I in to Emperor Anastasius I⁹; in modern times—Pope Leo XIII in many encyclicals, especially *Immortale Dei* of 1885).¹⁰ The idea of the Church as a perfect community¹¹ and the idea of the Catholic state and its duty towards religion—according to the concept of Leo XIII—was proclaimed until the Second Vatican Council.

According to the Congregation for the Doctrine of the Faith, the Second Vatican Council reflecting on its attitude to the world and on its activities in it,¹² was in fact neither going to change, nor actually changed this learning,

⁶ Zygmunt Zieliński, “Cezaropapizm,” in *Encyklopedia Katolicka*, t. III, ed. Romuald Łukaszyk, Ludomir Bieńkowski, and Feliks Gryglewicz (Lublin: Towarzystwo Naukowe KUL, 1979), 41–42.

⁷ Anzelm Weiss, “Inwestytura,” in *Encyklopedia Katolicka*, t. VII, ed. Stanisław Wielgus, Jerzy Duchniewski, and Mirosław Daniluk (Lublin: Towarzystwo Naukowe KUL, 1997), 421–22.

⁸ Tadeusz Pawluk, *Prawo kanoniczne według Kodeksu Jana Pawła II*, t. I: *Zagadnienia wstępne i normy ogólne* (Olsztyn: Warmińskie Wydawnictwo Diecezjalne, 2002), 174–75; Bogdan Szlachta, “Papocezaryzm,” in *Encyklopedia Katolicka*, t. XIV, ed. Edward Gigilewicz (Lublin: Towarzystwo Naukowe KUL, 2010), 1309–310.

⁹ *Epistola VIII Gelasii Papae I ad Anastasium Imperatorem* (494), in *Sacrorum Conciliorum Nova et Amplissima Collectio*, ed. Joannes Dominicus Mansi, t. VIII (Florentiae: Expensis Antonii Zatta Veneti, 1762), 30–35.

¹⁰ Leo PP. XIII, “Epistola encyclica de civitatum constitutione Christiana *Immortale Dei*” (1.11.1885), AAS 18 (1885): 161–80.

¹¹ Henryk Insadowski, *Ustrój prawny Kościoła Katolickiego* (Lublin: [s.n.], 1926), 29–60.

¹² Jan Sieg, “Refleksja Soboru nad obecnością Kościoła w świecie współczesnym,” in *Kościół w świetle Soboru*, ed. Henryk Bogacki and Stefan Moysa (Poznań: Księgarnia św. Wojciecha, 1968), 491.

but only developed, deepened and expounded in a more explicit way.¹³ The Church deepened and renewed the doctrine relating to her mission in the world. The Council did this by interpreting typical for the Christian culture the religious-political dualism. The Council pointed to the need to extend this dualism on the relationship between the two communities of a different type: ecclesiastical and civil, to which at the same time, although other reasons include the same people.¹⁴ Indications of relations of the Church to the world were concentrated on the following principles: (1) respect for pluralist society; (2) respect for conscience and religion freedom in the individual, community, and institutional dimension; (3) the autonomy and independence of Church and state, each in its field; (4) cooperation between the Church and the state in achieving the common good of the human person.

The Principle of Respect for Pluralistic Society

The principle of respect for pluralistic society was not distinct from the model of Church–state relations. Therefore, it should be viewed in the broader context of the principles of these relations, analyzing the *Gaudium et Spes* constitution, according to “correct notion of the relationship between the political community and the Church” and together with the need to distinguish “between the tasks which Christians undertake, individually or as a group, on their own responsibility as citizens guided by the dictates of a Christian conscience, and the activities which, in union with their pastors, they carry out in the name of the Church” (n. 76). This strongly indicates that, despite the lack of distinct by the Council *explicite* this principle, Church—in place of the existing concepts, such as the Christian state and non-Christian state—moved away from the model of the state unified ideologically in favor of the pluralistic society.¹⁵ Whereas this pluralistic order has its origins in the family, and by various groups goes back to Church and to state.¹⁶ The Council has not announced the thesis that the state should be, but pointed out that it actually is, that is, on the global community in which exist both, the state and the Church. Confirmed the existence of a pluralistic society, in which the Church coexists with the

¹³ Congregatio pro Doctrina Fidei, “Responsa ad quaestiones de aliquibus sententiis ad doctrinam de Ecclesia pertinentibus” (29.06.2007), AAS 99 (2007): 604–08.

¹⁴ Józef Krukowski, *Kościół i państwo. Podstawy relacji prawnych* (Lublin: Redakcja Wydawnictw KUL, 2000²), 85.

¹⁵ Wójcik, “Wytyczne w układaniu stosunków Kościół–Państwo,” 41.

¹⁶ Henryk Krzemienowski, “W kierunku posoborowej koncepcji odniesień między Kościołem a państwem,” *Colloquium Salutis. Wrocławskie Studia Teologiczne* 9 (1977): 53.

state, and in which there are people with various ideological and religious convictions.¹⁷ According to Józef Krukowski: “global society, in which state and the Church exist is not a religious denomination monolithic [...]. With the existence of the pluralistic society there also arises the duty to respect both, by the Church and by the state, for the phenomenon of the pluralism of Churches, namely, existence in the same global society next to the Catholic Church of other Churches or religious communities, and consequently resigned in the future by the Church with all the privileges, if this would result in a feeling of discrimination on the side of other Churches or religious associations.”¹⁸ In this way, the Council directly acknowledged the worldview plurality, which was a *novum* in Church doctrine in the topic of relations to the political community.¹⁹ However, pluralism was seen in the previous teaching of the Church—also by Pope Leo XIII—therefore this *novum* could not and cannot be understood as making changes in this learning, but as the modernizing and adapting to the needs of the times and places.²⁰

The principle of respect for pluralistic society refers to pluralism as a social phenomenon. With it comes the possibility of recognition a state secularism by the Church. However, this phenomenon cannot relate to the recognition of equality of “religious doctrines” and “confessions of faith,” nor to recognize the state community as irreligious or anti-religious—laicized, but to equality of citizens with “different religious pedigrees.”²¹ Thus, pluralism means the existence of society with differentiated religious beliefs and worldviews. Such community should not be understood as an ideal condition, but as a normal status, which cannot raise neither surprise nor opposition. Besides the states, which were called “Catholic,” easily accepted the Church and the Catholic doctrine, and also carried out the assessment of its activities and individual faithful. In turn, at present times, when the Church has taken a reflection on their place in the world and recognized the existence of a pluralistic society, is hard to the so-called Catholic states to see and understand Church as it really is—made up of the divine and the human element and built on a hierarchical structure.²² Therefore, to avoid the misunderstandings, the Second Vatican Council pre-

¹⁷ Józef Krukowski, “Stanowisko Soboru Watykańskiego II wobec rozdziału Kościoła od państwa,” *Roczniki Teologiczno-Kanoniczne* 27, z. 5 (1980): 53–54.

¹⁸ Józef Krukowski, *Kościelne prawo publiczne. Prawo konkordatowe* (Lublin: Towarzystwo Naukowe KUL, 2013), 115–17.

¹⁹ Paweł Sobczyk, *Kościół a wspólnoty polityczne* (Warszawa: Santiago, 2005), 78.

²⁰ Anna Słowikowska, “Soborowa zasada współdziałania Kościoła i państwa w kontekście zasad ją warunkujących,” *Biuletyn Stowarzyszenia Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego* 11, n. 2 (2014): 33.

²¹ Jacques Maritain, *Człowiek i państwo*, trans. Adam Grobler (Kraków: Wydawnictwo Znak, 1993), 181.

²² Mirosław Sitarz, “Zasada równouprawnienia Kościołów i innych związków wyznaniowych,” *Kościół i Prawo* 4 (17), n. 1 (2015): 147.

sented what it is, and explaining when the state has to deal with the action of the Church, and when with the action of her members,²³ because pluralism provides the coexistence of different views without the overwhelming hegemony of one of them and, in this way, people believe deeply that they create the reality, developing “a growing conviction that they themselves shape the reality in which there are more signs of their activities, and less of God.”²⁴ However, at the same time, the pluralistic society enables a man to mature and have conscious choice, consistent with his/her conscience, and consequently to the adoption of the Christian mission.²⁵ According to Krukowski, “this means the need to distinguish about two planes in the relations between the state and the Church in a democratic society, that is, the horizontal plane from the vertical one. In the horizontal plane the faithful may occur individually as fellow citizens, being organized, taking action on their own responsibility, guided by the Christian conscience. In the second plane, they may occur in relation to the state together with the bishops. This does not mean that the bishops cannot intervene in matters concerning the temporal order from the point of view of human rights, but they may take public activity in relations with state authorities, and only their activity is to be public on behalf of the Church.”²⁶ Whereas Paweł Sobczyk expresses the opinion that we need to respond more broadly to understand pluralism properly in the context of a social phenomenon:

In this lies the fundamental difference between the position of the Catholic Church and the assumptions of the liberal ideology, which sees pluralism as a core value. For Council Fathers the consequence of religious and world-view pluralism is the need to respect religious freedom, autonomy, and independence of Church and state and their healthy cooperation for the good of man and the common good.²⁷

²³ Andrzej Białczyk, *Rozdział między Kościołem a państwem w świetle nauki Kościoła katolickiego* (Lublin: mps w Archiwum KUL, 1978), 251–52.

²⁴ Ryszard Kamiński, *Duszpasterstwo w społeczeństwie pluralistycznym* (Lublin: Atla 2, 1997), 34–35.

²⁵ *Ibid.*, 36.

²⁶ Krukowski, *Kościelne prawo publiczne*, 116.

²⁷ Paweł Sobczyk, “Katolicka koncepcja państwa wyznaniowego,” in *Państwo wyznaniowe. Doktryna, prawo i praktyka*, ed. Jarosław Szymanek (Warszawa: Dom Wydawniczy Elipsa, 2011), 113–14.

The Principle of Religious Freedom

In the declaration on religious freedom the Second Vatican Council proclaimed the principle of social and civil freedom in religious matters (n. 2).²⁸ The right to religious freedom belongs to a catalog of fundamental rights of the human being. The basis of respect for this right is the human conscience, and the source—human dignity,²⁹ which should be the foundation of every law.³⁰ The Council also expounded the issue of religious freedom in the Pastoral Constitution on the Church in the Modern World and pointed teaching on its close relationship with the dignity of the human person,

since he stands above all things, and his rights and duties are universal and inviolable. Therefore, there must be made available to all men everything necessary for leading a life truly human, such as food, clothing, and shelter; the right to choose a state of life freely and to find a family, the right to education, to employment, to a good reputation, to respect, to appropriate information, to behave in accordance with the upright norm of one's own conscience, to protection of privacy and rightful freedom even in religious matters.³¹

The Second Vatican Council developed the concept of freedom of conscience and religion, and declared that the human person has the right to religious freedom. It consists in that all people should be free from coercion from the individuals, community groups or authority so that no one should be made to act contrary to his/her conscience and should not experience any obstacles when acting in accordance with it—both privately and publicly, individually and communally.³² The principle of religious freedom is manifested in two ways: at individual and community level. The first one concerns the subject of the freedom of the individual. This freedom is the fundamental human right to the freedom of conscience and religion and to equal participation in public life, regardless of religion. In turn, religious freedom in community (social) dimension whose

²⁸ Sacrosanctum Concilium Oecumenicum Vaticanum II, “Declaratio de libertate religiosa *Dignitatis humanae*” (7.12.1965), AAS 58 (1966): 929–46.

²⁹ Ioannes PP. XXIII, “Litterae encyclicae de pace omnium gentium in veritate, iustitia, caritate, libertate constituenda, *Pacem in terris*” (11.04.1963), AAS 55 (1963): 257–304.

³⁰ Tarcisio Bertone, “La dignità umana unico fondamento dei diritti dell'uomo,” in Tarcisio Bertone, *La Diplomazia Pontificia in un mondo globalizzato*, ed. Vincenzo Buonomo (Città del Vaticano: Libreria Editrice Vaticana, 2013), 241–79.

³¹ *Gaudium et Spes*, n. 26.

³² Mirosław Sitarz, “Zasady relacji Kościół–państwo w nauczaniu Soboru Watykańskiego II,” in *Reddite ergo quae sunt Caesaris Caesari et quae sunt Dei Deo. Księga jubileuszowa dedykowana Księdzu Profesorowi Józefowi Krukowskiemu z okazji 50-lecia pracy naukowej*, ed. Mirosław Sitarz, Piotr Stanisław, and Henryk Stawniak (Lublin: Towarzystwo Naukowe KUL, 2014), 244.

subject is the human community (collectivity), refers to a group of rights due to religious communities, thanks to which they can freely fulfill their tasks.³³ Both of these aspects of religious freedom are closely linked and mutually dependent. Where there is no individual freedom, neither is there social freedom, and where there is no social freedom, there cannot be individual dimension.³⁴ The Council demanded that the religious freedom should be for all recognized and respected, also in the relations between Church and state.³⁵ The Council Fathers recommended that the human person's right to religious freedom be in the legal order of society to make it statutory law.³⁶ The Council applied the principle of religious freedom in recognition of pluralism and teaches that: "In the conscience of many arises an increasing concern that the rights of minorities be recognized, without any neglect for their duties toward the political community. In addition, there is a steadily growing respect for men of other opinions or other religions."³⁷ Therefore, religious freedom is fundamental for Church in relations with the state. It is an essential condition for their mutual relations should be based on cooperation. Church wants freedom, not direct or indirect authority over the political community. This is the elementary right, realization of which is one of the fundamental tests of humanity in any political system, society or environment.³⁸ State authorities that reserve for themselves the right to direct religious acts or prohibit their practice, go beyond its competence,³⁹ because the Church should have, always and everywhere, true freedom in the proclamation of faith, in teaching, in the fulfillment of her mission, in passing moral judgment "in those matters which regard public order when the fundamental rights of a person or the salvation of souls require it."⁴⁰ Only when the principle of religious freedom is practically used is the Church gaining the legal conditions for the implementation of the principle of autonomy and independence of Church and state,⁴¹ and initiating the cooperation aiming at ensuring that everyone—not just the privileged individuals, are able to use their personal rights.⁴²

³³ Stanisław Stawny, "Niektóre aspekty wolności religijnej w listach pasterskich Prymasa i Episkopatu Polskich w latach 1945–1981," *Kościół i Prawo* 7 (1990): 203; Remigiusz Sobański, *Kościół jako podmiot prawa* (Warszawa: Akademia Teologii Katolickiej, 1983), 219.

³⁴ Sobański, *Kościół jako podmiot prawa*, 219.

³⁵ Piotr Hemperek, "Współpraca między Kościołem a państwem," *Kościół i Prawo* 4 (1985): 90.

³⁶ *Dignitatis Humanae*, n. 2.

³⁷ *Gaudium et Spes*, n. 73.

³⁸ Ioannes Paulus PP. II, "Litterae encyclicae *Redemptor Hominis*" (4.03.1979), AAS 71 (1979): 257–324, n. 17.

³⁹ *Dignitatis Humanae*, n. 3.

⁴⁰ *Gaudium et Spes*, n. 76.

⁴¹ *Dignitatis Humanae*, n. 13.

⁴² *Gaudium et Spes*, n. 73.

The Principle of Autonomy and Independence of Church and State

The Second Vatican Council, emphasizing the need for proper alignment relations between the Church—as a community of the People of God, and the state—as a political community, a special place admits the principle of autonomy and independence of the tasks for which they have been implementing. According to the Council: “The Church and the political community in their own fields are autonomous and independent from each other. Yet both, under different titles, are devoted to the personal and social vocation of the same men. The more both foster sounder cooperation between themselves with due consideration for the circumstances of time and place, the more effective will their service be exercised for the good of all.”⁴³

By “autonomy and independence” the Council highlighted the mutual respect for one institution to another. The autonomy inheres to the Church, which is situated within the boundaries of the state. The state also has the autonomy in relation to Church, but the boundaries of their autonomy define field of activity of both communities.⁴⁴ Therefore, the Council noticed the need for the delimitation of competences of Church and State. The Council pointed out that the Church is not identified in any way with the political community nor bound to any political system, but it is a sign and the defense of the transcendent human person,⁴⁵ and instrument of intimate union with God and of the unity of all mankind.⁴⁶ The basis of separation of the two communities is the mission of the Church and the current problems that need to be solved.

The state and the Church exist for the good of the people—the state for its citizens, and the Church for the good of her followers. The Church does not identify herself with the state and temporal things but represents herself only from the point of view of morality. However, she is able to contribute to temporal things as much as it is her own mission that requires it.⁴⁷ Since the Second Vatican Council, the Church strongly emphasizes her independence from the state. The political community also has its own values and its own rules, which the Church must respect. Its autonomy includes various forms of human activity, which should be directed to the common good.⁴⁸ At the

⁴³ Ibid., 76.

⁴⁴ Krukowski, “Stanowisko Soboru Watykańskiego II,” 55.

⁴⁵ *Gaudium et Spes*, n. 76.

⁴⁶ Sacrosanctum Concilium Oecumenicum Vaticanum II, “Constitutio dogmatica de Ecclesia *Lumen gentium*” (21.11.1964), AAS 57 (1965): 5–67, n. 1.

⁴⁷ *Gaudium et Spes*, n. 76.

⁴⁸ Józef Krukowski, “Autonomia i niezależność wspólnoty politycznej,” *Kościół i Prawo* 4 (1985): 58–59.

same time, the Church assumes the incompetence of the state in religious matters.⁴⁹ There should be no impact on the organization and activity of the Church. In this way, the Church demands the recognition of her independence from the state. Church and state are two separate legal systems—each of them is autonomous and independent due to their tasks, which must not be interchanged.

The obligation coming from significant differences between Church and state and the need to work in the same space and at the same time, for the same people, determines the legal relations between those institutions.⁵⁰ The principle of mutual autonomy and independence of the Church and the political community in their field includes not only the moral field, but also the legal one. In this aspect, the independence of each of these two different nature communities is identified with sovereignty.⁵¹ Sovereignty⁵² should be an attribute of each country, which is illustrated in the international custom, which distinguishes two types of sovereignty: the temporal and the spiritual one. The first is inherent to states (nations) and its representative authority bodies, the second—

⁴⁹ Hempterek, “Współpraca między Kościołem a państwem,” 89.

⁵⁰ Wójcik, “Wytyczne w układaniu stosunków Kościół-Państwo”, 44; cf. Paul Mikat, “Kirche und Staat,” *Sacramentum mundi. Theologisches Lexikon für die Praxis* 2 (1968): 1314.

⁵¹ Krukowski, *Kościół i państwo*, 121.

⁵² The term „sovereignty” derived from Latin *superanus*—higher; *superans*, *-ntis*—who has the advantage, dominant, unequalled, exceeding—Józef Korpanty, ed., *Słownik łacińsko-polski*, t. II (Warszawa: Wydawnictwo Szkolne PWN, 2003), 806; Janusz Sondel, *Słownik łacińsko-polski dla prawników i historyków* (Kraków: Towarzystwo Autorów i Wydawców Prac Naukowych Universitas, 2009), 919. According to *Słownik wyrazów obcych* “sovereignty” means: (a) the independence of the authority government from any external factors, (b) supreme power, supremacy, (c) independence, indivisible supremacy over the territory of the state—Jan Tokarski, ed., *Słownik wyrazów obcych PWN* (Warszawa: Państwowe Wydawnictwo Naukowe, 1980), 714; Władysław Kopaliński, *Słownik wyrazów obcych i zwrotów obcojęzycznych z almanachem* (Warszawa: Muza, 1999²⁵), 481. In state law science, some scholars understand the supreme sovereignty as unlimited by anyone—outside the state—authority; other distinguished two attributes of this power, that is, self-motricity—legal independence from any external factors, and all-motricity—competence to standardization of all relations within the state. Self-motricity is defined as external sovereignty and all-motricity as internal sovereignty, Jacek Barcik and Tomasz Srogosz, *Prawo międzynarodowe publiczne* (Warszawa: Wydawnictwo C.H. Beck, 2007), 45; Ludwik Ehrlich, *Prawo międzynarodowe* (Warszawa: Wydawnictwo Prawnicze, 1958), 123. Nowadays sovereignty is understood at two levels: internal (*ad intra*) and external (*ad extra*). The first means that on the territory of the State there is no power above its central organs, which means that there are no other authorities, which they would not to be the subject of political decision-making. Sovereignty in the external plane means state independence, or that the highest authorities of the state in making their political decisions are not subject to others authorities located outside its territory. State can independently make decisions within its territory and liabilities to other subjects of international law—Józef Krukowski, *Wstęp do nauki o państwie i prawie* (Lublin: Towarzystwo Naukowe KUL, 2004²), 23.

to Church, which is represented by the Holy See.⁵³ This sovereignty is the basis of the legal-public personality of the Holy See in international relations.⁵⁴ Therefore, in accordance with the principle of autonomy and independence, each of sovereign communities, both the Church and the state should take action within their competence so as to bring contribution to the common good of individuals and the whole society.

The Principle of Cooperation between Church and State

Among the fundamental principles which should underlay the relations between the state and the Church is the principle of cooperation and, in some cases, also collaboration.⁵⁵ The starting point for cooperation is the emphasis put on the menial role of the state and the Church. Service to personal and social vocation of the same people, which is implemented according to their tasks, both by the state and the Church, implies that the subject of cooperation is the common good (*bonum commune*). It involves respecting the rights and duties of the human person.⁵⁶ It includes the sum of the conditions of social life by which people can fully and quickly achieve their own perfection.⁵⁷ In order to create such conditions both the state and the Church are required, therefore their cooperation in the realization of the good is not only useful but also necessary.⁵⁸ The legal meaning of the common good comes down to it being the social order that allows anyone to enjoy the rights and freedoms flowing from the dignity of the human person.⁵⁹ The implementation of the common good is

⁵³ Krukowski, "Autonomia i niezależność Kościoła," 72–73; Krukowski, *Kościół i państwo*, 121.

⁵⁴ Krukowski, *Wstęp do nauki o państwie i prawie*, 22; Barcik and Srogosz, *Prawo międzynarodowe publiczne*, 152.

⁵⁵ Józef Krukowski, "Zasada współdziałania między państwem i Kościołem w ujęciu Prymasa Stefana Wyszyńskiego," *Roczniki Nauk Prawnych* 12, n. 1 (2002): 220. Krukowski explains that in Polish the equivalent of cooperation is rather "cooperation" rather than just "collaboration." In his opinion, cooperation occurs when the two parties perform the same task using the same resources; whereas in case of collaboration each party fulfills its own tasks, but both towards a common goal—Krukowski, *Kościół i państwo*, 124, ft. 21.

⁵⁶ *Pacem in Terris*, n. 60.

⁵⁷ Ioannes PP. XXIII, "Litterae encyclicae de rectionibus rerum socialium processibus ad Christiana praecepta componendis *Mater et Magistra*" (15.05.1961), AAS 53 (1961): 442, n. 58.

⁵⁸ Hemperek, "Współpraca między Kościołem a państwem," 93.

⁵⁹ Sieg, "Refleksja Soboru nad obecnością Kościoła w świecie," 506.

realized in view of the many forms of socialization. This starts in the family and then bifurcates into a variety of groups to finally reach to the Church and the state.⁶⁰ Common good is present in all aspects of social life and includes three basic components: the good of the person, the good of the family, and the good the nation.

Because the state and the Church were established to serve the same people, it is important that they work together. The Second Vatican Council recommended that the mutual cooperation of the two communities is healthy and should take into account “the diversity of times and circumstances.”⁶¹ The form and way in which it is made, have not been closely defined by the Council (*attentis locorum temporumque adiunctis*⁶²). The issue of relations and forms of cooperation has been left unresolved.⁶³ The Church does not have to provide ready solutions in temporal affairs. In different countries there are miscellaneous systems of government—their attitude to religion and to the Church is not the same. Therefore, no form of socialization is not competent to provide ready solutions to the world in this field. Constant amending the conditions and political systems in countries makes any attempt at drawing up a catalog of forms of cooperation between the Church and the state (which from the very beginning would be doomed to fail).⁶⁴ There are ways of cooperation, but they have contractual character. For their realization, cooperation between the state and the Church should be agreed by both parties.⁶⁵ In this regard, the Second Vatican Council proclaimed principle of healthy cooperation between Church and state for the common good, but not pointed out the ways and forms of its realization (issues of this can be explained by practice). According to Krukowski, agreeing on cooperation between the Church and the state should be guaranteed by the competent authorities of the two communities in the way of an agreement, for example, concordat. Of significance to these arrangements is a dialogue that would aim at understanding the parties as to the terms of cooperation or collaboration.⁶⁶ Staying at the level of equal dialogue between partners it is justified by the fact that the other party does not know the religious authority of the

⁶⁰ Krzemienowski, “W kierunku posoborowej koncepcji odniesień między Kościołem a państwem,” 53.

⁶¹ *Gaudium et Spes*, n. 76.

⁶² *Ibid.*

⁶³ Białczyk, “Rozdział między Kościołem a państwem w świetle nauki Kościoła katolickiego,” 255.

⁶⁴ See: Anna Słowikowska, “Origin of Principle of Cooperation between the Catholic Church and the State in Preparatory Documents for the Second Vatican Council. Outline,” *Teka Komisji Prawniczej. Polska Akademia Nauk Oddział w Lublinie* 6 (2013): 152–68.

⁶⁵ Krukowski, “Zasada współdziałania między państwem i Kościołem w ujęciu Prymasa,” 231–32.

⁶⁶ Józef Krukowski, “Podstawy współdziałania Kościoła i państwa,” *Kościół i Prawo* 8 (1992): 29.

Church and, at the same time, feels that it has the right to religious freedom. The Church considers it to be the right enjoyed by every human being. The recognition of human dignity and respect of human rights to proclaim their beliefs and to act according to their conscience are an essential condition for establishing authentic dialogue.⁶⁷ Church and state are equal partners in a dialogue and communicate their opinions in matters of mutual interest. Such mutual relations emphasize the relative autonomy of the world and temporal areas.

Conclusions

The above analysis of the basic principles of Church–state relations allows to draw the following conclusions:

1. Community—both the ecclesiastical and the civil community come from God. The basis of these relations is the command of Christ: “Then repay to Caesar what belongs to Caesar and to God what belongs to God” (Mt 22, 21).
2. In the history of Church–state relations there existed various forms of interconnection.
3. The current rules of the Church–state relations were forwarded by the Second Vatican Council, which made the actualization of mutual relations with regards to time and place. Complexity of the discussion on working out the correct position on the issue of the relations confirms the necessity to take account of the nature of the Church, both *ad intra* and *ad extra*.
4. Creating a catalog of principles of the Church–state relations, the Second Vatican Council placed man in the center, with his/her adherent and inalienable dignity of the human person. Then acknowledged the existence of a pluralistic society and proclaimed the necessity to respect it. In the context of the principle of respect for pluralistic society, the Council proclaimed as existing principles: religious freedom, autonomy and independence of Church and state, and the mutual cooperation between them.
5. These four principles are the subject of ecclesiastical public law.

⁶⁷ Sieg, “Refleksja Soboru nad obecnością Kościoła w świecie,” 499.

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Miroslaw Sitarz

Les relations Église–État dans *Gaudium et Spes*

Résumé

Dans la Constitution pastorale sur l'Église dans le monde de ce temps *Gaudium et Spes*, le Concile Vatican II a inclus l'enseignement concernant le droit civil ecclésiastique. Il a réinterprété les relations entre l'Église et la communauté politique, tout en définissant les principes de base sur lesquels ces deux entités de différente nature devraient gérer leurs relations mutuelles. Au centre de ces réflexions, on a placé l'homme ayant droit à la dignité inaliénable qui, quant à elle, est la source de toutes les libertés et de tous les droits. Cela étant, le Concile Vatican II a établi un catalogue de principes sur la base desquels on devrait gérer les relations Église–État. Parmi quatre principes, c'est celui concernant le respect de la société pluraliste qui n'a pas été explicitement mentionné dans *Gaudium et Spes*, mais, en prenant en considération la nature de l'Église et l'histoire des rapports mutuels entre elle et l'État, il faut le considérer comme point de départ pour l'établissement de nouveaux principes, directement indiqué par le Concile : liberté religieuse, autonomie et indépendance de l'Église de l'État et coopération mutuelle entre eux.

Mots clés : principes, communauté ecclésiastique, communauté politique, pluralisme, liberté religieuse, autonomie et indépendance, coopération

Mirosław Sitarz

I rapporti tra Chiesa e stato nella *Gaudium et Spes*

Sommario

Il Concilio Vaticano II nella costituzione pastorale sulla Chiesa nel mondo contemporaneo *Gaudium et Spes* racchiuse l'insegnamento riguardante il diritto pubblico ecclesiastico. Rilesse le relazioni tra la Chiesa e la comunità politica definendo i principi fondamentali sui quali queste due società di tipo divergente debbano organizzare i rapporti reciproci. Al centro di tali riferimenti pose l'uomo con la dignità che gli appartiene ed è inalienabile la quale è fonte di tutte le libertà e tutti i diritti. Per tale ragione definì un catalogo di principi sulla base dei quali devono essere organizzate le relazioni tra la Chiesa e lo stato. Tra i quattro principi, la regola del rispetto della società pluralista non fu espressamente menzionata nella *Gaudium et Spes*, ma considerando la natura della Chiesa e la storia delle correlazioni reciproche tra essa e lo stato, occorre riconoscere tale principio come punto di partenza per i successivi, ossia per i principi indicati direttamente dal Concilio: libertà religiosa, autonomia ed indipendenza della Chiesa dallo stato e collaborazione reciproca tra loro.

Parole chiave: principi, società ecclesiastica, comunità politica, pluralismo, libertà religiosa, autonomia ed indipendenza, collaborazione

Andrzej Pastwa

University of Silesia in Katowice, Poland

Gaudium et Spes: An Enormous Step towards Overcoming the Dualism between Natural Marriage and the Sacrament of Matrimony

Abstract: In this study the author undertakes an attempt of an integral interpretation of the Vaticanum II magisterium on the sacrament of matrimony. At the beginning he formulates a hypothesis which implies that next to the assumptions of an adequate anthropology and methodological remarks, which were made, lies an idea that “gives order” to the appropriate discourse in the area of *matrimonium christifidelium*. It is about the significant thesis which suggests that the “unity,” paradigm of the contemporary ecclesiology, constitutes an inseparable hermeneutical key to the understanding of Christian matrimony. The concentration in the old code (CIC 1917) of regulations concerning *sacramentum matrimonii*, on the constitutive moment of entering into marriage (*matrimonium in fieri*), carried many implications of a theological and legal nature. The matter of this sacrament was defined as (mutual) giving of the right to the body to the other person, whereas the form as the acceptance of this right. In turn, the legalistic depiction of the sacramentality of matrimony and binding it with the condition of a rightfully received baptism, regardless of the presence or absence of faith, in practice by no means meant that baptism is to constitute a foundation of building a sacramental reality of matrimony. Such automatism—a result of a substantial and juridical approach—by misrepresenting, in a significant way, the personal core of the event of the sacrament, brought this sacrament closer to magic. This is where the significance of Council Fathers’ work, aimed at overcoming the dualism between natural marriage and the sacrament of matrimony, stems from. The person who significantly contributed to the presentations of Christian matrimony, as closely connected with the secret of Christ, was a prominent theologian of law Eugenio Corecco. One of the rhetorical questions—that constitutes the structure of the fundamental part of the study—is as follows: Is it not desirable (or even essential) to interpret the most crucial code regulations of matrimonial law according to a proper “anthropological key,” that is, through the prism of the Mystery of Incarnation—in relation to an internal dynamics of followers’ (nupturients’) affiliation to *communio Ecclesiae*?

Keywords: marriage, sacramentality of matrimony, adequate anthropology, theology of matrimony, matrimonial doctrine *Gaudium et Spes*, matrimonial law in CIC

Introduction

Saint John Paul II's two enunciations, derived from the 1982 and 1986 addresses to the Roman Rota, as well as a fragment of an article from the Catechism of the Catholic Church (1992)—all together three texts *explicite* referring to the magisterium of the 48th point of the *Gaudium et Spes* constitution—comprise the ideological structure of this deliberation. Naturally, this selection is not accidental. After all it was no one else than the Pope of the Family, whom the issue of a genuine interpretation of the conciliar teaching on the matrimony¹ pressed heavily on mind, and who did a lot to make sure that this teaching was interpreted in its entirety, with a particular allowance for the ecclesiologic doctrine.²

Therefore, the introductory constatation from the first of the evoked speeches: “The Council perceived matrimony as a love covenant,”³ the Holy Father concludes by the means of the following bracket: “Matrimonial consent is an ecclesiastical act.”⁴ Whereas, in the second speech the following words are uttered: “Christian marriage is a sacrament, which causes a kind of consecration to God. It is a ministry of love, which, through its testimony, makes visible the meaning of the divine love [Triune God—A.P.] and the depth of conjugal gift [...]”⁵ Finally, article 1535 of the Catechism of the Catholic Church, which takes up the same thread, defines Christian matrimony alongside taking holy orders,

¹ See John Paul II, *Man and Woman He Created Them. A Theology of the Body 1,2–4*, trans. Michael Waldstein (Boston, Pauline Books and Media, 2006); see also Jan Paweł II, *Mężczyznę i niewiastę stworzył ich. O Jana Pawła II teologii ciała*, vol. 1–4, ed. Tadeusz Styczeń (Lublin: Redakcja Wydawnictw Katolickiego Uniwersytetu Lubelskiego, 1998).

² Let us recall the fact that the paradigm, formulated in such a way, is crowned in the pastoral constitution *Sacrae Disciplinae Leges* by the means of pope's famous sentence: “This new Code could be understood as a great effort to translate this same doctrine, that is, the conciliar ecclesiology, into canonical language.” Ioannes Paulus II, “Const. Apost. *Sacrae Disciplinae Leges*” (25.01.1983), *Acta Apostolicae Sedis* [henceforth: AAS] 75 (1983–II).

³ Ioannes Paulus II, “*Allocutio ad Sacrae Romanae Rotae Tribunalis Praelatos Auditores, Officiales et Advocatos coram admissos*” (28.01.1982), AAS 74 (1982): 450, n. 3.

⁴ *Ibid.*, 451, n. 5.

⁵ Ioannes Paulus II, “*Allocutio ad Rotae Romanae praelatos auditores coram admissos*” (30.01.1986), AAS 78 (1986) 923, n. 3. Here we easily recognize reference to the words of the constitution: *coniuges christiani ad sui status officia et dignitatem peculiari sacramento roborantur et veluti consecrantur* – Vatican Council II, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes* (7.12.1965), n. 48.

as a sacrament in the service of communion. “Through these sacraments those already *consecrated* by Baptism and Confirmation for the common priesthood of all the faithful can receive particular *consecrations*. [...] ‘Christian spouses are fortified and, as it were, *consecrated* for the duties and dignity of their state by a special sacrament.’”

All three papal enunciations, embedded in the content of the 48th point of the *Gaudium et Spes* constitution, reveal the Christocentric horizon of Christian anthropology, which constitutes the rudimental criterion for the adequate, that is, reaching the *integrum* of the human being and communion of persons, depictions of matrimony—both theological, as well as legal and canonical. Indeed, this Christocentric and at the same time par excellence personalistic vista is introduced by the earlier, it is safe to say, key sections of the aforementioned document. In the 22nd point the Council Fathers proclaim: the mystery of man is only truly explained in the mystery of the Incarnate Word. Jesus Christ, new Adam, already in the revelation of the mystery of God the Father and his love, reveals the fullness of man to the very man and shows him his highest vocation.⁶ In the 24th point of the document the following, famous words, which, it is worth recalling, laid the foundations for John Paul II’s *Theology of the Body*, were uttered: “Man, who is the only creature on earth which God willed for itself, cannot fully find himself except through a sincere gift of himself.” Only within this context, the *passus*, taken out from 48th point of the Pastoral Constitution on the Church, gains its full meaning: “For as God of old made Himself present to His people through a covenant of love and fidelity, so now the Savior of men and the Spouse of the Church comes into the lives of married Christians through the sacrament of matrimony. He abides with them thereafter so that just as He loved the Church and handed Himself over on her behalf, the spouses may love each other with perpetual fidelity through mutual self-bestowal.”

Naturally, this depiction of the ideological and subject matter structure should be accompanied by, especially in the face of the bold thesis proposed in the title (“a great stride”), a presentation of the main epistemological and methodological assumptions. First of all, it is not possible to escape the answer to the question what importance, among all Vaticanum II texts, taking the coherence and complementarity of Church’s sources of *de matrimonio*⁷ into consideration, shall we give to the “matrimonial” passuses of the *Gaudium et Spes* constitution. Similarly, a particular issue, in an obvious way connected with this question, requires taking a stand: What is the relation of these two passuses to the similar ones taken from the 11th point of the Dogmatic Constitution *Lumen Gentium*?

⁶ Cf. Karol Wojtyła, *U podstaw odnowy. Studium o realizacji Vaticanum II* (Kraków, Polskie Towarzystwo Teologiczne, 1972), 64–69; Ioannes Paulus II, Litterae encyclicae *Redemptor Hominis* (4.03.1979), n. 11.

⁷ Zob. Andrzej Pastwa, “Il matrimonio: comprensione personalistica e istituzionale.” *Ius Ecclesiae*, vol. 25 (2013): 389–91.

In a “draft” attempt at facing these questions, by making use of outstanding experts’ (theologians’) opinions,⁸ we can say:

1. There is no doubt that the magisterial statements of the 48th point of *Gaudium et Spes* have the same dogmatic status as the aforementioned statements included in the 11th point of *Lumen Gentium*.
2. The utmost important meaning of this fragment of the conciliar teaching should be confirmed—of the entire (!) 48th point, in relation to the remaining “matrimonial” verses of the *Gaudium et Spes* constitution; the mentioned fragment, although officially located within the sphere of the pastoral constitution, has a character of a doctrinal exposition; some passages of the 49th and 50th points also include doctrinal content of the renewed theology of marriage; whereas within the area of practical theology the entire content of the 47th, as well as the 51st and 52nd numbers of the constitution should be located.
3. During a genuine analysis of the texts on the sacrament of matrimony, in *Lumen Gentium* and *Gaudium et Spes* constitutions, we should not lose sight of the time perspective in which these texts were created; also, what is equally important is the order the abovementioned documents were announced, while this fact also communicates to us the message that the fundamental content included in the chronologically first dogmatic constitution did not have to be repeated by the Council Fathers in the second pastoral constitution.
4. What harmoniously comes out to meet the attempt of an integral interpretation of the Vaticanum II magisterium on the sacrament of matrimony, next to the assumptions of an adequate anthropology and methodological remarks that were made, is the idea “ordering” the appropriate discourse of a theologian and a canonist in the area of *matrimonium christifidelium* that we are interested in. It is about the significant thesis that suggests that the “unity,” paradigm of the contemporary ecclesiology, constitutes an inseparable hermeneutical key⁹ to the understanding of Christian matrimony.

⁸ Karl Rahner, “La problematica teologica di una Costituzione pastorale,” in *La Chiesa nel mondo contemporaneo. Commento alla Costituzione pastorale „Gaudium et spes”*, ed. Enzo Giammancheri (Brescia, Queriniana, 1966), 61–83; Otto Hermann Pesch, *Das Zweite Vatikanische Konzil. Vorgeschichte, Verlauf – Ergebnisse, Nachgeschichte* (Würzburg, Echter Verlag, 1994); Piero Barberi, *La celebrazione del matrimonio cristiano. Il tema negli ultimi decenni della teologia cattolica* (Roma, CLV Edizioni Liturgiche, 1982).

⁹ See Andrzej Pastwa, “Marriage in the Light of the Ecclesiological Paradigm of Unity. Selected issues,” *E-Theologos*, vol. 3/2 (2012): 212–28.

The Antipodes of the Personalistic Thought of the Magisterial *de sacramento matrimonii*

The fruit of Vaticanum II is the discovery of the biblical depth of the idea of “covenant”¹⁰ and a key decision undertaken by the Council Fathers to connect this idea with a renewed reality of the sacrament of matrimony in the ideologically innovative and theologically well prepared passages of the 48th point of the constitution. The concept of *foedus coniugalis*¹¹ harmoniously connected in itself, traditionally present in the Catholic doctrine, the sacral aspect of the institution of matrimony¹² with, clearly underappreciated in the past, strictly human aspect. The “humanization” of matrimony conducted in such a way,¹³ by giving robust foundations to the development of the theology of sacrament, was supposed to once and for all remove the historical burden, especially within the area of an incorrect, often hostile toward body, theological anthropology. Since it became clear that precisely this bodily relation (biblical *una caro*¹⁴), in its holistic, personal, and human context, is the carrier of sacramentality,¹⁵ it was important not only to conduct a revision of concepts, but, first and foremost, define the adequate ethos of matrimony and at the same time enter into the depth of truth about a person and matrimonial communion of persons.¹⁶

It is worth recalling the fact that at the foundations of the 1917 codification logic lay an assumption that the sacrament of matrimony is a reality that is legally perceptible, and, what is more, possible to codify holistically. Likewise understood was the content of the 1012th canon, opening title VII of the 3rd book: *De matrimonio*—an important matrimonial contract constitutes not only

¹⁰ Cf. Norbert Lohfink, „Der Begriff ‚Bund‘ in der biblischen Theologie,“ *Theologie und Philosophie*, vol. 66 (1991): 161–76.

¹¹ *Gaudium et Spes*, n. 48.

¹² Cf. Vatican Council II, Dogmatic Constitution on the Church *Lumen Gentium* (21.11.1964), n. 11; Vatican Council II, Decree on the Apostolate of the Laity *Apostolicam Actuositatem* (18.11.1965), n. 11.

¹³ Undoubtedly what has a symbolic meaning are the words of the *Gaudium et Spes* constitution: “Ille autem amor, utpote eminenter humanus, cum a persona in personam voluntatis affectu dirigatur, totius personae bonum complectitur,” *Gaudium et Spes*, n. 49.

¹⁴ Gen 2, 24.

¹⁵ Cf. Otto Hermann Pesch, *Ehe im Blick des Glaubens*, in: *Christlicher Glaube in moderner Gesellschaft*, ed. Franz Böckle, Franz-Xaver Kaufmann, Karl Rahner, and Bernhard Welte, Bd. 7 (Freiburg–Basel–Wien, Herder, 1981), 25–29.

¹⁶ See Jan Paweł II, *Mężczyzną i niewiastą stworzył ich. O Jana Pawła II teologii ciała*, vol. 1: *Chrystus odwołuje się do „początku,”* 59–68.

the image of the sacrament but is also identical with this sacrament.¹⁷ The same premises had also an impact on the fact that the entire code *ius matrimoniale* was consciously formed as, concentrated on the *feri* of the marriage, the law on entering into marriage.¹⁸

The concentration in the old code (CIC 1917) of regulations concerning *sacramentum matrimonii*, on the constitutive moment of entering into marriage (*matrimonium in fieri*), carried many implications of a theological and legal nature. The theory of inseparability (identity) of the matrimonial contract and the sacrament, determined the transitory character of the latter one. Consistently, marriage could not be perceived as a permanent sacrament. Only the contractual moment of exchanging the consent with the omission of the matrimonial community of life (*matrimonium in facto esse*) was connected with the sacrament. In this case unconvincing were the claims of neo-Scholastics, who suggested that it is precisely in the liturgy of church wedding that some and real immanence of the mystery of Christ's unification with the Church is revealed,¹⁹ since they admitted that this liturgy and priest's blessing do not belong to the nature of the sacrament.²⁰

The neo-Scholastic dogmatism complemented the code principle *eo ipso sacramentum* with the definition of the matter and form of the sacrament of matrimony. Since the formal element (so the internal sign) of the matrimonial contract was formulated as a mutual and an exclusive right to the body of the other person, *in ordine ad actus per se aptos ad prolis generationem*,²¹ nothing else was more apt to denominate this aim than *ius in corpus*. Hence, the matter of this sacrament was the (mutual) giving of the right to the body to the other person, whereas the form was the acceptance of this right.²²

The legalistic depiction of the sacramentality of matrimony and binding it, in harmony with the tradition, with the condition of a rightfully received baptism, regardless of the presence or absence of faith,²³ in practice meant that

¹⁷ Objectivized (objectified), contract depiction of *sacramentum matrimonii* gave an assumption to reach a conclusion that in the understanding of the 1917 Code the identity formula, between a matrimonial contract of the baptized and the sacrament, was used not only in the legal meaning but also a *stricte* theological one. See Peter Huizing, "La conception du mariage dans le code, le concile et le „Schema de Sacramentis," *Revue de droit canonique*, vol. 27 (1977): 137.

¹⁸ Cf. Urs Baumann, *Die Ehe – ein Sakrament?* (Zürich, Benschiger, 1988), 85.

¹⁹ Cf. Pierre Adnès, *Le mariage* (Tournai, Desclee, 1963²), 185.

²⁰ See Ludwig Ott, *Grudriß der Dogmatik* (Freiburg–Basel–Wien 1978⁹), 557.

²¹ CIC 1917, can. 1081 § 2.

²² See Ott, *Grudriß der Dogmatik*, 556–557; Adnès, *Le mariage*, 147–49.

²³ Cf. Eugenio Corecco, *Die Lehre der Untrennbarkeit des Ehevertrags vom Sakrament im Lichte des scholastischen Prinzips „Gratia perfecit, non destruit naturam,"* *Archiv für katholisches Kirchenrecht* [henceforth: AKKR] 143 (1974): 425–28; Julio Manzanares, „Habitudo matrimonium baptisatorum inter et sacramentum: omne matrimonium duorum baptisatorum estne necessario sacramentum?" *Periodica de re morali, canonica, liturgica* vol. 67 (1978): 35–37.

the baptism of the man and the woman gives their marriage a sacramental character, which was not really identical with the claim that baptism is to constitute a foundation of building a sacramental reality of matrimony.²⁴ Automatism of this type—a result of a substantial and juridical approach—by misrepresenting, in a significant way, the personal core of the event of the sacrament, brought this sacrament closer to magic.²⁵

The theory of a formal identity of the contract and the sacrament, or a strong accentuation of the juridical layer connected with it, was also used to justify the crucial virtue: indissolubility of matrimony. It was reasoned that since the redemptive relation Christ–Church that lies at the foundations of this sacrament is indestructible, then also matrimony, a sign and personalization of this theological reality, has to be absolutely indissoluble. This sacramental “real symbol” serves, therefore, not so much to emphasize—in a personal and ecclesial dimension—the unshaken faithfulness and love of Christ in relation to the Church, but, first and foremost, to prove the irrefutability of the legal fact that a valid marriage contract of baptized people is indissoluble.²⁶

Similarly *bonum sacramenti*, which corresponds to the virtue of indissolubility, par excellence revealed the juristic and institutional, as well as speculative character. It was, however, overlooked that the definition of sacramentality as a matrimonial well-being, so describing the legal structure of matrimony (*in facto esse*) the effect of entering into marriage, remains in tension toward the *eo ipso sacramentum* principle, according to which the sacramentality is inseparably bound (identical) only with the contract (*matrimonium in fieri*).²⁷

At the same time it is difficult not to notice that the very indissolubility was conceptually clearly separated from the matrimonial faithfulness and the significant virtue of identity. If the three abovementioned concepts were given content, on the one hand—personal, on the other—relational, that is, directed toward a personal relation of partners, then the three concepts would correspond with one another in their essence. Quite different doctrinal assumptions lay at the foundations of the marriage law in the 1917 code. Since this law presented the concept of matrimony with such a depiction of unity, faithfulness, and indissolubility, according to which by no means the spiritual and personal well-being or benefits of nuptials were put in the foreground. Indissolubility was understood not as a moral, life-long obligation of faithfulness toward the partner, but *explicite*

²⁴ Cf. Winfried Aymans, *Gleichsam häusliche Kirche. Ein kanonistischer Beitrag zum Grundverständnis der sakramentalen Ehe als Gottesbund und Vollzugsgestalt kirchlicher Existenz*, AKKR 147 (1978), 434–36.

²⁵ Helmuth Pree, *Die Ehe als Bezugswirklichkeit – Bemerkungen zur Individual- und Sozialdimension des kanonischen Eherechts*, Österreichisches Archiv für Kirchenrecht, 33 (1982): 345.

²⁶ Baumann, *Die Ehe*, 83, 135–36.

²⁷ *Ibid.*, 93–94.

as a feature of the *vinculum*²⁸ institution. If we additionally take into consideration the remaining Augustinian goods in CIC 1917: *bonum prolis*²⁹ and *bonum fidei*,³⁰ then it is not possible to deny that it was finally determined that the vision of a marriage should be extremely institutionalized, materialistic, and procreative, perceived as an identity of the sacrament with the contract.

Mysterium unitatis: Matrimony of the Baptized and God's Mystery

The doctrine on the sacrament of matrimony, renewed in the Second Vatican Council magisterium (mainly in the *Gaudium et Spes* constitution), with an inexhaustible abundance of content connecting *vetera et nova*, still remains the subject of in-depth theological research. Pope of the Family John Paul II emphasized their timeliness, when in the 2003 *Address to the Roman Rota* he considered important the topic of: the special *relationship that the marriage of the baptized has with the mystery of God*, a relationship that, in the new and definitive covenant in Christ, assumes the dignity of a *sacrament*. Natural and supernatural dimension—the pope continued to preach—“are not two juxtaposed aspects: rather, they are intimately connected as are the truth of the human person and the truth of God.”³¹ The message sent by the Holy Father was amply clear: we still need endeavors, as part of the activity of the teaching domain

²⁸ „Indissolubilitas opponitur divortio et excludit solutionem vinculi viventibus coniugibus [...] illa firmitas vinculi coniugalis indissolubilis peculiariter augetur in matrimonio baptizatorum ex dignitate sacramenti qua huiusmodi matrimonium donatur,“ Franz-Xaver Wernz, Pedro Vidal, Filippo Aguirre: *Ius canonicum*, vol. 5 (Roma 1946³), 34, n. 27. Inseparability (*bonum sacramenti*) depicted is such a way meant firstly an institutional protection of the impossibility to dissolve the bond by a mutual consent of the spouses, and only later a moral and legal ban on divorce, Pree, *Die Ehe als Bezugswirklichkeit*, 348.

²⁹ *Bonum prolis* as a counterpart of the most important aim of matrimony also showed a strongly overemphasized social function of this institution. Therefore, matrimony, according to the CIC 1917 standards, appeared to be a legally protected community of sexual and reproductive functions, Pree, *Die Ehe als Bezugswirklichkeit*, 347.

³⁰ *Bonum fidei* had in CIC 1917 its direct counterpart in a crucial attribute of unity. This “Good” was to some extent employed by the most important matrimonial aim and made subordinate to it. The legal obligation of faithfulness was, therefore, perceived as a simple reflection of the legal bond, Pree, *Die Ehe als Bezugswirklichkeit*, 347–48.

³¹ Ioannes Paulus II, “*Allocutio ad Romanae Rotae iudices*” (30.01.2003), AAS 95 (2003): 393, n. 2.

of the Church, as well as theologians' (also canonists'), aimed at overcoming the dualism between natural marriage and the sacrament of matrimony.³²

The person who significantly contributed to the presentations of Christian matrimony, as closely connected with the mystery of Christ, was a prominent theologian of law Eugenio Corecco. One of the rhetoric questions, which is today worth formulating, based on the research by this highly-regarded canonist, is as follows: Is it not desirable (or even essential) to interpret the most crucial code regulations of matrimonial law according to a proper "anthropological key," that is, through the prism of the mystery of Incarnation—in relation to an internal dynamics of followers' (nupturients') affiliation to *communio Ecclesiae*? It is difficult to miss the fact that the accuracy of this question is obviously consonant with the implications of the principle of insolubility of matrimonial sacrament and covenant affirmed by Eugenio Corecco.³³ This principle, based on the Christological and Trinitarian foundations, reflects well the exceptional establishment of matrimony in God's redemptive plan. The relationship of the betrothed, since the dawn of time, conveys a sacral and "sacramental" character, since this relationship from the "beginning," invariably through Christ, and with Christ, and in Christ, expresses the participation of the human "we" in the mystery of the Holy Trinity (God's "We"). Both realities: covenant (Old Testament mystery "sign") and the "event" of sacrament (participation in the New Testament *mystērion*: love of Christ-the Betrothed to Church-the Betrothed), are inseparable—such as the economics of Redemption cannot be separated from the economics of Creation.³⁴

The significance of the creative thought *de sacramento matrimonii* of a Swiss canonist³⁵ characterizes well the emphatically formulated warning against doctrinaire depreciation at the plane of nupturients' personal right to the act of faith at the moment of entering into marriage, which goes hand in hand with the interpretation of the *eo ipso sacramentum* principle, according to a substantial and juridical logic of the 1917 code (with the help of the

³² Ibid.

³³ Eugenio Corecco believed this principle to be one of the most ingenious achievements of the entire theological reflection on Christian matrimony. In such a way the truth about the fact that the matrimony as a natural, rooted in creative economy, reality achieves its fullness in the sacrament the same way as the Act of Creation fulfills itself in the Act of Redemption. Corecco, *Die Lehre der Untrennbarkeit*, 428.

³⁴ Ibid., 428–29.

³⁵ Eugenio Corecco many times expressed a belief that a renewed conciliar matrimonial doctrine radically postulates a change of paradigm in canonical *ius matrimoniale*. It is about working out such system changes that would make it possible to, on the one hand, have the depiction of matrimony more concentrated on ecclesiology than on the very theology of sacrament, on the other, to have the system based more on the idea of sacrament than on a traditional definition of contract, Corecco, *Il matrimonio nel nuovo Codex Iuris Canonici. Osservazioni critiche*, in *Studi sulle fonti del diritto matrimoniale canonico* (Padova: CEDAM, 1988), 105–30.

so-called sacramental automatism—a “mechanical” coupling of the sacramentality of matrimony with a pure fact of both nupturients’ baptism). The crux of the problem, according to the author, lies in an unambiguous declaration whether it is possible to adopt selectively the conciliar theology of matrimonial covenant in the canon law? Is it proper to ignore the fact that Christ, the creator of God’s image in the baptized: the man and the woman, is the real creator of matrimonial *communio personarum* (and not the very contract!) to the image of the Trinitarian “We”? Are not *christifideles* (man’s “I,” woman’s “I,” both belonging to Christ) the real subject of the covenant, with faith as a concrete existence of a person experiencing the “already” of Redemption and the consciousness of himself as a member of the Mystical Body of Christ—the Community of the Redeemed³⁶? If so, is it not a misunderstanding to create a false image of Christian matrimony, when the believer (*christifidelis*) is replaced by “I” with an “individualistic” subjectivity? Is it possible to reduce the act of covenant to a pure *ratio* (clear “freedom”)—without *fides* (in the understanding of *Redemptor hominis* encyclical), that is, a holistic existential engagement of a human “already” redeemed, realizing *in Christo* according to the paradigm of “Trinitarian image of God”? Then if the baptism transforms ontically and moulds the human being so that he or she becomes a member of Christ’s Body, placed immanently in His Presence, can the “yes” of spouses (*fides et ratio*) and “yes” toward the Church of Christ in this covenant (consent) be external in relation to each other? Is it not more about the participation of the baptized betrothed in the mystery—Christological, and finally Trinitarian—dynamics of giving oneself to the other person in God? Following Eugenio Corecco’s train of thought we eventually reach the crux of the problem: is it not true that only a consistent revival of the matrimonial doctrine conducted in the spirit of Vaticanum II theological anthropology (in authoritative horizon of the magisterial encyclicals: *Redemptor Hominis* and *Fides et Ratio*, as well as John Paul II’s *Theology of the Body*) will allow us to overcome the dichotomous perception of the moment of establishing *sacramentum matrimonii*: the act of will (*ratio*) and the act of faith (*fides*)³⁷? Then the constatation, which argues that (Christian) matrimony not so much has to be but is a legal order, and the entire ethical substance of the covenant (“the event of the sacrament”) carries legality with itself, proves authentic.³⁸

³⁶ What reflects it very well is can. 226 (CIC 1983) on a communion calling in marriage and family: “According to their own vocation, those who live in the marital state are bound by a special duty to work through marriage and the family to build up the people of God (§ 1). Since they have given life to their children, parents have a most grave obligation and possess the right to educate them. Therefore, it is for Christian parents particularly to take care of the Christian education of their children according to the doctrine handed on by the Church (§ 2).”

³⁷ See Corecco, *Il matrimonio nel nuovo Codex*, 115–21.

³⁸ Cf. Giorgio Zannoni, *Il matrimonio canonico nel crocevia tra dogma e diritto. L’amore avvenimento giuridico* (Genova: Marietti, 2002), 96, 489.

The conclusions that follow from the message of the prominent Swiss canonist about overcoming the harmful dichotomy at the line: contract–sacrament, emerge immediately. Firstly, we have to reject the incorrect, at the very anthropological “roots,” scheme of two intentions: contractual (consensual will) and sacramental (the will to accept *sacramentum matrimonii*, which suggests the presence of faith in this sacrament).³⁹ Secondly, new efforts have to be taken (both in the doctrine as well as body of rulings), to not only refrain from obfuscating the theological and canonical, par excellence ecclesiological, truth about the sacrament of matrimony as an “event of faith,” but first of all indefatigably promulgate and promote this truth.

It is also worth to ponder over the results of research conducted by a different expert on this subject matter. Matrimony ingrained in the mystery of Christ creates the, present in the history of humankind, fundamental structure of the love of God’s Betrothed to Church—the Betrothed⁴⁰—such a shape of the matrimonial covenant *in Christo*, in the form of real sign of the redemptive act and the potential participation of Christian spouses in the Communion of Divine Persons, gave Giorgio Zannoni, the author of a famous monograph *Il matrimonio canonico nel crocevia tra dogma e diritto*, an assumption to pose serious questions. One of the most important is the question whether the legal description of the sacrament of matrimony in the Code of Canon Law is an optimum description.

Even if we keep ourselves at distance in the face of some too far-reaching theses of the monograph,⁴¹ the conclusions from the analysis of the code matrimonial law, undertaken by the author, clearly show that the new chapter *aggiornamento* of the matrimonial doctrine—initiated by the means of the inspired verses of the *Gaudium et Spes*—was by no means completed. The renewed Church legislation *de sacramento matrimonii* in the 1983 code did not ultimately get through the lingering in the canonist tradition, created or strengthened by neo-Scholastic anthropology, dichotomies: spirit–body, nature–grace, contract–sacrament, act of reason–act of faith (consent), subjective truth of matrimonial covenant–objective truth. The Italian canonist, inspired by Eugenio Corecco’s thought, ponders on the system coherence of the concepts *ordinatio* (with its institutional and non-personalistic connotations) or *elevatio* (with a hidden naturalistic meaning) in can. 1055, which defines matrimony. Not without reason does he establish the lack of the *sacramentum* dimension on the central canon 1057 § 2 that defines the matrimonial consent.

³⁹ Cf. Mario Francesco Pompedda, “Intenzionalità sacramentale, in Matrimonio e Sacramento” [*Annali di dottrina e giurisprudenza canonica*, vol. 32], (Città del Vaticano: LEV, 2004), 41.

⁴⁰ Cf. *Lumen Gentium*, n. 11; *Gaudium et Spes*, n. 48.

⁴¹ See Giorgio Zannoni, *Il matrimonio canonico nel crocevia tra dogma e diritto. L’amore avvenimento giuridico*, reviewed by Andrzej Pastwa (Genova: Marietti, 2002), in *Śląskie Studia Historyczno-Teologiczne*, vol. 38, 2 (2005): 507–10.

Indeed, in the course of the *ius matrimoniale* reform, the highly harmful reduction of matrimonial consent to a commitment of a contractual type, in which the objectively expressed sexuality of an ahistorical human remains at the service of the procreative aim (*ius in corpus*), was discarded. What was also thrown away was the useless and harmful ballast of contractual depictions—rightly assuming that a contract is not capable of expressing the truth of the sacramental act and the redemptive Mystery cannot be reduced to external reality in relation to the acting entities: Christ and the spouses. The concept of “institution” (with the main postulate: releasing *ius* from abstract and ahistorical conceptions), worked out as reaction to the contractualism, by treating matrimony as an interpersonal relation, also shows inadequacy.⁴² Even though institutionalism looks for a crucial core of the matrimonial communion in the existential concrete, it cannot secure a harmonious synthesis between *feri and esse* of matrimony. The significant absence of this optics is depicted by dichotomies: between the institutional aim and an individual entity, which realizes it; between the personal sacramental order and the social and legal reality. Therefore, *institutum* falls into an institutionalistic type of reduction: although it presents matrimony as a relation, it actually remains outside in relation to the sacramental covenant: personal meeting and the act of faith.

Meanwhile, as Giorgio Zannoni rightly deduces, the sacrament of matrimony is the reality of an ecclesial and institutional nature, and its communal interpersonal knot is created not only by the spouses but also by the Person of Christ, who dwells among “his own” in the way of institutionalized *communio*. Therefore, treating matrimony as an institution, we should not forget that the latter one should be perceived in connection with “charisma” (by the principle of coexistence). Only such renewed concept of institution “adjoins” the semantic horizon of the central concept of the contemporary Catholic matrimonial doctrine: *matrimoniale foedus*.

Final Remarks

The Christian spouses’ covenant, in the depiction of the *Gaudium et Spes* constitution, is an act of Mystery, which takes place in the bodily dimension of the personal “I.” Sexuality constitutes a mysterical road, on which human-person experiences the other inside his “I,” in order to, in the act of self-determina-

⁴² Giorgio Zannoni, *Il matrimonio canonico nel crocevia tra dogma e diritto*, 145–54, 163–71, 412–18, 487–97.

tion—choice, which the matrimonial covenant is,⁴³ enter with him into a permanent relation—indissoluble “unity of two” (*una caro*). The thing is about a mutual act, undertaken by a given man and a given woman, of establishing, according to their sexual complementarity, matrimonial co-identity “here and now.”

Saint John Paul II’s extraordinary testimony of understanding the truth of the “beginning”: “man and woman he created them”—finally: in the dimension of covenant and grace (sacrament), is based firmly on the anthropological realism, “defined” in such a way by the Council. Threefold greed, the effect of the original sin, does not destroy the ability to read the “body language,” in which the sacramental sign is formed. In the constitutive moment of expressing matrimonial consent—based on the immanent personal dynamism: sexual complementarity—entering into relation with the other and binding a matrimonial knot in covenant, signifies a real transformation of a person: “she” belongs to “him” as an aim and calling (*destinatio*), and vice versa. What is connected with the new identity “we” constituted in such a way: “being one for the other” is, according to the logic of gift, a new dimension of tasks—rights and duties, implied by nuptiality and parenthood.

However, the concept of *matrimoniale foedus* open to the mysterial reality (and exactly like that, rediscovered in the conciliar and post-conciliar magisterium) carries, first and foremost, legible Christological and ecclesiological connotations. Indeed this lifelong covenant of baptized spouses constitutes—in Christ—an “effective sign” of the Sacrament of Redemption (eternal Covenant of the he-Betrothed and she-Betrothed), which the Church defines and realizes in the “house” form.⁴⁴ That is how the real meaning of matrimony *in Christo*, sacral and sacramental “community of the entire life,” is unveiled. In the Christological perspective, in which *ordo creationis* and *ordo redemptionis* perfectly interweave, a revival of the incipient sacrality of the matrimonial meeting, in which Christ himself defines the way of giving oneself to the other in matrimonial covenant (realized in Christ), takes place: in the initializing the sacrament of matrimony love meeting of persons, the personal gift is done by the Christian—“I” that belongs to Christ.⁴⁵

Here it is most visible how valuable is Benedict XVI’s magisterial thought from his last address to the Roman Rota (2013) on the subject of the common linguistic stem that the words *fides* and *foedus* have in Latin—if we bear in mind that using the latter one the *Gaudium et Spes* constitution, and later the Code of Canon Law, define the matrimonial reality as an irrevocable covenant of love. If the mutual trust (*fides*) of a man and a woman is the essential foundation

⁴³ Cf. Benedictus XVI, “*Allocutio ad sodales Tribunalis Romanae Rotae*” (29.01.2009). AAS 101 (2009): 127.

⁴⁴ *Lumen Gentium*, n. 11.

⁴⁵ CIC 1983, can. 1055 § 1.

of covenant (*foedus*), then—as the pope teaches—“on the theological plane the relation between faith and matrimony gains an even deeper meaning.”⁴⁶

Indeed, the Christocentric optics, so clearly highlighted in the sentence derived from the *Gaudium et Spes* constitution, quoted at the beginning: “the Savior of men and the Spouse of the Church comes into the lives of married Christians through the sacrament of matrimony”⁴⁷—remains the key to overcoming not only the “title” dualism, but also all other dualisms in the Catholic *de matrimonio* doctrine. The subject of covenant in the relationship of the baptized is *Christi-fidelis*—the person bringing to the matrimonial “we” his/her identity and existence *esse in Christo*; a person who—potentially (!)—experiences through faith: the “now” of the Redemption, experiences mutually with wife/husband the participation in the Community of the Redeemed—Mystical Body of Christ. If so, then the human “we” of the matrimonial covenant, sacramentally reflecting the truth of Trinitarian “We,” is by no means a sum of autonomous “I”–“you” (subjectivity of understood “individualistically”); just the opposite, “we” is the constitutive dimension of person, which in the covenant defines the entire dynamics of giving oneself to the “other” in the “Other”—*per Christum, cum Christo et in Christo*.

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⁴⁶ Benedict XVI, “*Allocutio ad Romanae Rote Tribunal*” (26.01.2013), AAS 105 (2013): 168, n. 1.

⁴⁷ *Gaudium et Spes*, n. 48.

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Andrzej Pastwa

Gaudium et Spes :
un grand pas visant à surmonter le dualisme entre
le mariage naturel et le sacrement de mariage

Résumé

Dans le présent article, l'auteur tente d'interpréter de façon intégrale le magisterium Vaticanum II sur le sacrement de mariage. Au début, il formule l'hypothèse qu'à la tâche de recherche ainsi définie—à côté des principes de l'anthropologie adéquate et des remarques méthodologiques effectuées—est harmonieusement favorable l'idée « arrangeant » le discours adéquat dans le domaine de *matrimonium christifidelium*. Il s'agit d'une thèse importante que « l'unité »—paradigme de l'ecclésiologie contemporaine—constitue la clé herméneutique indispensable à la compréhension du mariage chrétien. La concentration dans le code de 1917 des réglementations concernant *sacramentum matrimonii* sur la base du moment constitutif du contrat de mariage (*matrimonium in fieri*) entraînait beaucoup d'implications sérieuses d'ordre théologico-juridique. La matière du sacrement était définie comme le fait de donner (de façon mutuelle) à l'autre personne le droit à son corps, tandis que la forme—le fait d'accepter ce droit. Par contre, la présentation législative du caractère sacramentel du mariage et son attachement à la condition d'un baptême valablement reçu, indépendamment de la foi ou de son manque, ne signifiaient pas en pratique que le baptême doit constituer un fondement indispensable à l'établissement de la réalité sacramentelle du mariage. Ce type d'automatisme—effet d'une approche réellement juridique—, tout en falsifiant de manière essentielle le noyau particulier de l'événement du baptême, approchait le sacrement de la magie. D'où l'importance de l'ouvrage, entrepris par les pères du Concile, visant à surmonter le dualisme entre le mariage naturel et le sacrement de mariage. Eugenio Corecco, théologien éminent de droit, a apporté sa contribution significative à la présentation du mariage chrétien comme étant strictement lié au mystère du Christ. L'une des questions rhétoriques inspirantes—qui constituent le fond de la partie principale de l'article—est suivante : n'est-il pas désirable (et même nécessaire) d'interpréter les réglementations les plus importantes du droit matrimonial selon la « clé anthropologique » appropriée, c'est-à-dire à travers le prisme du mystère de l'Incarnation, par rapport à la dynamique intérieure de l'appartenance des fidèles (ceux qui s'apprennent à contracter le mariage) à *communio Ecclesiae* ?

Mots clés : mariage, sacrement de mariage, anthropologie adéquate, théologie de mariage, doctrine matrimoniale *Gaudium et Spes*, droit matrimonial dans CIC

Andrzej Pastwa

Gaudium et Spes:
il passo miliare nel vincere il dualismo
tra il matrimonio naturale e il sacramento del matrimonio

Sommaro

Nel presente studio l'Autore intraprende una prova di lettura integrale del magistero del *Vaticanium II* sul sacramento del matrimonio. Nell'introduzione viene formulata l'ipotesi secondo la quale a tale compito di analisi così definito, accanto alle premesse di antropologia adeguata e alle osservazioni metodologiche avanzate, viene incontro armoniosamente l'idea „che regola” il discorso adeguato nell'area del *matrimonium christifidelium*. Si tratta dell'importante tesi secondo la quale “l'unione”—paradigma dell'ecclesiologia contemporanea—costituisce la chiave ermeneutica indispensabile per la comprensione del matrimonio cristiano. La concentrazione nel codice del 1917 dei regolamenti riguardanti il *sacramentum matrimonii* sul momento costitutivo della contrazione del matrimonio (*matrimonium in fieri*) portò molte implicazioni serie di natura teologico-giuridica. Come materia del sacramento veniva definito il dono (reciproco) all'altra persona del diritto al corpo mentre come forma l'accettazione di tale diritto. Invece la concezione legalistica della sacramentalità del matrimonio e il vincolare la stessa alla condizione del battesimo ricevuto con validità, indipendentemente dalla presenza o dall'assenza della fede, nella pratica non significava affatto che il battesimo dovesse costituire il fondamento per costruire la realtà sacramentale del matrimonio. Questo genere di automatismo—effetto dell'approccio oggettivo-giuridico—adulterando in modo essenziale il nucleo personale dell'evento del sacramento, avvicinava il sacramento alla magia. Da ciò risulta l'importanza dell'opera intrapresa dai padri del Concilio per vincere il dualismo tra il matrimonio naturale ed il sacramento del matrimonio. Un contributo notevole nella presentazione del matrimonio cristiano come strettamente unito al mistero di Cristo fu apportato dall'eminente teologo del diritto Eugenio Corecco. Una delle domande retoriche ispiratrici che costituiscono la trama della parte fondamentale dello studio suona nel modo seguente: non è richiesto (e persino necessario) che le più importanti norme del codice del diritto del matrimonio siano lette secondo una “chiave antropologica” adeguata ossia attraverso il prisma del mistero dell'Incarnazione—in relazione alla dinamica interiore dell'appartenenza dei fedeli (nubendi) alla *communio Ecclesiae*?

Parole chiave: matrimonio, sacramento del matrimonio, antropologia adeguata, teologia del matrimonio, dottrina del matrimonio *Gaudium et Spes*, diritto matrimoniale nel CIC

Lucjan Świto

University of Warmia and Mazury in Olsztyn, Poland

Responsible Parenthood in the Context of Contemporary Challenges

Abstract: The article undertakes the subject matter of responsible parenthood, as a significant issue from the point of view of Catholic teaching. The article systematizes and organizes basic notions concerning responsible parenthood and, first of all, makes the reader acquainted with the most important challenges and threats faced today by Catholic spouses. The source of threats for a responsible parenthood includes not only contraception, abortion, assisted procreation or surrogacy, but also the unchecked inflow of immigrants from Muslim countries into the European Union. Immigrants of Muslim origin represent not only a different system of values and culture, but also a different legal system, which is incompatible with the Western model. In view of the fact that some institutions of Muslim law, for instance *kafala*, are adopted into the legal systems of the Western Europe states, in the short term perspective we may face the problem of serious demands by Islamic communities, which may collide with the Christian system of values and upbringing and become a threat to responsible parenthood in the dimension of child-rearing. It may result in Christian parents taking care of children of Muslim origin, who will be obliged to bring them up according to guidelines of *sharia*, and not the Gospel.

Keywords: responsible parenthood, upbringing, *kafala*, Islam, religious freedom

Introduction

The subject matter of “responsible parenthood” is an important issue in the teaching of the Church, since this is a field in which, as through a lens, the most current challenges and social problems of contemporary family are accumulated. The topic of responsible parenthood was brought up by Pope Pius XII.

However, the term *responsible parenthood* did not emerge until the *Humanae Vitae* encyclical letter by Paul VI. The issue was taken up by the Second Vatican Council in the Pastoral Constitution *Gaudium et Spes*, and developed by John Paul II, first of all in his Apostolic Exhortation *Familiaris Consortio* and in the Letter to Families, *Gratissimam Sane*.

What is Responsible Parenthood?

The issue of responsible parenthood is a well-examined subject, which can be analyzed in various ways. Unquestionably, the teaching of John Paul II shed light on comprehension of the responsible parenthood. Let us try to organize its most important elements, subsequently proceeding to present the most serious challenges and threats which responsible parenthood has to face today.

Responsible parenthood can be discussed in two contexts: (1) in a narrow meaning, referring to a decision made by spouses about conceiving and having children, or (2) in a broad meaning, having in mind the entire process of begetting and upbringing of the offspring.

On the one hand, the element of responsible parenthood which comes to the fore is unquestionably its biological dimension, related to corporality of spouses. The married couple, as a husband and a wife, with their sexual differences and innate drives and passions, participate—as the *Gaudium et Spes* constitution explains—in the creative work of God, by fulfilling the duty to transmit human life, or even “the task of giving birth to children.” Thus, cooperating with the love of the Creator and the Saviour, they contribute to enlarging and enriching their family.

However, it should be emphasized that the view on responsible parenthood through the biological dimension does not mean simple birth control or the so-called conscious motherhood, but it emphasizes the spouses’ knowledge of procreative biological processes, as well as requires the spouses to use their reason and will to control the sphere of emotions and the sexual drive. Hence a sexual act should be free. Only then can it be an expression of love.

On the other hand, the emphasis of responsible parenthood is shifted towards the entire process of begetting and upbringing children, towards the service to life—as John Paul II wrote in the Letter to Families—implemented through transmission of human life and upbringing of children,¹ towards responsibility for love, life, and child-rearing, as well as for welfare of the society and the

¹ John Paul II, Letter to Families *Gratissimam Sane*, http://w2.vatican.va/content/john-paul-ii/en/letters/1994/documents/hf_jp-ii_let_02021994_families.html.

Church herself. Thus, a decision of spouses as to the number of children cannot be hindered by any anti-natal propaganda or imperatives of governmental authorities. In their decision concerning the number of children, as we read in the *Gaudium et Spes* constitution, the spouses should consider both their own welfare, as well as their already born children and those that are to be born, while considering at the same time their living conditions in the material and spiritual aspects, and finally, taking into account the interests of the family group, the society, and of the Church herself.² Therefore, responsible parenthood is demonstrated both when the spouses prudently and generously decide to accept and bring up a larger number of children, as well as when for important reasons they decide to avoid the conception of a new life, by resigning from sexual intercourse, temporarily or for an indefinite period of time, with due respect to moral orders.³

Elaborating on the thought raised by the Council, John Paul II in his letter *Gratissimam Sane* points out the fact that responsible fatherhood and motherhood concerns directly the moment in which a man and a woman, uniting themselves “in one flesh” can become parents. This moment is of particular value for their interpersonal bonds. At the same time, it brings the possibility of parenthood. Those two aspects of conjugal union, the unitive and the procreative, cannot be separated in an artificial manner without infringing the internal truth of the act itself. The Holy Father emphasizes that the love between a husband and a wife is fertile by its nature. The child is not an external addition to the mutual love of spouses; it is in the very heart of their mutual gift, as its fruit and fulfillment. The secret of the growing life should be perceived as exceeding the pure biological fact. This brings out consequences also at the ethical level: one cannot treat anything that concerns emergence of human life as only a pure biological fact that can be subject to manipulation.

Finally, Paul VI writes in his encyclical letter *Humane Vitae* that responsible fertility is a task of spouses that should be rational, sagacious, and magnanimous, as well as generous. So when the spouses cannot have children, they should fulfill their parental duty by providing help to children from other families, or by adoption of abandoned children, deprived of their parents or living in difficult conditions.⁴

² Vatican Council II, “*Gaudium et Spes*. Pastoral Constitution on the Church,” AAS 58, no. 50. (1966): 1025–1115.

³ Paul VI, Encyclical *Humane Vitae*, n. 10, http://w2.vatican.va/content/paul-vi/en/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae.html.

⁴ John Paul II, Encyclical *Evangelium Vitae*, n. 93, http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html.

What Are the Challenges?

Within the last 50 years following the publication of the *Gaudium et Spes*, a great amount of threats have emerged to responsible parenthood. They affect it both to a lesser and greater extent, and in fact bring down the issue of responsibility of parenthood to artificial birth control: either by reducing or assisting it.

A contemporary threat to responsible parenthood is, therefore, not only contraception or abortion, but also the emergence and popularization of assisted procreation techniques, both as regards intracorporeal fertilization *in vivo*,⁵ and the extracorporeal fertilization *in vitro*.⁶ In particular, aided procreation not only strips the motherhood and procreation of the context of a person and love, and thus leads to side effects in the form of abortion, but through its reproductive technology, it questions the explicitness of basic paradigms related to motherhood itself. Consequently, as a result of assisted procreation, today one can face the multitude of forms of maternity, which obviously undermines the natural idea of marriage and family.⁷ Małgorzata Tomkiewicz describes four categories of motherhood that may emerge as a result of applying medically-assisted reproduction techniques, that is: (1) genetic motherhood, which is the most closely related to the very moment of fertilization and comes down to the donation of the genetic material. The mother and the child are bound by genetic consanguinity bonds; (2) biological motherhood, which is related to the course of the pregnancy itself. The role of the biological mother—the carrier is to carry the pregnancy to term and to give birth to the child; (3) social motherhood, which means the bonds connecting the child with the woman who wants to bring the child up as his or her mother; (4) legal motherhood, which refers to the woman listed on the birth certificate of the child as his or her mother.⁸

Therefore, it can be clearly seen that surrogacy involves serious threats to responsible parenthood, since it undermines the explicitness of basic paradigms related to parenthood, destroys the unity of social-biological identity of the

⁵ Intracorporeal fertilization *in vivo* consists in artificial introduction of the man's semen into the reproductive organs of the woman. Two types of this process can be distinguished, homologous insemination [AIH] and heterological insemination [AID]. See Hieronim Bartel, *Embriologia* (Warszawa: Wydawnictwo Lekarskie PZWZ, 2007), 87.

⁶ Extracorporeal fertilization *in vitro* takes place in laboratory conditions, after which the embryo thus created is transferred to the uterus of the woman. See Łukasz Szymański, *In vitro* (Kraków: PETRUS, 2009).

⁷ For more on this issue, see Małgorzata Tomkiewicz, "Mater semper certa est"? Macierzyństwo zastępcze w świetle regulacji prawa europejskiego i w prawie polskim, in *Kobieta w Kościele i społeczeństwie* (Uniwersytet Warmińsko-Mazurski w Olsztynie), 144–159.

⁸ See: *ibid.*

child, infringes the right to genetic integrity and brings the risk of expansion and commercialization of the procedure.

Risk of the Islamic *kafala*

The above-described new challenges and threats to responsible parenthood, such as contraception, abortion, assisted procreation, and surrogacy, are unquestionably highly significant and may not only arouse concerns, but even fill one with dread. However, since these risks to responsible parenthood have been widely discussed in the academic literature as well as remain a topic of various polemics, their analysis will be omitted in this article. Instead, the paper will focus on a risk to contemporary responsible parenthood—which still seems to be unrecognized and may derive from the unprecedented inflow of immigrants from Muslim countries to Western Europe.

Immigrants of Muslim origin represent not only a different system of values and culture, but also a different legal system, which is incompatible with the Western model, for example, the freedom of conscience and religion. In view of the fact that some institutions of Muslim law have been adopted into the legal systems of Western Europe, in the short term perspective we can face the problem of serious demands from Islamic communities, which may collide with the Christian system of values and child-rearing and become a threat to responsible parenthood in the dimension of bringing up offspring.

One of such examples which I would like to describe in detail is the Muslim institution of foster care, the so-called *kafala*. This otherwise generous care for abandoned children, deprived of parents or living in difficult conditions, provided, for instance, through adoption, of which Paul VI or John Paul II approved—especially to childless married couples—when offered to children of Muslim origin will have an effect on rights and duties of Christian parents adopting Muslim children. This results from the fact that the Muslim institution of adoption, the so-called *kafala*, significantly differs from the European one.

What is *kafala*?

Without going into details concerning foster care and adoption governed by Polish law or law in other European states,⁹ it should be observed that Islamic law—just like Polish law—provides the children deprived of parental care with the possibility of growing in the family.¹⁰ However, in the Muslim world, adoption, or more broadly, foster care, is understood in a significantly different manner than in the European legal tradition. Although the term adoption exists in Arabic (*tabannin*), Islam prohibits adoption which would consist in establishing a relation under family law that would be identical to that which exists between biological parents and the child.¹¹

The Quran prohibits adoption *sensu stricto* but it allows the existence of a foster care institution in the form of *kafala*.¹² However, taking the child into a family under this formula does not mean that the legal bond between the child and his or her biological parents ceases to exist. Pursuant to Muslim law concerning *kafala*, adults adopting a child become the child's guardians and not new parents. An adopted child has no right to inherit from them, cannot take their name, although he or she is entitled to inherit from the biological parents. After the child becomes sexually mature, he or she can even marry the adopting person. Under *kafala*, the guardian taking care of the foster child is obliged to care for the child's needs, care for his or her maintenance as well as—which is the most important issue from the point of view of the subject—has to ensure the child's upbringing in the Islamic faith.

⁹ For more see: Małgorzata Tomkiewicz, *Islamska „kafala” a prawo polskie*.

¹⁰ In Islam, children are considered orphans (*jatim*) if they have no father, regardless of the fact whether their mother is living. After the father's death, even if the mother is alive, the obligation to provide maintenance to the child is on the nearest male relative. See: Aldona Piwko, *Muzułmańscy rodzice*, "Nurt SVD," vol. 127, no. 1 (2010), 157–73.

¹¹ This prohibition is derived from the Quaranic parable of the marriage of the prophet Muhammad with the former wife of his adopted son, Zayd. Acknowledgement that taking the child for foster care does not result in establishing family bonds made it possible for Muhammad to enter into the abovementioned marriage, which thus ceased to be an impure relation.

¹² "He has not made your adopted children your sons. This is only saying by your mouths, God says the truth and only He can guide you the right way. Call them by the names of their fathers; this will be more just with God. And if you do not find their fathers, then they should be your brothers in faith and under your charge," Józef Bielawski, *Quran*, XXXIII, 4–5, Warszawa 1986.

The Issue of the Problem

The signalled problem for responsible parenthood does not result only from judicial and axiological differences in regulations concerning adoption in Muslim law and the law of the European states. This issue primarily consists in the fact that countries of Western Europe in their legislations either directly included *kafala* into their legal order or explicitly admit the possibility of following it. This means that for Christian spouses who adopt a child of Muslim origin, such a state of affairs can result in hindering and even depriving them of their right to responsible parenthood as regards the right to upbringing.

The fact that these are not imaginary threats and the *kafala* care system can be used as a tool for Islamization of law in Europe, has been backed up by the example of Spain. Spain, due to its geographical closeness of Morocco, is the primary place where Moroccan children are adopted.¹³ On September 19, 2012, the Moroccan minister of justice, Mustafa Ramid, issued a circular prohibiting the transfer of Moroccan children to families out of Morocco, since—as he claimed—when children leave the country, it is not possible to monitor whether the law of *kafala* is respected and children are brought up as Muslims. In response to this circular, the Spanish minister Ruiz-Gallardón announced that he would give in to Moroccan demands and would change Spanish law concerning international adoption, subjecting it to the *kafala* law. Following this announcement, an agreement was concluded in 2012 between the Spanish government and the Moroccan government, under which the Spanish government agreed to create “control mechanisms” to allow Moroccan spiritual authorities to monitor the children by the time they reach maturity and to check whether they have converted to Christianity.

The above remark also concerns Polish legislation. Apparently, it would seem that since *kafala* is an institution of an Islamic state and the Quran does not belong to the sources of Polish law,¹⁴ there are no grounds for the solutions adopted in *sharia* to be respected in Polish law. However, the complication is that *kafala* is recognized by provisions of the acts of international law, to which Poland is a party, while this institution is not excluded by international private law.¹⁵

¹³ In Morocco, many children are abandoned, since Art. 490 of the Penal Code provides for a year of imprisonment for extramarital sexual intercourse.

¹⁴ Specified in Art. 87.1 and Art. 87.2 of the Constitution of the Republic of Poland.

¹⁵ The International Private Law Act of 4 February 2011, Dz. U. 2011, No. 80, item 432.

Kafala in International Law

The above issue is reflected first of all in two conventions, the Convention on the Rights of the Child of 20 November 1989,¹⁶ and the so-called Hague Convention of 19 October 1996.¹⁷ Both Conventions *expressis verbis* mention the Islamic institution of adoption, the so-called *kafala*. Both Conventions have been ratified, therefore, included into the sources of law, not only in Poland, but also in various states joining the European Union, as well as in non-EU states.

Pursuant to Art. 20 of the Convention on the Rights of the Child, “a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.” On the one hand, the State—in accordance to its internal law—is to ensure alternative care for such a child, which can include, among others: placement in a foster family, in a suitable institution established for the care of children, adoption or—having in mind Islamic law—*kafala*. Additionally, the convention requires that while ensuring foster care, recommendations concerning continuity in a child’s upbringing should be taken into account, as well as the child’s ethnic, religious, cultural, and language identity.

On the other hand, Art. 3e of the Hague Convention provides that measures of parental responsibility and protection of children can refer in particular to “the placement of the child in a foster family or in institutional care or the provision of care by *kafala* or an analogous institution.”

Bearing in mind the above quoted norms, it should be noted that they do not introduce *expressis verbis* an obligation to respect foster care towards juvenile Islamic believers in the form of *kafala*, especially as they refer to the internal law system of a given country, which, for instance in Poland—does not provide for *kafala*. However, it would be hard not to notice that *kafala* is not a completely irrelevant measure in the Polish legal order.

¹⁶ The Convention on the Rights of the Child adopted by the General Assembly of the United Nation on 20 November 1989, Dz. U. of 1991, No. 120, item 526.

¹⁷ Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, concluded in Hague on 19 October 1996, Dz. U. of 2010, No. 172, item 1158, ratified by the Act of 22 January 2010, Dz. U. of 2010, No. 40, item 225.

Kafala and Foster Care

Still more visible consequences of the Muslim institution of *kafala* can be seen with foster care in the case of an international adoption, that is, as a result of which the adopted child moves to another country. The norm of Art. 56.1 and Art. 59.1 of the International Private Law¹⁸ provides that the governing law for issues concerning parental authority and contacts with child, as well as care and guardianship is specified in the above-mentioned Hague Convention of 1996. In Art. 16 this convention provides that parental responsibility which exists according to the law of the state of the habitual residence of the child subsists after a change of that habitual residence to another state, while the term parental responsibility means both parental authority as well as other relationship of authority, which specifies the rights, powers, and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child.¹⁹

Therefore, as results from the foregoing, if there are children in the territory of Poland who in the place of their habitual residence have been placed under the care in the *kafala* form, this fact should be respected in the light of Polish law, regardless of the fact whether the child will be placed in a Christian foster family or a family following any other values. Therefore, Polish law does not exclude the possibility of respecting *kafala* as a care solution. Consequently, one must pose a question of how far the respecting of this institution should reach and whether, for foster care of a child towards whom such care in the form of *kafala* has been applied, the followers of Islam can demand this care to be continued with consideration of the *kafala* specificity, for example, by placement of a child in a Muslim foster family.

Art. 20.3 of the Convention of the Child Right referred to above clearly provides that while choosing an appropriate measure, ethnic, religious, cultural, and language identity of the child should be respected. Bearing in mind that this provision has been ratified, that is, included in the sources of Polish law, it should be directly applied. Therefore, the possible thesis that Muslims have no grounds to demand considering the specificity of *kafala* in issues related to foster care by Christian parents who adopt a Muslim child, could be difficult to defend.

¹⁸ The International Private Law Act of 4 February 2011, Dz. U. of 2011, No. 80, item 432.

¹⁹ Pursuant to Art. 1.2 of the Hague Convention of 1996. On the other hand, pursuant to Art. 20 of the Hague Convention of 1996, the above-mentioned provisions apply even if the law indicated by them is the law of the state which is not a party to the Convention.

Kafala and Judicial Decisions of the European Court of Human Rights

The above-mentioned interpretation direction ordering the *kafala* system to be respected in the internal law orders also seems to derive from the judicial decisions of the European Court of Human Rights.

In its decision of 4 October 2012 in case of Harroudj v. France²⁰ the European Court of Human Rights clearly pointed out that Art. 20 of the Convention on the Rights of the Child explicitly acknowledges the system of *kafala* derived from Islamic law as a form of a foster care. In this decision, the Court also brought up that a refusal to adjudicate adoption of a child entrusted in Algeria to a French citizen in a form of the *kafala* care does not violate the right to respect for family life specified in Art. 8 of the Convention on the Protection of Human Rights and Fundamental Freedom, since “the fact that *kafala* was acknowledged in international law was a decisive factor while assessing how the States accommodated it in their domestic law and dealt with any conflicts that arose.” The Court considered that the applicant was refused adoption “due to the need to preserve the spirit and purpose of international convention.”

Also in the decision of 16 December 2014, Chbihi Loudoudi v. Belgium²¹ the European Court of Human Rights decided that the rejection of an application for recognizing adoption of a child for whom the applicants cared in the form of *kafala* did not violate the right to respect for family and private life.

Kafala and the Right for Responsible Parenthood

Since we consider that there are grounds to take *kafala* into account when making a decision on taking care of a minor Muslim, another dimension of the analysed problem emerges, namely, the question whether *kafala* can be combined with the principle of religious freedom in Poland and in other states of the European Union, as well as with the possibility to exercise the right for responsible parenthood for Christian spouses who would provide legal care to Muslim children?

²⁰ Application No. 43631/09.

²¹ Application No. 52265/10.

Referring to this aspect, it should be first of all reminded that the *kafala* caring system, although it can differ in individual countries in details, imposes, as a rule, on the kafalic guardians an obligation to bring up the child in the spirit of Islam, while Islam excludes the possibility of changing religion. In the Western world, the right to change religion is one of the fundamental dimensions of religious freedom and belongs to one of the fundamental human rights, emphasized in numerous acts of international law.²²

However, the European model of human rights, including the right to religious freedom, is not practiced in Islam. In the Islamic doctrine, the rights of an individual are derived from God and his revelation—Quran—and are not inherent to people under the laws of nature. A human being is treated not as a subject of rights, but as an entity obliged to follow certain behavior, attitudes, and acts towards his or her community, but first of all towards God.²³ Therefore—pursuant to this doctrine—the Muslim community should follow the divine right in the form prescribed by Quran and *sharia*, the system of Muslim law developed by Muslim countries over the centuries.²⁴ Although Muslim countries differ in their application of the religious law, yet as regards religion, they explicitly refer to *sharia* as the basis for jointly promulgated declarations of human rights.²⁵

Without going into the details of the subject matter concerning the concept of human rights in Islam,²⁶ it should be indicated, for the sake of illustration,

²² The Universal Declaration of Human Rights, Art. 18: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief.” International Covenant on Civic and Political Rights, Art. 18.1: “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom.” Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 9.1: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom.” Chart of Fundamental Rights of the European Union, Art.10. 1: “Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief.” Although the Constitution of the Republic of Poland does not guarantee the right to change religion or belief *expressis verbis*, it is unquestionable that such a right, making up the content of the freedom of conscience and religion, results from the wording of Art. 53.2.

²³ Roman Baecker, “Islam: między fundamentalizmem a totalitaryzmem,” in *Islam a świat*, ed. Roman Baecker and Sh. Kitab (Toruń: MADO, 2005), 89.

²⁴ Rollin Armour, *Islam, chrześcijaństwo i zachód. Burzliwe dzieje wzajemnych relacji*, trans. Iwona Nowicka (Kraków: WAM, 2004), 35–36.

²⁵ Muhammad Saïd al-Ashmawy, *Islam and the Political Order* (Washington, D.C.: Council for Research in Values and Philosophy), 95–100.

²⁶ For more on this subject, see for example, Andrzej Bisztyga, „Zachodnia a islamska koncepcja praw jednostki,” *Przegląd Prawa Konstytucyjnego*, no. 1 (2013); Anna Mrozek-Dumanowska, „Islam a demokracja,” in *Islam a demokracja*, ed. Anna Mrozek-Dumanowska (Warszawa: Askon, 1999); Mariusz Jabłoński, „Wolności i prawa jednostki w regionalnym systemie Ligi Państw Arabskich,” in Bogusław Banaszak et al. (ed.), *System ochrony praw człowieka* (Kraków: Wolter Kluwer Polska SA, 2005).

that Islamic countries not only have not adopted the Universal Declaration of Human Rights of 1948, but on 5 August 1990 developed the so-called Cairo Declaration on Human Rights in Islam,²⁷ from which it follows that all humanity is Muslim out of its nature, and therefore the freedom of religion cannot be accepted. Already in the preamble, the Cairo Declaration states that Islam is superior to other religions. The same preamble also emphasizes the prohibition on objecting towards what is required by the law of *sharia*. Also, Article 10 of the Cairo Declaration provides that Islam is a natural religion of a human being; therefore, it is against the law to exercise any form of pressure on man or to exploit his or her ignorance or poverty to convert him to another religion or to atheism, while, pursuant to Art. 19 of the Declaration, no other penalty should be inflicted except as provided for under Islamic law. This means that corporal penalties must be accepted according to *sharia* law, including the death penalty for apostasy.²⁸

Conclusion

In the light of the above remarks, it seems unquestionable that *kafala* in the aspect in which it obliges a person to bring up the child in the spirit of Islam, cannot be combined to any extent with the principle of religious freedom and the right for responsible parenthood as regards Christian upbringing of adopted Muslim children. Consequently, bearing in mind the huge inflow of immigrants from Muslim countries to Europe, it may turn out soon that Christian parents who decide to take into custody children of Muslim origin will be obliged to bring them up according to the guidance of *sharia*, and not the Gospel. And this is—apparently—the most pressing contemporary challenge for responsible parenthood.

²⁷ This declaration was signed by 45 Ministers of Foreign Affairs of the Organization of the Islamic Conference.

²⁸ The Quran does not contain an explicit provision imposing a death penalty for apostates. However, the capital punishment for apostates is recommended by many hadiths, including several ones recognized by all Islamic schools. An apostate should be put to death according to the teaching of three Sunni schools (Hanbali, Maliki, and Shafi'i), while the Sunni Hanafi school and the Shia Jafari school provide for imprisonment until the apostate "returns to the bosom of Islam," although also in this case the death penalty is not excluded.

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Lucjan Świto

La parentalité responsable dans le contexte des défis de l'époque contemporaine

Résumé

Le présent article aborde la question qui est importante du point de vue de l'enseignement catholique, c'est-à-dire la parentalité responsable. L'article non seulement systématise et organise les notions de base concernant la parentalité responsable, mais il présente avant tout au lecteur les défis et dangers les plus importants qui se posent aujourd'hui devant les époux catholiques. Ce sont non seulement la contraception, l'avortement, la procréation assistée ou la gestation pour autrui, mais également l'afflux d'immigrés musulmans sur les territoires de l'Union européenne qui peuvent constituer la source de danger pour la parentalité responsable. Les immigrants d'origine musulmane représentent non seulement un système différent de valeurs et de cultures, mais aussi un système différent de droit qui n'est nullement compatible avec le modèle occidental. De plus, étant donné que certaines institutions du droit musulman, comme la kafala, sont appréciées par les systèmes juridiques des pays de l'Europe occidentale, il est probable que dans peu de temps on fera face aux revendications sérieuses des milieux islamiques qui pourront frapper le système chrétien de valeurs et d'éducation et devenir par suite le danger pour la parentalité

responsable des époux chrétiens au niveau de l'éducation de leurs enfants. Il se peut que les parents chrétiens acceptant de se charger de la tutelle des enfants d'origine musulmane soient obligés de les élever selon les indications de la charia, et non celles l'Évangile.

Mots clés: parentalité responsable, éducation, kafala, islam, liberté religieuse

Lucjan Świto

La genitorialità responsabile nel contesto delle sfide della contemporaneità

Sommario

L'articolo presentato intraprende la problematica fondamentale dal punto di vista dell'insegnamento cattolico della genitorialità responsabile. L'articolo non solo sistema e ordina i concetti basilari riguardanti la genitorialità responsabile, ma soprattutto fa conoscere al lettore le sfide ed i rischi più importanti che oggi si presentano dinanzi ai coniugi cattolici. Una fonte di pericolo per la genitorialità responsabile può essere rappresentata non solo dalla contraccezione, dall'aborto, dalla procreazione assistita o dalla maternità surrogata ma anche da un afflusso ancora incosciente nell'Unione Europea di immigrati provenienti dai paesi musulmani. Gli immigrati di origine musulmana rappresentano infatti non soltanto un sistema di valori e di cultura differente ma anche un differente sistema giuridico che non è compatibile con il modello occidentale. Considerato che alcune istituzioni del diritto musulmano—come ad es. la *kafala*—sono recepiti nei sistemi giuridici degli stati dell'Europa Occidentale, ci si può trovare, nella prospettiva breve, dinanzi al problema di serie richieste da parte degli ambienti islamici che possono colpire il sistema dei valori e dell'educazione cristiani e divenire un pericolo per la genitorialità responsabile dei coniugi cristiani nella dimensione dell'educazione dei figli. Può risultare infatti che i genitori cristiani, prendendo in affidamento bambini di origine musulmana, saranno obbligati ad educarli secondo le indicazioni della *sharī'a*, e non del Vangelo.

Parole chiave: genitorialità responsabile, educazione, *kafala*, islam, libertà religiosa

Malgorzata Tomkiewicz

University of Warmia and Mazury in Olsztyn, Poland

Femininity and Masculinity as a Legal Issue

Abstract: The Pastoral Constitution on the Church in the Modern World *Gaudium et Spes* emphasizes that dignity refers to the human person in all his/her complexity including everything that constitutes sex and human sexuality.

The determination of sex is not always as natural and obvious as it might seem. There are cases of people who do not accept their femininity or masculinity, which takes place, for example, in the case of transsexualism. In brief—this disorder consists in the desire to belong to the opposite sex, which is usually accompanied by discomfort associated with the biological sex, a sense of inadequacy, and—consequently—desire to undergo a surgical or hormonal treatment in order to adjust the body to the preferred sex.

The appearance of a formal possibility to change the sex registered at birth raises the question of whether such a possibility actually serves the human person. Do transsexual people actually do it with respect for the rights and inherent dignity of the human person?

The present article constitutes an attempt to answer these questions by analysing the existing solutions in the Polish law, including the position on the matter of both the European and Polish jurisprudence.

Keywords: sex, transsexualism, sex change, birth certificate, marriage

Introduction

The Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*¹ in the opening of the chapter entitled “The Dignity of the Human Person” states:

¹ The constitution promulgated by Pope Paul VI on December 7, 1965. Text: *Sobór Watykański II, Konstytucje. Deklaracje. Dekrety*, Polish translation, Pallotinum (1968), 537–620.

“According to the almost unanimous opinion of believers and unbelievers alike, all things on earth should be related to man as their centre and crown.”² The dignity of all persons is equal.³ The dignity of man and equality in the theological perspective has its source in the creation of all people in the image of God. The constitution *Gaudium et Spes* quotes the formula from Genesis: “Thus God created mankind in his own image; in his own image God created them; he created them male and female.”⁴ The constitution emphasizes that dignity refers to man in all his complexity, including everything that constitutes sex and human sexuality.

However, determination of sex is not always as natural and obvious as it may seem. There may occur cases of persons⁵ who do not accept their femininity or masculinity, which happens, for instance, in the case of transsexualism.⁶

According to International Classification of Diseases of 2010 (the so-called ICD-10), prepared by the World Health Organization (WHO), transsexualism is classified among mental and behavioral disorders,⁷ in the subcategory of disorders of adult personality and behavior,⁸ of the gender identity disorder type.⁹ According to the definition adopted in this classification, transsexualism consists in the desire to be accepted as a member of the opposite sex, which is typically accompanied by a discomfort related to the biological sex, the feeling of its inappropriateness and, in consequence, the wish to undergo surgery or hormonal treatment to make one’s body as congruent as possible with one’s preferred sex.¹⁰ The diagnostic criteria for transsexualism provided by ICD-10 include a persistent, lasting for at least two years transsexual identity, which

[English text derived from http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html, accessed September 17, 2016].

² Ibid., No. 12.

³ Ibid., No. 29.

⁴ Gen. 1:27, quotation according to Biblia Tysiąclecia, Pallotinum, Poznań 2003 [English text after International Standard Version].

⁵ According to statistics, this disorder in the global scale concerns 1 per 30,000 persons of anatomically masculine sex and 1 per 100,000 persons of anatomically female sex. Polish statistics provide that transsexualism occurs much more frequently in anatomical women than in anatomical man. It is estimated that 1 per 17,000 Polish women and 1 per 57,000 Polish men can be affected by transsexualism (see Joanna Ostojka, “Sądowa zmiana płci.” Praca doktorska przygotowana pod kierunkiem Prof. dr. hab. Krzysztofa Pietrzykowskiego w Instytucie Prawa Cywilnego Wydziału Prawa i Administracji Uniwersytetu Warszawskiego, accessed July 25, 2015, https://depotuw.ceon.pl/bitstream/handle/item/1014/S%C4%85dowa%20zmiana%20p%C5%82ci_Joanna%20Ostojka.pdf?sequence=1, footnote 47).

⁶ Due to limitations resulting from the nature of this publication, other forms of sex identification disorders, such as intersexualism, have been omitted in the article.

⁷ ICD-10: F.00–F.99.

⁸ ICD-10: F.64–F.69.

⁹ ICD-10: F.64.

¹⁰ ICD-10: F.64.0.

does not result from other mental disorders, intersexual or genetic irregularities, or chromosomal aberrations.¹¹

Just like ICD-10, also the literature on the subject defines transsexualism as a discrepancy between the mental experience of one's own gender and the morphological and biological structure of the body and the sex assigned at birth, which are perceived as alien and belonging to the opposite sex.¹² A transsexual does not identify himself or herself with their own anatomical sex, feels disgust at his or her own sex organs and usually wants to get rid of them, and aims at obtaining a legal decision establishing that he or she is a member of the sex opposite to the one recorded in his or her birth certificate.

Transsexualism and related attempts to "change sex" recorded at birth are a tragedy for persons suffering from this disorder and for their families. This phenomenon is also a social problem, towards which the law does not remain indifferent.

European legislations do not provide a uniform solution concerning the problem of changing sex assigned at birth. Legal regulations of this type apply, for example, in Sweden, Germany, Italy, the Netherlands, United Kingdom, and Italy. In other countries, for instance in France and Switzerland, matters related to sex reassignment are left to be decided by way of court decisions.

The emergence of the formal possibility of changing sex assignment recorded in the birth certificate raises the question of whether such possibilities are really good for the human being? Do they actually serve the human being with respect to his or her rights and inherent dignity of the human person? This article, by presenting an analysis of solutions existing in the Polish law, including the standpoints of the European and Polish judiciary, attempts to answer these questions.

The Issue of Transsexualism and Sex Change in Judicial Practice

In judicial decisions of the European Court of Human Rights,¹³ the right to change legal sex by transsexual persons is derived from Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,

¹¹ International Classification of Diseases (ICD-10): F.64.0 – transsexualism <http://apps.who.int/classifications/icd10/browse/2010/en#/F60-F69>; accessed September 9, 2015.

¹² Kazimierz Imieliński, *Seksjatria. Patologia seksualna* (Warszawa: Państwowy Zakład Wydawnictw Lekarskich, 1990), 285.

¹³ Hereinafter the ECHR.

which in section 1 states that everyone has the right to respect one's private and family life, one's home and one's correspondence.¹⁴ However, it should be noted that until 2002, the Court, referring to the doctrine of the so-called margin of appreciation, regarded the possibility of sex change as an internal matter of individual Contracting States.¹⁵

The first case in which the ECHR expressed a substantial opinion on the situation of transsexual persons was the case of *Rees v. the United Kingdom*.¹⁶ In this case, the ECHR did not find any violation of Art. 8 or Art. 12 of the ECPHR. In justification of its decision, the Court stated that the issue of the possibility of changing sex in some jurisdictions had been regulated only in some national legislations, and that those regulations were not uniform. It stated further on that due to the specific nature of the topic under discussion, the United Kingdom was entitled to regulate this issue at its discretion within the so-called margin of appreciation. On this basis, ECHR indicated that it was not competent to force the United Kingdom to change the existing regulations and to issue a legal act making it possible to legally change sex.

The ECHR also referred to the doctrine of the margin of appreciation in the case of *Cossey v. the United Kingdom*, decided on 27 September 1990.¹⁷

The first sign of tuning down the standpoint expressed in case *Rees v. United Kingdom* was brought by the case of *B. v. France*, in the judgement of 25 March 1992.¹⁸ In its decision, the ECHR pointed out that, unlike the British legal system, French law did not assume registration of only historical facts, but provided for the possibility of introducing changes to the birth certificate. On this basis, the ECHR decided that France violated Art. 8 of the ECPHR since it had implemented such solutions and made it impossible for the M-to-F transsexual to change sex assignment on the birth certificate.

As it could be clearly seen in subsequent decisions concerning change of legal sex, the ECHR maintained its previous interpretations of the ECPHR

¹⁴ The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, Dz. U. of 1993, No. 61, item 284; hereinafter ECPHR.

¹⁵ Wojciech Burek, „Interpretacja ewolucyjna Europejskiej Konwencji Praw Człowieka na przykładzie orzecznictwa w sprawach sytuacji prawnej transseksualistów pooperacyjnych,” *Prawo i Medycyna* 1 (2007): 114; Konrad Osajda, „Orzecznictwo Europejskiego Trybunału Praw Człowieka dotyczące transseksualizmu,” *Europejski Przegląd Sądowy* 5 (2009): 35. The discussions concerning the decisions presented are based on Ostojka, „Sądowa zmiana płci,” 65–85 and 93–138.

¹⁶ Application No. 9532/81; decision of ECHR of 17 October 1986, accessed September 12, 2015, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57564>.

¹⁷ Application No. 10843/84; decision of the ECHR of 27 September 1990, accessed September 12, 2015, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57641>.

¹⁸ Application No. 13343/87; decision of the ECHR of 25 March 1992, accessed September 9, 2015, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57770>.

regulations, including case X., Y. and Z. v. the United Kingdom of 1997¹⁹ and the case of Sheffield and Horsham v. United Kingdom of 1998.²⁰

A breakthrough in judicial decisions of the ECHR as regards the legal effects of transsexualism was brought by in the judgment issued in the case of Goodwin v. the United Kingdom on 11 July 2002.²¹ This decision rejected the thesis of leaving the issue of legal sex assignment of transsexual persons within the margin of appreciation of Contracting States. In its assessment, the ECHR based its position on the view that the ECPHR creates a basic system for the protection of human rights, and cannot be perceived only as theoretical or illusory. Although due to the principle of law certainty, the ECHR should not depart from the interpretation presented in its previous decisions, it must present an evolutive approach, open to progress in science and changes occurring in society. The ECHR pointed out the incoherence in the legal system of the United Kingdom which, on one hand, provided for financing by the state of the sex change surgical procedure and, on the other, did not introduce regulations which would make it possible to change sex assignment on the birth certificate. The ECHR also emphasized that the fact that European legislations did not apply uniform solutions to the problem of changing the legal sex of transsexual persons only served to highlight the need to solve this issue at the European level. Consequently, the ECHR concluded that the United Kingdom could not refer to the margin of appreciation, but should create appropriate regulations to make it possible to exercise rights guaranteed in the ECPHR. The Court also established a violation of Art. 12 of the ECPHR in this case. In substantiation of its opinion, the ECHR considered that sex as a premise for entering into marriage cannot be determined only on the basis of the chromosomal scheme, type of gonads or type of external genitalia. At the same time, the ECHR established that an obligation of Contracting States in relation to creating legal regulations enabling transsexual persons to change sex recorded at birth resulted in the right of those persons to form a marital union within their “new” sex.

The decision in the case of Goodwin v. the United Kingdom entirely changed the approach of the ECHR to reassignment of legal sex by transsexual persons. The interpretation presented in this judgement was repeated in a decision issued on the same date in the case of I. v. the United Kingdom,²² and four years

¹⁹ Application No. 21830/93; decision of the ECHR of 22 April 1997, accessed September 9, 2015, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58032>.

²⁰ Application No. 31-32/1997/815-816/1018-1019; decision of the ECHR of 30 July 1998, accessed September 9, 2015, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58212>.

²¹ Application No. 28957/95; decision of ECHR of 11 July 2002, accessed September 9, 2015, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60596>.

²² Application No. 25680/94; decision of ECHR of 11 July 2002, accessed September 9, 2015, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60595>.

later, in the decision concerning the case of *Grant v. the United Kingdom*.²³ In the latter case, the ECHR established that from the time of the judgement in the case of *Goodwin v. the United Kingdom*, legal regulations of Contracting States which violated the right of transsexual persons after surgery to be given recognition to their sex remained incompatible with the ECPHR.

In judicial decisions of Polish courts, the first commonly referred to adjudication concerning the subject matter discussed in this article is the decision of the Provincial Court for the Capital City of Warsaw of 24 September 1964,²⁴ which admitted the possibility of changing sex assignment on the basis of applied *per analogiam* provisions of the Act on Registry Office Records concerning corrections of the registry office records in case of erroneous or imprecise wording. Such a manner of proceeding was also approved by the Supreme Court in its resolution of 25 February 1978.²⁵ In this resolution, adopted in response to the legal issue presented by the Provincial Court in Gdańsk, regarding whether the birth certificate of a person with an intersexual body build and identification with the female sex could be changed by reassignment of sex from male to female before a required corrective surgery of external sex organs, the Supreme Court decided that in an exceptional case, the court can correct the birth certificate by changing sex assignment also before the corrective surgery of external sex organs if the characteristics of the newly-developing sex were prevailing and this state was irreversible. The Court assumed that a change of legal sex assignment can take place even without previously undergoing a surgical procedure, since—as the Court asserted—forcing a person who identifies with the sex that is opposite in relation to the sex of his or her external genitalia to undergo a surgery for changing these organs is unjustified, since this issue is of strictly personal nature and should be left to be decided by the person concerned.

On the other hand, in its resolution of 22 June 1989,²⁶ taken in relation to the legal question of the Attorney General asking whether the court can correct the birth certificate on the basis of regulations of the Act on Registry Office Records by changing sex assignment from male to female or vice versa in the case of transsexualism, but before a relevant surgical procedure to external sex organs, the Supreme Court asserted that the occurrence of transsexualism did not provide any grounds to correct the birth certificate as regards sex assignment. In justification of this resolution (which was given the force of a rule

²³ Application No. 32570/03; decision of ECHR of 23 August 2006, accessed September 12, 2015, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-75454>.

²⁴ Decision of the Provincial Court for the Capital City of Warsaw of 24 September 1964, file ref. No. 2 Cr 515/64, *Państwo i Prawo* 10 (1965).

²⁵ Resolution of the Supreme Court of 25 February 1978, file ref. No. III CZP 100/77, *Orzecznictwo Sądów Polskich i Komisji Arbitrażowych* 10 (1983), item 217.

²⁶ Resolution of the Supreme Court of 22 June 1989, file ref. No. III CZP 37/89, *Orzecznictwo Sądów Polskich i Komisji Arbitrażowych* 2 (1991), item 35.

of law), the Supreme Court emphasizes that sex, as a personal trait, determines the civil status of a person. This status is based on the principle of indivisibility, which results in that every person can have only one civil status and, therefore, only one sex. At the same time, the Court shared the view of the Attorney General, according to which the existing practice of correcting birth certificates of transsexual persons as regards sex assignment, established by the resolution of the Supreme Court of 25 February 1978, constituted a threat to the legal order. In the light of the assessment of the Supreme Court, the registry office record determines the legal status of a person, which was issued based on legal events. Transsexualism, in which the change of the mental status and, not the legal status of the person is concerned, is not a legal event. In the opinion of the Court, provisions of the Act on Registry Office Records do not permit any corrections in the birth certificate of a transsexual person as regards sex assignment, as the birth certificate can be corrected only when it is erroneous or imprecise from the very beginning, which does not apply in the case of transsexualism. Also, in the opinion of the Court, it is not possible to admit the possibility of applying provisions on correction *per analogiam*, since they concern facts that are entirely different and dissimilar in legal terms.

However, in its judgement of 22 March 1991,²⁷ the Supreme Court decided that the sense of being a member of a given sex can be considered a personal interest (Art. 23 of the Civil Code) and, as such, is subject to protection by way of an action for a declaratory judgement pursuant to Art. 189 of the Code of Civil Procedure. Such an opinion was also maintained by the Supreme Court in its resolution of 22 September 1995.²⁸

On the other hand, the Court of Appeal in Katowice, in its decision of 30 April 2004,²⁹ ruled that sex reassignment through a court decision cannot be based only on the feeling of a given person of being a member of a specific sex, since the legal evaluation of human sex is based on medical criteria. A similar position was also taken by the Supreme Court in its judgement of 6 December 2013.³⁰ In this decision, the Supreme Court also observed that reassignment of the sex of a father or a mother of a child, resulting in the difference between the new sex and the sex indicated by the role fulfilled by this person in the process of conception and birth, was important for the child, since it concerned the person to whom his or her origin would be assigned. Consequently, the

²⁷ Resolution of the Supreme Court of 22 March 1991, file ref. No. III CRN 28/91, *Przegląd Sądowy* 5–6 (1991), item 118.

²⁸ Resolution of the Supreme Court of 22 September 1995, file ref. No. III CZP 118/95, *Orzecznictwo Sądu Najwyższego–Izba Cywilna* 1 (1996), item 7.

²⁹ Decision of the Court of Appeal in Katowice of 30 April 2004, file ref. No. I ACa 276/04, *Orzecznictwo Sądu Administracyjnego* 10 (2004), item 31.

³⁰ Decision of the Supreme Court of 6 December 2013, file ref. No. I CSK 146/13, LEX 1415181.

Supreme Court justifiably emphasized that in the decision on sex reassignment “consideration should be given not only to the desire of a transsexual to adjust the sex assigned to him or her at birth with the mental feeling of his or her gender, but also to the circumstances affecting the child, namely the child’s broadly understood readiness to find himself or herself in a situation in which the child is to see the person of his or her parent as a person of another sex [...]”

Sex and Sexual Identity as Normative Criteria

Experts specializing in transsexualism studies and treatment distinguish ten elements determining sex, which include³¹: (1) chromosomal sex (genotype),³² (2) gonadal sex,³³ (3) sex of internal genitals (gonadophoric),³⁴ (4) sex of external genitals,³⁵ (5) phenotypic sex (somatotypical, biotypical),³⁶ (6) hormonal sex,³⁷ (7) metabolic sex,³⁸ (8) social sex (registered at birth, legal),³⁹ (9) brain sex⁴⁰ and (10) psychological sex.⁴¹

Pursuant to solutions applicable in Polish law, the initial sex identification takes place in the birth certificate, which is prepared on the basis of a written notification of a birth of a child, a document issued by a physician, a midwife or a health care facility. Identification of the child’s sex is made on the basis of the appearance of external sex organs, which in great majority of cases are convergent with internal characteristics. However, the law does not regulate a situation when such a convergence does not exist, that is, when among the ten

³¹ Stanisław Dulko, Kazimierz Imieliński, and Marian Filar, *Transpozycje płci. Transseksualizm i inne zaburzenia identyfikacji płciowej* (Warszawa: Polska Akademia Medyczna, 1997): 3–5.

³² It is determined at fertilization. It is determined by two sex chromosomes: XY in men and XX in women.

³³ It is determined by sex glands: testicles in men and ovaries in women.

³⁴ It is determined by diversification of reproductive tracts developed from the gonadal ducts.

³⁵ It is determined by the presence of a penis in men and a vulva in women.

³⁶ It is determined by secondary or tertiary sexual characteristics.

³⁷ It is determined by internal secretory activity of testicles and ovaries.

³⁸ It is determined by the type of enzymatic apparatus of some metabolic systems.

³⁹ In the opinion of authors, it is established immediately after birth, on the basis of the appearance of external genitals and determines fulfilment of a male or female role.

⁴⁰ It consists in typically sexual differentiation of brain.

⁴¹ It is determined by the feeling of adherence to a given sex, therefore through identification of an individual with male or female sex.

above-mentioned sex determinants at least one belongs to the opposite sex.⁴² The applicable regulations do not explicitly settle the issues of admissibility or the scope and manner of changing human sex assignment, and the problem of a so-called sex change is the subject of vivid discussions in the judiciary and the doctrine. However, the view prevailing in legal sciences is that although not every sex transposition can justify the right to change sex, and the choice and self-determination of sex is unacceptable, yet a sex change in case of a transsexual person should be legally admissible.

This is the interpretative direction that predominates over the judicial practice. Changes of sex assignment in birth certificates were initially made by applying *per analogiam* regulations on birth certificate correction, while the current practice provides for sex assignment pursuant to Art. 189 of the Code of Civil Procedure.⁴³ Sex is currently reassigned by way of adversarial litigation: the petitioner in this procedure is a transsexual person who wishes to be assigned a sex that is different from the one recorded in his or her birth certificate and the passive subjects of the legal action are his or her parents. The court decision reassigning sex pursuant to Art. 189 of the Code of Civil Procedure results in *ex nunc* effects, which means that a transsexual person belongs to the sex determined by the court decision as of the date it becomes valid. The procedure of issuing a sex reassignment decision does not require the transsexual person to undergo any previous or subsequent medical procedure in order to adjust his or her anatomical appearance to features of the sex established in the decision.⁴⁴ It does not require the transsexual person to be unmarried and it does not condition the possibility of obtaining a required decision on his or her childlessness.

The Act of Gender Reassignment, approved on 10 September 2015,⁴⁵ which is a first attempt⁴⁶ to explicitly regulate the conditions and mode of the legal reassignment of a person to a given sex, provides for significant changes in the existing model. This Act assumes, among others, that sex reassignment must be made by the Regional Court in Łódź in non-litigious proceedings, while the petition for sex assignment can be filled only by persons who are not married (Art. 5.1), and a party interested in this case is only the petitioner (Art. 4.1). A court decision on sex reassignment does not require the petitioner to be previously subject to any medical intervention, in particular, hormonal treatment or surgical procedures aiming at correction of external or internal sex charac-

⁴² Stanisław Dulko, „ABC płci,” *Kosmos—Problemy Nauk Biologicznych* 1 (2003): 7.

⁴³ The Code of Civil Procedure Act of 17 November 1964, Dz. U of 1964, No. 43, item 296 as amended; hereinafter CCP.

⁴⁴ The surgical procedure of sex change is also not required in such countries as for example: United Kingdom, Austria, Germany, Sweden, and Spain.

⁴⁵ Sejm paper No. 1469.

⁴⁶ The President of the Republic of Poland applied on 2 October 2015 for re-examination of this act by the Sejm.

teristics, or at introducing changes into body structure or sex-related functions. A valid decision considering the petition for sex reassignment provides a basis for preparing a new birth certificate, a change in the personal identification number (PESEL) and issuance of an ID card, and it can be used as a basis for changing the surname (Art. 10.1). At the moment when the decision considering the petition for sex reassignment comes into force, all rights and obligations contingent upon belonging to a given sex result from the sex established in this decision (Art. 11).

A fundamental change brought about by the act under discussion is that it clearly rejects the basic role of biological characteristics for human sex identification, considering gender identity as the basis for sex assignment. Pursuant to the definition provided by this act (Art. 2.1), the notion of gender identity is understood as “established, intensively felt experience and sense of one’s own sexuality, which corresponds or does not correspond to the sex registered at birth.”

None of the solutions currently applicable or the solutions that are proposed deserve approval. Both models discussed here are based on assumptions that clearly undermine the existing paradigms related to sex and family law relations, destabilizing the existing normative order. This can be proved in a compelling way by the fact that the sex reassignment decision (in the form of a ruling or judgment) is a decision resulting in effects *ex nunc*, that is, for the future.

The nature of such a decision obviously undermines the fundamental thesis that human sex is a fact (which occurs at the moment of birth) and that this fact is indivisible over time. In the light of the sex reassignment decision, a human being at a certain period of his or her life belongs to one sex, and starting from a certain other moment (when the court decision becomes valid), he or she is already of the opposite sex. The above effect, in view of the absence of prohibition to reassign sex in case of persons with children, results at the same time in the “divisibility” of parental relations. For instance, a transsexual person with reassigned (recognized) sex, until a certain moment in time, is the mother of her children born in the “previous” sex, and suddenly becomes their father. Such a state of affairs, as rightly observed by the Court of Appeal in Łódź in its decision of 15 July 2010,⁴⁷ undermines the relationship between the child and the parent and violates the child’s personal interests in the form of a right to protect family life.

Unquestionably, the *ex nunc* effect of the sex reassignment ruling also results in upsetting other intrafamily relations. A person who used to be a daughter, a grand-daughter, a sister, a niece, etc. ceases to function in those roles when the decision becomes valid. Such a situation causes a change not only in the personal life of a transsexual person, but also in the life of members of his

⁴⁷ Case I ACa 437/2010, *Orzecznictwo Sądu Apelacji Łódzkiej* 3 (2010), item 23.

or her family, violating their personal interests. Following the decision of the Constitutional Tribunal of 12 November 2002,⁴⁸ it should be emphasized that the data making up the personal and civil status of one person can affect the enforceability of rights of other persons, and the civil status, in the meaning of belonging to a specific family and relevant family bonds, is a particular personal interest of every person. At the same time, it is obvious that specific family bonds result in a series of rights and obligations, such as those related to inheritance or maintenance obligations.

Admissibility of gender reassignment also has a significant effect on the aspect of marriage, impairing the meaning of marriage as a relationship between a woman and a man (Art. 18 of Constitution of the Republic of Poland⁴⁹ and Art. 1 of the Family and Guardianship Code⁵⁰). Under the current legal status, there are no regulations which would prevent persons remaining in a marital union from obtaining a sex reassignment decision. This means that in the light of applicable legal solutions there can be (and are) marital unions of persons who formally (according to their birth records) are of the same sex. On the other hand, the permission granted to a transsexual person who has already obtained a decision reassigning his or her sex, to enter into marriage with a person who is of the opposite sex in the light of documents, *de facto* means the possibility of entering into marriage by persons who biologically are of the same sex.

Although the Gender Reassignment Act of 2015 excludes the possibility of applying for a sex reassignment decision by married persons, marital unions of persons who biologically are of the same sex will also be admissible in the light of this act. Moreover, in view of the fact that none of the analyzed procedures condition the issuance of the gender reassignment (recognition) decision upon any previous or consecutive surgery or hormonal corrections, both solutions legitimize marriages of persons who, even in external appearance perceived *prima facie*, form a relationship of persons of the same sex.

The absence of the requirement of adjustment of sex organs or even only of external phenotypic traits, with a simultaneous change of sex assignment registered at birth, also upsets social rules related to functioning within a given sex. Being a man or a woman determines the possibility of, for example, participating in specific categories of sport events, determines the choice of toilet or dressing room to be used, as well as has an effect on the type of a penal institution in case of imprisonment. In the light of regulations under discussion, the person who is a biological man and looks like a man but who has documents

⁴⁸ Case SK 40/01, *Orzecznictwo Trybunału Konstytucyjnego Zbiór Urzędowy* 6 (2002), item 81.

⁴⁹ The Constitution of the Republic of Poland of 2 April 1997, Dz. U. 1997, No. 78, item 483.

⁵⁰ The Family and Guardianship Code Act of 25 February 1964, Dz. U. 1964, No. 9, item 59 as amended; hereinafter FGC.

proving that he is a woman will be able to access toilets, dressing rooms, etc. intended for women. It is difficult to consider it proper in the context of applicable social and cultural norms. At the same time, it is hard not to notice that a change in sex assignment registered at birth, along with the existing possibility of preserving the previous sex characteristics, also bears the risk that the person who formally belongs to a given sex will be able to beget a child of the opposite sex. For instance, an F-to-M transsexual, with regard to whom it has been adjudicated that he is of a male sex, will be able—having ovaries and uterus—to give birth to a child. Therefore, in the light of law, he will be a man (with a masculine form of name and surname), who will give birth to a child.

Regardless of the above, fundamental reservations are brought by the fact that the analyzed Gender Reassignment Act of 2015 deconstructs the notion of “sex,” rejecting the basic role of biological characteristics for identification of human sexuality. Although the previously applicable law did not define what gender is, and applied this term in its fundamental meaning as commonly used in the Polish language, it undoubtedly is based on dichotomous division of people into men and women and this division has biological references.⁵¹

In the light of the Gender Reassignment Act of 2015, the legal understanding of sex is to be determined by the so-called gender identity (therefore, as indicated above—“a persistent intensively felt experience and sense of one’s own sexuality, which corresponds or does not correspond to the sex registered at birth”), which means that determination of sex registered in registry office records is to be made on the basis of internal feelings of a human being. From such a perspective, sex will cease to be an objective state based on biological foundations, but it will depend on the subjective self-perception of a human being.⁵² Therefore, the fact of belonging to a specific sex will be determined on the basis of psychological sex and this is to determine the legal gender.

The proposed solutions have their ardent supporters, but also fierce critics.⁵³ The opponents have justly observed that transposition of sexual characteristics does not determine by itself, even in medical terms, the belonging to the opposite sex, but only proves sexual disorders of a given person. Therefore, since not every fact of incompatibility of one or more sexual characteristics determines belonging to the opposite sex, and not every transposition of sexual characteristics can justify a motion for gender assignment, then the motives making it acceptable to change sex assignment in case of discrepancies concerning psychological sex raise serious doubts. Even more doubts emerge if we consider that under the existing legal system it is the relation between physiological (and not

⁵¹ For more, see: Maciej Domański, „Rozdzielność płci nupturientów jako przesłanka istnienia małżeństwa (art. 1 k.r.o),” *Kwartalnik Prawa Prywatnego* 4 (2013): 821–55.

⁵² Jan Lipski, „Uwagi dotyczące poselskiego projektu ustawy o uzgadnianiu płci na tle orzecznictwa i poglądów doktryny,” *Zeszyty prawnicze* 3 (2014): 36.

⁵³ Lipski, “Uwagi,” along with the literature referred to therein.

psychical) features and sex that provide a basis for a series of regulations, for instance, related to the protection of working pregnant women, etc.⁵⁴

The opponents of the act emphasize, not without reason, that, above all, this is questionable whether the solutions proposed in this act can actually reach the aim which the act is to serve. A highly disputable issue is whether any legal change of sex assignment and even a surgical correction can actually correct errors of nature and solve the problems of a transsexual person. It is an undeniable fact that a change in documents or correction in the form of surgical adjustment procedures will not result in the total belonging of a transsexual person to the desired sex, the meaningful evidence of which there is a lack of reproductive abilities in the “new” sex. This, in turn, means that the thesis claiming that the above changes could really change the perception of a transsexual person by the community, ensure “normal functioning in society”⁵⁵ for such a person and eliminate the discomfort related to functioning in the “unwanted” sex is controversial.

Conclusion

According to the *Gaudium et Spes* constitution, the human person is to be the subject and aim of all actions of the state, human community, and all social institutions, since he or she stands above “all things and his [or her] rights and duties are universal and inviolable.”⁵⁶ The constitution also emphasizes that all things on earth should be referred to man as the center and crown of all existence, while among the most important issues that the Church faces in contemporary world, *Gaudium et Spes* mentions care for marriage and the family above all. Marriage is perceived as a mutual gift of two persons, and the marital union as a noble and dignified way of mutual giving. It is unquestionable that in the meaning of *Gaudium et Spes*, it is a woman and a man who constitute a marital union, the woman is the mother and the man is the father.

Those truths, although quite obvious at the time when the referred constitution was created, over the next 50 years have been subject to significant redefining attempts, with transsexualism and sex reassignment becoming a part of those changes.

The issue of gender reassignment in the case of transsexual persons is a complex issue, raising interpretive doubts both in the case-law of the ECHR

⁵⁴ Lipski, „Uwagi,” 41.

⁵⁵ Juliusz Leszczyński, „Głosa do uchwały Sądu Najwyższego z dnia 22 czerwca 1989 roku, sygn. akt III CZP 37/89,” *Palestra* 3–4 (1992): 97.

⁵⁶ No. 41.

and in the judicial decision of Polish courts and doctrine. What is noteworthy is that the relation to the issue of sex change has undergone clear evolution, while the direction of those changes—quite clearly specified in the Gender Reassignment Act of September 2015 referred to in this article—has become a cause for concern. These changes can lead to destabilization of social norms related to functioning in a given sex, in the understanding of marriage, motherhood and fatherhood, and finally—to rejection of a division of people into women and men.

The fact that such a risk is not illusory is proven by a significant example of Sweden and Germany. In Sweden, in response to postulates of supporters of abandoning the notion of sex and considering it as a neutral term, the National Encyclopaedia of Sweden has introduced the personal pronoun “hen.” This pronoun has been defined as a gender-neutral personal pronoun used instead of “he” and “she.” Also, an *Egalia* pre-school was opened in Stockholm, in which gender does not exist. The notions of “boy” or “girl” are not used there, children are called “friends” and they are referred to by the above-mentioned pronoun “hen.”⁵⁷ However, in Germany, an amendment to the German Act on Rights of Status entered into force on November 1, 2013, providing that if a child cannot be unambiguously assigned physical male or female physical characteristics, no sex assignment is recorded in the birth certificate.⁵⁸

Persons affected by the tragedy of transsexualism unquestionably deserve understanding, care, and professional help. Those persons, just like any others struggling with incurable disease and suffering, have a right to respect and to life in society free from any manifestation of discrimination. They should also not be denied the right to improve the comfort of their life.

However, it cannot be considered that the existing (and postulated) normative solutions as regards gender reassignment would actually serve man with respect to the rights and inherent dignity of the human person.

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⁵⁷ Ewa Łosińska and Anna Nowacka-Isaksson, „Bezpłciowe przedszkole,” *Rzeczpospolita* (8.02.2011): A-002.

⁵⁸ Ostojka, “Sądowa zmiana,” 14.

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Małgorzata Tomkiewicz

Féminité et masculinité en tant que question juridique

Résumé

La Constitution pastorale sur l'Église dans le monde de ce temps *Gaudium et Spes* souligne que la dignité se réfère à l'homme dans toute sa complexité, en englobant aussi tout ce qui concerne le sexe et la sexualité humaine.

Toutefois, la détermination du sexe n'est pas toujours si naturelle et évidente que cela puisse paraître. Il arrive qu'il y ait des personnes qui n'acceptent pas leur féminité ou masculinité, ce qui est visible entre autres dans le cas du transsexualisme. Tout court, cette déviance consiste dans le désir d'appartenir au sexe opposé qui est d'habitude accompagné d'un inconfort lié au sexe biologique, de la conviction de son incongruité et, par conséquent, d'un désir de subir un traitement chirurgical ou hormonal visant à adapter le corps au sexe préféré.

L'apparition de la possibilité formelle permettant de changer le sexe dans les actes de l'état civil incite à poser la question si ces possibilités sont vraiment salutaires pour l'homme. Le font-elles avec le respect de ses droits et de la dignité innée de l'homme ?

Le présent article constitue la tentative de répondre à ces questions en analysant les solutions existant dans le droit polonais, y inclus les positions de la judicature européenne et polonaise.

Mots clés : sexe, transsexualisme, changement de sexe, acte de naissance, mariage

Małgorzata Tomkiewicz

La femminilità e la mascolinità come problema legale

Sommario

La Costituzione pastorale sulla Chiesa nel mondo contemporaneo *Gaudium et spes* sottolinea che la dignità si riferisce all'uomo in tutta la sua complessità, includendo anche tutto ciò di cui fanno parte il sesso e la sessualità umana.

La definizione del sesso tuttavia non sempre è così naturale e palese come possa sembrare. Occorrono casi di persone che non accettano la propria femminilità o mascolinità, cosa che

avviene tra l'altro nel caso del transessualismo. Tale disturbo—considerando la cosa per sommi capi—consiste nel desiderio di appartenenza al sesso contrario che è solitamente accompagnato da un disagio legato al sesso biologico, da un senso della sua inadeguatezza e di conseguenza dal desiderio di sottoporsi ad un intervento chirurgico o ad una cura ormonale allo scopo di adattare il corpo al sesso preferito.

L'apparire della possibilità formale di cambiare l'indicazione del sesso registrato alla nascita induce alla domanda: possibilità di tal genere giovano realmente all'uomo? Lo fanno effettivamente rispettando i suoi diritti e la dignità innata della persona?

L'articolo, attraverso l'analisi delle soluzioni che esistono nel diritto polacco, tra cui le posizioni della giurisprudenza europea e nazionale, costituisce un tentativo di risposta a tali quesiti.

Parole chiave: sesso, transessualismo, cambiamento di sesso, atto di nascita, matrimonio

Elżbieta Szczot

The John Paul II Catholic University of Lublin, Poland

Family in the Face of Globalization

Abstract: The effects of the impact of globalization on the family were presented in this article. Globalization of culture and globalization of consumption became the main causes of changes in the value system. So-called uniformity (unification) of life and its homogenization were a result of global transformation. Relations with people and objects take on a new, transitional character. Mankind seeks to achieve happiness and joy, but the boundaries between good and evil, truth and falsehood, values and anti-values are blurred. The fast pace of changes contributes, on the one hand, to a multiplicity of choices but, on the other hand, to the formation of transience, temporality, and changeability. Since the 1960s there have been new, alternative forms of family life. The 1990s brought the fashion for “invisible women” manifested in blurring gender difference. In the first decade of the twenty-first century some legal changes concerning same sex partnerships were made common and in some countries such partnerships were regarded as equivalent to marriage, thus weakening understanding of the traditional definition of the family.

Keywords: family, marriage, globalization, consumption

Introduction

In the early 1960s an American sociologist, Ronald Robertson, created the theory of globalization and defined it as the process of social phenomena that make the world as a whole.¹ The process connected with the expansive develop-

¹ See Roland Robertson, *Globalization: Social Theory and Global Culture* (London, Thousand Oaks, New Dehli: Sage Publications), 1992; Marguerite A. Peeters, *The Globalization of the Western Cultural Revolution: Key Concepts, Operational Mechanisms* (Brussels: Institute for Intercultural Dialogue Dynamics), 2012.

ment of the so-called modern social formation lies at the basis of globalization. As a result of dissemination of new technologies, communications, telecommunications and then the Internet, in the 1990s the world began to “shrink” and turn into “a global village.”² The term global village was introduced to social communication by Canadian-born Herbert Marshall McLuhan³ who described it by a situation when the results of an event happening in one part of the world could be experienced in other, even very remote, parts in real-time. Relationships and their effects in the area of economy, finances, politics, and culture have become stronger and stronger. Many organizations and large corporations have their networks all around the world. Among such international organizations there are: the World Bank, the International Monetary Fund,⁴ and the World Trade Organization,⁵ with the European Union also mentioned in this context. What is more, the conditions of life and work have changed. There is no longer one particular place where a job was, or is, performed. Today with the introduction of free movement of persons, goods, services, and capital in the European Union, many professional groups must continually change their place of residence in connection with the work performed. In the past there were mostly diplomats, today—the managers, representatives of various companies, traders, artists, and scientists. Mobility has become a requirement of the modern labor market. For this purpose the European Parliament and the Council issued a special directive (2004/38/EC of 29 April 2004), among others, on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states.⁶ The aim of this directive was family reunion, therefore the term family had to be defined. The directive recognizes that the family is comprised of two adults of different sexes or of the same sex who are in a marriage, partnership or concubinage together with the direct descendants and dependent direct relatives in the ascending line.⁷ The global transformation resulted in the so-called uniformity (unification) of life and its homogenization (i.e., forming

² See Lucjan Kocik, *Rodzina w obliczu wartości i wzorów życia ponowoczesnego świata* (Kraków: Oficyna Wydawnicza AFM, 2006), 108.

³ Marshall McLuhan, *The Gutenberg Galaxy* (University of Toronto Press: Toronto 1962), also: *The Gutenberg Galaxy.pdf (PDFy mirror)*, Published January 1, 2014. Cf. Mateusz Szast, *Globalna wioska jako nowa rzeczywistość XXI wieku*, accessed November 4, 2015, <http://www.pedkat.pl/images/czasopisma/pk8/art25.pdf>.

⁴ The World Bank and the International Monetary Fund were formed in 1944.

⁵ Formed in Marakesh, the organization operates since January 1, 1995.

⁶ *Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states*, Official Journal C 270 E, 25/09/2001 P. 0150-0160.

⁷ In the European Union Member States there are five types of relationships which are legally recognized as marriage and which can form the family: (1) the marriage of man and woman, (2) the same-sex marriage, (3) registered partnership of persons of different sexes, (4) registered partnership of persons of the same sex, (5) concubinage.

a homogenous mixture of two or more elements). It also affected culture. First, it was connected with the language as the intensification of contacts, common interests and politics required one tool of communication. Therefore, the English language became such a tool—earlier there were some attempts to introduce Esperanto, but they failed.⁸ Today the most expansive cultures are these of the most developed Western countries and the economic strength decides about the directions of the flow of culture. In this respect the United States of America is the leading country as it spends the greatest amount of money on marketing its products. Nowadays, consumption shapes social life and it has become a determinant of postmodern society, not as it was still in the first half of the twentieth century when production was characteristic of the industrial period. At that time society had to work together. Now it is not so important because life consists of consecutive kaleidoscopic images that are often ambivalent and contradictory. What is required today are constant negotiations, tenders, public procurement. Whereas lack of precision, indefiniteness, and ambiguities are not, as it turns out, symptoms of an illness of society but of its vitality.⁹

Globalization of culture and globalization of consumption became the main causes of changes in the value system.¹⁰ There are more and more places which facilitate consumption. Both daily and festive life has moved to and is now taking place in shopping centers. There is a widespread “McDonaldization” or as some people define it “Cocaolization” of social life. More and more often modern man comes into contact with things rather than people. The other man arouses one’s interest only because of the position which he holds and not his or her personality. Relations with people and objects take on a new, transitional character. Life is made up of episodes which occur next to each other and often have nothing in common. This, in turn, deprives man of a sense of stability and security. What is characteristic of contemporary times is the pursuit of happiness and joy; the boundaries between good and evil, truth and falsehood, values and anti-values are blurred. The fast pace of changes contributes, on the one hand, to a multiplicity of choices but, on the other hand, to the formation of transience, temporality, and changeability. There is a requirement to lead a fast life. The culture that dominates now is the so-called instant culture, reflected in the famous saying “fast food, fast sex, fast car.” Today everything can be put up on sale and social behaviors are governed by the rules of free market. Modern

⁸ Kocik, *Rodzina w obliczu wartości*, 110–12; Esperanto was created by Ludwik Zamenhof (1859–1917), a Polish Jew born in Białystok.

⁹ Kocik, *Rodzina w obliczu wartości*, 114.

¹⁰ Kocik, *Rodzina w obliczu wartości*, 111; Krystyna Slany, *Alternatywne formy życia małżeńsko-rodzinnego w ponowoczesnym świecie* (Kraków: Zakład Wydawniczy ‘Nomos,’ 2002), 42–6; Ryszard Legutko, *Triumf człowieka pospolitego* (Poznań: ZYSK I S-KA Wydawnictwo, 2012), 165–66, 202.

man can be defined with the motto: “I am what I have and what I consume.”¹¹ Consumers worldwide, who are under the influence of mass culture, have a great difficulty to raise their children without any contact with mass culture, mass media, and their products. Man has become a compulsive buyer in the supermarket called culture. In his apostolic exhortation *Ecclesia in Europa* of 2003 the Pope, St. John Paul II emphasized that nowadays we witness a widespread existential fragmentation, dominated by a feeling of loneliness, in which divisions and conflicts are on the rise. Among other symptoms of this state of affairs, Europe is also experiencing the grave phenomenon of family crises and the weakening of the very concept of the family.¹²

Problems with Defining the *Family*

Globalization has also influenced the way marriage and family were defined. In the second half of the twentieth century it was not difficult to explain these terms. Both in legal terms and in everyday language the family was understood as a married couple with children. It was a nuclear family relationship based on legally contracted marriage and biological parenthood.¹³ Since the 1960s there have been new, alternative forms of family life, and therefore the question of how to meet the definitional challenges in the face of such diversity was posed.¹⁴ The universal concept of the family assumes that the family is a group of people, defined normatively, who are related to each other and whose aim is to procreate and socialize. In this case, relationship does not define the number of parents or children. A monoparental relationship, both with adopted children and conceived in this relationship, is also considered to be the family. “A normatively

¹¹ Kocik, *Rodzina w obliczu wartości*, 118–19.

¹² John Paul II, Post-Synodal Apostolic Exhortation *Ecclesia in Europa* of 28 June 2003, Pallottinum 2003, n. 8.

¹³ See Grażyna Firlit-Fesnak, *Rodziny polskie i polityka rodzinna; stan i kierunki przemian*, in *Polityka społeczna. Podręcznik akademicki*, ed. Grażyna Firlit-Fesnak and Małgorzata Szyłko-Skoczny (Warszawa: Wydawnictwo PWN, 2008), 187–88; Anna Kwak, *Rodzina w dobie przemian. Małżeństwo i kohabitacja* (Warszawa: Wydawnictwo Akademickie „Żak,” 2005), 12–20; Kocik, *Rodzina w obliczu wartości*, 61–64. Kocik notes that from the very beginning of human existence man was defined by and identified with the family. Lack of affiliation caused difficulties with identification or even made it impossible to identify him. Moreover, the institution of marriage and the family was often more important than faith, ethnicity, citizenship or nationality as this all could be changed to sanctify marriage and the family. See Jan J. Sztudynger, *Rodzinny kapitał społeczny a wzrost gospodarczy w Polsce*, accessed June 5, 2010, www.jjsztudynger.yoyo.pl/e2009-2-sztudynger.pdf.

¹⁴ Slany, *Alternatywne formy życia*, 42; Kocik, *Rodzina w obliczu wartości*, 67.

defined relationship” points to the important role that society has in defining the family. However, a childless marriage—although each of the partners has their own family related by affinity, is not considered to constitute the family.¹⁵

In Poland the term family was specified for the purpose of the National Census conducted¹⁶ in 2002. The Polish legislator described it as two or more persons who are related as husband and wife or partners living together (cohabitants)¹⁷—persons of the opposite sex, or living as a parent and a child. Therefore, according to the criterion adopted for the purpose of the national census the family included: a couple without children and a couple with one child or more children, a single-parent with one child or more children, and partners with children. However, the Act of 4 March 2010 on the national census of population and housing in 2011 (Journal of Laws No. 47, item. 277) does not specify the term family. The Act includes only the definition of a non-marital relationship (in Article 2 point 14), understood as two people living in the same household who are not married in the form provided by Polish law yet the relationship of these people is of a marital nature. It needs to be emphasized that the last national census was conducted after Poland had joined the European Union and was carried out according to the criteria established by the Union.¹⁸

The family formed in the initial period of the so-called modernization of societies with the so-called sole breadwinner, who was a man, underwent some serious changes in a short time. In the second half of the twentieth century there was a breakdown of traditional family which ceased to be authoritarian, durable, sacred, stable, multifunctional, multigenerational, and with many children. The family is no longer an institution based on the public interest but it is a small group which is nuclear, democratic, unstable, secular, mobile, based on

¹⁵ Ibid., 69–70; Slany, *Alternatywne formy życia*, 7–82. Cf. Tadeusz Guz, “Koncepcje małżeństwa i rodziny w nowożytnej filozofii,” in *Prawo rodzinne w dobie przemian*, ed. Piotr Kasprzyk and Piotr Wiśniewski (Lublin: TN KUL, 2009), 9–20.

¹⁶ Chronologically it was the last national census which was carried out before the Polish accession to the European Union.

¹⁷ Cohabitation is understood as a situation when two unrelated adult people live together, maintain intimate contacts and run the same household, yet their relationship is not formalized. Another example of an informal relationship is the so-called LAT (*living apart together*), which means that partners have an intimate relationship but they do not live together. Whereas the household should be understood as a group of people living together and joining their sources of income. See: Slany, *Alternatywne formy życia*, 134–38. Slany notes that cohabitation is a different form of relationship than *common-law-marriage*. “This term does not sound romantic but it also does not have a pejorative meaning like, for example, concubinage which is often used in Poland as a substitute for cohabitation,” see Ibid., 135; Kwak, *Rodzina w dobie przemian*, 177–78.

¹⁸ Regulation (EC) No 763/2008 of the European Parliament and the Council of 9 July 2008 on population and housing censuses (Text with EFA relevance), L 218/14 EN Official Journal of the European Union 13.8.2008, accessed January 21, 2016, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008R0763>. accessed: January 21, 2016.

love, with few children and limited functions.¹⁹ What is disturbing in all these changes related to the family is the fact that they happened not within centuries but within decades. For example, marriage, as shown by Slany, used to be an institution *sui generis* over the individual and today it has become more of a product and construct of individuals who constitute it. The family has become a creative and dynamic project, implemented in many variations.²⁰ Lucjan Kocik aptly notes that for the first time in the history of humankind the individual does not need lasting relationships with other individuals in order to survive and satisfy all their needs, and pass on their genes to the next generation. The individual only needs money. Moreover, there has been a change in the role and position of women in marriage and the family. Until the 1960s the so-called model of “a good wife and mother” functioned, in the 1970s in the West, there was the model of “a superwoman,” whereas the 1990s brought the fashion for “invisible women” manifested in blurring gender difference.²¹ In the first decade of the twenty-first century some legal changes concerning same sex partnerships were made common and in some countries such partnerships were regarded as equivalent to marriage,²² thus weakening understanding of the traditional definition of the family.

It is worth noting that many of the poorer European societies, Polish society included, have recently been affected by a serious problem of emigration, especially after the EU enlargement in 2004. Economists emphasize the positive aspects of emigration, for example, an increase of money transfers to the country of origin. The results of studies on emigration from the poorest parts of Poland show that women are the group which most often decides to leave their country for economic reasons and they take seasonal jobs. Women are characterized by greater activity, are less prone to depression and less affected by addictions. Most often they leave their children with less active or incapable

¹⁹ Slany, *Alternatywne formy pożycia*, 52.

²⁰ Ibid., 53. Ewa Karabin in the article entitled *Mężczyzny i niewiasty porządne złączenie. O małżeństwie encyklopedycznie*, in „Więź” 11–12(2009), 5–10 notices that the encyclopedic editions published after 2000 no longer use gender terms. The definition of marriage does not use the words “woman,” “man,” “husband,” and “wife” but some gender-neutral terms like “persons,” “people.” In *Encyklopedia PWN A–Z* the 2008 edition has no entrance “marriage,” though the 2007 edition still includes this term. Cf. Kocik, *Rodzina w obliczu wartości*, 64.

²¹ Slany, *Alternatywne formy życia*, 15. Cf. Polish Episcopal Conference, document prepared by the Council for Family, *Służyć prawdzie o małżeństwie i rodzinie*, Łomża, 19 June 2009: “Avoiding anything that blurs gender differences is the basic expression of gratitude to God for having created us men and women,” no. 66.

²² See: Tomasz Ponikło, “Czym jest małżeństwo. Krótka historia zmian w prawie,” in *Więź* 11–12(2009): 22–28; Joanna Pietrzak-Thébault, “Formy życia wspólnego Francuzów,” in *Więź* 11–12(2009): 36–46; Joanna Petry Mroczkowska, “Małżeństwo: kwestia dyskusyjna. Spory i argumenty w USA,” in *Więź* 11–12(2009): 29–34; Marek Rymśa, “Małżeństwo nie jest sprawą prywatną,” in *Więź* 11–12(2009): 57–72.

parent, “who often cannot provide the child with necessary social and emotional support.”²³ Female migration has led to the creation of a new social phenomenon called “transnational motherhood” and the Euro-orphans phenomenon has become a subject of research and scientific analyses.

The Teaching of the Catholic Church on the Family

Because of its views on the family the Church is often viewed, especially by young people, as a relic of the past with medieval rules. How can the following principles be implemented: St. John Paul II’s rule to put “be” before “have” and the idea that the family is the natural and fundamental unit of society and is entitled to protection by society and the State²⁴?

The Synod Fathers sitting at the Council were well aware of the changes that were taking place in the social order. In their documents the Council warned against the new, negative phenomena. Yet, did they realize the pace of these changes well enough as they were debating in the first half of the 1960s? Probably not entirely. Though they already wrote in *The Pastoral Constitution on the Church in the Modern World* that “the traditional local communities such as families, clans, tribes, villages, various groups and associations stemming from social contracts, experience more thorough changes every day” (n. 6). Also, “a change in attitudes and in human structures frequently calls accepted values into question, especially among young people, who have grown impatient on more than one occasion, and indeed become rebels in their distress. Aware of their own influence in the life of society, they want a part in it sooner. This frequently causes parents and educators to experience greater difficulties day by day in discharging their tasks” (n. 7). On the subject of marriage and the family the Council emphasized that “the well-being of the individual person and of human and Christian society is intimately linked with the healthy condition of that community produced by marriage and family [...]” (n. 47). It was also noted that the dignity of this basic social institution is heavily affected by “polygamy, the plague of divorce, the so-called free love and other disfigurements”

²³ Cf. Aleksandra Brzemia-Bonarek, “Lepiej zapobiegać niż sądzić. Uwagi prawnika-kanonisty odnośnie do przygotowania do małżeństwa,” in *Miłość i odpowiedzialność – wyznaczniki kanonicznego przygotowania do małżeństwa*, ed. Andrzej Pastwa and Monika Gwóźdź (Katowice: Wydawnictwo Uniwersytetu Śląskiego, 2013), 132.

²⁴ See: Article 16.3 of The Universal Declaration of Human Rights, accessed October 21, 2015, http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

(n. 47). What is more, “married love is too often profaned by excessive self-love, the worship of pleasure and illicit practices against human generation. Moreover, serious disturbances are caused in families by modern economic conditions, by influences at once social and psychological, and by the demands of civil society” (n. 47).

The Council, and the provisions of the Pastoral Constitution on the Church in the Modern World in particular, helped to initiate some changes in defining and normalizing the institution of marriage and the family at the level of the Church law. However, it needs to be emphasized that the applicable Code of Canon Law of 1983 does not contain any special sections on family law, it only specifies the institution of marriage. Yet it does not mean that there are not any references to the family and its laws. The scheme *De iure Familiae* prepared by the Pontifical Commission for the Revision of the Code of Canon Law, though it was not included in the Code, has references to the family in all but one of its books, that is, *The Temporal Goods of the Church*. The above-mentioned events and documents of the Church show that the post-synodal popes cared a lot about the well-being of the family. In 1980 St. John Paul II convened the first Synod dedicated to the family. In 1981 he established The Pontifical Council for the Family and on 21 November 1981 he announced the Post-synodal Exhortation *Familiaris Consortio*. On 22 October 1983 the Holy See presented The Charter of the Rights of the Family which lists some specified rights that the family as a legal entity enjoys.

Characterizing the last century Archbishop Marek Jędraszewski notices that postmodernism gradually replaced faith.²⁵ It is the pleasure of the moment (hedonism) that offers hope which is necessary for each human being to live. The love for God and neighbor is being replaced by extreme selfishness that goes hand in hand with wrongly understood tolerance. The period which we are experiencing now is a stage of degradation. The concept of *human machine* is now becoming the ideal, facilitated by a previously unknown development of medicine and technology. Biotechnology is taking the place of faith, whereas the order of hope is being replaced by “everlasting life” on earth. There is no room for the love for God and neighbor in the order of love—there is only the worship of the body. Based on this way of viewing the world, great sports and recreation industry are being built, with fitness clubs and spas.²⁶

²⁵ On the subject of liberal ironist see: http://etyka.uw.edu.pl/wp-content/uploads/2014/07/Etyka26_A_Szahaj.pdf, accessed October 28, 2015. Also: Andrzej Szahaj, “Richarda Rorty’ego humanizm bez metafizyki i jego etyczno-polityczne implikacje,” in *Etyka*, no. 26 (1993): 109–24.

²⁶ See: Abp. Marek Jędraszewski, *Bóg filozofów i Bóg Jezusa Chrystusa* (Poznań: Wydawnictwo Naukowe Uniwersytetu im. Adama Mickiewicza), 2011; cf. Abp Stanisław Gądecki, *Siedem etapów degradacji kultury europejskiej*, accessed October 25, 2015, <https://ekai.pl/wydarzenia/polska/x63092/siedem-etapow-degradacji-kultury-europejskiej/>.

The Catholic Church teaches that the first, basic element defining the family is its emergence from marriage. Although marriage and the family are two different realities they are related to each other. The conjugal community per se does not constitute the family and not every family forms a conjugal community.²⁷ The family is a bigger community whose source is in the order of the conjugal community. Its basis is in its purpose, that is, marriage. Not every relationship which forms a community between man and woman can be called the family. A family-like community is, for example, a relationship whose driving force is cohabitation, and not marriage, or a civil union concluded between two people which according to canon law is considered as invalid marriage. The second element which defines the family is cohabitation of two generations, that is, a situation when parents and children live together, children are raised to full manhood and prepared to participate in practicing faith and in the life of the Church. According to the teaching of the Church this upbringing should include physical, social, cultural, moral, and religious education (can. 1136). In the canonical sense, the family is a community between parents and children whose foundation and driving force is marriage, that is, marriage which is valid for the Church or at least putative.

In 2004, in his speech on the importance of the family in whole Europe, Pope John Paul II emphasized that “the family mirrors society, hence, also the Europe that is under construction. The development of families is and will be the most important indicator of cultural and institutional development on the Continent.”²⁸

Conclusion

Can we protect the family? Probably yes, because this oldest social institution stemming from natural law has already survived some historical turmoil. This, however, does not mean that the condition of the family will not be further weakened. Maybe in one thousand years' time it will be a rarity?

What needs to be done is to increase efforts to protect the family, respect its rights and not discriminate the family by equating it in its rights with free

²⁷ Jan Vries, *Die christliche Familie aus kanonistischer Sicht*, in *Iuri Canonici Promovendo. Festschrift für Heribert Schmitz zum 65. Geburtstag*, ed. Winfried Aymans and Karl Theodor Geringer (Regensbrug: Pustet, 1994), 100–101.

²⁸ John Paul II, Address to the participants in the European symposium for university teachers, 25 June 2004, accessed October 21, 2015, http://w2.vatican.va/content/john-paul-ii/en/speeches/2004/june/documents/hf_jp-ii_spe_20040625_famiglia-europa.html. The Polish text in *L'Osservatore Romano* 11–12 (268) 2004: 20–21, no. 1.

relationships. People need to be more carefully prepared to marriage, families need to be given support and adequate facilities, immigrants need to be supported—also these ones who are left on their own or with children in the country of origin, and last but not least, a favorable environment needs to be created to encourage demographic growth.

Ius saquitur vitam. Human life should go before law, therefore the role of law is to recognize the legal standards of conduct and rules of behavior. A question may be asked whether the cultural processes which are now taking place did not have too much pressure on the Church. The new *Motu Proprio Mitis iudex Dominus Iesus*²⁹ and *Mitis et misericors Iesus*³⁰ by Pope Francis are both devoted to speeding up the processes regarding the nullity of marriage. Firstly, the procedures have been made briefer. Secondly, the appointed priests can decide whether the divorced faithful who is in a new relationship can take Holy Communion. Moreover, the role of divine mercy has been emphasized.³¹

What allows us to have hopes for the future is the fact that the family has survived despite many changes, such as globalization or the primacy of the individual over the community. And though it has become more sensitive the family managed to adapt to the changing conditions of life and it satisfies the natural and basic desire of mankind to search for love, assistance, and solidarity. The surveys carried out among different social groups, including young people, reveal the persistence of this desire. Less and less people believe that it is possible to be happy without marriage, children, and the family.³² According to the European Economic and Social Committee the family carries with itself some favorable factors which contribute to the economic development and social balance in the following basic areas³³:

²⁹ Pope Francis, *Motu proprio Mitis iudex Dominus Iesus* by which the canons of the Code of Canon Law pertaining to cases regarding the nullity of marriage are reformed of 15.08.2015, accessed November 3, 2015, https://w2.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20150815_mitis-iudex-dominus-iesus.html. The reform came into force on 8 December 2015.

³⁰ Pope Francis, *Motu proprio Mitis et misericors Iesus* by which the canons of the Code of Canons of Eastern Churches pertaining to cases regarding the nullity of marriage are reformed at: https://w2.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20150815_mitis-et-misericors-iesus.html, accessed November 3, 2015. The reform came into force on 8 December 2015.

³¹ It needs to be remembered that *plenitudo ergo legis est dilectio!* (*Dilectio proximo malum non operatur plenitudo ergo legis est dilectio* – Rz 13, 10).

³² Peter Hahne, *Dość tej zabawy! Koniec społeczeństwa przyjemności*, trans. Adam Pradela, (Katowice: Wydawnictwo św. Jacka, 2007), 79.

³³ Cf. Commission of the European Communities, *Communication from the Commission Green Paper: Confronting Demographic Change: A New Solidarity between Generations*, Brussels, 16.03.2005, COM (2005) 94 final. Accessed June 21, 2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Ac10128>, Institute for Family Policies, *Report on the Evolution of the Family in Europe 2009*, accessed October 25, 2015, <http://www.mmmeurope.com>.

1. The family is a hub of emotional, economic, and social solidarity which, for many people, makes it easier to deal with the vicissitudes of economic life. The unemployed can benefit from family, psychological and/or financial support. They find it easier to take steps to find a job, training program or even set up a business, although this does not alter the fact that unemployment places a heavy burden on the entire family.
2. The family is a direct economic drive because it is the source of what economists describe as “human capital.” Hence parents must get all support they need to raise their children. The real cost of Europe’s “demographic winter” can be felt when we consider the difficulties ahead in terms of funding pensions, rural depopulation, and the consequent disappearance of economic activities.
3. The family makes a great contribution to “human capital” through the education and value it imparts and support and stimulus the parents provide for their children. Qualities that will be crucial to professional as well as social life are acquired in the family: respect for others, making an effort, team spirit, tolerance, social behavior, responsible independence.
4. The family is a long-term economic drive, as parents use their economic resources to meet the family’s needs. Parental responsibility to educate and prepare children for the future contributes towards saving and investment in terms of money, real estate, training, and knowledge. Parents will also take steps to reduce pollution from all sources in order to preserve decent environment for their children.³⁴

All surveys show that Europeans are not able to fulfill their wish to have children and the often-expressed desire for a third child frequently goes unfulfilled. This is often because of some financial or material reasons and some difficulties in balancing a career with family life, particularly for mothers.³⁵

Nowadays, it is very important to contribute to the creation of the true culture of the family. Over the past decades a negative image of the family has been effectively projected. People have talked and written about it badly and it has been ridiculed. The social consequences of such actions will be long felt by next

org/fidoc/FAMILYPLATFORM-Final-Report-04-2011.pdf. Cf. http://www.familywatchinternational.org/fwi/Report_Evolution_Famiy_europe_2007_EU27.pdf, accessed October 25, 2015. Cf. *Family Policies and Diversity in Europe: The State-of-the-art Regarding Fertility, Work, Care, Leave, Laws and Self-Sufficiency*, ed. Olivier Thévenon and Gerda Neyer, accessed October 25, 2015, <http://www.familiesandsocieties.eu/wp-content/uploads/2014/12/WP7Thevenon-Neyer2014.pdf>. See: Elżbieta Szczot, *Rodzina a wolne związki. Skutki kanoniczne i społeczne deprecjacji rodziny* (Lublin: Stowarzyszenie Absolwentów Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego, „Biuletyn” no. 4 (2009): 27–51.

³⁴ Opinion of the European Economic and Social Committee on *The family and demographic change* (2007/C 161/19), accessed October 21, 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52007AE0423>.

³⁵ *Ibid.*, no. 8.13.

generations. As aptly noted by Joaquín Navarro-Valls, the culture of the family cannot develop in a society whose basic institutions—legislative and judicial, universities and religious centers—not only do not defend it but, in fact, they theoretically and practically destroy it.³⁶

The family is the first and the most important place where values are passed on. It is in the family where the foundations for the future life of each person are laid or otherwise the person has not got any.³⁷ The negative effects of social depreciation of the family are closely related to the departure of societies from the teaching of the Church on the family. Concern for the family, protection of its rights and safeguarding them are not only in the interest of the Church, but they should be preserved as the highest values by each state and the whole mankind.

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³⁶ Statement by Joaquín Navarro-Valls of 16 June 2007 in Gniezno, accessed October 21, 2015, <http://ekai.pl/serwis/?print=17MID=12877>.

³⁷ Hahne, *Dość tej zabawy*, 78.

- Francis. Motu proprio *Mitis iudex Dominus Iesus* by which the canons of the Code of Canon Law pertaining to cases regarding the nullity of marriage are reformed (August 15, 2015). Accessed 3, November 2015. https://w2.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20150815_mitis-iudex-dominus-iesus.html.
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Elżbieta Szczot

La famille face au phénomène de la mondialisation

Résumé

Dans l'article, on a présenté les conséquences de l'influence de la mondialisation sur la famille. La mondialisation de la culture et celle de la consommation sont devenues la raison principale du changement du système de valeurs. Cela étant, on a affaire à l'uniformisation (unification) et l'homogénéisation de la vie. Les contacts avec les gens aussi bien qu'avec les choses ont acquis un nouveau caractère passager. L'homme cherche à atteindre le bonheur et la joie, mais les frontières entre le bien et le mal, le vrai et le faux, la valeur et l'antivaleur se sont effacées. Le rythme rapide de changements contribue, d'une part, à la multiplicité de choix, d'autre part, à l'émergence de tout ce qui est passager, temporaire et susceptible aux changements. Depuis les années soixante du XX^e siècle apparaissent de nouvelles formes alternatives de la vie familiale. Dans les années quatre-vingt-dix, on aperçoit la mode des « invisible women » qui se manifeste, entre autres, dans l'effacement de la différence de sexe. Dans la première décennie du XXI^e siècle, on a répandu les changements juridiques concernant la réglementation des unions homosexuelles et, dans certains pays, elles ont égalé les mariages, en affaiblissant de cette façon la compréhension traditionnelle de la famille.

Mots clés : famille, mariage, mondialisation, consommation

Elżbieta Szczot

La famiglia dinanzi al fenomeno della globalizzazione

Sommario

Nell'articolo sono stati presentati gli effetti dell'influenza della globalizzazione sulla famiglia. La globalizzazione della cultura e la globalizzazione del consumo sono divenuti la causa principale del cambiamento del sistema di valori. Ha avuto luogo un'uniformazione (standardizzazione) e un'omogenizzazione della vita. I contatti sia con le persone, sia con le cose hanno assunto un carattere nuovo, provvisorio. L'uomo aspira a raggiungere la felicità e la gioia ma si sono cancellati i limiti del bene e del male, della verità e della falsità, del valore e dell'antivalore. Il ritmo veloce dei cambiamenti contribuisce da un lato a possedere una molteplicità di scelta, dall'altro al sorgere di provvisorietà, temporaneità e variabilità. Dagli anni '60 del XX secolo sorgono nuove forme alternative di vita familiare. Gli anni '90 hanno portato la moda delle „invisible women” che si manifesta tra l'altro nella cancellazione della differenza sessuale. Nella prima decade del XXI secolo sono state diffuse modifiche giuridiche riguardanti la regolazione delle unioni omosessuali, ed in alcuni paesi sono state equiparate ai matrimoni, indebolendo in tal modo la concezione tradizionale della famiglia.

Parole chiave: famiglia, matrimonio, globalizzazione, consumo

Part Three

Reviews

David L. Schindler, Nicholas J. Healy Jr.,
*Freedom, Truth, and Human Dignity:
The Second Vatican Council's Declaration
on Religious Freedom*, 491 pp.
Grand Rapids, MI, USA: Eerdmans 2015

This important new book by two professors on the faculty of the Pontifical John Paul II Institute for Studies on Marriage and Family at The Catholic University of America, is inspired by these words of Pope John Paul II in his first encyclical, *Redemptor Hominis*: “For this reason the Church in our time attaches great importance to all that is stated by the Second Vatican Council in its Declaration on Religious Freedom, both the first and the second part of the document. We perceive intimately that the truth revealed to us by God imposes on us an obligation” (§12). In his insistence on carefully reading together the first and second part of the controversial document, John Paul II took a stand against the one-sided individualistic and voluntaristic notion of rights championed by most political philosophies in the West. To each right there corresponds a duty and a background notion of the common good and a standard for human flourishing. The obligation imposed by God entails a respect for the right of others because the proclamation of the Gospel embodies “a deep esteem for man, for his intellect, his will, his conscience and his freedom.” But more importantly, the right to religious freedom presupposes an obligation on the part of its possessor to search for the truth and to live by the truth when found. That of course is the main idea of part two of *Dignitatis Humanae*. Guided by Wojtyła’s more balanced and dialectical account of freedom and truth, the authors draw out the fundamental differences between a more juridical account of religious freedom,

as represented by John Courtney Murray, and the ontological account as taught by Wojtyła, DeLubac and others.

The book has five parts. In the first one, a new English translation of the Declaration on Religious Freedom is set along side the Latin text. It is important to understand the English translation precisely because Fr. Murray and the American experience of religious freedom have held such significance for the Church and the world. The new translation better captures the nuances and interconnections between freedom and truth and the dependence of the juridical aspects of the teaching upon the ontological teaching about human being and its intrinsic ordering to the truth about God through reason and revelation.

The second part contains the core of the book in the form of a one hundred and seventy page essay by David L. Schindler entitled “Freedom, Truth and Human Dignity: An Interpretation of *Dignitatis Humanae* on the Right to Religious Freedom.” He offers a fresh comprehensive interpretation of the right to religious freedom. Schindler compares and contrasts the account provided by John C. Murray and that of Karol Wojtyła and Henri DeLubac. The emphasis of the latter view points to the intrinsic connection and inseparability of freedom and truth. Truth must be received and embraced in and through the freedom of the human person, and freedom itself must be established in truth and finds its fulfillment in the truth of human nature and ultimately in the truth about God. Drawing upon the work of Servais Pinckaers, O.P.—the distinction between “freedom of indifference” and “freedom of excellence”—Schindler argues that Murray’s juridical account of religious freedom overemphasizes the freedom of indifference. The right to religious freedom for Murray has primarily a negative or abstract content, providing an “immunity from coercion” and a neutral public square. His account, despite his protests to contrary, inevitably falls prey to relativism and an oppressive treatment of true religious pluralism spawned by a monistic secularism. His articles of peace in fact have failed to establish a true or just peace among citizens when it comes to religious freedom. On the other hand, as Wojtyła well understood, religious freedom has primarily a positive content. The right to religious freedom takes its meaning from the human person’s natural desire to seek the truth, especially religious truth. Thus by finding the essential interconnection between freedom and truth, Schindler explains how this teaching represents a genuine development in the Catholic Church’s teaching on religious freedom insofar as it brings together both the importance of truth and the concomitant importance of freedom. The two should not be set in opposition to one another as is done by the liberals on one side and the integralists on the other. Christendom is a thing of the past, for sure, but the new secular order must be transformed from within by the appeal to the spirit and truth. The Church influences the temporal order through the formation of the laity by way of conscience and liturgical life. The proper secularity of the laity must always be combined with the newness of life brought about by baptism

and the ongoing work of the Holy Spirit. Thus, Schindler wisely concludes with these words: "The Church's embrace of rights, in a word, can be properly understood only when tied to, and situated within, her comprehensive Christological and anthropological mission to the contemporary world: within the call to form a civilization of love open finally to the God revealed in Jesus Christ" (p. 161).

Part three consists of an essay by Nicholas J. Healy on the process of the drafting of *Dignitatis Humanae* and in part four all five conciliar schemas are presented with new English translation set side by side with the Latin text. The fifth part lies out the final text with schema three in order to emphasize the decisive and key modifications to the text. In these parts of the book the reader may discover the evidence for the developmental influence of the position argued by Schindler on the final draft. Healy establishes a redaction history, "The Drafting of *Dignitatis Humanae*," and thereby provides "a brief overview of each successive draft, and to call attention to the some of the important changes introduced into the final text" (p. 213). Through his study of conciliar histories, journals, and documents, Healy shows how the developments of the document on issues like the relation of Church and state or the limits of religious liberty arose out of a discussion, led in part by Wojtyła and supported by Pope Paul VI, for a more adequate anthropological grounding of religious freedom. In this way, a true development of doctrine was able to unfold and true dynamic balance was found for the subjective and objective aspects of the right of religious freedom.

In the two appendices are contained conciliar interventions, in Latin and English, of Karol Wojtyła and Alfred Ancel, Titular Bishop of Myrina, Auxiliary Bishop of Lyon. Ancel's brief intervention was decisive in bringing the principle for a true balance in the teaching; he said "the obligation to seek the truth is itself the ontological foundation of religious freedom." His terse statement provided the key to the problem: "Not only is there no opposition between religious freedom and the obligation to seek the truth, therefore, but in fact religious freedom has its foundation in the obligation itself, and the obligation to seek the truth in turn requires religious freedom" (p. 463). The five interventions by Wojtyła are crucial texts for an appreciation of his rare combination of philosophical understanding and pastoral experience; the seeds of his future pontificate may be seen in these concerns about the human person, freedom and truth, and the role of the Church in human society as brought before the council. The testimony of a soul under barbed wire offered an important corrective to the easy freedom of the west. The current ideology of secular or anthropocentric humanism is unable to provide the resources for an adequate account of the importance of religion and the dignity of the person who claims a right to religious freedom. Like Solzhenitsyn, Wojtyła sought a full account of human existence, one which turns toward God and faces the opportunities for good, and evil, of the present age. But especially in the degradation of oppression they discovered the possibility of renewal through the discovery of the

transcendent truth that provides the spark for conscience. The purely juridical account of religious freedom, and the freedom of indifference that underwrites it, fails to account for the urgency and priority that a true account of religious freedom holds for the modern world. As Pope John Paul II, Karol Wojtyła brought this hopeful teaching on religious freedom to countless persons across the globe and he established the authentic interpretation of the Second Vatican Council. This new book, *Freedom, Truth and Human Dignity*, should become essential reading for anyone who wishes to understand the principles and ground of religious freedom and how this teaching emerged out of the debates of the Second Vatican Council.

John Hittinger

University of St. Thomas, Houston, TX, USA

Aneta Gawkowska, *Skandal i ekstaza
Nowy Feminizm na tle koncepcji pojednania
według Jana Pawła II*, 434 pp. Warszawa:
Wydawnictwo
Uniwersytetu Warszawskiego, 2015

The author of the book under review is a recognized figure in the milieu of the social sciences. Aneta Gawkowska, Ph.D. hab. in sociology, works at the Chair of Sociology and Anthropology of Custom and Law at the Institute of Applied Social Sciences of the University of Warsaw. She published many scientific articles about communitarianism and the book entitled *Taking Community Seriously? Communitarian Critiques of Liberalism* (2011; its earlier Polish version was published in 2004). Her new work *Skandal i ekstaza. Nowy Feminizm na tle koncepcji pojednania według Jana Pawła II* [Scandal and Ecstasy. New Feminism in the Light of the Concept of Reconciliation According to John Paul II] is a continuation of the author's earlier area of interest. Gawkowska starts with pointing to the component of community which is not captured by the liberal anthropology or social theory. For her, in a sense, the starting point "must be" the community and reconciliation of individuals, often quite differing from one another, such as those described within the New Feminism, where man and woman, differing in quite an important way, only together form the most primary and elementary community, which becomes a matrix of other communities. With this approach, where community creates the framework for individuals, the title of the book comes to be understandable: scandal and ecstasy. Ecstasy refers to the physical unity of what is different, namely man and woman, while scandal comes from the very unity (or union) that goes beyond the individualistic anthropology. One can say that the author not only re-

constructed the position of the New Feminism, that is, the feminism inspired by the teaching of John Paul II, but also collated the anthropological vision that emerges from these analyses with the dominant liberal vision of individuals. While the New Feminism claims the anthropological need of the other, in a way expressing a certain incompleteness of an individual which can only be fulfilled by relations with other people, the contemporary liberalism sees the individual as somehow self-sufficient or even closed to otherness. It is precisely with this position that the author of *Scandal and Ecstasy* argues within the 412 pages of her extensive work.

The book presents the theoretical content of the New Feminism in the context of reconciliation issues as treated in documents and initiatives of John Paul II. The New Feminism is a specific type of a feminist standpoint which was inspired by the pope's theology of woman and his theology of sexuality, better known as theology of the body. (His theological anthropology developed there was largely based on the premises of the Pastoral Constitution *Gaudium et Spes*, whose communitarian personalism was presented as linked with the relational *imago Dei*.) The concept of reconciliation discussed in the book is combined with the New Feminism through their common, and sociologically important, assumption of the possibility of a deep sense of social unity. This sense of social unity corresponds to the meaning of community in theoretical positions opposite to liberalism. The so-called communitarians analyze social bonds and needs of unity in contemporary times. Similar position can be found in philosophical and theological investigations characteristic for premodern times. Gawkowska conceptualizes the problematics of reconciliation as reuniting (love in the social dimension) in reference to the theoretical background of modern thought about society. At the same time, she creates a synthesis of the theoretical foundations of the papal treatment of reconciliation with the New Feminist vision of social coexistence as an opposition to a pure liberal vision of rootless, self-sufficient, independent individual subject.

Modern theory of society is divided between individualism and collectivism. Modern authors often look for an ideal individual or an ideal of collective body, hence in modern times we see various philosophical projects of emancipation of the individual and many projects of ideal collectivities. Both sides of this inner dialogue between individualism and collectivism criticize the opposite intellectual position. Gawkowska shows these critical arguments in the writings of Georg Simmel, Max Weber, Émile Durkheim, or modern social thinkers such as Michael J. Sandel and Charles Taylor. The goal of her book is to show that the real individualism needs "otherness" to fulfill itself. Viewed positioning this way, both theorists of individualism as well as the theorists of collectivism are wrong. It looks like we need a certain type of reconciliation of that position in a new anthropology where the individual is treated as not self-sufficient but largely dependent in many ways on others.

The book is divided into four chapters. The first one discusses the category of reconciliation in the teaching of John Paul II (56 pp.). In the second chapter the

author presents the practices associated with the idea of reconciliation, that is, the reconciliation initiatives during the pontificate of John Paul II (75 pp.). In chapter three Gawkowska presents the New Feminism with its papal sources and inspirations (100 pp.). Chapter four traces the practices connected with the ideas of the New Feminism, so the New Feminism in the writings and initiatives of women themselves (122 pp.). The book is thus a complex structure where it is assumed that there are some theological beliefs, in this case pertaining to the philosophical anthropology and feminism, which have their practical consequences. Indeed, the author presents the order emerging from the theological writings of John Paul II, points to its essential elements, such as the incompleteness of man, his need for social ties and reconciliation, and shows how these elements come to the fore in such an important dimension of human life as the differentiation based on sex. In this way, the author, starting from the theological vision of order goes to the reconstruction of social practices which are a consequence of beliefs held by people. As the Catholic confession has many followers and, moreover, it also significantly affects the followers of other Christian communities, the practical and social impact of Catholic theology in the field of reconciliation and sex relations remains indisputable. The questionable matter may just be its scope. Gawkowska shows some practices inspired by the theological teaching, follows their internal logic, and points to their influence on other social activities. Her book is thus a very successful combination of the theological-metaphysical reconstruction with the reconstruction of the social impact of religious beliefs.

One can argue that religious beliefs are totally asocial, since they concern the sphere of sacrum and they have an individual character. In her book Gawkowska argues in favor of the opposite view. She points out that religious beliefs relate to the metaphysical order, which is not only an object of faith, but it shapes the social practices and contributes to the transformation of the social order in a certain way. It is possible because religious beliefs produce a certain gap between the transcendental and the secular order. The social effect of these beliefs is constituted by a set of practices aimed at transforming the secular world in accordance with the prevailing transcendent vision and the implementation of the elements of this vision to the secular reality. Thus the order of faith produces an ideal for social reality and its point of reference as well as source of evaluation standards.

The result of theoretical research developed in the book is the analysis of the social phenomenon of the New Feminism inspired by Catholic theology. Theological reconstruction of an anthropological order in which individuals are dependent on God and also dependent on one another shows a new model for a society based on bonds. This theological reconstruction shows an ideal model for social changes. It also depicts a source of evaluation of social practices. Gawkowska illustrates that conciliatory and dialogical message may be sent to the contemporary individualistic society through practical activities provided by believers. In

addition, the study explores the importance of existence of such a type of feminism which, in comparison with other currents of feminism, presents a particular vision of reconciliation of sexes and complementarity of masculinity and femininity in the framework of reconciled humanity, together with the reconciled aspects of physicality and consciousness, as well as nature and culture.

It is not possible to enumerate all merits of this book. However, it is worth mentioning its clear language, proficiency in the presentation of theological and sociological matters, precise wording, and clarity of argument. Weaker sides of the work include its excessive amplitude. The reader can sometimes get lost in the maze of details that blur the main axis of the author's argumentation. Regardless of the shortcomings, the work reads very well.

Gawkowska uses theology to reconstruct the ideal model of relations based on reconciliation. She also uses sociology in order to reconstruct the model of relations which could become a model for social practices. Moreover, she tracks how social practices incorporate this model and thus contribute to real social changes. Her method, therefore, consists in tracing the relationship between the ideal and the social practices inspired by this ideal. This book is an extremely interesting piece of work because Gawkowska also reveals a broader meaning of the metaphysical order referred to by the members of society. It should be of interest to researchers in the field of sociological theory, social philosophy, and theology. It shows that the social sciences, despite the necessity of divisions between disciplines, are intrinsically open to analysis of the content presented to all areas of human activity. The book also brings a lot to the feminist debates and it should arouse interest among contemporary feminists. Its author, having completed much work on communitarianism, very smoothly "translates" the theological concepts into the language of contemporary political philosophy such as communitarianism. Thus, she enables a dialogue between the "secular" feminists and those who are religiously inspired. A kind of translation is possible via communitarianism and its terms that are understandable for both sides of the feminist dispute, so both the "secular" feminists and the representatives of the New Feminism. The book may thus be on the reading lists presented in the context of gender studies. Even if its reading does not lead to a general reconciliation, it will show the consequent social practices to which the assumptions and beliefs shared by the New Feminists may lead. Taking into account the scale of influence of Christianity, its impact on the society cannot be disregarded. The book by Aneta Gawkowska perfectly reconstructs this influence and presents it in a language understood by the representatives of other social sciences.

Agnieszka Nogal
University of Warsaw, Poland

*Church and Society:
Towards Responsible Engagement*
Ed. L. M. Ondrášek, I. Moďoroši, 410 pp.
Ružomberok: VERBUM, 2015

Church and Society: Towards Responsible Engagement, published by Verbum in 2015, has been made possible thanks to the support of Acta Sanctorum, Inc. and the Faculty of Arts and Letters at Catholic University in Ružomberok. This publication addresses the issue of the Church and its role in the contemporary society. It makes an attempt at answering the questions: What attitude should the Church adopt to the phenomenon of cultural pluralism, secularism, Islam etc. in open society? And how could the believers get involved in this society responsibly? This topic is current and important, considering the fact that every generation has a duty to deal with the question of Jesus Christ's follower's relation with the world. Our generation is in the third millennium, which means some opportunities and challenges, which are, on the one hand, absolutely new, and on the other, they are as old as the humankind.

The publication *Church and Society* is conference proceedings, which consists of thirteen papers. The authors of those papers come from various professional, cultural, and denominational backgrounds, which gives the opportunity of deeper reflection and analysis of the issues. Many of the authors give lectures at prestigious world's universities and they are the best in their fields. For instance, Harvey Cox at Harvard University, Jean Bethke Elshtain at University of Chicago, David Fergusson at University of Edinburgh, Robert P. George at Princeton University, Tomáš Halík at Charles University, etc. One of the aims of this publication is to present their thoughts to a Slovak reader. The publication is bilingual so its content is not restricted to our geographical location.

The paper by Harvey Cox entitled "Pentecostalism and Global Market Culture" analyzes the role of the Christians in the contemporary global culture. The author agrees with Paul Tillich that religion is the substance of culture and the culture is the form of religion. He tries to show that religion and culture do not belong to separate spheres. He reflects upon the situation of early Christians and concludes that their behavior and attitudes can teach today's Christians a lot. Harvey Cox presents an idea that in the next century Christians will have to develop ways of living defined by communal sharing rather than by individualistic accumulation.

David Fergusson is the author of "Moral Formation and the Life of the Church." He deals with the issue of the European Christian identity, which is in crisis nowadays, and of its formation. He maintains that the attention to thought and desire are significant for moral commitment in a range of ways, that is, articulating the source of moral motivation, the seriousness and vocation of ethical practice, the importance of commitment and perseverance across a lifetime, the prospect of forgiveness, repentance, and renewal in the inevitable event of failure, etc.

The paper "Christianity and Secularization" presents the uniqueness of Christianity. The author Tomáš Halík claims that Christianity engendered two inter-linked phenomena. The first one is the church and the second one is the secular society. No other religion ever created an institution that represents a specific religion as a whole and is not identical with the state or nation. The author of the paper analyzes the course and process of secularization. In the conclusions Halík highlights that the history of religion in Europe is not in the end as certain zealous apostles of atheism predicted.

The paper under the title "The Role of the Church in a 'Post-narratable' World: Bringing Meaning to Reality through a Credible Narrative" deals with the issue of human identity. Michal Valčo discusses the Slovakia's post-totalitarian situation and the false political solution and he raises the question of human future. He summarizes that if people and societies wish to be able to defend themselves against any type of ideological manipulation, they should have a solid appreciation of the power and the role of narratives in the human life individually and collectively. In addition, it is vitally important to understand one's own tradition.

The Editors' aim was not to provide readers with easy answers to comprehensive questions, but to give them food for thought, which would lead them to critical thinking and also stimulate their interest and formation of new questions. The topic itself is of great importance. In contrast with other valuable publications and academic proceedings of the same or similar type, the intention of the publication *Church and Society: Towards Responsible Engagement* is not to inform, but to form with the aim to transform. This publication has a potential to find its readers among academics, ecclesiastic dignitaries, and general public, too. It is well written and easy to follow. I believe that it would make a valuable contribution to every library.

Alexandru Buzalic

Babeş-Bolyai University, Cluj-Napoca, Romania

Michał Paluch, *Dlaczego Tomasz*, 262 pp.
Warszawa: Instytut Tomistyczny, 2012

The book *Dlaczego Tomasz* [Why Thomas] by Fr. Michał Paluch, O.P., is a collection of texts published earlier in the forms of separate articles or conference speeches. However, the collection published in a book is not an accidental medley but a well-organized and logically ordered whole which defends itself very well in the new form published in 2012. The book is divided into three parts: the first one describes the intellectual standpoint of St. Thomas Aquinas within philosophy and theology, the second one presents his concept of God, while the third part discusses his position on the place of Christology within the soteriological analysis. The book is enriched with detailed footnotes full of valuable pieces of information and it is provided with neatly organized bibliographical lists including sources and studies. Additionally, it includes the index of persons mentioned in the book together with the English summary provided at the end. So much about the technical description of the values of the book. Now I will move on to considering the substantial merits of the publication.

Hopefully, there are many intellectuals to whom the writings of St. Thomas have always been and will be treated as presenting the value beyond doubt, though including certain human mistakes clear to later followers and critics. However, to many believers St. Thomas is just an old figure from the past, a saint to be celebrated without the necessary knowledge of what to adore in his life and writings. Additionally, after several centuries during which he was first forgotten or even openly criticized and misrepresented by large portions of the Western philosophers and theologians, and later slowly discovered anew and brought eventually somehow back to the debates, we must admit he is still relatively not known to many. Whatever is the state of interest and knowledge on him, he definitely needs to be better known to both intellectuals and com-

mon believers. That is why the book by Fr. Michał Paluch, O.P., answers the real and urgent need of our times and our society. The Polish speaking readers get the gift of a relatively simply written book on a rather difficult and interesting topic which should at least partly be familiar to Catholics and well educated as well as ambitious people in general. (That is why this book deserves its translation at least to the modern Latin, namely English. Let us hope that this review, written in English and published in a newly established journal, may contribute to the book's popularity outside Poland or outside the Polish speaking circle of readers.)

The book is vital not only due to its relative simplicity in presentation of certain parts of the complicated and monumental theory of St. Thomas. After all, there are already certain positions which get us nicely closer to the figure and writing of St. Thomas. One of such rich and available sources of knowledge for the Polish readers is the book often referred to by Fr. Paluch, namely the book by Jean-Pierre Torrell, *Święty Tomasz z Akwinu, mistrz duchowy*, translated by Agnieszka Kuryś, published by Instytut Tomistyczny—Wydawnictwo Marek Derewiecki in Warsaw—Kęty in 2008. However, there are still not many sources of information and analysis of St. Thomas which could be comprehensible for more or less common audience relatively interested in philosophy and theology. Moreover, the exceptional value of the book by Fr. Paluch comes from its concentration on several chosen aspects of St. Thomas's theory, which seem to be important in late modernity maybe even to a greater degree than they were at the time of St. Thomas. I am not a theologian or an expert on the intricacies of the scholastic philosophy. However, my interest in social philosophy, especially its fields inspired by theology, made me persuaded a long time ago that many answers to contemporary philosophical (and practically social) problems can be found in the theoretical standpoint presented by St. Thomas. Therefore, I agree with the Author and understand why Fr. Paluch did not provide a question mark at the end of the title of his book *Dlaczego Tomasz* [Why Thomas]. However, being involved in teaching contemporary social theory and debating contemporary social philosophies, I still see a great need of making St. Thomas seen as rich in argumentation really enlightening to the modern audience/society. I understand that the review does not provide space for a long discussion of such issues but I would like to briefly mention some points present in the book which made me notice the connection with important contemporary debates or problems which seem at first glance to be irresolvable to the modern way of perception.

A renowned contemporary social ethicist in my field of interest, namely Alasdair MacIntyre, put a lot of intellectual effort to bringing back to the modern West the actuality of the eudaimonistic virtue ethics. Naturally, he contributed to the recovering of the philosophical interest in Thomism. The debates between the so-called communitarians and the contemporary liberals provoked our coming back to the fundamental questions of modernity, like these concern-

ing freedom, free will, being vs. constructing, community vs. individual, personal activity vs. structural dependence, and many others. Late modern ecological concerns turned our attention to the issue of how much we accept the world as given in opposition to the attitude of its constant reconstruction and unilateral technological progress oftentimes leading to human tragedies. Of course these are just exemplary cases of modern trends uncovering contemporary conundrums. There have been many more theoretical and practical orientations which make our attention rightly turned back to the grave questions of the past as still vivid in the present. The book *Dłaczego Tomasz* is a clear example of pertinence of the matters raised by the good old realistic philosophy.

First of all, this philosophy effectively justified using reason because it relied on the assumption that reality is more or less reasonable, being created by Logos. Thus, it has been based on a great portion of trust toward the world, the humans, and their Creator. (Fr. Paluch devotes a large part of the first chapters to showing the attractiveness of this Thomistic attitude; an attitude which actually contributed largely to the sanctity of St. Thomas himself.) It is worthwhile to remind the modern and postmodern people that reason has a much deeper meaning and a longer history than just its roots in the Enlightenment. Fr. Paluch lets us realize the depth of Thomistic understanding of reason by referring us to Etienne Gilson's opinion on its revolutionary potential. The relative autonomy of human cognition is described by St. Thomas as possible due to reason seen as a gift from God and a gift enabling us to be free to discover and create on the basis of what is discovered (not *ex nihilo!*). I would venture to claim that if humanity had followed this Thomistic idea of reason, we would have had a chance of avoiding the major historical tragedies stemming from adopting a different and false idea of human autonomy linked with arbitrary free will inspired by Ockham and developed by the followers of Descartes (as it is theologically analyzed by Servais Pinckaers, O.P. in his *Sources of Christian Ethics*). The motives considered later in Fr. Paluch's book concerning the creation *ex nihilo* or the rule of non-contradiction in God's reality also touch upon this problem and as such are equally vital for the social philosophers debating the matter of relative vs. absolute dependence in our times. It seems that since the beginning of modernity around five centuries ago the understanding of freedom and autonomy has slowly eroded within the area between two extremes of absolute autonomy without constraints provided by the good on the one hand, and the total lack of any freedom on the other. The Thomistic alternative thus seems as the still most attractive solution of this pseudodilemma offered to us by the founders of modernity. The reason's creativity perceived as a gift created to be given in return, devoted to uncover the mysteries of the reality initially independent of the observer, sounds like cutting the gordian knot of the modern epistemological crises and later social experiments based on their mistakes.

Read by a social theorist, the book under review rings many bells, pointing our attention to how much the political and social philosophy (including even the philosophy of education) is rooted in fundamental debates raised by theologians during the peak of the Middle Ages. The aforementioned motive of human freedom/autonomy linked with personal dignity and reason inspired the views of the Fathers of Vaticanum II on the freedom of conscience, as Fr. Paluch points out on page 56. What seems equally important is his comment about the contemporary lack of pedagogical appreciation of coercive methods necessary to form the will. We rely mostly on the intellect for the moral education and probably that is why the Thomistic view on forming conscience must have been more adequate compared with our one-sided perspective (p. 57). Another topic inspiring the views during Vaticanum II, and as I agree with the Author, still vital today, is the way of treating the natural order as good (and then perfected by grace). Such a view constitutes a solid platform for dialogue with people of all cultures and religions, which was fruitfully confirmed not only by Vaticanum II but also by the teaching of St. John Paul II and his inter-religious dialogue. Contemporary social philosophers inspired by St. Thomas, like the late New Feminist Mary F. Rousseau, persuasively treated the natural order as the basis of the primary community which could later develop into a fully blown, consciously embraced and creatively organized association.

The changing theological perception of God as expressing just arbitrary will with his creation, together with the positive view of negation and “nothingness,” gradually narrowed our perspectives on freedom and reduced the role of love as the motive of God’s creative initiative (Part II of Fr. Paluch’s book). Slowly but steadily it imprinted itself in the social thinking which had its practical effects in the shapes of social institutions which, on the one hand, were established to guard individual freedoms, while on the other hand, came to be seen as the expression of the arbitrary power of the state or social system which has supposedly always been opposed to human freedom. The biblical motive of creation, namely God’s love, gradually came to be lost from sight as the inspiring force of human and social relations. The relations themselves lost their realistic ontological status, largely due to the *désintéressement* or misinterpretation of the reality of the Trinity.

Luckily, the contemporary readers of John Paul II’s theology of the body may enjoy treating his audiences about human love as the creative follow-up to St. Thomas, who has been forgotten or neglected by many and who came to be well rediscovered through the theological/anthropological reflections on human sexuality. The triple unity of God found its image of “dual unity” of marriage neatly presented by the Polish Pope. His intellectual efforts recovered *and developed* the Thomistic arguments about the Trinity and marriage/family showing both the love of God and the goodness of nature, especially the unique role of human sexuality. John Paul II said that “*man became the*

image of God not only through his own humanity, but also through the communion of persons, which man and woman form from the very beginning."¹ The pope developed this argument first in his Wednesday audiences and later in the Apostolic Letter on the Dignity and Vocation of Women *Mulieris Dignitatem*: "The fact that man 'created as man and woman' is the image of God means not only that each of them individually is like God, as a rational and free being. It also means that man and woman, created as a 'unity of the two' in their common humanity, are called to live in a communion of love, and in this way, to mirror in the world the communion of love that is in God, through which the Three Persons love each other in the intimate mystery of the one divine life. The Father, Son, and Holy Spirit, one God through the unity of the divinity, exist as persons through the inscrutable divine relationship. Only in this way can we understand the truth that God in himself is love (cf. 1 Jn 4:16)" (*Mulieris Dignitatem*, 7).

The relational concept of the human person created as the image and likeness of the Trinitarian God found its place in an often quoted fragment of the Second Vatican Council Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*, which states that "man, who is the only creature on earth which God willed for itself, cannot fully find himself except through a sincere gift of himself" (24). Interestingly enough, women connected with the New Feminism, which is inspired by theology of the body and John Paul II's teaching on women, are now the ones who stress both the value of Thomism and the vital role of women as the ones who enable men to enter into ecstatic relations based on love that joins equal subjects in love imaging the Holy Trinity. (This could be an inspiration for those who would like to correct some views of St. Thomas on women.)

A sociologist may identify the Trinitarian picture as an interesting analogy with the Simmelian idea of a minimal social group constituted by three persons (due to the qualitative difference made by the importance of interactions with relations, not only with individuals). However, not knowing whether Georg Simmel actually was or was not aware of the depth of St. Thomas's analysis, reading the clear explanation of St. Thomas's trinitarian theory done by Fr. Paluch, we see Thomas as more interesting and deeper than Simmel. The former shows the mechanism of acting of a relation itself to a much greater extent! Coming back to the discussion on the status of relations seems urgently needed in times of dominant individualism. Human community does not yet find a more ennobling place in any modern social philosophy than the Thomistically developed Aristotelianism. And it badly needs one for sure.

¹ John Paul II, *Man and Woman He Created Them. A Theology of the Body*, trans. Michael Waldstein (Boston: Pauline Books and Media, 2006) (9:3), 163 [Emphasis in the citations present in the original].

The up-to-dateness of the Thomistic reflections on the Trinity is also confirmed by the great misunderstanding of the Christian concept by Muslims. I presume I do not need to develop the topic on practical effects of that misunderstanding and accusations directed against Christians supposedly believing in three gods rather than one... I will also venture an opinion that thanks to the Catholics adhering to St. Thomas, their societies were not as prone as to turn either to individualism or communism. (Both Protestants and Orthodox societies were not as safely kept from the influence of these doctrines, respectively.) What is more, Thomas Aquinas should be referred to nowadays because of the attractiveness of his way of linking unity and difference, as Fr. Paluch mentions on page 127. The present debates on multiculturalism or other forms of social coexistence constitute good fields for the necessity of such argumentation. Speaking of necessity... Here comes another area which could clearly benefit from the Thomistic perspective: the modern methodology of science could definitely use some of the crucial reflections about the distinctions between necessity and adequacy (*convenientia*) or relative necessity. The modern emphasis which is too strongly put on absolute necessity as the only scientific standard calls for a more soft alternative introduced by St. Thomas in his soteriology and that is why, I think that Fr. Paluch's comments and attitude concerning this issue at the beginning sentences of the chapter on page 152 seem to me even too modest or cautious. His argumentation is so clear that it easily presents St. Thomas as a much better alternative than the modern shallow and one-sided view of either-or in terms of the necessity/contingency of Salvation history or other aspects of reality. As Fr. Paluch himself brilliantly shows by his presentation of Hegel's views on necessity de facto excluding freedom, St. Thomas's vision deserves even more of an applause rather than what the introductory remarks suggest.

Really fabulous is the reconstruction of the soteriological arguments of St. Thomas and St. Bonaventure. Their views are presented as complementary and equally fascinating, with more philosophical accent identified in the former and more mystical aspects noticed in the latter. Attractive as it is, I would offer a polemic to this view, suggesting that Thomistic philosophy is equally mystical (as Jean-Pierre Torrell claimed) and proposing, though without proofs yet, that both versions of great theologians are even closer to each other than it looks at first sight to the analytical male mind. Maybe I should be more cautious but my female intuition tells me that reconciliation of the two masters of thought and masters of mysticism is not really necessary. Maybe they actually do already say the same thing despite putting accents in different places. But maybe I am wrong? The review, however, does not provide enough space to discuss such details. Let it just inspire the readers to look for their own answers.

Reconciliation which has been shown well as achieved by St. Thomas in his theorizing is that between justice and mercy, while we—contemporary peo-

ple—often still have trouble with linking them together and we rather choose to oppose them. Or at least we often think that we owe the reconciliation only to St. Theresa of Lisieux and St. Faustina who presented these realities as linked together in their visions. Additionally, it is worth reminding us that being God's instrument the way Christ has been in his mission of Salvation is not degrading but ennobling. Late modern people need to hear that in contrast to the largely derogatory treatment of any activity devoted to service, therefore it seems good Fr. Paluch refers to the old arguments on this topic. Finally, an absolutely wonderful and very important is the juxtaposition of the mission of Christ in Salvation presented by St. Thomas and the twentieth-century Belgian theologian Jacques Dupuis. Fr. Paluch's consistent following of the Thomistic argument not only persuades me about Thomas's adequacy on this point but it may also make readers better understand the logic behind Vaticanum II on this matter and the standpoint of John Paul II on his conciliatory initiatives.

Having mentioned all the arguments which I found inspiring in the book by Fr. Michał Paluch, O.P., I must definitely say that he reassured me and hopefully will persuade many others *why Thomas* is still valuable nowadays. The last sentences of the book are only too cautious in praises as Thomas just cannot sink into oblivion but needs to be read, debated and, last but not least, admired even by those who do not agree with him. However, while my words of admiration may discourage some people from discovering Thomism, Fr. Paluch's well balanced approach will surely motivate readers to delve deeply into St. Thomas's writings on their own.

Aneta Gawkowska
University of Warsaw, Poland

Grzegorz Grzybek,
Etyka zawodowa jako subdyscyplina naukowa
(odniesienie do działalności zawodowej
w obszarze nauczania, wychowania i opieki), 166 pp.
Rzeszów: Wydawnictwo
Uniwersytetu Rzeszowskiego, 2016

Published in 2016 by the University of Rzeszów Publishing House, a monograph titled *Work Ethics as a Scientific Subdiscipline (A Reference to the Professional Activity in the Field of Education and Care)* authored by Grzegorz Grzybek takes up the issues currently discussed in the field of ethics as well as in the area increasingly detaching itself—and even autonomizing itself—from it, namely, the area of work ethics. The book has a clear structure and well-thought-out division of content; still, changes and completions seem feasible in the intended structure, which shall be discussed later in the review.

The text's assumptions have been presented in the introduction as well as the elucidation of its basic concepts. The basic structure consists of two parts which contain five chapters divided into separate titled points (as if subchapters). The work also has the summary, the bibliography that complements it as well as an additional bibliography presenting the Author's achievements.

The first part, "Fundamentals of Work Ethics," includes the first and second chapters (Chapter One: "Ethics and Work Ethics"; Chapter Two: "Work Ethics as Applied Ethics"). The second part, "Work Ethics—Examples of Application," contains the third, fourth, and fifth chapters (Chapter Three: "Ethos of the Teacher"; Chapter Four: "Ethos of the Tutor"; Chapter Five: "Ethos of the Social Worker").

In the introduction the Author notes that the present work falls within his cycle of monographic publications whose leitmotif is “development ethics.” Grzegorz Grzybek regards “development ethics” as his own unique concept, which he has been expanding on in subsequent articles and monographs, each time examining the selected ethical issues further, especially in the context of education and care. Wiesław Wójcik wrote in one of his reviews published on the professor’s work: “For several years now, I have had the pleasure of following the subsequent publications related to development ethics formulated by Professor Grzegorz Grzybek. This theory, using the basic concepts of classical and contemporary ethics, is trying to find a basis for the main educational (though not exclusively) categories.”¹

The presently reviewed monograph extends the range of the Author’s previous considerations which either belong to the field of “development ethics” or are based on the assumptions developed and adopted for the theory’s sake. The Author turns his attention to the issues concerning work ethics as a scientific subdiscipline that is developing nowadays: in the first part of the book, he focuses on the basic issues of work ethics and in the second part, he makes particular references to the professional activity in the area of education and care.

While analyzing matters of work ethics in the broad sense of the term, the Author does not avoid surprising and thought-provoking juxtapositions of the views which undergo his examination and his own theses; this further encourages the reader to reflect independently and intensely on ethical issues (the ethos of profession) indicated in the reviewed monograph.

It is important to note that the Author does not make use of preventive and ideologically determined censorship, which would radically limit and reduce his field of research. What deserves a friendly reception on the part of the reader is the monograph’s evident intellectual openness to diverse and different opinions which are often seen as contradictory and exclusive. Noteworthy here is the pluralism of ethical positions cited and examined in the reviewed monograph. Opening new and extensive horizons in the debate about the problems relating to work ethics in the broad sense of the word is one of the most significant advantages of the reviewed publication.

The Author does not shrink from highlighting and discussing issues that are considered controversial as regards work ethics. He is far from authoritarian or dogmatic opinions on what is to be the model ethos for a particular profession. He rather seems to encourage the reader to reflect independently on the broadly understood work ethics, so that the reader can consciously and critically recognize and shape his or her own ethos of professional activity.

While reading the monograph titled *Work Ethics as a Scientific Subdiscipline (A Reference to the Professional Activity in the Field of Education and Care)*

¹ See: <http://apcz.pl/czasopisma/index.php/PCh/article/viewFile/PCh.2013.019/3320>.

one will also reach some specific conclusions, i.a. proposals and indications to be considered in the next publications of Grzybek:

1. In the discourse on work ethics, it is worth making a broader reference—also while commencing a discussion—to the analyses of the subject carried out by Włodzimierz Galewicz, presented in numerous publications. Galewicz is one of the leading promoters of research on work ethics in Poland. In the analyses, it is worth making a reference to detailed analyses and commentaries made by Jan Woleński, Włodzimierz Tyburski, Ryszard Wiśniewski, Ryszard Kleszcz, Danuta Ślęczek-Czakon, and Tomasz Czakon, which touch upon various (also controversial) aspects of work ethics.

2. In the analysis focused on work ethics, one should make more reference to the classical heritage of Polish ethical thought, due to its high cognitive value, especially as regards general and work ethics. This is to mention the reflections and comments of Maria Ossowska, Ija Lazaria Pawłowska, Tadeusz Kotarbiński, and Tadeusz Czeżowski.

3. I suggest that the Author—on the meta-ethical level—should make an attempt at the comparative analysis of a role that the perspective of “development ethics” proposed by him may have in the area of work ethics, especially in the context of ethical concepts that have been intensely worked upon for many years and are already well-established (on the grounds of abundant literature).

At the beginning, I claimed there would be other ideas for the design of the book to be considered. It seems that in order to keep the discourse more coherent, certain shifts should be made as regards the sequence of chapters in the second section. Chapter Three, titled “Ethos of the Teacher,” could be swapped with Chapter Four titled “Ethos of the Tutor.” Indeed, the tutor’s ethos is more primary and lays the foundation for the teacher’s ethos. This is how the Author presents it. Introducing the above-mentioned change in the sequence seems coherent with the Author’s reasoning presented in these chapters. The current sequence of the chapters disturbs the order of the Author’s narration from the perspective of the reader. Such a shift would be beneficial to the whole content and design of the reviewed book. Should another, expanded edition of the monograph be published in the future, it is also worth considering the option of including the sixth chapter in the book, so as to develop and order the Author’s reflections on work ethics as a dynamically growing academic subdiscipline. Such a chapter would definitely be an advantage for the content and structure of the reviewed book, and it would open horizons for further discussion.

Having become familiar with the reviewed monograph—along with the Author’s previous works—I would like to emphasize the proposal I have made before, namely that Grzegorz Grzybek—if organizationally feasible, in his capacity as the professor of the University of Rzeszów—should organize systematic academic seminars in ethics, especially work ethics. During such seminars—which should be interdisciplinary and held with the participation of philoso-

phers, ethicists, pedagogues, and representatives of other humanities and social sciences—the issues proposed and presented by the Author should be discussed from various perspectives in the context of the proposed “development ethics.”

Grzegorz Grzybek’s next publications and books constitute a good inspiration for such academic seminars in work ethics; what is more, they seem to be soliciting such actions more and more, because of the “development” category exposed in them. What is essential is the development, which is achieved mainly through the exchange and criticism of arguments in an open, substantial academic discourse.

I would strongly encourage Grzegorz Grzybek to organize such seminars systematically, as the experience of a few generations of academics proves that this is the verified way of intellectual growth and shaping intellectual maturity. This will also be the embodiment of the tenets of work ethics and a practical expression of the due care and attention paid to the work ethos of an academic teacher.

Marek Rembierz

University of Silesia, Katowice, Poland

Translated by Dominika Pieczka

Demokratyczne państwo prawa
Ed. M. Aleksandrowicz, A. Jamróz, L. Jamróz,
330 pp. Białystok: Temida 2, 2014

An interesting title has come out on the publishing market. Its subject matter concerns, in a broad and varied scope, the democratic state, whose foundation lies in the legal state. The analysis of the material gathered in the study proves that it is not directed at a wide circle of people wishing to get familiar with fundamental principles of defining and functioning of the democratic state of justice. The only exception is the study by Roman Tokarczyk entitled *Paradygmatyczne ujęcie koncepcyjnych i ustrojowych aspektów demokratycznego państwa prawa*. The presented specific issues concerning some democratic countries (Switzerland, Sweden, France, Spain, Israel) or selected problems both in philosophy and theory of law (*The principle of the rule of law and definition of the legal state; the theory of constitutional legal state and its impact on legal argumentation; the formal legal state*) and functioning of legal institutions (e.g., the Constitutional Tribunal, the institution of ombudsman, National Bank of Poland) emphasize the academic character of the study directed at experts seeking doctrinal inspiration or functional solutions. However, the layout of the study does not correspond to the above systematics, suggesting itself after reading the text. Presumably, this was not the conception of the initiators of the work and its Editors. It can be inferred after familiarizing oneself with the texts of particular studies. The starting point was not suggested in advance, clearly defined subject matter imposed on the authors of particular studies. They were allowed a great deal of thematic freedom determined only by issues and problems provoked by the democratic state of justice.

Yet an academic study concerning a wide range of selected problems has to meet methodological requirements which allow comprehensible coverage of par-

ticular issues. The Editors of the study chose 21 problems, discussed in detail, and divided them into three parts: (1) models and principles of the democratic legal state; (2) rights and liberties of an individual and their institutional protection; (3) institutions of the democratic state, particularly the judicial power. The multitude of issues from which the authors of the studies could choose freely makes it impossible to explicitly and exclusively classify each of them into a particular part. The Editors of the publication made this choice basing on the theme of each of the studies, which allowed to classify them into a particular subject matter. It enables the reader, as the Editors write in the preface, “to move in the wide area of the democratic state of justice” (p. 9).

The studies found in the first part revolve around general theoretic reflections on the state of justice and legal principles embraced in the general rule of citizens’ trust towards the legal state. The second part of the study points out at the homogeneity of the research matter focusing on the rights and freedom of the individual and their institutional protection. It mostly contains articles concerning some rights and liberties of the individual. The deliberations revolving around the institution of ombudsman in France and Spain, whose purpose is to protect the rights of the individual and the evolution of rights and liberties in the constitutional documents of France, are particularly interesting. The last part of the study contains articles referring to the institution of the democratic state, connected mainly with the execution of judiciary power.

Academic value of the study is unquestionable. From the point of view of the reader interested in particular issues, one can only draw attention to the layout of specific problems within the framework of distinct parts. The Editors determined the order of the studies using the alphabetical criterion of the authors’ last names. The layout of the articles according to their subject matter would suggest some kind of continuity attracting, so to speak, even greater interest.

Tomasz Gałkowski

University of Cardinal Stefan Wyszyński, Warsaw, Poland

*Filozoficzne i teoretyczne zagadnienia
demokratycznego państwa prawa*
Ed. M. Andruszkiewicz, A. Breczko, S. Oliwniak,
425 pp. Białystok: Temida 2, 2015

The above title presents a continuation of the earlier academic publication (*Demokratyczne państwo prawa*, Białystok 2014), which discussed problems connected with the democratic state of justice. It comes out only one year later, which indicates willingness to discuss the issues stated in the title in a deep and explicit way. One can wonder whether theoretical, philosophical, and legal deliberations on the democratic state of justice will not remain merely a doctrinal study, included in the presented collection. The subject matter focuses rather on functional and practical legal solutions.

The presented collection of studies indicates the need for deeper exploration and doctrinal reflections consolidating and explaining the mechanisms of functioning of the democratic state of justice. It is pointed out by the Editors who state in the preface that “the presented volume raises many inspiring problems and reflections on the democratic state of justice” and the discussed issues “are also necessary in the practice of executing law” (p. 9). The way in which it can be done was shown in the specific articles.

The collection includes 32 studies grouped in three parts. The Editors were motivated by “methodological clarity,” which allowed them to notice the dominant thematic scope of the articles. Taking these as a point of departure, they put together the studies far from one another as far as their problematic formulation contained in the title is concerned. Looking at the layout of the material, one can easily notice that it was determined by methodological approach to the presented issues. The first part containing 14 articles was dedicated to

philosophical aspects of the democratic state of justice. However, not all articles included in it refer directly to the content expressed in its title (e.g., *Marginalizowanie filozofii prawa w Polsce a jej znaczenie dla demokracji* [Marginalization of the philosophy of law in Poland and its effects on democracy]). Their sense and intentions of the Authors can be discovered only in careful reading, although it seems that their methodological and doctrinal aspects are not sufficiently explored. The second part of the collection was devoted to theoretical problems of the democratic state of justice. The element which allowed placing so thematically different studies in one part is the fact that they were written from legal and theoretical perspective. The last part was devoted to the institutional concepts of democracy referring to the current national and international situation. The reflections which can be found there are loosely connected with the topic determined by the title of the presented collection. Nevertheless, on account of the intentions of the Editors who emphasize the connection of philosophical and theoretical deliberations with the practice of executing law in the democratic state of justice, the presented content is well justified. To a greater or lesser extent, the Authors of the articles presented in this part point out at the foundations of the discussed problems referring to the issues provoked by them and requiring further explanation.

Each academic publication which concerns analysis of the problems provoked by the current social order and the norms imposed by it can become the object of interest of the people who create this order and are responsible for it. They can also be an inspiration for the opponents searching for deeper expression of social relations, who strive not so much to negate or abolish this order but to express it more fully and appropriately.

Tomasz Gałkowski

University of Cardinal Stefan Wyszyński, Warsaw, Poland

Notes on Contributors

Pavol Dancák, Professor, Ph.D., graduated from the Cyril and Methodius Roman Catholic Faculty of Theology in Bratislava in 1988, and in the same year received the priest's ordination. He worked as a parish priest and in 1996 was appointed as a censor in beatification of Bishop Paul Peter Gojdič, and later also in the process of beatification of Bishop Vasil Hopko, Th.D. In 1995, he began to study philosophy at the Philosophical Faculty of Papal Theological Academy in Cracow. In 2001, with the supervision of Professor Karol Tarnowski, he defended his postgraduate dissertation *The Issue of Education in Teaching of John Paul II*. On April 27, 2005, he attained the habilitation in history of philosophy with a book *Historical and Philosophical Reflections of Paideia in Works of Karol Wojtyła*, at the Faculty of Arts, University of Prešov in Prešov, and on January 29, 2011, he was appointed Professor of History of Philosophy. On August 1, 2002, he was employed as Vice-Dean for Development and External Relations Greek Catholic Theological Faculty of University of Prešov in Prešov, Slovak Republic, and currently Professor Dancák is the Head of Department of Philosophy and Religion. He is a member of the Academic Council of GTF UP in Prešov and the Academic Council of the St. Elizabeth University of Health and Social Work in Bratislava.

Rudolph Dupkala, graduated from the Faculty of Arts at the Pavol Jozef Šafárik University in Prešov. He studied and gave lectures at the Lomonosov University in Moscow, L'Université déte in Paris, Masaryk University in Brno, Uniwersytet Rzeszowski in Rzeszów, etc. His teaching and research focus on the history of philosophy and ethics, philosophy of culture and civilizations. He is the author of seven scientific monographs, four out of which published in foreign languages and abroad. He has extensive managerial experience, especially in the university environment. For almost 20 years, he held various academic positions (Head

of department, Chairman of the Academic Senate, Chairman of the Scientific Council, Dean of the Faculty of Arts at the Prešov University).

Tomasz Galkowski C.P., Associate professor at the Cardinal Stefan Wyszyński University in Warsaw (UKSW), graduated from the Pontifical Faculty of Theology “Bobolanum”: SJ in Warsaw. In the years 1991–1995 he studied Canon Law at the Pontifical Gregorian University in Rome, where on the basis of the dissertation “*Il quid ius nella realtà umana e nella Chiesa*” he received his doctoral degree. He was awarded with the Bellarmin’s Prize for his publication (Analecta Gregoriana 269, Roma 1996). In 2007, he received a postdoctoral degree at the Faculty of Canon Law from the Cardinal Stefan Wyszyński University in Warsaw. His monograph *Right—Duty. Priority and Interdependence in the Law Orders: Canonical and the Secular Society* earned him the Prize of the Rector of the University. He is the author of about 70 academic publications. His academic interests include issues related to the *ratio legis* of the canonical norms and issues of common law and canon law. Currently, he is a judge at the Archdiocesan Tribunal of Łódź and professor at Canon Law Faculty of the UKSW in Warsaw.

John P. Hittinger, Dr, is a professor of philosophy and he is a member of the Center for Thomistic Studies at the University of St. Thomas, Houston, Texas, USA. He is the founder and director of the Pope John Paul II Forum for the Church in the Modern World. He holds degrees from the University of Notre Dame and the Catholic University of America. Dr. Hittinger has published articles on political philosophy, just war theory, and the thought of Karol Wojtyła. He is an ordinary member of the Pontifical Academy of St. Thomas Aquinas.

Witold Kania, Ph.D., priest of the archdiocese of Katowice and an associate professor of philosophy at the Faculty of Theology, University of Silesia, Katowice, Poland. He received his doctorate in philosophy from the University of Navarra, Pamplona, Spain. He was a visiting researcher at Kennedy Institute of Ethics at Georgetown University, Washington D.C. Currently he is a member of the Bioethics Committee at the School of Medicine in Katowice, Poland. His publications include several articles concerning metaethics and selected issues in applied medical ethics.

Koblížek Jan, Mgr. Th.D. (1977, Czech Republic) is priest of the Archdiocese of Olomouc and assistant professor at the Sts Cyril and Methodius Faculty of Theology (Palacky University) in Olomouc. His PhD thesis deals with the social contract theory by Francisco Suárez (KTF UK, Prague 2012). During the postdoctoral studies he worked at the Faculty of Arts of the Catholic University of Lyon in Archive “Joseph Vialatoux et Jean Lacroix” (2014, 15). His areas of expertise are political philosophy and social doctrine of the Church.

Józef Krukowski, Professor ordinarius of law, professor of Catholic University of Lublin of John Paul II (1965–2015) and University of Cardinal Stefan Wyszyński in Warsaw (1994–2015), consultor to the Pontifical Commission for Legal Texts in Vatican (1985–), representative of Conference of Polish Episcopacy to the National Assembly of the Constitution of Republic of Poland (1984–1987), member of the Parliamentary Commission for the Ratification of Concordat between Holy See and Poland (1984–1997), president of the Legal Commission of the Polish Academy of Sciences, branch in Lublin (2014–), president of the Polish Society of Canon Law (1991–).

Leo D. Lefebure is the Matteo Ricci, S.J., professor of Theology at Georgetown University. He is the author of *True and Holy: Christian Scripture and Other Religions*, which received the 2015 Catholic Press Association first place award for best academic book on scripture. He is the co-author of *The Path of Wisdom: A Christian Commentary on the Dhammapada*, which received the 2011 Frederick J. Streng Book Award from the Society for Buddhist-Christian Studies. He is also the author of *The Buddha and the Christ* and of *Revelation, the Religions, and Violence*, which received the Pax Christi USA 2001 Book Award. He is an Honorary Research Fellow of the Chinese University of Hong Kong and a Trustee Emeritus of the Council for a Parliament of the World's Religions.

Damián Němec, OP, Assistant professor at the Palacký University of Olomouc, Head of the Department of Church Law, teaching canon law and ecclesiastical law at the Faculty of Theology and at the Faculty of Philosophy. Research worker at the Faculty of Law at the University of Trnava (Slovak Republic). Specialist in the area of the law of consecrated life (including participation on the elaboration of several constitutions of some religious institutes), of the law of sacraments and of the Church-state-relationship, especially of the concordats between the Holy See and individual States. Translator of several official documents of the Catholic Church into Czech. Translator of liturgical texts of the Catholic Church into Czech.

Andrzej Pastwa, Professor UŚ, Priest in the Archdiocese of Katowice, Head of Department of Canon Law and Ecumenical Theology at the Faculty of Theology at the University of Silesia. He is a member of Consociatio Internationalis Studio Iuris Canonici Promovendo, Consociatio Iuris Canonici Polonorum, as well as Commission for Polish-Czech and Polish-Slovak Relations of the Polish Academy of Sciences. His scholarly achievements contain, among others, monographs: *Prawne znaczenie miłości małżeńskiej* (Katowice 1999), *Istotne elementy małżeństwa. W nurcie odnowy personalistycznej* (Katowice 2007), „Przymierze miłości małżeńskiej.” *Jana Pawła II idea małżeństwa kanonicznego* (Katowice

2009) and recently *Dobro małżonków. Identyfikacja elementu „ad validitatem” w orzecznictwie Roty Rzymskiej* (Katowice 2016).

Stanislav Příbyl, Ph.D., J.C.D, is a priest of the Catholic Prague Archdiocese. He was ordained in 1996. He studied at the Law School of Charles University in Prague and the Faculty of Canon Law at the Institutum Utriusque Iuris of the Pontifical Lateran University in Rome. His thesis *Ekumenismus a právo* [Ecumenism and Law] was published in 2006. In 2011, he received the degree of docent following a successful defence of his study “Tschechisches Staatskirchenrecht nach 1989.” He is a judge of the Metropolitan Church Court in Prague; teaches church and civil law at the Theological School of South Bohemian University in České Budějovice. He also works as a researcher at the Institute of Religious Liberty Questions in the Faculty of Law in Trnava. Presently serves as a spiritual administrator of the St. Gabriel Church in Prague–Smíchov.

Mirosław Sitarz, Professor KUL, priest in the Archdiocese of Lublin, Head of Department of Ecclesiastical Public Law and Constitutional Law, Canon Law Institution, Faculty of Law, Canon Law and Administration at John Paul II Catholic University of Lublin; Secretary-General of the Learned Society of the John Paul II Catholic University of Lublin; Member of the Committee on Legal Sciences of the Polish Academy of Sciences; President of the Association of Alumni and Friends of the Faculty of Law of the Catholic University of Lublin.

Elżbieta Szczot, Professor KUL, holds a post-doctoral degree, a lawyer, expert in canon law, Chair of the Department of Political Science in the Institute of European Studies at the John Paul II Catholic University of Lublin, affiliated with this university since 1993. She was awarded a Doctor of Canon Law (JCD) in 1998 and became assistant professor in 2011. Her scientific interests are connected with the rights of the faithful in the Church, sacramental law, family policy, social rights. She is the author of two monographs: *Prawo wiernego do Eucharystii według Kodeksu Prawa Kanonicznego z 1983 roku* (Lublin 2000) and *Ochrona rodziny w prawie Kościoła łacińskiego* (Lublin 2011), and the editor of *Kuria Rzymska i pomniki chrześcijaństwa na szlaku do Wiecznego Miasta* (Lublin 2007), *Bronisław Wenanty Zubert OFM „Pro iure et vita”. Wybór Pism* (Lublin 2005). She is also a member of Towarzystwo Naukowe KUL, Consortiatio Internationalis Studio Iuris Canonici Promovendo (Rome). She is married with two children.

Lucjan Świto, Professor UWM, priest in the Archdiocese of Warmia, graduated from the “Hosianum” Seminary in Olsztyn and the Faculty of Canon Law at the Cardinal Stefan Wyszyński University in Warsaw. He also studied at the Faculty of Canon Law of the Gregorian University in Rome, as well as at the

Congregation for Divine Worship and the Discipline of the Sacraments and at the Apostolic Tribunal of the Roman Rota in Rome. He earned his doctorate, followed by habilitation, at the Faculty of Canon Law at the Cardinal Stefan Wyszyński University in Warsaw. Currently, he is a judicial vicar at the Metropolitan Court of the Archdiocese of Warmia, as well as the Head of the Department of Canon Law at the Faculty of Theology of the University of Warmia and Mazury in Olsztyn.

Małgorzata Tomkiewicz, doctor of law, a lecturer of law in the Faculty of Theology of the Warmia and Mazury University in Olsztyn, a judge of the District Court in Olsztyn. The author of a series of publications concerning Law on Religious Denominations and the criminal and family law, such as *Safety of the Family in the Light of Amended Provisions of the Polish Law—Theory and Reality* (Studia Warmińskie 2012, No. 49); *Loss of Public Rights in the Polish Law: Causes, Extent and Results* (Przegląd Sądowy 2012, No. 1); *Child Grooming and Sexting. A Child as a Victim and a Case Concerning Sexual Abuse—A Legal and Punishment Dimension* (Profilaktyka Społeczna i Resocjalizacyjna 2012, vol. 20); *Insulting religious feelings of a Catholic in Poland—Is this possible?* (Seminare 2012, No. 32); *Incest and Criminal Law Protection of a Family in Poland* (Profilaktyka Społeczna i Resocjalizacyjna 2013); *Civil Effects of a Religious Marriage Contracted by Polish Citizens before a Roman Catholic Minister Abroad* (Prawo Kanoniczne 2012, No. 4).

Krzysztof T. Wiczorek, Professor, Ph.D., director of the Unit of Logic and Methodology of the Institute of Philosophy at the University of Silesia. Studied mathematics at the University of Silesia; two semesters of theology at Albert Ludwigs University of Freiburg, and philosophy in Cracow and Lublin. Scientific titles and degrees: 1978 Master of Science in Mathematics MSM; 1986 Doctorate degree in Philosophy; 1994 Habilitation Thesis in Philosophy; 2005 Full professor in Philosophy. The author of four books, co-author of five. Published more than 200 articles. Visiting professor at J. Palacki University, Olomouc; M. Bela University, Banská Bystrica; P. J. Safarik University, Koszyce. Research cooperation, among others, with „Die Wolfsburg” Katholische Akademie des Bistums Essen; „Renovabis” Solidaritätsaktion der Diözese München/Freising, Europäische Akademie für Lebensforschung, Integration und Zivilgesellschaft, Wien.

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