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Canonical approach to the year of faith

Annus fidei which is to begin on 11 October 2012 and end on 24 November 2013 is, according to the Pope Benedict XVI, a great opportunity for illustrating for all the faithful the power and beauty of the faith in all dimensions of church life (PF¹ 4).

Inspired by this, the article offers a presentation of the correlation between faith and law in the catholic perspective. Of course, as it is written in by John Paul II in Apostolic Constitution *Sacrae disciplinae leges*, it appears sufficiently clear that law is in no way intended as a substitute for faith in the life of the Church and of the faithful.² The thesis of the article is that faith is of essence for law understood as a phenomenon present in the Church. Faith is also absolutely required for canonical regulations to play an active role in the life of community. The article gives some arguments for this opinion.

Law in the Church as a result of faith

The Church is a unique societal association that was established by Jesus Christ. The first thing that joined Jesus' disciples together was their faith in Him. Through faith they saw Christ as the Messiah and the only source of salvation (cf. Acts 4, 11–12). It can be said that the community of His followers was from the very beginning united by God in faith, creating thus an image of the unity of the Holy Trinity (Jn 17, 21–23; Jn 10, 30; 1 Jn 5, 7). The unity in faith was both the aim and the feature of the community of Christians.

All the participants of the Christian community had to follow a specific order. This order differed from the order of the world. Daily life inside the community

¹ Benedictus PP. XVI, Litterae Apostolicae Motu Proprio Datae *Porta fidei* quibus Annus Fidei incohatur motu (hereinafter: PF), 11 X 2011, "Acta Apostolicae Sedis" (hereinafter: AAS) 103 : 2011, p. 723–734.

² Joannes Paulus PP. II, Constitutio Apostolica *Sacrae disciplinae leges* Codex Iuris Canonici promulgatur, 25 I 1983, AAS 75 : 1983, pars II, p. XI.

of disciples required from its members obeying the rules of faith (cf. PF 13). The development and elaboration of the practice of faith turned into the rules of law (cf. Acts 15, 28). As a result, the Church up to the present day defines dogmas and truths of faith, protects and promotes faith, teaches in what to believe and how to live also by creating its laws.³

The whole activity of the Church is inspired by faith. There is no act of the Church that would not come from faith. Both law as a phenomenon and as written acts of law are the products of faith of the Church. So, the very origin of canon law, in the form we know it today, was connected with an effort of leading a life according to the faith. There was and, of course, there is a mutual connection between faith and rules of Christian life, which is, in fact, church law.⁴

The statement that canon law is the law of the Church is meaningful and brings many methodological consequences.⁵ One of them is that St. Thomas Aquinas' definition of law as *ordinatio rationis*⁶ seems to be not enough to define the phenomenon of law in the Church. It must be completed by a definition of law as *ordinatio fidei*.⁷ In accordance with this view, canon law must be defined in this way because it is not produced by any human legislator but by the Church itself, and the Church's decisive epistemological criterion is faith.⁸ Canon law is produced by the Church and participates in the nature of the Church. It follows that faith and its rules play a central role.

The fact presented above is manifested in the way of speaking about the rules of faith. They are called *disciplina*. Although the word was taken into the Church from Roman law where it had been used in many contexts and had many meanings,⁹ in the Church milieu the word *disciplina* meant loyalty or obedience to the law of God, and a conduct in accordance with it.¹⁰

³ Cf. R. Sobański, *Ustawa Kościelna – "ordinatio rationis" czy "ordinatio fidei"?*, „Collectanea Theologica” 48 : 1978, fascicle I, p. 34.

⁴ Peter Archbishop of Orthodox Diocese of New York and Jersey, *Making of Written Law in the Church*, „Studia Canonica” 31 : 1997, p. 117.

⁵ About the ecclesiology of the canon law see, e.g., R. Sobański, *Podstawy prawa Kościelnego*, „Prawo Kanoniczne” 34 : 1991, no. 1–2, p. 13–24; R. Sobański, *Prawo w prawie kościelnym*, „Prawo Kanoniczne” 36 : 1993, no. 1–2, p. 7–17.

⁶ *Summa Theologiae*, I–II, q. 90, a. 4 co: “Et sic ex quatuor praedictis potest colligi definitio legis, quae nihil est aliud quam quaedam rationis ordinatio ad bonum commune, ab eo qui curam communitatis habet, promulgata.”

⁷ E. Corecco, *Ordinatio rationis o ordinatio fidei? Appunti sulla definizione della legge canonica*, „Communio” 36 : 1977, p. 48–69.

⁸ Idem, *The Theology of Canon Law: a Methodological Question*, transl. F. Turvasi, Pittsburg 1992, p. 147.

⁹ Entry: *Disciplina*, [in:] A. Berger, *Encyclopedic Dictionary of Roman Law*, Philadelphia 1953, p. 438.

¹⁰ Entry: *Disciplina*, [in:] A. Souter, *A Glossary of Later Latin to 600 A. D.*, Oxford 1957, col. 106b.

Another specific way of expressing rules important for faith is exemplified by a distinction between *leges* and *canones*. *Leges* were used to name rules given by Caesar or generally speaking any civil authority. So the term was designated exclusively for civil law.¹¹ *Canones* were rules of Christian life given by the Church, especially by church synod or council.¹² Gratian wrote about the word in question:

Porro canonum alii sunt decreta Pontificum, alii statuta conciliorum. Conciliorum vero alia sunt universalialia, alia provincialialia. Provincialium alia celebrantur auctoritate Romani Pontificis, presente videlicet legato sanctae Romanae ecclesiae; alia vero auctoritate patriarcharum, vel primatum, vel metropolitanorum eiusdem provinciae. Hec quidem de generalibus regulis intelligenda sunt.¹³

It must be underlined that the difference in names shows the difference in attitude. *Lex* was more like a one-directional norm that one must obey. The will of the rulers was *lex*. As it was formulated in Roman law: “Quod principi placuit legis habet vigorem.”¹⁴ *Canon* was something good, right, and accurate¹⁵ and *canon* was hardly ever translated into Latin by *lex*, but rather the word *regula* was used instead.¹⁶ *Canon* was a rule to which one should cling by will and heart, not only by external actions. The source of canons was not the will of a head of community but the requirements of faith. Everything written by the competent ecclesiastical authorities, even when the subject of norm was an earthly one, for instance, a material issue, was required by faith. The authorities ordered it being aware of their responsibilities to lead people to salvation and not simply because they only wanted to organize the life of the faithful. The source of *canon* goes far deeper than *lex*. It shows pattern of righteous living (*norma recte vivendi*).¹⁷

The fact that faith demands social responsibility effects the form of law in the Church (cf. PF 10). In other words, law in the Church is a result of faith. The Church “clare demonstrat hanc publicam dimensionem credendi et sine timore propriam fidem unicuique personae nuntiandi” (PF 10).

Faith as needed in making law

The rules binding in the Church come from divine law, whether natural or positive (cf. can. 199 no. 1), and from human positive law. The capacity of making rules for the Church is a divine gift granted to the Church by the Holy Spirit. Those who

¹¹ Entry: *Leges*, [in:] J. Sondel, *Słownik łacińsko-polski dla prawników i historyków*, Kraków 1997, p. 570–572.

¹² Entry: *Canon*, [in:] A. Souter, *A Glossary of...*, col. 37b.

¹³ *Decretum magistri Gratiani*, III, c. 2.

¹⁴ *Iustiniani digesta*, 1, 4, 1.

¹⁵ The word *canon* originally comes from Greek: κανόν (*kanon*), Hebrew: קנה (*kaneh*). The words means: rule, standard, measure, or practical direction. Cf. *Decretum magistri Gratiani*, III, c. 1.

¹⁶ *Decretum magistri Gratiani*, III, c. 1: “Canon grece, regula latine noncupatur.”

¹⁷ J. H. Burns, *The Cambridge History of Medieval Political Thought c. 350 – c. 1450*, Cambridge 1995, p. 266.

are in a specific position in the community usually exercise the legislative activity. They are also in a specific way responsible for the community. God gave them the position and the responsibility and they are seen as chosen by Jesus, the first legislator in the Church,¹⁸ as the Shepherds to lead the Flock and to govern it also by making law. Apart from the Pope, who is the supreme legislator, the common legislators in the Church are, for instance, Bishops and other inferior legislators. They are empowered to govern their own territory or their subjects. It is obvious that both the genesis of their special place in the community and the significance of their will expressed in form of rules of law, have, apart from personal qualities of a specific person, their source in the order of faith of the addressees of the law.

Trying to better present the church legislator and his position in the community, it is expedient to present a paradox of the legislator. Naturally, this paradox must be understood in the optic of faith.

The paradox consists in the fact that the legislator in the Church is a head of the people over whom he exercises his power and according to whose rule they must live, and yet, at the same time, he is a servant of the people for whom he makes law simply because any authority in the community of believers must be always understood as an exercise of service, never as absolute dominance. "You know that those who are recognized as rulers over the Gentiles lord it over them, and their great ones make their authority over them felt. But it shall not be so among you. Rather, whoever wishes to be great among you will be your servant; whoever wishes to be first among you will be the slave of all. For the Son of Man did not come to be served but to serve and to give his life as a ransom for many" (Mk 10, 42–45; cf. Lk 22, 26–27; Mt 20, 25–28; Jn 13, 3–16). Those who hold office of legislator in the Church must act according to these words. They must be at the same time a head and a servant of the community just as Jesus Christ was. By acting as a Head and as a Servant, the legislator makes visible an integrating action of Christ.¹⁹ Undoubtedly, to see oneself in this position requires an attitude of faith. As a result, the motivation for taking legislative action, that is, for instance, for making law is supernatural. All his efforts and activities must have their origin in faith in order for him to be a good shepherd to those entrusted to him. All solutions and orders in law are to be established due to faith. It is ultimately faith, which decides what is good and valuable, and what must be present in law. Faith plays a crucial role in the legislator's activity. One can say, paraphrasing a well-known sentence, that faith urges the legislator (cf. 2 Cor 5, 14).

Legislative activity in the Church aims to regulate reality of the Church, which is a community united by the Holy Spirit in faith. The Church's legislator as the

¹⁸ Concilium Oecumenicum Tridentinum, Sessio VI, 13 I 1547, *Decretum de iustificatione*, can. 21 (DS 1571): „Si quis dixerit, Christum Iesum a Deo hominibus datum fuisse ut redemptorem, cui fidant, non etiam ut legislatorem, cui obediant: anathema sit.”

¹⁹ R. Sobański, *Kościół jako podmiot prawa. Elementy eklezjologii prawnej*, Warszawa 1983, p. 165.

one who writes laws must be interested in reality of life of the faithful but also, what is especially important, in the faith, that is, in its dogmas and truths contained in the teaching of the Magisterium. The legislator must be aware of the limits of his competency not only on practical level, that is, his legislative competency, but also on the level of the general usefulness of law: he must abstain from the temptation to regulate what must not be regulated by canon law. The system of canonical law must be complete but only in the realm of faith. Any extra norm, that is, not in any way demanded to regulate practice of faith is harmful. These limits are set by faith but they are also conditioned by historical circumstances.²⁰

Since the law in the Church has its deep source in faith, the regulations should be always connected with faith. The connection would be of different intensity. Sometimes it would be a very close relation, as in the canons about sacraments, sometimes the connection would be weak, e.g., in procedural law. But the limit is always dictated by faith, not only in the sense that nothing in norms can be against the faith, but also in the sense that norms without any connection with faith are unjustified in the Church. They are simply unwanted and unneeded. If the norms are in no relation to faith they are unnecessary for the community of faith, that is, the Church. This limit is historically conditioned, that is, law is given to the community as a help to practice faith in certain historical circumstances. A change of the circumstances changes the needs for the law.

Based on everything presented above, a postulate can be formulated for the church legislator: the legislator in the Church must have faith.²¹ For the legislator, faith is useful in determining the subject of law made by him. Faith can give the legislator incentive to work for the community, its moral and spiritual growth. Personal faith is also an important factor of his authority. People more eagerly listen to somebody, who acts as he teaches. Faith modifies the general perception of the reality of life. It points to the main goal, that is, salvation of souls. Also, preferences are created by values important for faith. The subject regulated by canon law is being so strongly modified by faith that the outcome of a work of a lawgiver can be completely different depending on whether he operates with or without faith.²²

It must be mentioned that there is an opinion that personal faith is not needed for the legislator. It is enough that he will take into consideration the reality of faith and that he will put himself as if in the situation of faith. If he were to do it, the law he makes would be in some kind of relation to the reality of faith. The faith in that situation would be a canonical tool.²³

But this standpoint is rather problematic. Faith, in general, is not only a knowledge of the collection of divine truths. If it were so, making law would be limited

²⁰ Cf. R. Sobański, *Kościół – prawo – zbawienie*, Katowice 1979, p. 279–281.

²¹ Cf. idem, *Szkoły kanonistyczne*, Warszawa 2009, p. 102, ft. 68.

²² Cf. B. Lonergan, *Method in Theology*, Toronto 1999, p. 82.

²³ R. Sobański, *Kościół jako podmiot prawa...*, p. 357–359.

to making provisions of law coherent with doctrinal statements. It is a basic step but not sufficient for a duly carried out legislative activity in the Church. Faith is an intellectual but also moral and emotional stance involving all of human existence. Only when lived authentically will it truly enlighten the mind protecting it from dangerous urges and impulses, opening it to the inspiration of the Holy Spirit, enabling it to reach beyond mere formal congruence of doctrinal statements and into the true wisdom about God and man which they contain. Faith is a personal relation to God, and due to this, putting oneself as if in the situation of faith is impossible.

In summation it can be said that the legislator must be a man of faith and the process of making church law is strictly connected with faith. It can be called not only a participation in the great love of God that creates the Christian community,²⁴ but also a participation in the faith of the Church.

Faith as needed in interpreting law

No legal text is enacted and thus as it were visible in the life of the members of a community, unless it becomes interpreted; otherwise it can be justly called "a dead letter." The question of interpretation constitutes a rather vast and complex subject and the very term "interpretation of law" has a lot of meanings worked out by the theory of law.²⁵ One thing can be said for sure: it is a necessary intellectual work that must be done with regard to any law. Law to be seen in action needs to be interpreted, that is, the sentences that build an act of law must be transformed into clear cut norms which tell what is to be done by addressees of law and what sanction is to be applied if the disposition of the norm is not carried out.

The right interpretation of law is quite similar to the right interpretation of the faith in the sense that they are both done in the matrix of the Church.²⁶ Considering canon law's grounds, its foundation, and its very meaning for the faith, it is clear that the process of interpretation cannot be reduced to a mere semantic assonance. The *lex agendi* cannot but mirror the *lex credendi*.²⁷ The hermeneutics of canonical laws is most closely tied to the very understanding of the law of the Church: the beginning and development of law as a phenomenon in the community connected by faith and as a system of law as it is known today.

The Pope Benedict XVI noticed that in realistic perspective, the interpretative undertaking, at times arduous, takes on meaning and purpose.

²⁴ L. Örsy, *The Creative Role of Constitutional Law in the Church*, „*Studia Canonica*” 1 : 1968, p. 324.

²⁵ For the examples of the definitions of the term in question, see, e.g., P. Kroczek, *Zasada „clara non sunt interpretanda” w prawie kanonicznym*, Kraków 2005, p. 134.

²⁶ Address of His Holiness Benedict XVI for the Inauguration of the judicial year of the Tribunal of the Roman Rota, 21 I 2012, www.vatican.va/holy_father/benedict_xvi/speeches/2012/january/documents/hf_ben-xvi_spe_20120121_rota-romana_en.html (23.03.2012), (hereinafter: Address to the Roman Rota, 2012).

²⁷ Address to the Roman Rota, 2012.

The use of the interpretive means foreseen by the Code of Canon Law in can. 17, beginning with “the proper meaning of the words considered in their text and context,” is no longer a mere logical exercise. It has to do with an assignment that is vivified by an authentic contact with the comprehensive reality of the Church, which allows one to penetrate the true meaning of the letter of the law. [...] It follows that the interpretation of canonical law must take place within the Church. This is not a matter of mere external circumstance, subject to the environs: it is a calling to the same *humus* of Canon Law and the reality regulated by it. *Sentire cum Ecclesia* takes on meaning also within the discipline, by reason of the doctrinal foundations that are always present and operative within the legal norms of the Church.²⁸

In practice it means that the interpreter must take into consideration not only the rules of interpretation given by the supreme legislation (see: can. 16–19, and can. 27), but also the vital relationship of every law with the communion and the mission of the Church. The work of the interpreter becomes deprived of vital contact with ecclesial reality if he is not a man of faith.

On the other hand, he must well know that norms interpreted by him are to be given to the people of faith. They cannot be seen as a result of a laboratory clean intellectual work done in a computer-like manner. Outcome of the interpretation must always be in favor of the faith of the users understood here as individuals and as a community.

Faith as needed in implementing law

Clear norms as an outcome of interpretation are simple sentences to be implemented in life of the Church. Implementation of law is done in two ways. The first way is by obeying norms by users of law, and second way is by applying norms in judicial or administrative decisions.²⁹ For a fruitful implementation of canonical norms faith is also an important factor. All in all, users of law and executioners of law, just like already mentioned legislator and interpreter, are in the same community joined by faith.

First of all, faith is needed for the users of law to see themselves in the specific relation to God and His Church. It is because being a member of the Church is not the same as being a member of the state or any other humanly based association. As a result, law that binds the members of the community binds them on a different ground than other laws created by man. It means that following legal rules should be preceded by obligation created by faith in the conscience. A user of canon law is not to be seen only as a human being who must respect the law and obey the rule under the threat of penalty. His position in the community is based on the fact that he is freed by Christ, gifted by the Holy Spirit and called to sanctity. He has intelligence,

²⁸ Ibidem.

²⁹ Cf. M. Wijlens, “*Salus animarum suprema lex*”: *Mercy as a Legal Principle in the Application of Canon Law?*, „Jurist” 54 : 1994, p. 560, ft. 3.

conscience and is able to make free choices. The dignity of the user of law is underlined by the main purpose of the law in the Church, which is salvation of souls.

Of course, not to every norm the response of the faithful must be *oboedientia fidei*.³⁰ It means that canon law refers to the earthly system of norms that the Church creates on its pilgrim way. Relating it all to the legislator one can say that although the legislator is inspired by faith, he has to turn to human beings and their way of thinking. It means taking into consideration the earthly circumstances.

It must be recalled that canonical norms established especially by the universal church legislator bind in *forum internum* that is under sin (*ad culpam*). There are no norms of this kind without a recall to conscience. A classical canon law science is of the position that “Certum est omnem legem ecclesiasticam qua talem proxime et essentialiter inducere, praeter obligationem juridicam coram auctoritate sociali ecclesiastica, aliquam obligationem moralem seu vinculum quo subditorum voluntas in conscientia et coram Deo constringitur, ita ut legis transgressor peccet et a Deo punitionem mereatur.”³¹ It means that whoever fails to observe canon law commits a sin.

Of course, breaking the rules in question can cause possibility of punishment on *forum externum*. Act of law can bind under the penalty (*ad poenam*). But there are no purely punitive norms (*leges mere poenalis*) in universal canon law, that is, laws which bind only under the threat of penalty – “omnes leges poenales in «Codice Juris Canonici» contentae indubitanter dicendae sunt simul morales ut supra exposuimus.” It is not so sure in case of “leges juris particularis, de quibus a legislatore explicite declaratur eas «non obligare ad culpam, sed tantum ad poenam.»”³²

Recognizing oneself as a member of community of believers and respecting rules under the threat of sin leads to the full reception of law. Reception in this context means that norms of law are seen in free and willingly done action of the users of law.³³ It is fully justified to say that the foundation of the reception of law by the whole personal identity of a member of the Church is his personal faith.

It is possible that obedience to canon law would come about only externally.³⁴ In such a case, not faith but rather other reasons, like functionality of law, are driving the user of law to observance. For instance, a conformist attitude takes place when a user of law obeys norm due to its practicability and effectiveness in achieving aims

³⁰ Cf. L. Örsy, *Theology and Canon law: an Inquiry into Their Relationship*, [in:] *Theology and Canon Law: New Horizons for Legislation and Interpretation*, Collegeville 1992, p. 177.

³¹ G. Michiels, *Normae generales iuris canonici*, vol. 1, Parisiis–Tornaci–Romae 1949, p. 290.

³² Idem, vol. 1, p. 314–315.

³³ Cf. idem, *Recepcja normy kanonicznej*, „Śląskie Studia Historyczno-Teologiczne” 23–24 : 1990–91, p. 77–85. Explanations of the different meanings of the term “reception of law” can be found in: P. Kroczek, *The Theological Foundations of the Reception of Canon Law*, „Annales Canonici” 5 : 2009, p. 161–177.

³⁴ See more about models of an attitude of the users of law to law, e.g., A. Pieniążek, M. Stefaniuk, *Socjologia prawa. Zarys wykładu*, Kraków 2003, p. 202–212; P. Sztompka, *Socjologia*, Kraków 2002, p. 277–278.

significant for a user or for a community. There is a limited trust in law, although faith is fully accepted. Another approach worth mentioning is an opportunistic one. It happens when a user of law acts according to a norm to achieve his own aim, but the same user of law can disrespect law, when its norms are not in accord with his goals. Someone goes along with law only because law can be of help to him. Law is seen only as a practical tool, for instance, during election or juridical proceedings.³⁵

It can be said that only when faith is fully accepted and permeates life as a main factor in making decisions, life is lived according to canonical rules as received in whole and to the end. In this situation one can say that faith is a factor conditioning the proper obeying of law.

Application of law means making usage of norms of law.³⁶ It is the moment when legal norm and life meet together in a judicial or administrative decision. Law is applied to the facts.³⁷ Also at this stage faith plays an important role.

Applying norms can be done both: obligatorily and willingly. Obligatory appliance of law concerns the bodies with authority and administrative and judicial power.³⁸ Usually they are obeying norm that orders to apply other norm, but it could also be that norm gives right but does not order to use it (e.g., can. 125 § 2). Those who voluntarily apply law are mainly members of the community and all who are entitled to use law in their interest. The action they take is foreseen but not ordered as obligatory.³⁹

Applying law is always a conscious and intentional behavior. It is planned. Its aim is not applying that which is ordered and can be applied, but rather its ultimate aim is exactly the same as the aim of canon law – salvation of souls. Applying law is a realization in concrete situation of general and abstract norm interpreted from act of law. Those who are the bearers of administrative or judicial power must see both the community and the individuals in terms of faith. All these cannot be done fruitfully without a personal faith.

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As it has been demonstrated, faith is important for legal dimension of life of the Church. At every single step, from the situation of right and duty in the community of the faithful through making law to interpreting law and implementing law, faith is of essence.

Unfortunately it often happens that this point is neglected. Catholics, especially among them canon lawyers and those interested in canon law, seem to be more concerned with the jurisprudential, social, philosophical, cultural or political

³⁵ Cf. R. Sobański, *Kościół – prawo...*, p. 218–220.

³⁶ Idem, *Teoria prawa kościelnego*, Warszawa 1992, p. 242.

³⁷ Entry: *Apply*, [in:] *Black's Law Dictionary*, ed. B. A. Garner, St. Paul 2004, p. 116.

³⁸ More about application of law by organ of power in the Church, see: R. Sobański, *Teoria prawa...*, p. 244–250.

³⁹ More about application of law by the faithful, see: R. Sobański, *Teoria prawa...*, p. 242–244.

connections of canon law. These connections, of course, are important because canon law is an interdisciplinary Church discipline, but they cannot substitute for the connection between faith and law.

It can be said, that without faith canon law would not be a church law. And it also can be said that the stronger the faith among members of the Church the more important role the law would play as the Church's tool to lead people to salvation. Solid connection between law and faith is an essential condition for a proper operation of law for *salus animarum*.

Summary

Canonical approach to the year of faith

The article offers a demonstration of the correlation between faith and church law in the catholic perspective. The author stands on the position that faith is of essence for law understood as a phenomenon and as regulations that play an active role in the life of community of believers. It is because faith is a factor in the processes of drafting law, interpreting law, and implementing law. The conclusion is that in the study of church law more attention should be paid to faith especially during the Year of faith.

Keywords

Annus fidei, Canon law, Church, faith, *Porta fidei*