

**220** *Nemini licet bonam famam, qua quis gaudet, illegitime laedere, nec ius cuiusque personae ad propriam intimitatem tuendam violare.*

No one may unlawfully harm the good reputation which a person enjoys, or violate the right of every person to protect his or her privacy.

SOURCES: c. 2355; GS 26, 27; IOANNES PP. XXIII, Enc. *Pacem in terris*, 11 apr. 1963 (AAS 55 [1963] 260)

CROSS REFERENCES: cc. 96, 98, 128, 199, 1° et 3°, 204 § 1, 208–210, 212 § 3, 214, 218, 221, 223–224, 240, 483 § 2, 630 §§ 4–5, 642, 719 §§ 3–4, 976, 979, 982–985, 991, 1048, 1080, 1082, 1130–1133, 1341–1342, 1352 § 2, 1361 § 3, 1388, 1390, 1455, 1457, 1546 § 1, 1548 § 2, 1550 § 2, 2°, 1564, 1598 § 1, 1703 § 1, 1717, 1719

# COMMENTARY

Daniel Cenalmor

The duty to respect a good reputation and the duty to respect the right of each person to protect his/her own privacy—just as their correlative rights—certainly concern all human beings, since they do not originate in baptism, but rather in natural law.<sup>1</sup> In fact, as the pontifical Magisterium teaches, natural law requires “that due honor be given to all people and that their good name be respected.”<sup>2</sup> Vatican Council II, when it pointed out that awareness of the fundamental dignity belonging to human beings is increasing during the present time, has invoked, in turn, the right “to a good reputation, to respect” and “to the protection of private life,” among the universal and inviolable duties and rights needed to lead a truly human life (GS 26 b).

1. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia. Bases de sus respectivos estatutos jurídicos* (Pamplona 1987), pp. 152–158; P.-J. VILADRICH, “La declaración de derechos y deberes de los fieles,” in REDACCIÓN IUS CANONICUM, *El proyecto de la Ley Fundamental de la Iglesia* (Pamplona 1971), p. 152; J.H. PROVOST, commentary on c. 220, in *The Code of Canon Law. A text and commentary* (New York 1985), p. 153; J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987), p. 148; idem, commentary on c. 220, in *Pamplona Com*; G. FELICIANI, *Il popolo di Dio* (Bologna 1991), pp. 45–46.

2. JOHN XXIII, Enc. *Pacem in terris*, April 11, 1963, in AAS 55 (1963), p. 260; Cf. PIUS XII, *Allocution*, June 2, 1940, in AAS 32 (1940), pp. 273ff; idem, *Allocution*, December 6, 1953, in AAS 45 (1953), p. 975.

It might seem strange, therefore, to include the present norm, originally of a natural order, among the provisions pertaining to the obligations and rights of the faithful. However, there are various reasons justifying this decision of the legislator.

In the first place, it should be borne in mind that human rights and duties and the rights and duties of the faithful, while they reflect two different levels of concern, are not in opposition to each other, but are complementary. “Human rights are born from the nature of the human being, while the fundamental rights of the faithful trace their origin to conformation in Christ through baptism (of a supernatural order), though in some cases, they find support in a fact of nature, such as happens with the right of association.”<sup>3</sup> The former refers primarily to the condition of all human beings within civil society, while the latter refers to the position of the faithful within the Church.<sup>4</sup> But, just as grace does not exist in opposition to nature, but rather perfects and elevates it, the incorporation of a person into the people of God through baptism, without adversely affecting one's patrimony of human rights and duties, lifts one up and guides one towards a supernatural end.

What we have just indicated does not imply that the Church should explicitly adopt natural rights and duties in its code of laws, since this instead falls under the purview of civil laws. However, due to the relevance of some of these rights and duties in regard to the life of the people of God, either in general or under specific historical circumstances, it is for canon law to also remember them at times, as one more means to achieve the proper exercise and effective protection of such rights within the midst of the ecclesial community.<sup>5</sup> This is the case of the duties contained in the present prescription.

## 1. Respect for good reputation

a) A reputation or the public opinion that is held of someone is, according to St. Thomas, the most precious temporal asset that a person possesses, the unlawful injury of which can be considered more serious than theft itself, since it is greater than material wealth, being closer to spiritual riches.<sup>6</sup> This alone would be enough to explain the particular interest of the Church in defending the natural law reflected in it. But this interest is even more understandable if we keep in mind that there also exists a good ecclesial reputation of the baptized, which refers to their

3. J. HERVADA, *Elementos de...*, cit., p. 147.

4. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 158.

5. Cf. *ibid.*, pp. 153–158; P.-J. VILADRICH, “La declaración de derechos y deberes...” cit., p. 152; G. FELICIANI, *Il popolo...*, cit., pp. 45–46.

6. Cf. S. Th., II-II, q. 73, a. 2 c and a. 3 c.



human qualities and, above all, to their Christian virtues, to their integrity of faith and to their permanence in communion; and that this good reputation can be unjustly and gravely injured as a result of the spread of unfounded accusations pertaining to behaviors assumed to be contrary to doctrine and to morals, as history clearly shows us. Insofar as the respect of one's good reputation is concerned, even though it is protected for all people by natural law, it assumes specific reflections and connotations within the ecclesiastical community, which the Code of canon law should also protect.<sup>7</sup>

b) The duty of the faithful to respect the good reputation of others has been formalized, according to the general practice adopted throughout this entire chapter, based on the *LEF* draft, which in turn was inspired in the Encyclical *Pacem in terris*,<sup>8</sup> in *Gaudium et spes* 26 and in *Unitatis redintegratio* 12.<sup>9</sup>

The first *schemata* of the canon directly adopted the right to a good reputation.<sup>10</sup> But, as of the 1976 text of the *LEF*, it was decided, instead, to formalize the corresponding duty,<sup>11</sup> perhaps because of the advantages that this entailed: on one hand, to render unnecessary the problem of citing only the baptized as the subject of that right, when it belongs, in reality, to any person; to urge the faithful—whom the canon addresses—to fulfill their natural duty to respect the good reputation of others, while in passing, to implicitly exhort them to attain the mutual esteem which is to shine among Christians (*UR* 12 a); and, finally, to observe in this way the traditional ecclesial practice of insisting more on the performance of duties towards others than on the respect given to one's own rights (see commentary on c. 209 § 2).

c) When pointing out that "it is not lawful for anyone to illegitimately harm the good name which someone else enjoys," this provision indicated two things: that everyone—the Hierarchy, the other members of the faithful, and, in the last analysis, any human being—should respect the good reputation of all in general, and that harm can be done to this good only when there may be *legitimate* reasons for doing so.<sup>12</sup>

In fact, except the case of the sacramental seal—which "is sacred and cannot be violated under any pretext" (CCC, 2490; c. 983 § 1)—divine law at times gives authorization to uncover defects, sins or crimes whenever a higher good belonging to all people, to civil society or to the Church

7. Cf. G. FELICIANI, *Il popolo...*, cit., pp. 45–46.

8. See note 2.

9. Cf. CodCom, "Textus prior LEF, c. 22" and "Textus emendatus LEF, c. 22," in *Legge e Vangelo. Discussione su una legge fondamentale per la Chiesa* (Brescia 1972), pp. 506–507.

10. Cf. *ibid.*

11. Cf. *Comm* 12 (1980), p. 41.

12. Cf. H.J.F. REINHARDT, commentary on cc. 209–223, in *Münsterischer Kommentar zum Codex Iuris Canonici*, (Essen 1987), p. 220/1.

is involved. Ecclesiastical law similarly contemplates concrete situations, such as those which institute a procedural action—if such a right exists in the case in question—the publicizing of which might perhaps diminish the good reputation of the defendant.<sup>13</sup> But, on all other occasions, in which neither ecclesiastical law nor divine law can serve to legitimate it, it is unlawful to act to the detriment of the good reputation of someone.

d) Stating this duty, however, would be of little use if suitable means of guaranteeing its effective enforcement, and thereby protecting the correlative rights of others to a good reputation, were not also offered. This right implies, among other things: the possibility of having recourse to the ecclesiastical authority whenever a good reputation is considered to be injured through calumny, slander, insults, the spreading of rumors, etc.; the prohibition against accepting anonymous accusations; and the right of the accused to learn the name of the accuser and the subject of the accusation, etc.<sup>14</sup>

In this sense, it is fairly instructive that prior legislation, despite having already anticipated, in part, a system of actions directed at achieving protection of the right to a good reputation, not infrequently has proved itself, as a result of the lacunae from which it suffered, to be only slightly effective at ensuring the good reputation of people and even of entire institutions in the Church, which has seen this fundamental right violated without the possibility of an appropriate defense.<sup>15</sup> Thus, we can infer from this the importance of various norms contained in the *CIC* seeking to better safeguard this right in the Church.

e) Whoever brings a calumnious denunciation of some delict to the attention of an ecclesiastical Superior, or in any other way damages the good reputation of someone else—apart from the case of false denunciation of solicitation in confession, which is punished as an offense from time immemorial (c. 1390 § 1)—can be punished with a just penalty, not excluding a censure (390 § 2), and can be compelled, in addition, to make amends for the harm caused (cc. 1390 § 3 and 128). This action does not require a prior denunciation or complaint from the injured party before implementing the applicable procedural action, as was required in the *CIC/1917* (cc. 1938 and 2355), even though the judge can only proceed at the request of one of the parties (cc. 1452 § 1), while in a case involving the promoter of justice, upon a prior decision of the Ordinary, as with any canonical penal action (cc. 1721). The Ordinary, before following this procedure, or by the administrative procedure—if there were just causes and the imposition of a censure were not discussed (c. 1342)—would first seek to exhaust all other pastoral remedies which are at his disposal, in

13. Cf. J. HERVADA, *Elementos de...*, cit., p. 148.

14. Cf. *ibid.*; J. HERVADA, commentary on c. 220, in *Pamplona Com.*

15. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 153–155.



order to restore justice and to bring about reformation of the slanderer (c. 1341).

One of the innovations in the *CIC*, which is noteworthy in regard to the most effective protection of the right to a good reputation, is the disappearance of the *ex informata conscientia* suspension—foreseen in cc. 2186–2194 in the *CIC/1917*—and of all other special procedures in which the right of defense was not sufficiently safeguarded. This right now remains guaranteed in all judicial proceedings (c. 1598 § 1), even during administrative proceedings (c. 1342 § 3), despite the fact that the *CIC* does not expressly indicate, for example, the right of the accused party to learn the name of his accuser, or the right to always know the motivation underlying the acts of the ecclesiastical authority who intends to impose sanctions.<sup>16</sup>

In all other respects, there are numerous prescriptions in the canons adopted throughout the *CIC*—the majority of which also appear in the *CIC/1917*—which are intended to protect the good name of the faithful in other ways and which reflect a concrete manifestation of the right to it and of its correlative duty (for example, cc. 1048, 1361 § 3, 1455, 1548 § 2, 2° and 1717).<sup>17</sup> Even the duty to respect the right of each person to protect his own privacy, which appears in this same norm, could be considered one more way of defending one's good reputation in the Church.

## 2. Respect for privacy

a) As we indicated at the beginning of this commentary, protection of one's own privacy is also a natural right of human beings that all people should respect. The relationship existing in practice between people's privacy and their reputation, and the originally natural character of the right to both, might perhaps be the cause for the shared treatment they receive in this canon.

The duty to respect the right of each person to protect his or her own privacy was introduced at a later stage in c. 220, since none of the *schemata* of the *LEF* considered it, nor did it even appear in the 1982 *schema* of the *CIC*. It would seem that the origin of this prescription is in c. 33 of the *schema* "De Populo Dei" of the year 1977, which pointed out "Christifideles officium et ius habent servandi secretum commercii epistolae aliusve personalis indolis." This canon, despite having been rejected by

16. Cf. *ibid.*, p. 156.

17. Cf. H.J.F. REINHARDT, commentary on cc. 209–223..., cit., pp. 220/1–220/2.

the Code Commission in 1979, would wind up later expressing itself in this norm in a more general way.<sup>18</sup>

b) As a result of the discussion which preceded incorporation of this prescription in the *CIC*, *intimitas* in a strict sense is the psychological and moral privacy of individuals; it is that which belongs to the specifically personal sphere of the internal forum or conscience.<sup>19</sup> But the right to one's own privacy also extends, within the Church, to everything that does not fall under the scope of the public nor commonly known, that is, to all that pertains to the purely private sphere of persons and institutions.<sup>20</sup>

This right, insofar as it includes in its object not only the private sphere which is at the disposal of all people, but also the specific right of the faithful to live their relationship with Christ without enduring abusive hindrance on the part of other members of the baptized and even from the same ecclesiastical authority, assumes within the Christian community—such as the right to a good reputation—inherent reflections and connotations which should also find adequate protection.<sup>21</sup>

c) As with the right to a good reputation (see above 1, c), the same thing can be said about the limits of respect for privacy: only when there are *legitimate* reasons, accepted by divine law or by ecclesiastical law, can inquiries be made into the standard of the private life of others. But it should not be forgotten that the right to defend the forum of one's conscience is absolutely inviolable: no one can force another to let one's personal privacy be analyzed; one must first have explicit, informed and absolutely free permission.<sup>22</sup>

d) Due to the right to privacy, there is no obligation to provide information to which the recipient does not have a strict right.<sup>23</sup> This right likewise protects the secrecy of personal correspondence.

The primary field of application in the Church of the duty to respect the privacy of people is that which refers to the sphere of conscience: the obligations of the confessor and of the other members of the faithful related to the sacrament of penitence (cc. 970, 983–984, 1388 and 1550 § 2, 2°), freedom of the other faithful to seek out the confessor of their choice (cc. 240 § 1, 976 and 991), and other provisions in regard to

18. Cf. E. CORECCO, "Il catalogo dei doveri—diritti del fedele nel *CIC*," in *I diritti fondamentali della persona umana e la libertà religiosa. Atti del V Colloquio Giuridico (8–March 10, 1984)* (Rome 1985), p. 107; J.H. PROVOST, commentary on c. 220, in *The Code of Canon Law. A text and commentary* (New York 1985), p. 153.

19. Cf. V. MARCOZZI, "Il diritto alla propria intimità nel nuovo Codice," in *La Civiltà Cattolica* 134 (1983), IV, p. 574.

20. Cf. J. HERVADA, *Elementos de...*, cit., p. 148.

21. Cf. G. FELICIANI, *Il popolo...*, cit., p. 46.

22. Cf. V. MARCOZZI, "Il diritto alla propria intimità...", cit., p. 579.

23. Cf. J. HERVADA, *Elementos de...*, cit., p. 148.



confession or spiritual guidance in general (for example, cc. 240 § 2 and 985).

But the right to privacy is also a source of inspiration for other prescriptions in the *CIC*, such as that of c. 1548 § 2 concerning witnesses, specifically releasing from the obligation to respond in judicial proceedings, (i) clerics with respect to matters which have been confided to them by reason of their sacred ministry, as well as other professionals who are bound to keep the secrecy of their office, and (ii) "those who fear that, as a result of giving testimony, a loss of reputation, dangerous harassment or some other grave evil will ensue for themselves, their spouses, or those related to them by consanguinity or affinity." (The relationship between the right to privacy and the right to a good reputation can also be seen here.) Another example is found in c. 642, which states that the employment by a religious superior of an expert, in order to establish the satisfactory health, character and maturity of a candidate for the novitiate, shall be subject to the provisions of c. 220.

Certain practices, for instance, involving "the review of life" or excesses which could be committed in the exercise of an indiscrete and poorly understood "spiritual guidance" would constitute a abuse of this right.<sup>24</sup>

24. Cf. G. FELICIANI, *Il popolo...* cit., p. 46.

- 221** § 1. **Christifidelibus competit ut iura, quibus in Ecclesia gaudent, legitime vindicent atque defendant in foro competenti ecclesiastico ad normam iuris.**
- § 2. **Christifidelibus ius quoque est ut, si ad iudicium ab auctoritate competenti vocentur, iudicentur servatis iuris praescriptis, cum aequitate applicandis.**
- § 3. **Christifidelibus ius est, ne poenis canonicis nisi ad normam legis plectantur.**

- § 1. Christ's faithful may lawfully vindicate and defend the rights they enjoy in the Church before the competent ecclesiastical forum in accordance with the law.
- § 2. If any members of Christ's faithful are summoned to trial by the competent authority, they have the right to be judged according to the provisions of law, to be applied with equity.
- § 3. Christ's faithful have the right that no canonical penalties be inflicted upon them except in accordance with the law.

SOURCES: § 1: c. 1646  
 § 2: c. 2214 § 2  
 § 3: cc. 2195, 2222

CROSS REFERENCES: cc. 18-19, 36 § 1, 50, 87, 96, 98, 135 § 3, 199, 1° et 3°, 204 § 1, 208-220, 223-224, 695, 696 § 1, 697-698, 699 § 1, 700, 702 § 2, 729, 1030, 1311, 1315-1318, 1321, 1341-1350, 1364-1402, 1417 § 1, 1445 § 3, 1°, 1446, 1452, 1457, 1461, 1476, 1478, 1481-1482, 1490-1493, 1494 § 1, 1504-1506, 1620, 7°, 1622, 2° et 6°, 1626 § 1, 1628, 1638, 1645, 1647 § 1, 1649 § 1, 3°, 1654 § 2, 1674, 1676, 1687 § 2, 1695, 1699 § 3, 1702, 1703 § 1, 1708, 1720, 1°, 1723, 1725, 1727 § 1, 1721, 1733, 1737 § 1, 1738

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The three paragraphs of this canon—the content of which are related to the sixth and seventh guiding principles used for revision of the *CIC*, as they pertain to the "safeguarding of people's rights" and to the "procedure for safeguarding subjective rights," respectively—fulfill a dou-



4. The right-duty to the apostolate, as with all the other duties and rights existing in the Church, should be always be fulfilled in communion with the Pastors and with the other faithful (see commentary on c. 209 § 1). "Nothing could be farther from the true apostolate than an anarchic act, distanced from ecclesiastical communion, from which the guarantee of effectiveness and rectitude is obtained. But it should be stressed at the same time that this requirement of unity in no way implies the need or appropriateness of channeling the apostolic action of each and every one of the faithful into *denominational* Catholic forms and structures; much less could it justify the attempt on the part of any person to claim for oneself the right of *monopoly* or of exclusive apostolic activity in apostolate fields that belong to the competence inherent to all the faithful."<sup>14</sup> The right of the Hierarchy to coordinate, to guide the totality of apostolic action towards the common good, should not mean a restriction on the legitimate and responsible spontaneity of the faithful. Instead, it should try to use the multiform apostolic possibilities that are found in the people of God to the best advantage possible.<sup>15</sup>

14. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 119.

15. Cf. *ibid.*

- 212 § 1. Quae sacri Pastores, utpote Christum repraesentantes, tamquam fidei magistri declarant aut tamquam Ecclesiae rectores statuunt, christifideles, propriae responsabilitatis conscii, christiana oboedientia prosequi tenentur.
- § 2. Christifidelibus integrum est, ut necessitates suas, praesertim spirituales, suae optata Ecclesiae Pastoribus patefaciant.
- § 3. Pro scientia, competentia et praestantia quibus polent, ipsis ius est, immo et aliquando officium, ut sententiam suam de hisquae ad bonum Ecclesiae pertinent sacris Pastoribus manifestent eamque, salva fidei morumque integritate ac reverentia erga Pastores, attentisque communi utilitate et personarum dignitate, ceteris christifidelibus notam faciant.

- § 1. Christ's faithful, conscious of their own responsibility, are bound to show Christian obedience to what the sacred Pastors, who represent Christ, declare as teachers of the faith and prescribe as rulers of the Church.
- § 2. Christ's faithful are at liberty to make known their needs, especially their spiritual needs, and their wishes to the Pastors of the Church.
- § 3. They have the right, indeed at times the duty, in keeping with their knowledge, competence and position, to manifest to the sacred Pastors their views on matters which concern the good of the Church. They have the right also to make their views known to others of Christ's faithful, but in doing so they must always respect the integrity of faith and morals, show due reverence to the Pastors and take into account both the common good and the dignity of individuals.

SOURCES: § 1: c. 1323; LG 25, 37; P0 9  
 § 2: c. 682; IM 8; LG 37; AA 6; P0 9; GS 92  
 § 3: IM 8; LG 37; AA 6; P0 9; GS 92

CROSS REFERENCES: cc. 57, 59-61, 96, 98, 127 § 3, 190 § 2, 199, 1° et 3°, 204, 208-211, 213-224, 227, 228 § 2, 273, 274 § 2, 341, 384, 455, 466, 474, 618, 628 § 3, 630 § 5, 678, 750-754, 978 § 2, 1371, 1749



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The three paragraphs of this norm, conceived from the beginning from a single canon of the *LEF* and, above all, drawing their inspiration from *Lumen Gentium* 37, refer to the relationship between the faithful and their Pastors; and they discuss, in succession, the duty of obedience and the rights of petition and of opinion. It is absolutely correct that these three duties and rights are found together in this canon, since they pertain, not only to those of the faithful who lack power, but also to those who form part of the Hierarchy of the Church. Since "those who preside also ought to obey those who stand above them in the hierarchical order, and, first and foremost, they always ought to bend their actions to the will of Jesus Christ whose representatives they are,"<sup>1</sup> this same line of reasoning could similarly be extended to the rights of petition and of opinion.

## 1. The duty of obedience to pastors (c. 212 § 1)

a) The fundamental duty of the Christian to keep communion with the Church always entails the obligation, not only moral, but also juridical, to obey the Hierarchy;<sup>2</sup> since the *communio ecclesiastica*, or the bonds of the people of God, include the *communio hierarchica*,<sup>3</sup> and it is clear that "the duty of obedience of the faithful to the Pastors in a strict sense is one of the juridical bonds comprising the communion of governance."<sup>4</sup>

This obligation—which Hervada includes among those duties arising from the *conditio subiectionis* of the faithful<sup>5</sup>—was described in the Council in the following terms: "The laity, as all the faithful, must accept promptly and with Christian obedience those things that the sacred Pastors, insofar as they are representatives of Jesus Christ, state as teachers and rulers of the Church" (*LG* 37 b, *PO* 7 b). Additionally c. 212 § 1 has adopted this in nearly the same language since its first *schemata*, which has barely undergone any variation whatsoever.

1. A. DEL PORTILLO, *Fieles y laicos en la Iglesia. Bases de sus respectivos estatutos jurídicos* (Pamplona 1991), p. 109. Cf. PAUL VI, "Allocution of December 2, 1965," in *L'Osservatore Romano*, December 3, 1965, p. 1; H. JEDIN, "Storia e crisi della Chiesa," in *L'Osservatore Romano*, January 15, 1969, p. 5.

2. Cf. G. FELICIANI, *Il popolo di Dio* (Bologna 1991), p. 32.

3. J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987), p. 144.

4. P.-J. VILADRICH, "La declaración de derechos y deberes de los fieles," in REDACCIÓN IUS CANONICUM, *El proyecto de Ley Fundamental de la Iglesia* (Pamplona 1971), p. 135.

5. Cf. J. HERVADA, *Elementos de...*, cit., pp. 143-147.

In effect, in regard to c. 13 § 1 of the *Textus prior* of the *LEF*, the text which indicated "Quae sacri Pastores, utpote Christum repraesentantes, tanquam fidei magistri declarant aut tanquam Ecclesiae rectores statuunt, christifideles christiana oboedientia voluntaria et responsabili sectari tenentur, ad normam sacrorum canonum," in the version of the *Textus emendatus* only the phrase "propriae responsabilitatis conscii" was replaced by the expression "voluntaria et responsabili." Since that *schema*, the only change worthy of note consisted in suppressing the last words of the text: "ad normam sacrorum canonum," whose purpose was to highlight the juridical obligation to obey, which was upheld only in regard to the Pastors themselves, and to point out at the same time that different modalities fall within the scope of this obligation.<sup>6</sup> This suppression, without contradicting what we have just said, serves to stress, on the one hand, the fundamental nature of this duty; while, on the other, even though at times there may not have existed a juridical obligation to obey, on the contrary, there could indeed exist a moral obligation in many cases.

b) Christian obedience, as prescribed by the Council and by c. 212 § 1, constitutes obedience which, since it must be requested and given within the freedom of the children of God, cannot simply be mechanical or passive; but, much to the contrary, demands full consciousness of the dignity of baptism and, therefore, of personal and ecclesial responsibility.<sup>7</sup> Thus, the words "propriae responsabilitatis conscii," which, in addition to stressing that one should not obey simply because one is so ordered, imply that obedience of the faithful to their Pastors should include personal initiative, when the order allows scope for it. In other words, when what is ordered is legitimate, it must be obeyed in a spirit of collaboration.<sup>8</sup> This obedience must always be given, although, in some cases, the interior attitude of those exercising power does not respond to the function of service which must be exercised, since it is not grounded either in the attitudes of mind or in the personal virtues of those who rule, but instead in the hierarchical constitution of the Church itself as desired by God.<sup>9</sup>

In order to make it easier to exercise this obligation, with all its qualities, the authority of the Church ought to rule in such a manner that the due respect that is owed should not be disproportionately burdensome for the faithful. It is entirely proper that it has been said, for this reason, that "the faithful have a right to be well governed by those who, in turn, have a right to be well obeyed."<sup>10</sup> In this sense, it is fairly significant that

6. Cf. CodCom, "Relatio super priore schemate LEF," in *Legge e Vangelo. Discussione su una legge fondamentale per la Chiesa* (Brescia 1972), p. 579.

7. Cf. G. FELICIANI, *Il popolo...*, cit., p. 32.

8. Cf. J. HERVADA, commentary on c. 212, in *Pamplona Com.*

9. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 109-110.

10. Cf. J. HERRANZ, "De principio legalitatis in exercitio potestatis ecclesiasticae," in *Acta Conventus Internationalis Canonistarum* (Vatican City 1970), p. 224.



the Council, after affirming the duty of obedience to the Hierarchy, has immediately added that the sacred Pastors, in turn, ought to recognize and promote the dignity and responsibility of all the faithful in the Church. Following the 6° and 7° guidelines on the revision of the *CIC*, they should insist on the need to provide adequate procedures to safeguard those subjective rights, by furnishing a system of legal recourse, through administrative as well as judicial channels, which would allow the faithful to defend themselves through institutionally established channels against the acts of authority which they judge to be injurious to their own rights."<sup>11</sup>

c) The duty of obedience to the Pastors, insofar as it is a juridical duty, can only be demanded when the sacred Pastors, in addition to serving as such—that is, insofar as they are representatives of Christ—have power over those faithful, and when what has been ordered falls under the legitimate scope of the exercise of the offices of teaching and ruling for which they are responsible.<sup>12</sup>

On the other hand, it is obvious that the Fathers of Vatican II have not asked for the same kind of obedience in regard to the traditionally called powers of magisterium and jurisdiction. "According to the entire body of ecclesiological and canonical doctrine, as soon as this jurisdiction consists, in fact, of the power to rule, that is, power over behavior, magisterium instead is linked to faith, to the extent that faith consists of believing in the testimony of another, and magisterium means that the Pastors testify about Christian faith and message."<sup>13</sup>

d) Insofar as the Magisterium specifically is concerned, the moral and juridical duty of adhering to it arises only to the extent that it affects communion with Peter's successor, and that it refers to matters of faith or morals. Such an obligation, therefore, assumes various gradations according to whether it involves episcopal or pontifical teachings, of an infallible nature or not, according to the various modalities specified by the Council and recognized in cc. 749–754.<sup>14</sup>

The delicate problem of the limitations on the freedom of investigation and theological opinion and the so-called "right of dissension" are located within this context. It should not be forgotten that Catholic theologians are, first and foremost, members of the Church; and thus they cannot, therefore, claim for themselves a statute which would exonerate them from the duty of adhering to the magisterial teaching which is in-

11. Cf. *Preface*, in *Pamplona Com*, p. 55; A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 110–111.

12. Cf. G. FELICIANI, *Il popolo...*, cit., p. 32; J.H. PROVOST, commentary on c. 212, in *The Code of Canon Law. A text and commentary* (New York 1985), p. 145.

13. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 111.

14. Cf. G. FELICIANI, *Il popolo...*, cit., p. 32.

cumbent upon all the faithful,<sup>15</sup> nor from invoking a hypothetical right, since that dissension or public attitude of opposition to the Magisterium presupposes an act of behavior against due communion which all members of the people of God ought to keep.<sup>16</sup> All of this does not mean, however, that there does not exist a just freedom of theological investigation (see commentary on c. 218).

e) Insofar as commands given by the authority in regard to the power of governance or jurisdiction are concerned, it should be kept in mind that the corresponding obligation of obedience, since it does not depend on a dominative power, does not penetrate into the private sphere of the person, but only on external intersubjective relations and on that which involves the common good. It can be thus inferred that the function of the Hierarchy within this framework should also respect certain boundaries, among which could be singled out those delineating the sphere of temporal matters and the private sphere, properly speaking,<sup>17</sup> in addition to whatever may be contrary to divine, natural or positive law, or that which exceeds the field of competence of whoever has issued the command.<sup>18</sup>

Within the sphere of the temporal, the actions of the Hierarchy ought to be limited to fulfilling its magisterial mission of proposing principles and of forming the conscience of the faithful, so that they can be the ones who, freely and responsibly—as the Council has taught—make those decisions which each specific case may require,<sup>19</sup> thereby acknowledging "the just liberty which belongs to everyone in earthly society" (*LG* 37 c; *PO* 9 b). This freedom constitutes a true subjective right of the faithful and a limitation on ecclesiastical power, which does not penetrate directly into the sphere of temporal matters.<sup>20</sup>

Insofar as the private sphere is concerned, it encompasses the personal arena, incapable of being communicated, as well as the functions of community dimension which do not exceed the limits of private autonomy. In fact, the personal initiative and responsibility of the latter, insofar as they are functions lacking in public and official status, are also incumbent upon the faithful, even though they may be performed collectively.<sup>21</sup>

Finally, it is appropriate to point out that, in regard to this subject, for all those cases involving true commands from the Hierarchy, the latter should be "capable of being confirmed in juridical terms, so as to embody

15. Cf. *ibid.*, pp. 32–33.

16. Cf. J.A. FUENTES, "El derecho a recibir y a transmitir el mensaje evangélico. A propósito de la instrucción sobre 'la vocación eclesial del teólogo,'" in *Fidelium Iura* 3 (1993), p. 445.

17. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 112.

18. Cf. J. HERVADA, *Elementos de...*, cit., p. 145.

19. Cf. *LG* 36 and 37; *GS* 33, 36, 43, 76 and 91; *CD* 12 and 19; *PO* 4, 6 and 9; *AA* 5, 7 and 24; etc.

20. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 112–113.

21. Cf. *ibid.*, p. 113.



in them the certainty and security—on behalf of the party who is obligated to obey and of third parties—demanded by the law in regard to the existence of the command as well as to its binding force and content."<sup>22</sup>

## 2. The right of petition (c. 212 § 2)

a) The power of the Hierarchy to preside over the faithful in the name of God is given for the building up of the entire mystical body of Christ.<sup>23</sup> For this reason, it can be explained that the relationship of subjection between the faithful and their Pastors—from which derives the duty of obedience—is qualified by a dimension of service, in particular stressed by the last Council.<sup>24</sup>

One of the obligations of the Hierarchy, arising from the relationship of subjection and qualified by a dimension of service, is that of attending to the concerns or petitions of the faithful's solicitude, which they believe, above all, to be necessary or appropriate in order to satisfy the demands of their Christian vocation and of their specific ecclesial function.<sup>25</sup> It is an obligation ultimately intended to promote the duty of all baptized persons to lead a holy life and to promote the growth of the Church and its continual sanctification (c. 210). It is an obligation which pertains to the right of the faithful to "express their needs, primarily spiritual ones, and their wishes to the Pastors of the Church," which is discussed in the paragraph which is now the subject of our commentary.

b) The original expression "integrum est" appearing at the beginning of § 2 indicates that the obligation of the Pastors to attend to the requests of the faithful is truly one of justice. For this reason, we can correctly speak about a correlative right of the faithful, properly emphasized, furthermore, when introduced into this title of the *CIC* because, without a free and trusting dialogue with the Pastors, the teachings of Vatican II about the dignity and co-responsibility of all the baptized can neither be fully effective nor can those "family relations" emerge, which are indispensable for the Church so as to be able to develop its action effectively in the world (cf. *LG* 37 d).<sup>26</sup>

The doctrine has called this right the right of petition, in a technical and synthetic manner,<sup>27</sup> although its content is, in reality, much broader,

22. Ibid., p. 114.

23. Cf. Col 2:19; Eph 4:1-16.

24. Cf. M. LÖHRER, "La gerarchia al servizio del popolo cristiano," in *La Chiesa del Vaticano II* (Rome 1965), pp. 699-712.

25. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 139.

26. Cf. G. FELICIANI, *Il popolo...*, cit., p. 35.

27. Cf. P.-J. VILADRICH, "La declaración de derechos y deberes..." cit., p. 136.

since each of the faithful ought to have the possibility of seeking recourse to the ecclesiastical authority, not only to express requests that require a concrete response, but also simply to present wishes or difficulties in regard to the life of the Church which are demanding specific attention. Otherwise, there could not occur this free and trusting dialogue with the Pastors which we have just mentioned.<sup>28</sup> In addition to this, the sources cited for this canon are fairly expressive in this respect.

Furthermore, it can be deduced from these same sources that parish priests (cc. 515 § 1, 519), quasi-parish priests (c. 516 § 1),<sup>29</sup> and in general, all those sacred ministers who fulfill a pastoral function should be included among the Pastors of the Church, in addition to the Pope and the bishops, and those who collaborate with them in governance of the various ecclesiastical divisions.

c) The right of petition can be exercised either orally or in writing, on an individual as well as a collective level.<sup>30</sup> It accepts a wide range of specific manifestations and tonalities, which run the gamut from pastoral attention that takes into account the specific needs of each of the faithful, considered on an individual basis, or of associations of which the faithful are comprised, up to the petition of a rescript requesting grace provided under the law (c. 36). On the other hand, this right entails, at a minimum, the obligation of the Pastors of the Church to listen to the wishes and personal initiatives of the faithful and to receive and study their petitions.<sup>31</sup> All of this should be done, as the Council has recommended, with attention and "paternal love" (*LG* 37 c).

It has been pointed out that, although the right of petition, properly speaking, does not naturally assume an obligation to grant the petition (except when what has been demanded involves a true right, in the strict sense, in which case it extends beyond the limits of a simple petition<sup>32</sup>) this right "would remain deprived of content if, on the part of the authority, an obligation—juridically demandable—did not follow, which required that it duly weigh the petition and accord it the most just response or, if it involved matters of a discretionary nature, the most suitable response."<sup>33</sup> And thus, the proper exercise of this right would also imply "obtaining a concrete response—affirmative or negative—on the part of the ecclesiastical authority who has such jurisdiction, accompanied, in turn, by those reasons supporting any denial; in such a manner that, whosoever would

28. Cf. G. FELICIANI, *Il popolo...*, cit., p. 35.

29. Cf. H.J.F. REINHARDT, commentary on cc. 211-223, in *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1987), p. 212/2.

30. Cf. J. HERVADA, *Elementos de...*, cit., p. 145.

31. Cf. ibid.; A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 139-140.

32. Cf. J. HERVADA, *Elementos de...*, cit., p. 145.

33. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 140.



deem it appropriate could have recourse to a higher level of the Hierarchy, in order to obtain that which perhaps may have been unlawfully denied him.<sup>34</sup>

At this moment in time, however, there still does not exist in the Church the possibility of demanding such intervention from the Pastors in all cases. This is done, among other reasons, because of the genuine justifiable impossibility of attending to all petitions that exists in some particular churches, which include millions of faithful.<sup>35</sup> Perhaps for this reason, the *CIC* has not formally demanded compliance with this obligation up to this point.

### 3. The right of opinion in the Church (c. 212 § 3)

a) Since there exists a natural right of all persons to seek the truth freely and to express their opinion, in keeping with the moral order and the common good,<sup>36</sup> there also exists the right of the faithful, and on certain occasions, the duty, of formulating correctly and expressing their own opinion about those issues in the life of the Church which have not yet been definitively resolved by the ecclesiastical authority. This is a right grounded, in the first place and as a distant source, in the same natural right to which we have just referred, and to a closer degree, it is grounded in the active participation of all the faithful in the mission of the people of God, in regard to which there exists a *vera aequalitas*, in the *sensus fidei* and in genuine charisms. From this emerges the legitimate right to exercise them within the Church and in the world (cf. *LG* 12; *AA* 3 d).<sup>37</sup>

This right was declared by Vatican II in the following words: "By reason of the knowledge, competence, or pre-eminence which they have the laity are empowered—indeed sometimes obliged—to manifest their opinion on those things which pertain to the good of the Church. If the occasion should arise this should be done through the institutions established by the Church for that purpose and always with truth, courage and prudence and with reverence and charity toward those who, by reason of their office, represent the person of Christ" (*LG* 37 a). Canon 212 § 3 has adopted this, by partially repeating this teaching of the Council, but at the same time, making it clear that this involves a right, and not a simple power, with the recognition that it is expressly held, not only in the presence of the Hierarchy, but also in the presence of the remainder of the faithful.<sup>38</sup>

34. Ibid.

35. Cf. G. FELICIANI, *Il popolo...*, cit., p. 36.

36. Cf. JOHN XXIII, *Enc. Pacem in terris*, April 11, 1963, in *AAS* 55 (1963), p. 260.

37. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 144–145.

38. Cf. G. FELICIANI, *Il popolo...*, cit., p. 36.

b) The right of opinion in the Church assumes the freedom to formulate one's own opinion on those matters which have not been authentically defined by the ecclesiastical Magisterium, leading us to postulate the existence of a right to information within the Church.<sup>39</sup>

The *CIC* has not adopted this last right, despite the valuable suggestions of some authors to this effect,<sup>40</sup> perhaps because it is not easy to formalize. In fact, some sectors in the doctrine espousing it, as they conceive of it, have made it difficult to reconcile with the nature of the Church, by making it too similar to the corresponding right which is currently in effect in democratic countries. However, correct formalization of this right is, of course, possible.

In any event, when speaking of this right to information, we can say that it would be grounded in the active participation of the faithful in the life of the Church. Its object would be only those matters which pertain to external and social activities, not to personal and private activities, nor those which *natura sua* belong to the internal scope of conscience. The corresponding duty to inform would fall on the Hierarchy, and to the extent that it were to affect the common good, on institutions and extraordinary members of the faithful. Its limitations would be delineated by the faithful's interest in being informed—linked to one's degree of effective participation in the life of the people of God—and by the common good of the Church.<sup>41</sup>

c) Returning to the right to express one's own opinion, it can be said that it requires due information as a specific prerequisite for its proper exercise—to which the canon implicitly refers through the use of the words *scientia* and *competentia*—because without this, it would not be possible to formulate one's own opinion well, nor to participate adequately in the life of the Church.<sup>42</sup>

The fact that the right of opinion depends on *scientia*, *competentia* and also on the *praestantia* of each person—as this norm indicates and as the Council has taught—does not work to the detriment of its common nature nor against the fundamental equality of the faithful, since "insofar as matters involving the formulation of judgment in relation to the good of the Church and of its expression are concerned (inherent to *knowledge* and *competence* in the subject now under discussion), the laity have the same rights and duties as clerics and religious. The same thing can be said of *praestantia*, of prestige; it consists of a position of moral preeminence,

39. Cf. J. HERVADA, *Elementos de...*, cit., p. 142.

40. Cf. G. FELICIANI, *Il popolo...*, cit., p. 37; "Lex Ecclesiae Fundamental. Bericht über die Arbeitsergebnisse eines Kanonistischen Symposiums in München 1971," c. 20, in *Archiv für katholisches Kirchenrecht* 140 (1971), p. 433; P.-J. VILADRICH, "La declaración de derechos y deberes..." cit., p. 158; J. HERVADA, *Elementos de...*, cit., p. 142.

41. Cf. J. HERVADA, *Elementos de...*, cit., p. 142.

42. Cf. *ibid.*



a social value, and one who possesses it exerts an influence by inducing other members of that community to act. Thus, from this vantage point, a sense of responsibility emerges, because one's actions, omissions, and opinions can exert a real force influencing the conduct and the decisions of the community and of the authority.<sup>43</sup> Also, if there exists a sense of responsibility, there is also a right, and even a duty, to support what one believes is good for the Church and to state whatever one believes is contrary to the good of the people of God.<sup>44</sup>

In summary, knowledge, competence, and authority are prerequisites that have an effect on the proper exercise of this right. They cause the moral duty to communicate one's own opinion to the ecclesiastical authority or to the other faithful to have greater or lesser force.<sup>45</sup>

d) Furthermore, legitimacy in exercising the right of opinion is subject to other prerequisites, summarized by Vatican II as truth, fortitude, and prudence, and as reverence and charity toward the Hierarchy (cf. LG 37 a), among which, however, only truth, prudence and reverence have juridical relevance, expressed in the language of the canon by means of these words: "salva fidei morumque integritate ac reverentia erga Pastores, attentisque communi utilitate et personarum dignitate."<sup>46</sup>

Although these prerequisites should always be satisfied, the Latin version of the canon seems to urge us in particular in those cases in which one's personal opinion is stated in the presence of the faithful that does not pertain to the Hierarchy. This is understandable, since, while it is indeed true that "integrity in faith and in customs is an unconditional limit (there is no free speech on matters of faith or morals authentically taught by the Magisterium, according to the varying degrees of their obligatory nature)"<sup>47</sup> and that reverence towards the Pastors, the common purpose and respect for the dignity of persons shape the proper exercise of this right in all cases, it should not be forgotten that the possibility of creating an uproar should also be kept in mind as one of the limitations on this right.<sup>48</sup> And it is logical that, in general, this danger would be ever greater whenever erroneous, irreverent or reckless opinions are expressed to the faithful, who lack the formation that in principle would be presumed for the sacred Pastors.

e) Prudence should also be exerted when choosing the channels through which to exercise this right, whenever opinions are expressed before the Hierarchy as well as before the other faithful. In fact, it would convey a lack of responsibility and prudence, for example, to choose a

43. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 145-146.

44. Cf. *ibid.*, p. 146.

45. Cf. J. HERVADA, commentary on c. 212, in *Pamplona Com.*

46. Cf. J. HERVADA, *Elementos de...*, cit., p. 141.

47. J. HERVADA, commentary on c. 212, in *Pamplona Com.*

48. Cf. J. HERVADA, *Elementos de...*, cit., p. 141.

means of generalized dissemination to express opinions that could be misinterpreted by those faithful who did not possess sufficient formation. This does not mean, however, that the exercise of this right should be restricted to a very few pre-established channels, since an appropriate venue to express one's own personal opinion might well be the diocesan pastoral council, a column in the newspaper or a simple personal letter from one of the faithful to one's bishop, provided that due measures of prudence are observed. The regulation of the exercise of this right, therefore, should be open to public governance<sup>49</sup> as well as the private governance of expression.<sup>50</sup>

f) The right to opinion obviously entails the corresponding right of the Hierarchy to facilitate those channels of expression and to attend to the opinions expressed to them by the faithful, and even the right of the Pastors to make use of the "prudent counsel" of the faithful (cf. LG 37 c). At least, this is a duty that, as one author has remarked, should be recalled to mind, since it is not just a moral obligation, as can be deduced from the caution expressed on the part of the Council and of the CIC itself, of various entities of a consultative nature, open to collaboration by laypersons, clerics and the religious.<sup>51</sup>

Finally, we should point out that coordination between the rights of petition and of opinion, and the duty of obedience allows us to speak about a right to *remonstratio*; that is, about the right which allows us to seek reconsideration from ecclesiastical authority of those norms of purely ecclesiastical law that are considered to be difficult to adapt to the circumstances of time and place of their intended recipients.<sup>52</sup>

49. J.H. PROVOST, commentary on c. 212, in *The Code...*, cit., p. 147.

50. Cf. P.-J. VILADRICH, "La declaración de derechos y deberes..." cit., p. 139; A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 147-149.

51. Cf. G. FELICIANI, *Il popolo...*, cit., p. 37.

52. Cf. H.J.F. REINHARDT, commentary on cc. 211-223..., cit., p. 212/3; K. MÖRSDORF, *Lehrbuch des Kirchenrechts*, I (Paderborn 1964), pp. 86-87; J. LISTL, "Die Rechtsnormen," in *Handbuch des katholischen Kirchenrechts* (Regensburg 1983), p. 91.