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**THE UNDERSTANDING OF DEFECTION  
IN THE 1983 CODE OF CANON LAW**

by  
Patrick J. COGAN, S.A.

A dissertation submitted to the Faculty of Canon  
Law, Saint Paul University, Ottawa, Canada, in  
partial fulfillment of the requirements for the  
degree of Doctor of Canon Law



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ISBN 0-315-68098-9

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UNIVERSITÉ D'OTTAWA  
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## ACKNOWLEDGEMENTS

The preparation of this dissertation involved the assistance of numerous individuals. A warm expression of gratitude goes to the Atonment Friars who made available the time and resources for study.

Special recognition and appreciation goes to the Rev. Francis Morrissey, OMI, the director of this dissertation. His patient guidance, generous availability, and encouragement were important elements in bringing this project to final completion.

A special mention of gratitude also to Rev. Jean Thorn, Dean of the Faculty of Canon Law for his support and interest. The entire Faculty of Canon Law has been most supportive and generous through this project.

The access to research material for a dissertation project is critical. Therefore special recognition goes to Barbara Hicks, librarian of Saint Paul University, and the entire library staff.

## ABBREVIATIONS

AAS	Acta Apostolicae Sedis
CI	Pontificia Commissio ad Codicis canones authentice interpretandos
CLD	Canon Law Digest
CLSA	Canon Law Society of America
CLSA Comm	The Code of Canon Law: A Text and Commentary
Coll. Lac.	Collectio Lacensis
DH	Dignitatis Humanae
DS	Denzinger-Schöenmetzer, 35th ed.
GS	Gaudium et Spes
LG	Lumen Gentium
Periodica	Periodica de re morali, canonica, liturgica
Pl	Patrologia latina
STh	Summa theologica
UR	Unitatis Redintegratio

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## INTRODUCTION

The Catholic Church has frequently experienced the defection of some of its members, both collectively and individually. Defection from the Church is in opposition to a fundamental canonical principle: the permanence of incorporation. This permanence is based upon two consequences of baptism in the Catholic Church: the reception of the indelible sacramental character and the recognition of the perpetual jurisdiction of the Church over the baptized. Summarized in the axiom semel Catholicus semper Catholicus, this principle has generated a large corpus of canonical reflection and discipline. Such discussions have focused upon ecclesiological and jurisdictional issues, especially those concerning belonging to the Church and the implications of separation from it.

The Church's claim to perpetual jurisdiction is also signified by the imposition of penalties upon individuals who, in various ways, have separated from it. Understood as an action against religion and the unity of the Church, defection is viewed as inherently delictual and the structures of canon law recognize this act in terms of apostasy, schism or heresy. The penalties imposed for these actions, especially excommunication, are intended to be a medicinal

remedy to coerce or persuade individuals who defect to return to a regularized status. Canonical discipline has traditionally refused to recognize defection as a complete and total severance from the Church. Yet, this situation underscores a serious tension for the law continues to recognize as Catholics those who have defected, despite their intention no longer to be affiliated with the Church.

Thus defection is an action which touches upon certain critical issues concerning the relationship of the individual Catholic with the Church, Catholic identity, and the jurisdictional basis of canon law. Furthermore, the common disregard for canonical discipline in this respect by those who defect directs attention to a potentially serious example of the non-reception of law in the Church.

The promulgation of the 1983 Code has occasioned a new opportunity for the investigation of the question of defection. The introduction of the actus formalis as a canonically recognized modality of defection from the Catholic Church raises new questions, especially in view of canonical tradition. Thus this topic was selected as an area for investigation to explore the question of defection and to identify some of these new questions that might also

contribute to a revised understanding of defection and an eventual further evolution of the law. Since the dimensions of this investigation are numerous and complex, a methodology must be constructed within defined parameters. This study will seek to identify, then, the foundations of the canonical discipline relative to defection and their canonical expression.

This investigation is divided into four chapters. Chapter One outlines the historical development of the canonical discipline concerning defection; Chapter Two identifies the more significant statements of the Second Vatican Council that might contribute to a reconsideration of the question; Chapter Three examines the provisions of the 1983 Code of Canon Law relative to defection and its consequences, especially in light of canonical tradition; while Chapter Four explores several related issues and consequences within a proposed revised context as an indication of certain shifts, albeit limited, in the canonical understanding of defection.

Chapter One, then, presents a trajectory of the evolution of the historical understanding of defection. The teaching on sacramental character, especially with the contributions of Augustine of Hippo and Thomas Aquinas,

established a theoretical foundation for the development of the canonical discipline regarding defection. The expression of the Church's potestas coactiva would serve to protect the integrity of this teaching and discipline. The condemnation of the so-called "religious option" and religious indifferentism by the Council of Trent and Vatican I reinforced the discipline against defection. The 1917 Code firmly represented the canonical tradition; thus, the canons of this Code which refer to defection are examined in light of this tradition. However, in spite of this approach, new questions were raised concerning church membership and separation with the issuance of the encyclical Mystici Corporis. So it was that, on the eve of the Second Vatican Council, many issues relating to church membership and defection necessitated a re-evaluation.

Chapter Two explores the contribution of the Second Vatican Council with an investigation of several documents that have consequences for the traditional approach to defection. Without contest, the fundamental conciliar contribution is the self-understanding of the Church as a communion as elaborated in Lumen gentium and Unitatis redintegratio. This self-understanding includes the non-exclusive identification of the Church with the Ecclesia Christi, the presentation of church membership as full

communion and the recognition of the new relationship of other separated churches and ecclesial communities with the Roman Catholic Church. Here the canonical discipline on defection is seen to have serious ecumenical implications. Coupled with these, the reflections on religious freedom in Dignitatis humanae also raise important questions that impact upon our discussion.

Chapter Three examines and evaluates the provisions of the 1983 Code of Canon Law. Three modalities of defection are presented: formal defection, notorious defection, and public defection. These defection canons are then reviewed, taking into account their evolution during the Code's revision process, as well as their final formulation. The reception of the conciliar discussions within the Code is also considered, as are the consequences of the various acts of defection.

Chapter Four examines selected consequences of defection within the broader canonical spectrum. These include a review of the canonical condition of those who have defected, and the discussion of defection as an inherently delictual action when understood as heresy, apostasy, or schism. This exploration of the delictual dimensions of defection is important for canonical thought because this is

where any revision of the canonical tradition is most affected. This chapter concludes with an examination of several issues regarding defection and canonical praxis.



CHAPTER ONE  
HISTORICAL UNDERSTANDING OF DEFECTION

The Roman emperor Decius decreed in 249 AD that all residents of the empire offer sacrifice to the Roman deities. Compliance with the imperial decree was established by the presentation of a libellus. Many Christians obtained this document through bribery in order to avoid offering pagan sacrifices and to escape persecution.<sup>1</sup> Cyprian, in his treatise De lapsis, referred to these Christians as the libellatici and as the equivalent of apostates from the faith. The libellus became a symbol of the abandonment of Christianity.<sup>2</sup> Cyprian's condemnation of the libellatici was severe, even though the majority of them only obeyed the decree in order to escape persecution. His position is an illustration of early Christianity's intolerant attitude towards separation from the Church.

Membership or incorporation into the Roman Catholic Church has traditionally been viewed as permanent. The

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<sup>1</sup>H.A. MUSURILLO, The Fathers of the Primitive Church, Toronto, New American Library of Canada, 1966, p. 225.

<sup>2</sup>De lapsis, "Et illa professio denegantis contestatio est christiani quod fuerat abnuentis," PL 4, col. 487.

reception of the indelible sacramental character of baptism symbolizes this permanence. Once baptism has been received, it is not possible to revert to a pre-baptismal status. The permanence of this condition is thus reflected in the theological axiom "semel Catholicus, semper Catholicus".<sup>3</sup> Similarly, the analogy is also signaled between the permanence of ecclesial incorporation and a ratum et consummatum marriage.<sup>4</sup> Although the individual is instrumental in establishing the bond of incorporation through baptism or the marriage bond, this individual does not possess the capacity to dissolve it.<sup>5</sup>

The Church has always claimed the right to exclude members from the ecclesial society with the penalty of excommunication. This exclusion was a medicinal provision: a temporary penal recourse in order to compel the individual

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<sup>3</sup>E. CORECCO, "La sortie de l'Eglise pour raison fiscale", in Austritt aus der Kirche, Sortir de l'Eglise, L. Carlen (ed.), Freiburg, Universitätsverlag, 1982, p. 52.

<sup>4</sup>Cf. J. BERNHARD, "Des membres de l'Eglise", in Revue de droit canonique, 11(1961), p. 224; M. HUGHES, "The Juridical Nature of the Act of Joining the Catholic Church", in Studia canonica, 8(1974), p. 400.

<sup>5</sup>M. HUGHES, loc. cit., p. 400.

to return to the Church.<sup>6</sup> There has never existed the provision for a positive exercise of the so-called "religious option" whereby an individual could deliberately and freely decide to depart from the Church without penal consequences. The Council of Trent even issued an explicit condemnation of the religious option whereby a baptized Catholic could freely choose to leave the Catholic Church.<sup>7</sup> These various points shall be studied in detail in this chapter.

#### I. MEMBERSHIP IN THE CHURCH

Canonical inquiry into the question of defection from the Church includes a particular ecclesiological understanding of the nature of Church membership. Here it is important to recall the caution of K. Rahner that such concepts are not univocal or even definitively defined in theology. Thus the most prudent path of inquiry is to identify the magisterium's statements on the conditions of

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<sup>6</sup>Cf. P. HUIZING, "Le droit d'exclure", in Lumière et vie, 28 (1979), pp. 47-57.

<sup>7</sup>Cf. below for further discussion of Trent's deliberations on the religious option.

membership.<sup>8</sup> It is of methodological importance to identify these presuppositions in order to establish the proper context for an investigation into the notion of defection.

A. The juridic-dogmatic model

Numerous theological and canonical theories of Church membership have been proposed. A. Dulles has synthesized these various discussions into four principal categories: 1) mystical-organic; 2) juridical-dogmatic; 3) psycho-sociological; 4) personal-communal.<sup>9</sup> While none of these categories are mutually exclusive, they focus on particular dimensions of Church membership which are determinative from their own proper perspective.

Canonical discussion of defection from the Church is most naturally allied with Dulles' "juridical-dogmatic" model. The principal components of this model are very

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<sup>8</sup>K. RAHNER, "Membership of the Church According to the Teaching of Pius XII's Encyclical 'Mystici Corporis Christi'", in Theological Investigations, vol. 2, translated by Karl H. Kruger, Baltimore, Helicon Press, 1963, pp. 4-5.

<sup>9</sup>A. DULLES, Church Membership as a Catholic and Ecumenical Problem, The Père Marquette Theology Lecture 1974, Milwaukee, Marquette University Press, 1981, pp. 7-58.

clear. Emphasis is upon the institutional nature of the Church as a visible reality. The member's relationship to the Church is presented in predominately juridical terms with clear distinctions established between authority and subjects. Parallel to the structure of many legally organized societies, there is a strong focus on obligations and rights.<sup>10</sup>

This "juridical-dogmatic" model emerged in ecclesial structures and ecclesiologies principally during the era of the Counter Reformation. Robert Bellarmine's teaching on the necessary visibility of the Church is the classical representation of this model. One twentieth century example of the necessary visibility of the Church and an official position on membership is found in Pius XII's encyclical Mystici Corporis.<sup>11</sup> This encyclical gave exclusive preference to membership in the visible reality of the Church when it declared that "this social body of Christ has been designed by its Founder to be visible."<sup>12</sup> The criteria for

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<sup>10</sup>Ibid., p. 13.

<sup>11</sup>PIUS XII, Encyclical Letter, "Mystici Corporis", June 29, 1943, in AAS, 35(1943), pp. 193-248.

<sup>12</sup>Ibid., p. 227: "Quoniam vero, ut supra diximus,

membership in this visible Church are essentially a recapitulation of R. Bellarmine's requisites of profession of faith, sacraments and governance.

While A. Dulles acknowledges that the nature of the Church and the question of membership cannot be totally explained on the basis of external, visible criteria, he does indicate several positive features of the "juridical-dogmatic" model. Obligations and rights are clearly identified, an important juridical structure in any large assembly of individuals. This model also serves the useful purpose of providing clarity of status, at least on the external level. Members can ascertain their status with a certain facility. If one's baptism is valid and the tria vincula of faith, sacraments and government are honored, then one is a member. Otherwise one is not.<sup>13</sup>

This approach, however, suffers from several weaknesses. Loss of membership is not easily verified: the

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sociale eiusmodi Christi Corpus ex Conditoris sui voluntate adspectabile esse debet." English translation from The Church Teaches, Documents of the Church in English Translation, edited and translated by J. Clarkson et al., St. Louis, B. Herder Book Co., 1955, par. 265.

<sup>13</sup>A. DULLES, op. cit., pp. 18-19.

traditional delicts which carried the penalty of excommunication, i.e., schism, heresy and apostasy, are only imputable if they are operative in the external forum. The "juridical-dogmatic" model is also vulnerable to an exaggerated juridicism: there is minimal attention to the spiritual criteria of faith and personal commitment. A. Dulles thus concludes that this theory is probably inadequate to accommodate a more contemporary, participative model of the Church.<sup>14</sup>

#### B. Incorporation and baptism

The presupposition that valid baptism is the fundamental requisite for incorporation into the Church has been a constant teaching of the Church. The Council of Valentinum (855 AD) thus declared in canon 5, that "by water and the Holy Spirit a believer is reborn and through this is truly incorporated into the Church."<sup>15</sup> The Council of Florence (1442 AD), in Eugene IV's Exultate Deo, likewise stated that through baptism "we are made members of Christ and of his

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<sup>14</sup>Ibid., p. 19.

<sup>15</sup>DS, 632: "'ex aqua et Spiritu Sancto' (Jo 3,5) regenerata, ac per hoc veraciter Ecclesiae incorporata..."

body, the Church."<sup>16</sup> The Decretum Gratiani also preserves a pertinent text from Augustine who states that the baptized are incorporated into Christ and made his members.<sup>17</sup> Incorporation into the visible Church subjects the individual to its potestas jurisdictionis and potestas ordinis.<sup>18</sup>

The Council of Trent similarly declared in the canons on penance, that "Christ Our Lord has made members of his body once and for all by the water of baptism."<sup>19</sup> Although these statements about baptism and church membership are essentially theological, "they do make an indirect reference to the juridical effects of baptism in so far as

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<sup>16</sup>DS, 1314: "Primum omnium sacramentorum locum tenet sanctum baptisma, quod vitae spiritualis ianua est: per ipsum enim membra Christi ac de corpore efficimur Ecclesiae."

<sup>17</sup>C. 143, D. IV, de cons: "Ad hoc baptismus valet, ut baptizati Christo incorporentur, ut membra eius, et conspeliuntur, et oblatis per sacramentum karitatemque fidelium reconcilientur Deo, ut in eo vivi, salvi, liberati, redempti, illuminati fiant."

<sup>18</sup>K. RAHNER, loc. cit., p. 7.

<sup>19</sup>Sessio decima quarta, De poenitentia, caput II: "Secus est de domesticis fidei, quos Christus Dominus lavacro baptismi sui corporis membra semel effecit."



they state that baptism opens the door to the right of participating in the spiritual goods of the Church."<sup>20</sup>

However, every baptism does not necessarily effect membership in the Church. The only certain effect is the reception of the sacramental character.<sup>21</sup> Coerced baptism renders the baptism invalid. Canon 1351 of the 1917 Code stipulated that no one is to be forced to embrace the Catholic faith. This canon was generally interpreted to refer to one's initial entrance into the Church.<sup>22</sup> The principles of volition and non-coercion for entrance into the Church are not applicable criteria after baptism when a person no longer desires to remain a member. The Church has claimed and exercised the right to coerce the baptized to remain within her.

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<sup>20</sup>A.A. REED, The Juridical Aspect of Incorporation into the Church of Christ - Canon 87, Carthagen, Ohio, Messenger Press, 1960, p. 8.

<sup>21</sup>K. RAHNER, loc. cit., pp. 21-22.

<sup>22</sup>For example, cf. M. CONTE A CORONATA, Institutiones iuris canonici, Taurini, Marietti, 1939, vol. 2, p. 275.

### C. Incorporation and sacramental character

#### 1. The Augustinian Synthesis

Baptism is not reiterated due to the reception of the sacramental character; this testifies to the permanence of baptism and hence of incorporation into the Church. The baptismal character has been described as "one of the most valuable keys to a proper theological understanding of membership in the true Church."<sup>23</sup> Augustine formulated the foundational doctrine of sacramental character primarily in response to the Donatist controversy over the validity of baptism conferred outside the Church, and whether heretics and schismatics needed to be rebaptized. Augustine compared the baptismal character to the branding received by a soldier; this military branding was a permanent sign of inscription, even if the soldier deserted the military. In similar fashion, the baptismal character is a permanent spiritual mark upon the baptized.<sup>24</sup>

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<sup>23</sup>J. FENTON, "The Baptismal Character and Membership in the Catholic Church", in American Ecclesiastical Review, 122 (1950), p. 374.

<sup>24</sup>B. LEEMING, Principles of Sacramental Theology, second edition, Westminster, Maryland, The Newman Press, 1963, p. 155, notes that Augustine uses the expression

But the character is not merely a passive gift. "It is something which has the power to produce the normal effect of the sacrament when the essential condition of charity is fulfilled."<sup>25</sup> When a heretic or schismatic repents, then the res or fruit of the sacrament allows the salvific dimension to be operative. According to Augustine, baptism conferred by heretics may be valid, but there is no grace received until all obstacles have been removed.

## 2. The Thomistic synthesis

Thomas Aquinas' synthesis of the baptismal character elaborated on the foundation established by Augustine. He taught that baptism, orders and confirmation have two chief effects: grace and the character.<sup>26</sup> These sacraments likewise have a dual purpose: "for a remedy against sins; and for the perfecting of the soul in things pertaining to

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character only in reference to baptism, and never regarding confirmation or orders.

<sup>25</sup>Ibid.

<sup>26</sup>STh, III, q. 62, Introd.: "Deinde considerandum est de effectu Sacramentorum. Et primo, de effectu eius principalis, qui est gratia; secundo de effectu secundario, qui est character."

the divine worship according to the rite of the Christian life."<sup>27</sup> The cultus Dei is central to Aquinas' understanding of sacramental character. It is primarily a reference to the eucharist -- those who are members of the Church have eucharistic worship for their primary and permanent purpose: "Although external worship does not last after this life, yet its end remains."<sup>28</sup> The baptized is unable to extrapolate himself from this perpetual eucharistic orientation.

However, the Thomistic synthesis on sacramental character is not exclusively oriented towards the Eucharist. Through the sacramental character, the faithful also share in Christ's eternal priesthood. The baptized are designated "for eternal membership in His Church to share in the powers of His Priesthood."<sup>29</sup> This membership is eternal because the

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<sup>27</sup>Sth, III, q. 63, art. 1: "sacramenta novae legis ad duo ordinantur: videlicet ad remedium contra peccata; et ad perficiendum animam in his quae pertinent ad cultum Dei secundum ritum christianae vitae." English translation from Summa theologica, literally translated by Fathers of the English Dominican Province, New York, Benzinger, 1947-1948, vol. 2, p. 2361.

<sup>28</sup>Ibid., art. 5: "Ad tertium dicendum quod quamvis post hanc vitam non remaneat exterior cultus, remanet tamen finis illius cultus." English translation in Summa theologica, Benzinger, p. 2365.

<sup>29</sup>W. RYAN, "The Teaching of St. Thomas in the Summa

character resides in the intellect which is perpetual and incorruptible; it is perpetual because the one who impressed it is eternal. This is the source of the indelible nature of the sacramental character.

The activity of the character may be impeded by actions which set one in opposition to the Church, namely heresy, schism or apostasy. According to this understanding, when the potentia of the character is impeded by a repudiation of the faith, at least one author has thus concluded that membership in the Church is thus forfeited.<sup>30</sup>

### 3. F. Suárez

While the Augustinian and Thomistic synthesis of the sacramental character were determinative, other interpretations were also proposed. F. Suárez taught that true and sincere faith was necessary for membership in the Church, rather than the reception of baptism and the character.<sup>31</sup>

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Concerning the Baptismal Character", in American Ecclesiastical Review, 149(1963), p. 384:

<sup>30</sup>J. FENTON, loc. cit., p. 379.

<sup>31</sup>"...neque character baptismalis esset necessarius in

For Suárez, the character was a habitus or disposition of the first species, which is joined to the soul itself and perfects it formally without respect to works, rather than a potentia of the second species.<sup>32</sup>

#### 4. R. Bellarmine

Robert Bellarmine taught that the baptismal character was not absolutely necessary for membership in the Church. In De ecclesia militante (c.10), he declared that only a putative baptism was necessary for membership. J. Fenton claims that this position was definitively dismissed with Mystici Corporis which clearly stated that membership can only be acquired through baptism.<sup>33</sup>

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membris Ecclesiae," De fide, disp. 9, sect. 1, vol. 12, in F. SUAREZ, Opera omnia, Paris, Vivès, 1866, p. 253; J. FENTON, loc. cit., p. 380, claims that Suárez thus had a detrimental effect on ecclesiology due to his position on sacramental character and Church membership.

<sup>32</sup>F. SUAREZ, Opera omnia, III, q. 63, a. 4, disp. 11, sect. 3, in vol. 20, p. 195.

<sup>33</sup>J. FENTON, "Contemporary Questions about Membership in the Church", in American Ecclesiastical Review, 145(1961), pp. 43-44.

Theological reflection on the nature and effects of sacramental character established the foundation for the doctrine of the permanence of incorporation into the Church. Although speculation varied as to how the sacramental character precisely affected this permanence, the notion became firmly established in sacramental theology. This doctrine also evolved into canonical expression.

## II. SACRAMENTAL CHARACTER AND THE LAW

### A. Conciliar statements

#### 1. Council of Florence

The theology of sacramental character assumed canonical expression primarily through conciliar pronouncements. When the Council of Florence achieved reunion with the Armenian Church, the bull of reunion, Exultate Deo, recapitulated the sacramental doctrine of the Church. In reference to sacramental character, it stated that the three sacraments of baptism, confirmation and holy orders imprint

on the soul an indelible character that distinguishes the recipient from others.<sup>34</sup>

## 2. Council of Trent

The Council of Trent, in canon 9 of the canons De sacramentis in genere, presented the doctrine of sacramental character more authoritatively. Trent declared that if anyone doubted or denied that the spiritual and indelible character is received from baptism, confirmation and orders, they were to be pronounced anathema.<sup>35</sup>

During the period of the Council of Trent, there was basic theological agreement on the existence of the character, although various interpretations existed. There was, however, general acceptance on the inamissibility of the

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<sup>34</sup>DS, 1313: "Inter haec sacramenta tria sunt: baptismus, confirmatio et ordo, quae characterem, id est, spirituale quoddam signum a ceteris distinctivum, imprimunt in anima indelebile."

<sup>35</sup>DS, 1609: "Canon. 9. Si quis dixerit, in tribus sacramentis, baptismo scilicet, confirmatione et ordine, non imprimi characterem in anima, hoc est signum quoddam spirituale et indelebile, unde ea iterari non possunt: anathema sit." F. CAVALLERA, "Le décret du Concile de Trente sur les sacrements en général", in Bulletin de littérature ecclésiastique, 7(1915-1916), p. 86, calls attention to the striking similarity between the Tridentine statement and Exultate Deo.



character. During the formulation of canon 9, several theologians recommended that the concluding phrase, "anathema sit" be suppressed. The proposal was rejected; to reject the doctrine of the character was equivalent to dissent, which thus allowed for the possibility of disciplinary action if the doctrine was not accepted. With the Tridentine formulation, the doctrine of sacramental character became firmly situated within the teaching of the Church and became the common doctrine among canonists.<sup>36</sup>

#### B. The potestas coactiva

The doctrine of sacramental character did not remain isolated from further canonical expression. Its expression surfaced in canonical legislation and general attitudes towards the purpose of law itself. Since the conscious emphasis was on the permanence of incorporation, legal norms were necessary to enforce this position. One important

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<sup>36</sup>F. CAVALLERA, loc. cit., pp. 83-87. Martin Luther, in his letter "The Babylonian Captivity of the Church", concerning the sacramental character conferred at ordination, claimed: "For that fiction of an 'indelible character' has long since become a laughingstock. I admit that the pope imparts this 'character', but Christ knows nothing of it." English translation in A.R. Wentz (ed.), Luther's Works, Philadelphia, Muhlenberg Press, 1959, vol. 36, p. 117.

consequence of this doctrine was the Church's claim to the right to exercise a potestas coactiva to force the faithful to remain in the Church.<sup>37</sup>

### 1. Augustine

Augustine formulated the position whereby heretics and schismatics could be compelled to return to the Church. The early Augustine had demonstrated a gentle patience and understanding towards heretics and schismatics which evolved from a self-awareness of his own pre-conversion attitudes and practices. He recognized the possibility of good faith in heretics and schismatics. Thus, in a letter refuting the general tenets of Manichaeism, Augustine displayed a patient attitude towards his adversaries:

No, I cannot be harsh with you. I must now support you as others supported me then; I must treat you with as much patience as I received from my friends when I myself erred in your teachings blindly and senselessly.<sup>38</sup>

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<sup>37</sup>Y. CONGAR, "What Belonging to the Church Has Come to Mean", in Communio, 4:2(1977), pp. 146-160.

<sup>38</sup>Contra epistolam Manichaei quam vocant Fundamenti, PL, 42, cols. 174-175.

In the era of Augustine, the civil authorities also exhibited very tolerant attitudes towards individuals who left the Church. But they were less tolerant and even severe in their treatment of dissident groups.<sup>39</sup> As the controversy with the Donatists increased, Augustine's gentle patience experienced a vulnerability for change. He became persuaded that forceful intervention was at times justified, even to the extent of involving the state. Heresy and schism at times could precipitate civil disorder. Thus the state could exercise the right to intervene. Certain religious crimes were even regarded as crimes laesae majestatis.<sup>40</sup> Augustine thus distinguished between positive and negative coercion. Negatively, the schismatic abandons his pertinacious position due to fear of punishment; positively, he could be forced to realize "the truth he did not know" and voluntarily return to the Church.<sup>41</sup>

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<sup>39</sup>J. LECLER, Toleration and the Reformation, translated by T.L. Westow, New York, Association Press, 1960, vol. 1, p. 53.

<sup>40</sup>Ibid., pp. 53-54.

<sup>41</sup>"Verum quod nesciebat," in Epistula 93, PL 33, col. 329.

Augustine constructed his theory of coercion through an interpretation of the compelle intrare of the parable of the banquet in Luke 14:15-24. He compared those found on the highways and hedgerows to schismatics and heretics; such may be forced to return to the Church, just as the guests were compelled to attend the banquet. This interpretation later provided a biblical proof-text for the Inquisition.<sup>42</sup>

## 2. Fourth Council of Toledo

The Fourth Council of Toledo (633 AD) was convoked by King Sisenand of Spain under the presidency of Isidore of Seville. Particular attention was directed towards the Jews, whose presence was a pastoral concern of the Spanish Church.<sup>43</sup> Ten canons of the council addressed this issue. A general directive in c. 57 declared that Jews could no longer be compelled to adopt Christianity. But if they had been previously forced to convert under the Spanish king and had received the sacraments, then they must remain

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<sup>42</sup>J. LECLER, op. cit., p. 57.

<sup>43</sup>Cf. J. FONTAINE, Culture et spiritualité en Espagne du IV<sup>e</sup> au VII<sup>e</sup> siècle, London, Variorum Reprints, 1986, vol. 5, p. 134, n. 72.

Christians.<sup>44</sup> Canon 59 further stipulated that all baptized Jews who had apostasized back into Judaism were to be compelled by the bishop to return to the Church.<sup>45</sup> The council did not seek intervention by the state to force schismatics and apostates back to the Church. However, royal approval was sought for the Church's own exercise of coercion.

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<sup>44</sup>Canon 57: "...Qui autem iam pridem ad Christianitatem venire coacti sunt, sicut factum est temporibus religiosissimi principis Sisebuti, quia iam constat eos sacramentis divinis associatos et baptismi gratiam suscepisse et chrismate unctos esse et corporis domini et sanguinis extitisse participes, oportet ut fidem etiam, quam vi vel necessitate susceperunt, tenere cogantur, ne nomen domini blasphemetur, et fides quam susceperunt vilis ac contemptibilis habeatur," Mansi, vol. 10, col. 633.

<sup>45</sup>Canon 59: "Plerique, qui ex Judaeis dudum ad Christianam fidem promoti sunt, nunc blasphemantes in Christum non solum Judaicos ritus perpetrasse noscuntur, sed etiam et abominandas circumcisiones exercere praesumpserunt, de quibus consulto piissimi ac religiosissimi principis domini nostri Sisenandi regis hoc sanctum decrevit concilium, ut huiusmodi transgressores pontificali auctoritate correcti ad cultum Christiani dogmatis revocentur, ut quos voluntas propria non emendat, animadversio sacerdotalis coerceat. Eos autem, quos circumciderunt, si filii eorum sunt, a parentum consortio separentur, si servi, pro injuria corporis sui libertati tradantur," in Mansi, vol. 10, cols. 633-634.

### 3. Cardinal Hostiensis

The Summa Aurea (1253 AD) of Cardinal Hostiensis frequently comments upon the canonical principle salus animarum suprema lex. This central criterion in medieval legislation led Hostiensis to conclude that not only was it justified to have a crusade against heretics, but also to sustain one against schismatics and disloyal Catholics. Hostiensis has thus been characterized as the "father of the juridic theory of the crusade."<sup>46</sup> An essentially theological conviction earned him this designation. His conviction was that the Son of God came on earth not only to die on the cross, but also to redeem captives and to summon sinners to penance.<sup>47</sup> Unlike Augustine, however, he did not allow for

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<sup>46</sup>M. VILLEY, La Croisade; essai sur la formation d'une théorie juridique, Paris, J. Vrin, 1942, p. 257, indicates resistance against a crusade directed towards schismatics and disobedient faithful since there is not an explicit condemnation by ecclesial authorities of an heretical position. J. BRUNDAGE, "The Votive Obligations of Crusaders", in Traditio, 24 (1968), p. 117, disagrees with the assessment of Villey. Brundage believes that the canonical doctrine of the Crusades only developed over a period of two centuries.

<sup>47</sup>"Nec enim filius Dei in mundum venit, nec crucem subiit ut acquireret terram, sed ut captivos redimeret et peccatores ad poenitentiam revocaret," Summa Aurea III, de voto et voti redemptione, n. 19, In quo casu, CARD. HOSTIENSIS, Summa Aurea, Lugduni, 1588, p. 217c.

good faith in schismatics, apostates and heretics. Although his theory of a crusade against heretics is clear, his actual concept of a crusade against schismatics and disobedient faithful is less clear.<sup>48</sup> Hostiensis reasoned on the basis of analogy, invoking the principle of Roman law "plura sunt negotia quam vocabula." Thus by means of penal sanctions, such individuals could justifiably be coerced to return to the Church.<sup>49</sup> Several reasons supported this position. The possibility of dissident Catholics returning would be more secure, and it provided a salutary protection for the faithful. Furthermore, the common good of society, potentially threatened by extreme heretics, was thus ensured tranquil existence.

#### 4. Thomas Aquinas

The right of the Church to compel heretics and schismatics to return to the Church was explicitly pronounced by Thomas Aquinas in the Summa theologica. In his

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<sup>48</sup>M. VILLEY, op. cit., pp. 259-260.

<sup>49</sup>C. GALLAGHER, Canon Law and the Christian Community, The Role of Law in the Church According to the Summa Aurea of Cardinal Hostiensis, Analecta Gregoriana, no. 208, Roma, Università Gregoriana Editrice, 1978, p. 185.

response to the question whether baptized unbelievers ought to be compelled to return, Aquinas first recalled, in line with Augustine, the Lucan parable of the banquet. The non-baptized may not be compelled to accept the faith, although they may be compelled not to prohibit its exercise.

The Thomistic interpretation of the Lucan parable differs significantly from Augustine. Aquinas understood the parable under the aegis of compelle remanere rather than the compelle intrare of Augustine. Aquinas distinguished between the coercion of the non-baptized to enter the Church, and the coercion of the baptized who have abandoned it. It is these latter who are the legitimate subject of coercion:

There are unbelievers who at some time have accepted the faith, and professed it, such as heretics and all apostates; such should be submitted even to bodily compulsion, that they may fulfil what they have promised, and hold what they, at one time, received.<sup>50</sup>

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<sup>50</sup> STh, IIa-IIae, q. 10, art. 8, "[...] infideles qui quandoque fidem susceperunt...Et tales sunt etiam corporaliter compellendi ut impleant quod promiserunt et teneant quod semel susceperunt." English translation from Summa theologiae, Benzinger, vol. 2, p. 1219.



Thomas Aquinas taught a similar position in regards to Jews who had received baptism: "If, however, they have received it, they ought to be compelled to keep it..." Aquinas does not exhibit the same degree of tolerance as Augustine. A promise to believe is an act of the will; the preservation of that promise is a necessity.<sup>51</sup>

C. The exercise of the religious option

The religious option is the action whereby an individual elects no longer to be affiliated with the Catholic Church. Several conciliar statements explicitly addressed this issue.

1. Council of Trent

The seventh session of the Council of Trent discussed the sacraments. Canon 14 of the canons De sacramento baptismi legislated on the obligation of the baptized to remain in the Church after baptism:

If anyone says that those who have been thus baptized when children, are, when they

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<sup>51</sup>Ibid., "Si autem suscepserunt fidem, oportet ut fidem necessitate cogantur retinere."

have grown up, to be questioned whether they will ratify what their sponsors promised in their name when they were baptized, and in case they answer in the negative, are to be left to their own will; neither are they to be compelled in the meantime to a Christian life by any penalty other than exclusion from the reception of the Eucharist and the other sacraments, until they repent, let him be anathema.<sup>52</sup>

The exercise of a religious option after the reception of baptism was thus explicitly prohibited. This prohibition was directed especially towards the Anabaptist practice of baptizing only adults.<sup>53</sup> Canon 14 was essentially a recapitulation of the censure delivered against Erasmus by the University of Paris in 1526; he had advocated the ratification of baptism with a profession of faith when one reached adulthood.<sup>54</sup> Such practices relating to a

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<sup>52</sup>DS, 1627: "Can. 14. Si quis dixerit, hujusmodi parvulos baptizatos, cum adoleverint, interrogandos esse, an ratum habere velint, quod patrini eorum nomine, dum baptizarentur, polliciti sunt, et ubi se nolle responderint, suo esse arbitrio relinquendos nec alia interim poena ad Christianam vitam cogendos, nisi ut ab Eucharistiae aliorumque sacramentorum perceptione arceantur, donec resipiscant: anathema sit." English translation in H. SCHROEDER, Canons and Decrees of the Council of Trent, St. Louis, B. Herder Book Co., 1941, p. 54.

<sup>53</sup>A. DUVAL, Des sacrements au Concile de Trente, Paris, Editions du Cerf, 1985, p. 13.

<sup>54</sup>Ibid; O. DE LA BROSSE ET AL., Lateran V et Trente, Paris, Editions de l'Orante, (1975-1981), vol. 1, p. 312.

post-baptismal option were clearly condemned by Trent. Thus this text is significant.

This prohibition was also implicitly evidenced in other canons. Canons 7 and 8 under the same heading also reminded the baptized that they were bound to preserve the faith and the universal laws of the Church. Similarly, there is an affirmation in c. 9 of the canons de sacramentis in genere on the indelible nature of the sacramental character. Trent also reaffirmed in c. 13 the practice of infant baptism, and likewise condemned the practice of rebaptism upon the attainment of adulthood.

## 2. Vatican I

Dei Filius, the dogmatic constitution on the Catholic faith, was promulgated at the third session of Vatican I on April 24, 1870.<sup>55</sup> Chapter Three of Dei Filius explores the nature of faith, the harmony between faith and reason, the necessity of belief and the obligation to embrace and to preserve the faith. Corresponding canons were also

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<sup>55</sup>DS, 3000-3045.

promulgated in order to implement these statements with disciplinary norms.

The obligation to retain the Catholic faith was emphatically pronounced. The final paragraph of Chapter Three is particularly significant, where it forcefully declared the duty of remaining in the Catholic faith:

Therefore, the position of those who have embraced the Catholic truth by the heavenly gift of faith and of those who have been misled by human opinions and follow a false religion is by no means the same, for the former, who have accepted the faith under the teaching authority of the Church, can never have any just reason for changing that faith or calling it into question.<sup>56</sup>

The corresponding canon 6 reiterates this pronouncement:

If anyone says that the position of the faithful and of those who have not yet reached the only true faith is the same, so that Catholics could have good reason for suspending their assent and calling into question the faith that they have already

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<sup>56</sup>DS, 3014: "Quocirca minime par est conditio eorum, qui per caeleste fidei donum catholicae veritati adhaeserunt, atque eorum, qui ducti opinionibus humanis, falsam religionem sectantur; illi enim, qui fidem sub Ecclesiae magisterio susceperunt, nullam unquam habere possunt iustam causam mutandi, aut in dubium fidem eandem revocandi." English translation in H. SCHROEDER, p. 68.

accepted under the teaching authority of the Church, until they have completed a scientific demonstration of the credibility and truth of their faith: let him be anathema.<sup>57</sup>

The central emphasis of these pronouncements is that no Catholic may have a justa causa to doubt the Catholic faith or depart from it. Two possible interpretations of this justa causa have been proposed. The first interpretation is that the phrase implies a certain subjective reasoning or conviction that an individual can express doubt in good faith without culpability. The second interpretation is that there can never be any legitimate reason per se for doubting the Catholic faith. There is no possible objective reason for doubt which does not involve at least material sin.<sup>58</sup>

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<sup>57</sup>DS, 3036: "Si quis dixerit, parem esse conditionem fidelium atque eorum, qui ad fidem unice veram nondum pervenerunt, ita ut catholici iustam causam habere possint, fidem, quam sub Ecclesiae magisterio iam susceperunt, assensu suspenso in dubium vocandi, donec demonstrationem scientificam credibilitatis et veritatis fidei suae absolverint; anathema sit." English translation in H. SCHROEDER, p. 74.

<sup>58</sup>A. VACANT, Etudes théologiques sur les constitutions du Concile du Vatican d'après les Actes du Concile, Paris, Delhomme et Brigue, 1895, vol. 2, pp. 165-166.

The second interpretation, the non-recognition of an objective, legitimate reason for doubt about the Catholic faith, enjoyed greater support among theologians.<sup>59</sup> Vatican I did not declare that a person could not abandon the faith without formal sin; rather it taught that one could not have a justa causa for this action.

a. Hermesianism

Chapter III of Dei Filius and the corresponding canon 6 were occasioned by two errors which Vatican I sought to condemn: Hermesianism and religious indifferentism. Hermesianism was the doctrine of the nineteenth century German theologian Georg Hermes. His principal thesis was that all theological inquiry begins with doubt. A person is not obligated to embrace the true religion and to persevere in it. The notes of the presynodal schema of Dei Filius reveal an animated discussion which sought to achieve a conciliar condemnation of Hermes. His teachings postulated an equivalency between Catholics and those who have not yet embraced the true faith.<sup>60</sup> The condemnation of Hermes was a

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<sup>59</sup>Ibid.

<sup>60</sup>Cf. Coll. Lac., vol. 7 p. 534, for the full text of

re-echo of Proposition 15 of the Syllabus of Errors issued by Pius XI earlier in 1864.<sup>61</sup>

b. Religious indifferentism

The error of religious indifferentism taught that an individual may withdraw from the Catholic Church and join another communion without culpability. Such a decision can be formulated according to one's conscience. If this right to depart from the Catholic Church is not recognized for Catholics, then one must also condemn those who convert to the Catholic Church from other communions.<sup>62</sup>

The statements of Vatican I on the obligation to remain in the Catholic faith were presented within a context of the condemnation of certain errors. Theologians and canonists continued to speculate after Vatican I on the possibility and impossibility of leaving the Church. The

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the discussions.

<sup>61</sup>DS, 2915: "Liberum cuique homini est eam amplecti ac profiteri religionem, quam rationis lumine quis ductus veram putaverit."

<sup>62</sup>Coll. Lac., vol. 7, pp. 531-532.

categories of vincible or invincible ignorance, and material or formal sin largely defined the parameters of the discussions. The question of religious liberty did not constitute the basis of the debate as later experienced in the twentieth century.<sup>63</sup>

### 3. The Mortara case

Examples of the Catholic Church's spiritual and legal claim on the baptized were witnessed in two significant cases which span the nineteenth and twentieth century. The Mortara affair in the nineteenth century is particularly significant. The case concerned Edgar Mortara, a Jewish boy who was secretly baptized in August 1852 during a critical illness at the age of one year by a Catholic domestic servant. Six years later, this servant was concerned about her performance of the baptism and reported the action to the ecclesiastical authorities. The Holy Office, informed of the situation, instructed that the baptized child be removed from his family. He was sent to Rome in June 1858

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<sup>63</sup>For a lengthy discussion on the question of leaving the Church in light of Vatican I, cf. F. HUERTH, "De inculpabili defectione a fide", in Gregorianum, 7(1926), pp. 3-27, 203-224.



and came under the personal solicitude of Pius IX.<sup>64</sup> His parents made several unsuccessful attempts to have him returned to their custody. When E. Mortara reached the age of majority, he declared his intention to remain a member of the Catholic Church. This decision subsequently nullified any further legal parental custodial claims.

International opposition to the Pope's action erupted. Canonical precedent was cited from the Fourth Council of Toledo (c. 58) and the 1747 instruction of Benedict XIV, Postremo Mense, which declared that baptized Jewish children should be removed from their parents.<sup>65</sup> It also has been speculated that the Mortara controversy was a contributing factor towards the decline of the Papal States. While Pius IX's action was representative of the canonical discipline of the pontifical state of the nineteenth century, the 1917 Code avoided the incorporation of such norms.<sup>66</sup>

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<sup>64</sup>R. SEJOURNE, L'option religieuse des mineurs et l'autorité parentale, Paris, Beauchesne, 1972, p. 220.

<sup>65</sup>DS, 2552-2562.

<sup>66</sup>Ibid; extensive documentation on the Mortara case is presented in G.L.M. ZANNI, "Nuovi documenti sul 'Caso Mortara'" in Rivista di storia della Chiesa in Italia, 13(1959), pp. 260-279.

#### 4. The Finaly affair

The Finaly case is a twentieth century example of a very different resolution of a situation similar to the Mortara case. It testifies to a shift in the canonical discipline relative to the Church's rights over the baptized and the rights of parents. In 1944, a French Jewish couple, prior to their deportation to Germany, entrusted their two sons to the care of a Catholic woman during their absence. It was the father's explicit intention that they remain French nationals and were not to be baptized. After it became evident that the parents would never return, the Catholic guardian had the children baptized. A Jewish aunt from Palestine later sought custody of the children through the civil courts. The French Court of Cassation ultimately determined that the children in justice belonged to the custody of their Jewish aunt, in conformity with their parents' wishes. The Catholic guardian was accused of sequestration of minors and the children were eventually brought to Israel.

The contrast with the Mortara case is that the nineteenth century witnessed an alignment of the civil and canon law. The Church expected the secular authorities to promote the observance of ecclesiastical legislation. In

the Finaly affair there was conflict between the two systems of law. Nor did the Church support the rights of the children's Catholic guardian. There was a concern that the baptized children be free to practice the Catholic faith if they wished. The Church did not assert its spiritual rights; it could not compel the children's consciences.<sup>67</sup>

### III. THE 1917 CODE OF CANON LAW

The 1917 Code of Canon Law incorporated the traditional canonical and theological positions on the permanence of incorporation into the Roman Catholic Church. There was no accommodation to the exercise of a religious option, so vigorously condemned by Vatican I. In juridic terms, the baptized received a perpetual incorporation as the subject of rights and duties.

#### A. Canonical personality

The 1917 Code had no particular title de membris, nor a canonical terminology which designated the sense of

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<sup>67</sup>For further discussion on the Finaly affair, cf. R. ROUQUETTE, "L'Eglise et le baptême des enfants juifs", in Etudes, 277(1953), pp. 99-110.

incorporation into the ecclesial body. Canon 87 identified the persona as the basic juridic personality. Upon the reception of baptism, an individual is initiated into the visible order of the Church.<sup>68</sup> The baptized individual is also simultaneously constituted a persona in the Ecclesia Christi as the subject of specific ecclesial rights and obligations.<sup>69</sup> Within the canonical spectrum, belonging to the Church is understood in terms of juridic personality and of rights and obligations. Several authors have taught that in the context of discussion on incorporation in the Church, the persona of c.87 is equivalent to membrum.<sup>70</sup> Theological reflections on church membership, however, have suggested that "member" is the preferred theological term, whereas in canonical discussion "persona" is the proper term of reference.

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<sup>68</sup>A. VEERMERSCH - J. CREUSEN, Epitome iuris canonici, fifth edition, Mechliniae - Romae, H. Dessain, 1933-1936, vol. 1, p. 175.

<sup>69</sup>F.M. CAPPELLO, Summa juris canonici, fourth edition, Romae, Apud Aedes Universitatis Gregoriana, 1940, vol. 1, p. 147.

<sup>70</sup>E.g., K. MÖRSDORF,, "Persona in Ecclesia Christi", in Archiv für katholisches Kirchenrecht, 131(1962), pp. 367-373; L. BENDER, "Persona in ecclesia - membrum in ecclesia", in Apollinaris, 32 (1959), pp. 105-119; W. ONCLIN, "Membres de l'Eglise: Personnes dans l'Eglise", in L'Année canonique, 9(1965), pp. 11-32.

Ecclesial rights and obligations are fundamental to incorporation. Canon 87 stipulated that their exercise may be restricted when ecclesiastical communion is impeded by the presence of an obex or censure. The obex is a barrier to ecclesiastical communion when the baptized person deliberately withdraws (defects) from communion with the visible Church through heresy, apostasy, or schism. Through this act the baptized demonstrates his desire no longer to be affiliated with the Church.<sup>71</sup> The restriction of the capacitas agendi of ecclesial rights and obligations does not vitiate the capacitas habendi.<sup>72</sup> This permanent capacity for rights, a primary characteristic of the persona, exists because of the indelible nature of the baptismal character and the permanence of incorporation. While certain rights at times may be restricted, certain fundamental rights always remain. However, obligations normally retain their exigency despite any restrictions placed on the exercise of the rights. The status vis-à-vis the law of individuals who defect is primarily approached from the perspective of the restriction of the exercise of their ecclesial rights.

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<sup>71</sup>R. NAZ, Traité de droit canonique, Paris, Letouzey et Ané, 1947-1949, vol. 1, p. 236.

<sup>72</sup>F.M. CAPPELLO, op. cit, vol. 1, p. 150.

Although their juridic condition is complex, a fundamental capacity for the exercise of rights and obligations is preserved.<sup>73</sup>

Canon 12 of the 1917 Code specified who was subject to merely ecclesiastical laws. All the baptized who had achieved the use of reason and have completed their seventh year are bound to observe merely ecclesiastical laws unless it is provided otherwise. There was no provision for a complete dissolution of the Church's jurisdiction over the baptized. Consequently, all schismatics, heretics, apostates and excommunicated individuals theoretically continued to be subject to the Church's jurisdiction. The traditional opposition to a positive recognition of their departure was that this would at least imply an acknowledgement of their actions. In actual practice, however, the majority of these individuals were either incidentally excused or dispensed from the observance of certain laws, or because they were forbidden to perform certain actions.<sup>74</sup>

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<sup>73</sup>Ibid., p. 223.

<sup>74</sup>A. CICOGNANI, Canon Law, second revised edition, translated by J. O'Hara and F. Brennan, Philadelphia, Dolphin Press, 1935, p. 566.

## B. Defection from the Church

Since the 1917 Code did not officially recognize defection from the Church, there were no established canonical procedures for such an action. When individuals and groups did abandon or depart from the Church, they were still canonically recognized as members or personae. The normative response to these actions of defection was penal.

However, the 1917 Code did recognize de facto that members defected from the Church, even if this recognition was not de iure. This recognition was exhibited in several ways. Defection was recognized from the penal perspective of the categories of apostasy and schism as defined in c. 1325, §2, although the specific term "defection" was not employed in this canon. Both apostasy and schism involve withdrawal from the Church, but with distinct features. The apostate is one who has completely withdrawn from the Christian faith,<sup>75</sup> although there may not be a specific or identifiable separation from the visible society of the Church. The schismatic refuses to submit to the authority of the Supreme Pontiff or

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<sup>75</sup>A. VERMEERSCH, "Annotationes", in Periodica, 19(1930), p. 268, held there is no distinction between apostasy from the Catholic faith and from the Christian faith.

to be in communion with the members of the Church who are subject to him. Schism in particular is related to a rupture with the visible, institutional Church.<sup>76</sup> These delicts directly concern a violation of the tria vincula of faith, sacraments and governance.

Various acts of defection are thus presented in c. 1325, §2: denial of truths, abandonment of the faith, non-recognition of the Pontiff, and absence of communion with other members of the Church. A second category of defection is operative in the 1917 Code where there is the actual employment of the term "defection" itself. The term appears in various contexts which suggest that the 1917 Code recognized de facto the reality of members who have separated from the Church. These specific types of defection can be summarized under four headings: defectio ex educatione; defectio ex adscriptione; defectio publica; and defectio

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<sup>76</sup>J. EGAN, "The Sin of Schism", in The Thomist, 27(1963), p. 59, compares the 1917 Code's definition of schism with the Thomistic definition in the Summa theologiae: "There is only one difference: the canon joins the two clauses with an "or", the Summa with an "and". Is this significant? Perhaps the canonical formula reflects the modern way of conceiving the distinction between the visible and juridical aspect of the Church and the invisible and gracious aspect of it, which may not be the same as St. Thomas'."



notoria. The principal elements of these types of defection will be identified.

1. defectio ex educatione

Canon 1099, §1 stipulated that all Latin Catholics must observe the form of marriage when they either marry among themselves, or with an Oriental Catholic or a non-Catholic. This obligation remained even if they later defected (ab eadem postea defecerint). Canon 1099, §2 provided a significant exception to this obligation: those born of non-Catholics (ab acatholicis nati), baptized in the Catholic Church, but raised since infancy in heresy, schism or infidelity, were released from the obligation of form whenever they contracted marriage with a non-Catholic. This provision was a radical departure from the norm previously established by Ne Temere, which had abrogated most privileges enjoyed from the Tridentine decree Tametsi.<sup>77</sup>

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<sup>77</sup>For example, in the Benedictine Declaration, one not bound to the form could extend this freedom to the other party. In Germany, non-Catholics retained the privilege of communicating freedom from form when they married a Catholic. Cf. Littera apostolica, Provida, January 18, 1906, in Acta Sanctae Sedis, 39(1906), p. 81-84. For an extensive examination of c. 1099, cf. W. BOUDREAUX, The "ab acatholicis nati" of Canon 1099; A Historical Synopsis and Commentary, Canon Law Studies, no. 227, Washington, D.C., The Catholic University of America, 1946.

The proper understanding of "ab acatholicis nati" was the subject of several interpretations by the Code Commission. This phrase was interpreted to include children born of a mixed marriage,<sup>78</sup> and apostates.<sup>79</sup> Since they had no education in the Catholic faith before reaching the age of reason, they were considered equivalent to acatholici regarding the form of marriage, and therefore not obligated to observe it.

A. Blat held a very broad interpretation of c. 1099. The acatholici in the first clause of §2 would also include those who are non-Catholic ex defectione. They were not bound to the form when marrying other non-Catholics, or those baptized outside the Church or those never baptized, but were bound when they married another person who was non-Catholic ex defectione.<sup>80</sup> They could not communicate the exemption to another Catholic.

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<sup>78</sup>CI, Responsum, July 20, 1929, in AAS, 21 (1929), p. 573. This decision was later clarified as declarative on July 25, 1931, in AAS, 23(1931), p. 388.

<sup>79</sup>CI, Responsum, February 17, 1930, in AAS, 22(1930), p. 195.

<sup>80</sup>A. BLAT, Commentarium textus Codicis iuris canonici, Romae, Ex Tipographia Pontificia in Instituto Pii IX, 1921-1938, vol. 3, p. 647.

The question also arose among canonists whether the ab acatholicis nati in c. 1099, §2 were bound by the impediment of disparity of cult in c. 1070. Since for the purposes of the form of marriage they were considered equivalent to those not baptized in the Church, were they bound by this impediment? The Code Commission decided in the affirmative to this question.<sup>81</sup>

The exceptive clause of c. 1099, §2 was abrogated by Pius XII on August 1, 1948.<sup>82</sup> The principal reason presented for this abrogation was that the exemption did not promote the good of souls. In addition, there arose a multiplicity of difficulties in the solution of marriage cases. With the promulgation of the 1917 Code, the legislator had originally reinstituted the exceptions permitted by Tametsi in order to allow a greater possibility for valid marriages of the baptized who, through no fault of their own, were educated outside the Catholic faith. This situation was common

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<sup>81</sup>CI, Responsum, April 29, 1940, in AAS, 32(1940), p. 212.

<sup>82</sup>PIUS XII, motu proprio, "Abrogatur alterum comma paragraphi secundae can. 1099", August 1, 1948, in AAS, 40(1948), pp. 305-306. The decree was effective January 1, 1949.

especially in mission territories.<sup>83</sup> With the abrogation of the second clause of c. 1099, §2, the legislation essentially reverted back to the norms of Ne Temere. This provision thus promoted a restriction of the notion of acatholicus regarding the obligation of canonical form.

## 2. Defectio ex adscriptione

The 1917 Code distinguished between two levels of schismatic activity: 1) the espousal of heretical or schismatic positions; and 2) actual adscription in a heretical or schismatic sect. Once a Catholic enrolled in such a sect, additional penalties were incurred, and one's ecclesial identity henceforth was regarded in certain specific situations as acatholicus. This distinction is operative in c. 2314, §1,1°, which established that all heretics, apostates and schismatics incur ipso facto excommunication. With enrollment in a non-Catholic sect, following c. 2314, §1,3°, such an individual became infamis, and if a cleric, could ultimately be degraded.<sup>84</sup> Canon 1065, §1 also differentiated

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<sup>83</sup>I. CREUSEN, "Annotationes", in Periodica, 37(1948), pp. 334-344.

<sup>84</sup>Cf. J. KEATING, "'Conversion' Which Binds to the Canonical Form of Matrimony (Can. 1099, §1,1)", in Ius

between abandonment of the Catholic faith and enrollment in a non-Catholic sect.

Admission to a novitiate was invalid according to c. 542, 1° if one was enrolled in a non-Catholic sect. Canon 538 already established the requirement that the candidate for admission be a catholicus. The question was presented to the Code Commission in 1919 whether the phrase "qui sectae acatholicae adhaeserunt" in c. 542, 1° was applicable to those who converted to the Catholic Church from heresy or schism in which they were born, or to those who abandoned the Church and joined a non-Catholic sect. The Commission replied in the negative to the first question, and in the affirmative to the second.<sup>85</sup> Dispensation from this requirement was necessary.

There is no example in the 1917 Code of a case where a Catholic is identified as a non-Catholic as a consequence of enrollment in a heretical or schismatic sect. However

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Populi Dei; Miscellanea in honorem Raymundi Bidagor, U. Navarrete (ed.), Roma, Università Gregoriana Editrice, 1972, p. 657.

<sup>85</sup>CI, Responsum, October 16, 1919, in AAS, 11(1919), p. 477.

there was an implicit equivalence of the status of a non-Catholic, since there was incurred disqualification for the exercise of certain rights in the Church which ordinarily are reserved to Catholics only.

### 3. Defectio publica

Public defection was the modality of defection identified in cc. 167, §1, 4° and 188, 4°. Determining the precise meaning of the qualifying term publice was essential for a proper interpretation of this modality of defection. The fundamental nature of a "public" act is intermediate between an occult and a notorious one.<sup>86</sup> Several commentators referred to c. 2197, 1°, where the definition of a delictum publicum was presented.<sup>87</sup> A delict was designated "public" if it was already known or divulged or was attended by such circumstances that its divulgation may and must be

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<sup>86</sup>R. NAZ, op. cit., vol. 4, p. 584.

<sup>87</sup>A. BLAT, Commentarium, vol. 2, p. 158; M. CONTE A CORONATA, Institutiones iuris canonici, Taurini, Marietti, 1933-1939, vol. 1, p. 316.

prudently judged easily possible. A delict was considered public when it was known by the majority of the community.<sup>88</sup>

Ecclesiastical office was lost by tacit resignation when a cleric "a fide catholica publice defecerit" as stipulated in c. 188, 4°. Commentators held that this defection referred to public apostasy or heresy, but not mere schism.<sup>89</sup> Cappello also extended this act of defection to include enrollment in a non-Catholic sect.<sup>90</sup> Schism was not equivalent to defection in the context of c. 188, 4° because it did not necessarily involve a rejection of the faith. Schism necessarily included disobedience and lack of charity.<sup>91</sup>

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<sup>88</sup>R. NAZ, op. cit., vol. 4, p. 585.

<sup>89</sup>C. AUGUSTINE, A Commentary on the New Code of Canon Law, St. Louis, B. Herder Book Co., 1925-1936, vol. 2, p. 161; A. BLAT, Commentarium, vol. 2, p. 158; M. CONTE A CORONATA, Institutiones, vol. 1, p. 316.

<sup>90</sup>F.M. CAPPELLO, Summa, vol. 2, p. 267.

<sup>91</sup>G. McDEVITT, The Renunciation of an Ecclesiastical Office, Canon Law Studies, no. 218, Washington, D.C., The Catholic University of America Press, 1946, p. 137.

Parallel to the consequences of enrollment in a non-Catholic sect, c. 167, §1,4° excluded from participation in a canonical election those who publicly adhered to a sect. Public apostates, heretics and schismatics also lost the right to personal patronage (c. 1453, §1).

#### 4. Defectio notoria

According to c. 1065, §1, the faithful were to be deterred from marriage with a person who had notoriously abandoned the Catholic faith (cum iis qui notorie ... catholicam fidem abiecerunt), regardless of whether the person had enrolled in a non-Catholic sect or a condemned society. Since this canon constituted an impedient impediment, the interpretation of the word "notorie" became especially critical to a proper understanding of this canon.

R. Naz has defined "notorious" as a public situation which is known by several individuals or would be soon known.<sup>92</sup> This is the essential quality of notoriety. Further assistance for the understanding of the nature of notoriety was also furnished by c. 2197 which provided definitions of

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<sup>92</sup>R. NAZ, op. cit., vol. 2, p. 335.



delicts notorium notorietate iuris (c. 2197, 2°) and notorium notorietate facti (c. 2197, 3°). A delict was notorium notorietate iuris after a judicial sentence has been issued, or after a confession has been made in court following the provisions of c. 1750. A delict was classified as notorium notorietate facti if publicly known and committed under such circumstances that it could not be concealed or excused by any legal defense.

When these elements of notoriety are applied to c. 1065, §1, several observations can be noted. The canon did not distinguish between notorietas iuris or notorietas facti; either classification would have sufficed to fulfill the intention of the legislator.<sup>93</sup> Notoriety must be an established fact; mere allegation does not constitute a sufficient foundation or presumption. The situation must be public or divulged.

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<sup>93</sup>J. HENEGHAN, The Marriages of Unworthy Catholics, Canons 1065 and 1066; An Historical Synopsis and Commentary, Canon Law Studies, no. 188, Washington, DC, The Catholic University of America, 1944, p. 188. F.M. CAPPELLO, Tractatus canonico-moralis de sacramentis, Romae, Taurinorum Augustae, 1926-1928, vol. 1, p. 423, would not exclude notorietas iuris although it is admittedly rare.

Abandonment of the Catholic faith was recognized as an especially difficult case to determine with certitude. Authors are generally agreed that the mere neglect of religious duties does not per se constitute notorious abandonment.<sup>94</sup> J. Heneghan identified three examples of notorious abandonment of the faith in view of the impediment of c. 1065: 1) those who notoriously defect by the delict of apostasy or heresy (delict against the faith) or schism (delict against the Church); 2) disobedience to ecclesiastical authority through membership in condemned societies; 3) those under notorious censure of excommunication or personal interdict.<sup>95</sup> A published declaration, public conversations, request to have one's name removed from a parish register, or a declaration in a census are considered forms of established proof of notorious abandonment.<sup>96</sup>

These examples of abandonment of the faith are thus a recognition in the 1917 Code that those incorporated in

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<sup>94</sup>F.M. CAPPELLO, Tractatus, vol. 3, pars 1, p. 382; A. VERMEERSCH - J. CREUSEN, Epitome, vol. 2, p. 234.

<sup>95</sup>J. HENEGHAN, op. cit., p. 69.

<sup>96</sup>I. ROBERTI, "Quinam acatholici careant iure accusandi matrimonium?", in Apollinaris, 10(1937), p. 112.

the Church do de facto depart from it. Each category of defection was accompanied by certain, specific consequences. Although the member was never expressly declared a non-Catholic by the law, there was a restriction of certain rights, which thus created a status parallel, in certain respects, to that of a non-Catholic. The clearest example is the provisions of c. 1099 concerning the obligation of canonical form, whereby a baptized Catholic was characterized as a non-Catholic ex defectione.

### C. Excommunication

Excommunication is the strongest exercise of the Church's right to exclude.<sup>97</sup> Discussion of excommunication frequently focuses upon its effects, especially the question of the excommunicated individual's bond with the Church. Various proposals have been suggested. Theologians frequently maintain that excommunication does not imply a total severance from the Church, except in the case of the vitandus. Canonists, however, hold that there is an exclusion

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<sup>97</sup>C.10, X, II, I: "Quum Ecclesia non habeat ultra quid faciat."

from the community of the faithful, without a precise articulation of what this actually means in practice.<sup>98</sup>

Two principal schools of thought have been identified in this discussion as essentially following the positions of R. Bellarmine and F. Suárez. R. Bellarmine taught that the excommunicated individual ceased to be a member of the Church.<sup>99</sup> He based his argument principally on two sources: Matthew 18:17 and a canon from the Decretum Gratiani whereby the excommunicated person is described as eliminated from the bosom of the Church and from any association with Christianity.<sup>100</sup> F. Suárez held that the excommunicated individual remained a member of the Church. He based his reasoning on the Fathers of the Church, who taught that excommunication only separated one from

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<sup>98</sup>F. DIVERRES, "L'excommunié est-il séparé de l'Eglise?", in Sciences ecclésiastiques, 15(1963), p. 39.

<sup>99</sup>De conciliis, lib. III, cap. VI.

<sup>100</sup>C. 107, C. XI, q. 3: "Canonica instituta, et sanctorum Patrum exempla sequentes, Ecclesiarum Dei violatores, auctoritate Dei et iudicio sancti Spiritus, a gremio sanctae matris Ecclesiae, et a consortio totius Christianitatis eliminamus."

association or communication with the Church; they were not apart from it.<sup>101</sup>

Canon 2257 defined excommunication as a censure by which an individual excluditur a communione fidelium. This phrase is the critical element towards an understanding of excommunication, and it contributes towards a greater understanding of defection. A. Gommenginger considered this expression as a vestige of early penitential discipline and simply adopted into the Code.<sup>102</sup> The penitential exclusion from the faithful was a temporary physical separation. This position implicitly implied a distinction between the communio fidelium and the Church itself. F. Diverrès dismissed such a sharp distinction: it suggested two independent realities, one visible and one invisible, a position

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<sup>101</sup>De Fide, disp. IX, s. 1, n. 16. I am indebted for these references to F. HYLAND, Excommunication: Its Nature, Historical Development and Effects, Canon Law Studies, no. 49, Washington, D.C., The Catholic University of America Press, 1928, pp. 7-8.

<sup>102</sup>A. GOMMENGINGER, "Bedeutet die Exkommunikation verlust der Kirchengemeinschaft?", in Zeitschrift für katholische Theologie, 73(1951), pp. 1-71.

which Mystici Corporis condemned when it affirmed there is no exclusive distinction between the two realities.<sup>103</sup>

This exclusion was often distinguished as either "external" and "internal".<sup>104</sup> "External" exclusion concerned the participation in the merely external acts of the ecclesial society. "Internal" communion concerned a sharing in the spiritual goods entrusted by Christ to the Church; excommunication denied an individual a share in these same spiritual goods. F. Diverres' explanation is more nuanced. The "communion of the faithful" denotes two categories of communion: the first is a sharing in the spiritual goods of the Church which are founded on charity; participation in these goods cannot be denied by a judicial sentence. Only a serious fault on the part of the individual can impede them. The second category of communion is the focus of juridical action: excommunication deprives the member of the public suffrages provided by the Church.<sup>105</sup>

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<sup>103</sup>F. DIVERRES, loc. cit., p. 39.

<sup>104</sup>Cf. F.M. CAPPELLO, Summa iuris canonici, vol. 3, p. 459; A. VERMEERSCH - J. CREUSEN, Epitome, vol. 3, p. 274.

<sup>105</sup>F. DIVERRES, loc. cit., p. 50.

V. DePaolis has examined the question of excommunication from the perspective of communion.<sup>106</sup> He notes that the 1917 Code possessed a singular and unilateral understanding of communion; degrees of communion were not recognized as later articulated by Vatican II.<sup>107</sup> Communion either was present or absent. DePaolis also proposes the useful distinction between the penalty of excommunication and the mere loss of communion. These two issues are not equivalent. The member of the Church who simply defects or separates from ecclesial communion differs from the heretic, schismatic or apostate, or author of other delicts who incurs excommunication.<sup>108</sup>

Although, V. DePaolis observes, the 1917 Code did not distinguish between degrees of communion, there were distinct degrees of excommunication. The Code distinguished between two principal categories of excommunicated persons:

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<sup>106</sup>V. DEPAOLIS, "Communio et excommunicatio", in Periodica, 70(1981), pp. 271-302.

<sup>107</sup>Ibid., p. 272.

<sup>108</sup>Ibid., pp. 295-298.

the vitandus and the toleratus.<sup>109</sup> The most extreme form of excommunication designated the person a vitandus. Precise conditions had to be fulfilled for the validity of this declaration; otherwise the excommunicated person was toleratus. According to c. 2258, §2, to be considered vitandus, the subject had to be designated expressly by name; the act must have been executed by the Apostolic See, publicly announced; and it must have been expressly stated that the excommunicate was to be avoided. Only violent assault on the person of Supreme Pontiff could lead to the imposition of an excommunication latae sententiae whereby a person became vitandus (c. 2343, §1,1°). In addition to the privations and effects of excommunication in general, the vitandus was also subject to further penalties.<sup>110</sup>

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<sup>109</sup>R. NAZ, op. cit., vol. 3, pp. 653-654, holds that the 1917 Code actually possessed 3 types of excommunication within cc. 2259-2267: the toleratus without being the object of a sentence; the toleratus against whom a condemnatory or declarative sentence has been declared; and the vitandus. Cf. also F.M. CAPPELLO, Summa, vol. 3, p. 146f; C. COCCHI, Commentarium in Codicem iuris canonici, Roma, Taurinorum Augustae, Marietti, 1932-1942, vol. 5, pp. 144-147.

<sup>110</sup>Absolute exclusion from divine functions (c. 2262, §1); restriction on the application of masses only for the purpose of his conversion (c. 2262, §2,2°); privation of office and all accompanying benefits (c. 2266). Penalties are also established for the faithful who associate with a vitandus, with the exception of family members, subjects, or those who do so for a reasonable cause (c. 2267).



Canonists and theologians have debated whether the vitandus was completely severed from membership in the Church. K. Rahner held that Pius XII's encyclical Mystici Corporis closed the debate when it defined the necessary conditions for membership in the Church. The encyclical, according to Rahner, recognized the dissolution of Church membership by a positive act of ecclesiastical authority.<sup>111</sup>

Only those are to be included as members of the Church who have been baptized and profess the true faith and who have not had the misfortune of withdrawing from the body or for grave faults been cut off by legitimate authority.<sup>112</sup>

Appeal was often made to c.2266 for the fundamental distinction between the toleratus and vitandus regarding inclusion or exclusion. Canon 2266 stated that the toleratus retained his ecclesiastical dignities, although he may not benefit from them; the vitandus was deprived of these dignities. When viewed juridically under the aegis of rights and obligations, the vitandus lost all rights to

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<sup>111</sup>K. RAHNER, loc. cit., p. 30.

<sup>112</sup>English translation from J. CLARKSON et al., (eds.), The Church Teaches, Documents of the Church in English Translation, St. Louis, B. Herder Book Co., 1961, p. 242.

dignities.<sup>113</sup> Canonical jurisdiction of the Church remained, as did the radical capacity for the exercise of ecclesial rights.<sup>114</sup>

Two elements were operative in this exclusion. Was the excommunication merely a declarative sentence of the state of separation, thus giving it notoriety and confirmation, or did it effect separation? Or, was it the delict itself, such as heresy or apostasy which actually effected it? Only certain offenses carried the censure of excommunication and hence a priori could not effect total separation from the Church. Excommunication, properly imposed, presupposes a specific delict, previous warnings, contumaciousness and ultimately the actual sentence. If the canonical warnings were disregarded and the individual persisted in his intentions, then the sentence of excommunication appeared as the expression of a desired and already effected state. F. Diverrès held that both the

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<sup>113</sup>K. RAHNER, loc. cit., p. 32; F. DIVERRES, loc. cit., p. 49.

<sup>114</sup>C. SALVADOR, "Incorporación a la Iglesia por el bautismo y sus consecuencias jurídicas", in Revista española de derecho canonico, 19(1964), p. 852.

contumaciousness and the judicial sentence effected the separation.<sup>115</sup>

The excommunication vitandi illustrates one example of separation from the Church. Theologians and canonists have established a position that suggests the Church indeed can completely exclude members. Although radical incorporation remains due to the baptismal character, the external criteria of incorporation are no longer present.

#### IV. SECULAR STATEMENTS ON DEPARTURE

The question of departure from the Church is not only a theological and canonical issue. The question also is entertained in civil texts. Two examples which illustrate this are the constitutional provisions of the German Federal Republic and the Universal Declaration on Human Rights issued by the United Nations in 1948.

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<sup>115</sup>F. DIVERRES, loc. cit., p. 51.

### A. Federal German Republic

The Kirchensteuer is the compulsory Church tax collected by the German Federal Republic for the support of the churches. The organization of the church tax is regulated by very detailed agreements between the Church and state. The Roman Catholic Church is recognized by the state as a corporate body or "corporation of public right" (Körperschaft des öffentlichen Rechts). This civil status is distinct from the Church's autonomous existence as a canonical entity. Exemption from this church tax is gained by a declaration of intent to leave the Church. Article 4.1 GG of the West German constitution provides that, on the basis of the principle of religious liberty, the State must provide for the possibility of defection from the Church.<sup>116</sup> This departure concerns the Church only as a public corporation.<sup>117</sup> The intention of departure is declared before the

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<sup>116</sup>N. RUF, Das Recht der katholischen Kirche nach dem neuen Codex Iuris Canonici für die Praxis erläutert, Freiburg, Herder, 1984, p. 47; K. WALF, "The Church Tax as a Means of Subsistence", in The Finances of the Church, W. Bassett and P. Huizing (eds.), New York, The Seabury Press, 1979, pp. 20-21.

<sup>117</sup>K. WALF, loc. cit., p. 20.

civil authority either orally or in writing according to a determined protocol.<sup>118</sup> The State exhibits a strict neutrality in this process. It is not permitted to inquire into the reasons for the defection. The sole effect of the declaration is that the State no longer considers the individual to hold membership in the Church as a "corporation of public right". Only exemption from the church tax is granted. There is no simultaneous canonical effect regarding affiliation with the Church. There is no canonizatio of the civil law.<sup>119</sup>

The German Conference of Bishops issued a declaration in December 1969 relative to the church tax. The bishops stated that church members who filed a civil declaration of departure to avoid paying the church tax would incur the penalty of exclusion from the sacraments. This sacramental exclusion would remain in effect until the declaration of departure is withdrawn.<sup>120</sup> A significant

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<sup>118</sup>C. COUGAR and R. COUTURIER, "Sortir de l'Eglise, comme dans un club sportif par exemple?", in Praxis juridique et religion, 4(1987), p. 67.

<sup>119</sup>E. CORECCO, loc. cit. p. 52.

<sup>120</sup>DEUTSCHE BISCHOFSKONFERENZ, "Erklärung der Diözesanbischöfe der Bundesrepublik vom Dezember 1969 zu

element of the German declaration of departure was that it does not involve issues of belief or ecclesial authority. The sole purpose of this provision is the acquisition of an exemption from payment of the church tax.<sup>121</sup>

B. Universal Declaration of Human Rights

The General Assembly of the United Nations issued the Universal Declaration of Human Rights on December 10, 1948.<sup>122</sup> Although not a legally binding instrument, it is described as an "authoritative guide" for the interpretation of the Charter of the United Nations.<sup>123</sup> Article 18

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Fragen des kirchlichen Finanzwesens" in Archiv für katholisches Kirchenrecht, 138(1969), pp. 557-559. C. COUGAR and E. COUTURIER, loc. cit., p. 67, observe that this provision of the German bishops suggests that sacramental practice is allied with a civil juridic act, especially those of a financial nature.

<sup>121</sup>E. CORECCO, loc. cit., pp. 23-25, holds that defection from the Church in this context, since it is for purely financial reasons, does not constitute schism. N. Ruf, op. cit., p. 47 thinks it is at least apostasy.

<sup>122</sup>Text published in Basic Documents on Human Rights, I. Brownlie (ed.), second edition, Oxford, Clarendon Press, 1981, pp. 21-27.

<sup>123</sup>Ibid., p. 21.

addressed the issue of religious liberty, with a specific reference to a person's right to change religion:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.<sup>124</sup>

Social pluralism demands the equal tolerance of all religions.<sup>125</sup> The working group which drafted art. 18 originally described these rights as "sacred and primordial", although these words were not inserted into the final redaction of the declaration.<sup>126</sup> The Moslem members of the working group opposed the statement on the right to change religion since it was contrary to the law of the Koran.<sup>127</sup>

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<sup>124</sup>Ibid., pp. 24-25.

<sup>125</sup>p. DE LA CHAPPELLE, Droits de l'Homme et Catholicisme, Paris, R. Pichon et R. Durand - Auzias, 1965, p. 148.

<sup>126</sup>Ibid., p. 149.

<sup>127</sup>Ibid., p. 152. De la Chappelle does not address this problem from a Roman Catholic perspective.

The Declaration's position is also contrary to the general canonical tradition of permanence of incorporation in the Church.

#### CONCLUSION

This historical trajectory has illustrated the permanence of incorporation in the Church as a consistent teaching. Defection was viewed intolerantly, and interpreted as either heresy, apostasy or schism. A complete, absolute and actual separation from the Church is not possible. There was no reversal to a pre-baptismal status. Theologians also claimed that the Church was justified to compel individuals to return.

The theological and later canonical rationale for this teaching was fundamentally based upon the understanding of the indelible sacramental character received at baptism. This teaching then received canonical expression resulting in the discipline against defection. The sacramental character, following Thomas Aquinas, symbolized the perpetual orientation of the baptized towards the cultus Dei. Baptism effected membership in the Church wherein this worship was observed. Within the canonical spectrum, baptism brought the individual under the potestas



jurisdictionis and the potestas ordinis. Therefore, the Church asserted a perpetual jurisdiction over the baptized.

With the promulgation of the 1917 Code, it was clearly evident that there was no fundamental revision of the teaching on the permanence of incorporation. The provisions of c. 1099, §2 were designed only to secure the validity of marriage for those individuals baptized but otherwise never raised as Catholics. The abrogation of this exemption signified a reintroduction of more restrictive norms. The principal concern for this provision was the validity of marriage, and not the recognition of the intentions of the baptized who no longer desired to live as Catholics.

The various categories of defection listed in the 1917 Code and identified in this investigation served to establish the requirements for the application of various penalties, including excommunication. However, this did represent a de facto recognition of the intention to defect from the Church. These penalties served to protect the Catholic faith and personal Catholic identity. Thus there emerges, in a certain sense, two types of non-Catholic: individuals baptized outside the Catholic Church or never baptized, and Catholics who have defected.

The canonical provisions against defection are thus founded upon the effects of baptism. While the sacramental character may appear to be an inadequate basis for permanent incorporation and permanent canonical jurisdiction, there are other effects of baptism which contribute to this position, principally incorporation into the Ecclesia Christi which endows the individual with various Christian rights and obligations. It is the exclusive identification of the Ecclesia Christi with the Ecclesia Catholica which resulted in the discipline against defection. This ecclesiological presupposition, and the otherwise disregarded question of religious freedom, received significant attention at the Second Vatican Council. These discussions held serious consequences for the revised discipline on defection from the Church.

## CHAPTER TWO

### THE CONTRIBUTION OF THE SECOND VATICAN COUNCIL

The Second Vatican Council was essentially a pastoral council. Unlike previous councils, it did not seek to correct heresy or restore discipline in the Church. Rather, its agenda of aggiornamento was to fashion for the church a response to the "signs of the times". Thus it endeavored to provide an overture to the modern world while assuring a continuity with tradition.<sup>1</sup> The task of the Council could be explained in more sobering terms: its responsibility was the integration of what was obligatory in the pre-conciliar era with an ecclesiology of communion and with a Christian anthropology which held as a fundamental premise the dignity of the human person.<sup>2</sup>

The Council did not explicitly address the question of defection from the Church. However, a new context was established for its consideration. Indeed, several conciliar texts address issues which contribute to a new

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<sup>1</sup>H. POTTMEYER, "Vers une nouvelle phase de réception de Vatican II; Vingt ans d'herméneutique du Concile," in La Réception de Vatican II, G. ALBERIGO and J.P. JOSSUA (eds.) Paris, Editions du Cerf, 1985, pp. 43-45.

<sup>2</sup>Ibid., p. 52.

perspective on this question. The conciliar reformulation of the Church's self-understanding as a communion holds many implications both for extra-ecclesial and intra-ecclesial life. This included a re-examination of the very issue of belonging to the Church, and consequently, of defection from it. The Council's ecumenical agenda likewise necessitated a reconsideration of the question. However ecclesiological reflection alone does not furnish a new context for an investigation of defection from the Church. The conciliar statements on the dignity of the human person and the subsequent rights which flow from this dignity are also an essential new component of the discussion.

This chapter will consider the principal texts of the Second Vatican Council which suggest a new context for the discussion of defection from the Church. These texts are primarily located in Lumen gentium, Dignitatis humanae, Unitatis redintegratio, and Gaudium et spes. They will be critically examined followed by a description of their particular contribution to the problematic.

I. LUMEN GENTIUMA. Lumen gentium 8: "subsistit in"

The ecclesiological direction of the Second Vatican Council is clearly indicated by the declaration of LG 8:

This Church, constituted and organized in the world as a society, subsists in the Catholic Church, which is governed by the successor of Peter and by the bishops in union with that successor, although many elements of sanctification and of truth can be found outside of her visible structure. These elements, however, as gifts properly belonging to the Church of Christ, possess an inner dynamism toward Catholic unity.<sup>3</sup>

This watershed assertion of the Council immediately recalled the assertion of Pius XII in his encyclical Mystici

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<sup>3</sup>"...Haec Ecclesia, in hoc mundo ut societas constituta et ordinata, subsistit in Ecclesia catholica, a successore Petri et Episcopis in eius communione gubernata, licet extra eius compaginem elementa plura sanctificationis et veritatis inveniantur, quae ut dona Ecclesiae Christi propria, ad unitatem catholicam impellunt", SACROSANCTUM OECUMENICUM CONCILIUM VATICANUM II, Constitutiones, Decreta, Declarationes, Romae, Typis polyglottis Vaticanis, 1966, p. 105. English translation in W. ABBOTT (ed.), The Documents of Vatican II, Chicago, Follett Publishing Company, 1966, p. 23.

Corporis, where he declared that the true Church of Christ is the holy, catholic, apostolic, Roman Church.<sup>4</sup> The Preparatory Theological Commission of Vatican II presented to the opening session in 1962 the Schema De Ecclesia which reasserted this exclusivist ecclesiology.<sup>5</sup> This schema, however, was rejected. The second version, presented at the 1963 session, still espoused this exclusivist stance, but with the significant admission that "many elements of sanctification can be found outside its total structure", and that these elements are "things properly belonging to the Church of Christ."<sup>6</sup> This recognition of "elements of

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<sup>4</sup>Pius XII, Encyclical Letter, "Mystici corporis," July 20, 1943, in AAS, 35(1943), p. 199: "Iamvero ad definiendam describendamque hanc veracem Christi Ecclesiam - quae sancta, catholica, apostolica, Romana Ecclesia est." This teaching was again reiterated in Humani generis: "...corpus Christi mysticum et Ecclesiam Catholicam Romanam idemque esse", in AAS, 42(1950), p. 571.

<sup>5</sup>"Ecclesia societas est mysticum Christi Corpus," in Acta Synodalia, vol. 1-1-4, p. 15.

<sup>6</sup>"... quae ut res Ecclesia Christi propriae," in SACRO SANCTUM OECUMENICUM CONCILIUM VATICANUM II, Acta et documenta, Series II: Praeparatoria, cura et studio Secretariae Generalis Concilii Oecumenici Vaticani II, Civitate Vaticana, Typis polyglottis Vaticanis, 1960-1969, vol. 2-1-1-, p. 220.

sanctification" at least implied the existence of an ecclesial reality outside the boundaries of the Catholic Church.<sup>7</sup>

When the Theological Commission revised this second schema of De Ecclesia, the question of an apparent contradiction in the text arose within the commission itself. The identification of the Church of Christ with the Roman Catholic Church was inconsistent with the recognition of elements of sanctification elsewhere. Consequently this schema was amended to read that the Church of Christ "subsists in" (subsistit in) the Roman Catholic Church. The relatio reports that this amendment was inserted to achieve a greater consistency with the positive affirmation of ecclesial elements present outside the Catholic Church.<sup>8</sup>

No further elucidation was offered for a more precise interpretation of the subsistit in amendment.<sup>9</sup> However, this amendment was more than a mere attempt to

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<sup>7</sup>F. SULLIVAN, "Subsistit in", in One in Christ, 22(1986), p. 116. This section essentially follows the position of Sullivan.

<sup>8</sup>"Quaedam verba mutantur: loco 'est', l.21, dicitur 'subsistit in, ut expressio melius concordet cum affirmatione de elementis ecclesialibus quae alibi adsunt," in Acta Synodalia, vol. 3-3-1, p. 177.

<sup>9</sup>F. SULLIVAN, loc. cit., p. 116.

preserve consistency in literary style. There was a new overture to understanding the nature of the Church of Christ itself. F. Sullivan thus observes in this regard that the amendment forces one conclusion as "absolutely certain": there is no longer an exclusive identification between the Church of Christ and the Catholic Church.<sup>10</sup> But the question persisted: what was "subsists in" intended to mean? When Lumen gentium and Unitatis redintegratio were promulgated together on November 21, 1964, Paul VI said in his allocution that the constitution was to be interpreted in light of the further elaborations contained in the decree.<sup>11</sup> Thus Unitatis redintegratio must be examined for its assistance in interpreting this new ecclesiological affirmation.

The Church of Christ is the historical Church of the New Testament entrusted to Peter and the apostles. Although it is essentially a mystery, it has historical expression. This Church is found concretely in the Catholic Church,

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<sup>10</sup>Ibid., p. 116.

<sup>11</sup>PAUL VI, Allocution, "Post duo menses", November 21, 1964, in AAS, 56 (1964), pp. 1012-1013: "In spem praeterea erigimur fore ut eandem Ecclesiae doctrinam aequo benevolentique animo perpendant in Christo fratres, qui etiam nunc a nobis seiuncti sunt. Oh quam velimus, ut ea doctrina, explicationibus completa", in Schemate de Oecumenismo comprehensis".



governed by the successors of Peter.<sup>12</sup> The most instructive text in the conciliar documents for understanding how the Church of Christ subsists in the Catholic Church is found in UR 2 where a description is given of the unity Christ gave to his Church: the fundamental communion of faith, hope and love is brought into existence by the Holy Spirit. This visible expression of communion is located in the profession of faith and sacraments.<sup>13</sup> UR 4c declares further that as obstacles to perfect communion are overcome, there will be achieved "that unity of the one and only Church which Christ bestowed on his Church from the beginning".<sup>14</sup>

This unity exists in a unique manner in the Catholic Church. It is also present, however, in other Christian Churches and communions. As F. Sullivan keenly observes:

...it is the mind of the Council that the Church of Christ subsists in the Catholic Church not only with the unity that Christ intended his Church to have, but with all its inalienable properties intact. To say that the Church of Christ subsists means that it

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<sup>12</sup>A. GRILLMEIER, "Dogmatic Constitution on the Church", in H. Vorgrimler (gen. ed.), Commentary on the Documents of Vatican II, New York, Herder and Herder, 1967, vol. 1, p. 149.

<sup>13</sup>F. SULLIVAN, loc. cit., p. 118.

<sup>14</sup>English translation from W. Abbott, op. cit., p. 348.

still exists with all those gifts with which Christ endowed it. To say that it subsists in the Catholic Church means that it is in the Catholic Church that it is to be found still existing with all its essential properties: its oneness, holiness, catholicity and apostolicity.<sup>15</sup>

The fullness of the means of salvation exists in the Catholic Church according to UR 3. Means of salvation are found also outside the Catholic Church, but Unitatis redintegratio frankly admits these other ecclesial communions "suffer from defects." The reference to the inalienable properties and fullness of the means of salvation are specific to the institutional aspect of the Catholic Church.<sup>16</sup> But this leads to the question, what does "subsist in" imply for the other Christian Churches and communions? LG 8 says they possess "many elements of salvation and truth", but one must look beyond this specific text for a deeper explanation.<sup>17</sup>

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<sup>15</sup>F. SULLIVAN, loc. cit., p. 119.

<sup>16</sup>Ibid., pp. 119-120.

<sup>17</sup>F. SULLIVAN, loc. cit., p. 121 refers to the notificatio of the Congregation for the Doctrine of the Faith on L. Boff's publication Church, Charism and Power, in AAS, 77(1985), pp. 756-762. The Congregation criticized Boff's position that the Church of Christ subsists in other Christian Churches as an ecclesiological relativism. The Congregation interpreted "subsists in" in an exclusive manner: outside the Catholic Church are found only elements "solo elementa Ecclesiae" (pp. 758-759). Sullivan disagrees.

LG 15 declares that the Catholic Church is linked together with other Churches and ecclesial communities in many ways: with Sacred Scripture, baptism, other sacraments and the Holy Spirit. The relatio for UR 15 reveals that these elements concern not only individuals but also their communities.<sup>18</sup> The recognition of the salvific role played by other Christian Churches and communities as such, and not merely their elements or sacraments, presents a new context for our understanding of them. It is claimed that if only "elements of salvation" were found outside the Catholic Church, then chapter III of UR could have been omitted. This chapter recognizes the ecclesial nature of separated Christian communions.<sup>19</sup> The presence of the Church of Christ outside the boundaries of the Catholic Church is analogous to, but not identical with, its presence in the particular churches within the Catholic Church. As later

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with the Congregation when he notes that LG says plura elementa, not solo.

<sup>18</sup>"Elementa quae enumerantur non tantum individuos respiciunt, sed etiam communitates; in hoc praecise situm est principium motionis oecumenicae", Acta Synodalia, vol. 3-3-1-, p. 204.

<sup>19</sup>Ibid., p. 123. For an opposite opinion, cf. J. O'CONNOR, "The Church of Christ and the Catholic Church", in Homiletic and Pastoral Review, 84:4(1984), pp. 10-21.

stated in Mysterium ecclesiae,<sup>20</sup> the Church of Christ is more than a collection of churches and ecclesial communities; it is a real communion with various degrees of fullness and realization.

B. Lumen gentium, 14a: The necessity of the Church for salvation

The Council's recognition of the ecclesial dimensions of other Christian communions carried many implications for ecclesiology and church order. The subsistit in statement of LG 8 necessitated in particular a re-examination of many traditional tenets of Roman Catholic ecclesiology. The question of church membership especially required a critical review. The ecumenical agenda of the Council also demanded a new formulation of the question which heretofore had been considered definitively settled by Mystici Corporis. One commentator was even of the opinion that the question of church membership should have been momentarily suspended during the deliberations on the various schemata of LG, but this would have resulted in an incomplete ecclesiology.<sup>21</sup>

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<sup>20</sup>SACRA CONGREGATIO PRO DOCTRINA FIDEI, Declaration, "Mysterium ecclesiae", June 24, 1973 AAS, 65(1973), p. 398.

<sup>21</sup>A. GRILLMEIER, loc. cit., p. 168.

Article 14 addresses the question of belonging to the Church. Before the text treats the actual subject of Catholic membership, it first approaches a fundamental issue of Catholic dogma that has at times witnessed fierce controversy and rigorism in the history of theology: the doctrine, "extra ecclesiam nulla salus".

...For Christ, made present to us in His Body, which is the Church, is the one Mediator and the unique Way of salvation. In explicit terms He Himself affirmed the necessity of faith and baptism (cf. Mk. 16:16; Jn. 3:5) and thereby affirmed also the necessity of the Church, for through baptism as through a door men enter the Church. Whosoever, therefore, knowing that the Catholic Church was made necessary by God through Jesus Christ, would refuse to enter her or to remain in her could not be saved.

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This teaching, propagated by Origen and Cyprian, articulated the necessity of the Church for salvation. The original patristic conceptualization presumed definite boundaries to the Roman Catholic Church and an exclusive

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<sup>22</sup>"Unus enim Christus est Mediator ac via salutis, qui in Corpore suo, quod est Ecclesia, praesens nobis fit; Ipse autem necessitatem fidei et baptismi expressis verbis inculcando (cf. Mc. 16,16; Io. 3,5), necessitatem Ecclesiae, in quam homines per baptismum tamquam per ianuam intrant, simul confirmavit. Quare illi homines salvari non possent, qui Ecclesiam Catholicam a Deo per Iesum Christum ut necessariam esse conditam non ignorantes, tamen vel in eam intrare, vel in eadem perseverare noluerint." SACROSANCTUM OECUMENICUM CONCILIUM VATICANUM, op. cit., p. 118.

agency of the Church in the economy of salvation. A vast literature has been written on this doctrine.<sup>23</sup> The basic theological principle underlying this doctrine is Christocentric: the world received salvation from God through Christ; this salvation is only offered through the historical foundation of the Catholic Church by Christ Himself.<sup>24</sup> The patristic presupposition was that the entire world had heard the Gospel of Christ. This view thus facilitated a certain rigorism in the application of the principle and enabled people to tolerate this attitude more readily. The ultimate consequence, however, was that it was an individual's own fault if he was not in the Catholic Church.<sup>25</sup>

When it was realized that the world was much larger and that the majority of humanity had not been evangelized,

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<sup>23</sup>No need to rehearse here the history of this doctrine. This has been adequately presented in dictionaries of theology and textbooks of ecclesiology. For a good summary presentation with extensive bibliography, cf. B. WILLEMS, "Who Belongs to the Church?", in Concilium, 1(1965), pp. 62-71.

<sup>24</sup>The Council of Florence was particularly harsh with its adoption of the statement by Fulgentius: "Neither pagans nor Jews, nor heretics nor schismatics can obtain eternal life but will be condemned to the everlasting fire which is prepared for the devil and his angels unless, before the end of their lives, they are received into the Catholic Church", quoted in B. WILLEMS, loc. cit., p. 63.

<sup>25</sup>A. GRILLMEIER, loc. cit., p. 169.

a theological accomodation became necessary. The existence of an ecclesia ab Abel was posited to indicate salvation in Christ before the preaching of the Gospel. Christ's descent into hell was the moment of salvation for the Church's ancestors; a critical distinction was drawn between salvation and the preaching of the Gospel.<sup>26</sup> Nuanced distinctions such as "inculpable ignorance", "votum ecclesiae" and "vestigia ecclesiae" were designed to lessen the harsh consequences of the doctrine, "without lessening the motivation to join and remain in the 'true church'."<sup>27</sup>

The votum ecclesiae was an especially important element of this awareness. The patristic origins were the baptism of desire and the baptism of blood. These categories were also presented in Mystici Corporis which continued to speak of an "unconscious longing and desire (art. 101)."<sup>28</sup> The doctrine of the votum surfaced again at Vatican II, where it "formed the bridge between reality, the fact that most men are outside the Church, and the traditional

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<sup>26</sup>Ibid., pp. 169-170.

<sup>27</sup>A. DULLES, Models of the Church, Garden City, NY, Doubleday & Company, Inc., 1974, p. 46.

<sup>28</sup>"in scio quodam desiderio ac voto ad mysticum Redemptoris corpus ordinentur", loc. cit., p. 243.

doctrine of the universal salvific will of God and the necessity of the Church for salvation."<sup>29</sup>

The conciliar discussions on the votum ecclesiae underscored its conceptual inadequacies in view of the new ecclesiological assertions and ecumenical overtures. What was especially problematic was the lack of distinction between the votum of the unbaptized and the baptized non-Catholic. Another important criticism was that a votum in good faith was admittedly possible against membership in the institutional Catholic Church, but which nevertheless preserved a faithful obedience to God. Finally, the votum doctrine took only the individual into consideration, and not other churches and ecclesial communities as corporate salvific realities.<sup>30</sup> The link to the Catholic Church is no longer the votum but baptism. Thus UR 3 stated that those "who believe in Christ and have been properly baptized are brought into a certain, though imperfect, communion with the Catholic Church."<sup>31</sup> The Council restricted the votum to

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<sup>29</sup>A. GRILLMEIER, loc. cit., p. 171.

<sup>30</sup>Ibid.

<sup>31</sup>"Hi enim qui in Christum credunt et baptismum rite receperunt, in quadam cum Ecclesia catholica communione, etsi non perfecta, constituuntur" in SACROSANCTUM OECUMENICUM CONCILIUM VATICANUM II, op. cit., p. 248.



catechumens, those who have the explicit intention of being incorporated into the Church. This intention already links them with the Church.

Lumen gentium presented a new understanding of extra ecclesiam nulla salus. It reasserted the basic premise that the Church is "the historical embodiment and manifestation of the universal salvific will of God in this world."<sup>32</sup>

By reiterating the traditional Catholic doctrine on the necessity of the Church for salvation, Vatican II sought to highlight the importance of union with the Church.<sup>33</sup> But it cannot be concluded that the Church has abandoned its claim as the singular means of salvation.<sup>34</sup> The Church is necessary for salvation because it is the body of Christ, who is the only mediator of salvation. Jesus Christ explicitly proclaimed the necessity of baptism and faith in order to gain entrance into the Church (Mark 16:16). The

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<sup>32</sup>A. GRILLMEIER, loc. cit., p. 169; this theme of universal salvation appears also in LG, 2; 3; 13. Cf. also, Ag, 7.

<sup>33</sup>Commentary on Lumen gentium by A. DULLES in W. ABBOTT, op. cit., p. 32, n. 47.

<sup>34</sup>G. PHILIPS, L'Eglise et son mystère au IIe Concile du Vatican, Paris, Desclée, (1967-1968), vol., 1, p. 186.

reference to the Church "sojourning on earth" in the first sentence of LG 14 indicates the necessity of union with the visible Catholic Church, even though the precise nature of the necessity is not explained.<sup>35</sup> It is only asserted that the Church is a necessary means of salvation because the Lord instituted it with this purpose in mind.

The relatio for LG during the third session indicates discussion among Vatican II Fathers about the precise nature of this necessity. Some wished the constitution to state that it was an explicit necessitas medii, while others desired a necessitas praecepti. Still others preferred the more general interpretation: the necessity of the Church means ex necessitate Christi.<sup>36</sup> The most fundamental explanation is the affirmation that Christ is the unique Way of salvation; all must profess the faith and be baptized in His Name. The emphasis is on the salvation found in Christ

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<sup>35</sup>A. GRILLMEIER, loc. cit., p. 175; G. PHILIPS, op. cit., pp. 187-188.

<sup>36</sup>The relatio for LG states: "Statuit Commissio indicari necessitatem medii ex unico Mediatore Christo; cui assertioni tamen addidit affirmationem traditionalem de necessitate baptismi" in Acta Synodalia, vol. 3-3-1, p. 202. A. GRILLMEIER, loc. cit., p. 175, notes further that the text does not state whether the necessity of means is absolute or conditional.

and not on the mediation of the Church. The obligation to believe and to receive baptism is equivalent to the obligation of belonging to the Church since baptism essentially constitutes the Church,<sup>37</sup> which, as a necessity of means, is not presented so absolutely that inculpable ignorance would exclude from salvation.

The constitution also teaches that the necessity of entrance into the Church as a visible and historical institution is a fundamental premise. It does not advocate the position at times proposed by theologians that one could belong to the soul of the Church through an interior disposition without an external manifestation of this commitment to the institutional Church.<sup>38</sup> But, it is not defined as a solemn truth of faith. The Council derives its authority from Scripture and tradition when it teaches the necessity of the Church for salvation. The possibilities of salvation outside the strict boundaries of the Church are recognized in arts. 15 and 16.

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<sup>37</sup>A. GRILLMEIER, loc. cit., p. 175.

<sup>38</sup>G. PHILIPS, op. cit., p. 194.

The doctrine of the necessity of the Church for salvation is also to be understood in light of the assertion in UR 3 that "it is through Christ's Catholic Church alone, which is the all-embracing means of salvation, that the fullness of the means of salvation can be obtained."<sup>39</sup> But this does not deny the salvific purpose and value of other Christian communions; indeed, art. 3 also states that these communions provide "access to the community of salvation." Therefore outside the visible Catholic Church there is the possibility of salvation.<sup>40</sup> A correct interpretation of extra ecclesiam nulla salus never excluded this possibility of salvation outside the Catholic Church. The Council provided further elucidation of this by achieving a balance between the means of salvation found in the Catholic Church as distinguished from those offered elsewhere. Several commentators have urged the adoption of the constitution's frequent expression "The Church, universal sacrament of

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<sup>39</sup>"Per solam enim catholicam Christi Ecclesiam, quae generale auxilium salutis est, omnis salutarium mediorum plenitudo attingi potest", SACROSANCTUM OECUMENICUM CONCILIUM VATICANUM II, p. 250.

<sup>40</sup>B. KLOPPENBURG, The Ecclesiology of Vatican II, translated by M. O'Connell, Chicago, Franciscan Herald Press, 1974, p. 75.

salvation" rather than the patristic axiom "extra ecclesiam nulla salus." <sup>41</sup>

C. LG 14b: full communion

After the constitution outlined its understanding of the necessity of the universal sacrament of the Church for salvation, the foundation was now established to discuss the actual question of church membership. The reformulation of the conceptualization of the Church of Christ necessitated a restatement of who belongs to the Catholic Church. The identification of Roman Catholics was also important in order to distinguish them from other Christians. This has both theological and canonical significance. The belonging of baptized or received into the Catholic Church establishes "a specific manner in which Christians participate in the mission God gave the Church."<sup>42</sup> Other Christians were now seen to be related in new ways to the Catholic Church.

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<sup>41</sup>Ibid., pp. 75-76.

<sup>42</sup>J. PROVOST, "The Christian Faithful", in J. Coriden, T. Green, and D. Heintschel (eds.), The Code of Canon Law; A Text and Commentary, New York, Paulist Press, 1985, p. 129. Provost is commenting on c. 205 of the 1983 Code which incorporates art. 14b.

In contrast to previous treatises on church membership, Vatican II deliberately avoided the adoption of the term "member". This was a significant departure from the approach of Mystici Corporis which presented the requisite conditions for membership in the visible Church. The Council choose to formulate the issue using the model of "incorporation". Unlike the reapse of Mystici Corporis, the term "incorporation" allows a more open-ended structural expression of belonging to the Church. Various degrees of incorporation in the Catholic Church are possible. Catholics are said to be "fully incorporated" (plene incorporantur) when the three bonds of incorporation are present as stated in art. 14:

They are fully incorporated into the society of the Church who, possessing the Spirit of Christ, accept her entire system and all the means of salvation given to her, and through union with her visible structure are joined to Christ, who rules her through the Supreme Pontiff and the bishops. This joining is effected by the bonds of professed faith, of the sacraments, of ecclesiastical government, and of communion.<sup>43</sup>

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<sup>43</sup>"Illi plene Ecclesiae societati incorporantur, qui Spiritum Christi habentes, integram eius ordinationem omniaque media salutis in ea instituta accipiunt, et in eiusdem compage visibili cum Christo, eam per Summum Pontificem atque Episcopos regente, iunguntur, vinculis nempe professionis fidei, sacramentorum et ecclesiastici regiminis ac communionis", in SACROSANCTUM OECUMENICUM

This description of "full incorporation" integrates the spiritual and institutional dimensions of belonging to the Church. Baptism is not indicated; it is already presumed to have taken place. Indeed, baptism alone is not sufficient to achieve full incorporation, even though it accomplishes "communion" with the Church of Christ which subsists in the Catholic Church. When baptism is administered "communion" is also received, unless someone totally withdraws from the Christian faith, despite the indelible baptismal character.<sup>44</sup>

Fundamental to full incorporation is possession of the "Spirit of Christ" (Spiritum Christi habentes). F. Coccopalmerio holds that this phrase has both doctrinal and canonical significance.<sup>45</sup> The relatio for LG 14 gives several reasons for the inclusion of this phrase which was only inserted at the last stages of the draft of the constitution. Essentially it is related to the question of the

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CONCILIUM VATICANUM II, p. 118. English translation in W. ABBOTT, op. cit., p. 33.

<sup>44</sup>"...nisi quis totaliter a fide christiana recesserit", in V. DEPAOLIS, "Communio et excommunicatio, in Periodica, 70 (1981), p. 292.

<sup>45</sup>F. COCCOPALMERIO, "Quid significant verba 'Spiritum Christi habentes'?", in Periodica, 68(1979), p. 253.

ecclesial status of sinners. In a very real sense, sinners are not fully (plene) incorporated, even though they continue to belong to the Church.<sup>46</sup> The Theological Commission here wished to recall the traditional doctrine that the Church is composed of saints and sinners.<sup>47</sup> The primary emphasis of the text is that Catholic sinners are said to "belong" (pertinent), but are not "fully incorporated" (plene incorporantur). Catholics who lack the Spirit of Christ are, in a certain sense, less fully incorporated than non-Catholic Christians who possess the Spirit. In commenting on how other Christians are "non plene incorporantur", Feiner observes "that the Council recognizes a much graver condition for Catholics."<sup>48</sup> Thus, a separated Christian who lives an authentic grace-filled existence could at the moment be more fully incorporated into the Catholic Church than the sinner.<sup>49</sup> The conciliar notion of incorporation

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<sup>46</sup>"Quia peccatores Ecclesiae non plene incorporantur, etsi ad Ecclesiam pertinent, Commissio statuit adiungere, secundum Rom. 8,9: 'Spiritus Christi habentes'", in Acta Synodalia, vol. 3-3-1, p. 203.

<sup>47</sup>F. COCCOPALMERIO, loc. cit., p. 269; LG, 8,3: "Ecclesia in proprio sinu peccatores complectens, sancta simul et semper purificanda."

<sup>48</sup>J. FEINER, loc. cit., vol. 2, p. 80.

<sup>49</sup>A. DULLES, Church Membership as a Catholic and



permits a broad range of degrees of belonging to the Church. But in any analysis, the sinner is in an irregular position in the Church. Sinners remain in the body of the Church but not in the heart.

F.Coccopalmerio says that it is important to determine the meaning of "society of the Church" in LG 14.<sup>50</sup> The phrase is synonymous with terminology used to designate the Church as a social structure, a visible society on earth.<sup>51</sup> An objection can perhaps also be raised as to whether the "Spirit of Christ" is actually a constitutive element of full incorporation into the Church as a social structure. But Vatican II also speaks of sanctifying grace as a requisite for full incorporation in the visible Church. The conciliar statement was formulated to clarify the status of sinners in the Church. In former models of the Church one was either a member or a non-member. The model of

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Ecumenical Problem, The Père Marquette Lecture 1974, Milwaukee, Marquette University Press, 1981, pp. 74-75.

<sup>50</sup>F. COCCOPALMERIO, loc. cit., pp. 269-270. He also notes that the relatio speaks only of "Church", not of "society of the Church."

<sup>51</sup> Ibid., p. 270.

degrees of incorporation offers a clearer conceptualization of the question.

The phrase "having the Spirit of Christ" presented one criterion for incorporation on the internal, spiritual level. Article 14b also outlines the necessary conditions for incorporation in the external forum. One must accept the entire ordinatio of the Church and its means of salvation. By union with the visible Church one is joined to Christ who rules the Church through the Supreme Pontiff and the bishops who represent the communion of the entire body of the faithful.<sup>52</sup> Four bonds effect this joining (iunguntur) juridically: the profession of faith, sacraments, ecclesiastical governance and communion.<sup>53</sup> These criteria, according to Grillmeier, indicate that "communion goes beyond juridical boundaries and also is inclusive of a life lived by a common faith and full participation in the sacramental and liturgical life of the community."<sup>54</sup>

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<sup>52</sup>A. GRILLMEIER, loc. cit., p. 177.

<sup>53</sup>A. DULLES, op. cit., p. 17, believes that the fourth bond of communion doesn't really contribute anything to the other three bonds.

<sup>54</sup>A. GRILLMEIER, loc. cit., p. 177.

Catechumens hold the most complete degree of incorporation after those who are fully incorporated. They possess the intention to be fully incorporated, and thus are already said to be joined (coniunguntur) to the Church; this is a reformulation of the notion of votum ecclesiae, which is now restricted to catechumens.<sup>55</sup>

D. LG 15: imperfect communion

The constitution proceeds in art. 15 to describe the relationship of non-Catholic Christians to the Catholic Church. The salvific nature of separated Churches and ecclesial communities was already established by LG 8. Baptism "links" them to the Church even though member of these communities do not profess the faith, or "do not preserve unity of communion with the successor of Peter." Other elements of sacraments and spiritual devotions also join them to the Church. The acceptance of an episcopate "also implies recognition of the existence of Church authority or power to direct and govern." <sup>56</sup>

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<sup>55</sup> Concerning catechumens, c. 206, §1 states "the Church already cherishes them as its own"; and "grants them various prerogatives which are proper to Christians." Canon 1183, §1 considers catechumens as members of the Christian faithful as regards funeral rites.

<sup>56</sup> A. GRILLMEIER, loc. cit., p. 179.

LG 16 continues the theme of the two preceding articles when it addresses the situation of non-Christians. Christ accomplished an objective redemption for all people; they are ordered (ordinantur) to the People of God. Several religious traditions are identified: Jews (people of the covenants); Moslems (those who acknowledge the Creator and possess the faith of Abraham); those who believe in God (unevangelized, but who seek to do God's will); atheists; and those who live without hope. All these categories of persons who seek the God of salvation and creation in one way or another are ordered to the Church.

A. Dulles raises the question if the formulations of Vatican II on belonging to the Church project the impression that the baptized belong to two Churches: the Church of Christ, (which all ecclesial societies share in) and an institutional denomination.<sup>57</sup> He surmises that such a conclusion is opposed to the intentions of Vatican II, for with reference to the Church of Christ, he observes:

This one Church, moreover, today subsists in Roman Catholicism and - according to the usual interpretation of the Council's doctrine - not elsewhere. Hence one's incorporation into Roman Catholicism cannot be played

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<sup>57</sup>A. DULLES, op. cit., p. 75.

off against, or seen independently of, one's incorporation into the Church of Christ. Any separation from the Catholic Church implies a certain separation from the Church of Christ...<sup>58</sup>

## II. DIGNITATIS HUMANAЕ

### A. The notion of religious freedom

Dignitatis humanae holds "historical importance both for the Church and humanity."<sup>59</sup> Religious freedom is an issue which concerns the dignity of every human person. The opening sentence of the declaration reflects the Church's sensitivity to this perspective: "A sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man."<sup>60</sup> This is the point of departure for Vatican II's speculations on religious freedom. The Church's recognition of the modern consciousness of human dignity signifies a dramatic contrast with the traditional Catholic approach to the doctrine of

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<sup>58</sup>Ibid.

<sup>59</sup>P. PAVAN, loc. cit., p. 62.

<sup>60</sup>"Dignitatis humanae personae homines hac nostra aetate magis in dies conscii fiunt," SACROSANCTUM OECUMENICUM CONCILIUM VATICANUM II, op. cit., p. 511; English translation in W. ABBOTT, op. cit., p. 675.

religious freedom. The fundamental premise of the declaration is that all human persons have a right to religious liberty in society. The declaration is unique among the sixteen conciliar documents in that it is directed not only to Catholics, but also to the entire world.

With the recognition of this factor of human dignity, religious freedom is no longer solely considered from the perspective of Church and State and the exclusive rights of the Catholic religion. The declaration presents a radical revision of the traditional Catholic position on religious liberty. Among the conciliar pronouncements, DH holds an eminent position beyond the fact that it is addressed to the world. The reformulation of the Catholic doctrine of religious liberty is more significant because it illustrates an example of the development of doctrine.

The question of religious freedom of itself was not problematic. The real controversy at the Council was the minority's concern that the council's position would be consonant with previous papal teachings on religious liberty.

The traditional Catholic teaching on religious freedom was based on the presupposition that only the true

religion possessed the "right" to exist in society. Since the Catholic religion was the only true one, it alone possessed this "right". Other religions were merely to be tolerated by the State for the common good. If the majority of the citizens were Catholic, the State must profess the Catholic religion. If the Catholic religion is in the minority, the State must nevertheless permit the necessary freedom for the Church to fulfil its mission.

This position was initially proposed during the preparatory period of the Council by the Theological Commission. At that time, it is evident that religious freedom was viewed only from the perspective of Church and State as outlined in Chapter IX of the schema of De Ecclesia.<sup>61</sup> The medieval principle extra ecclesiam nullum ius summarizes the Catholic position on religious freedom when the Second Vatican Council convened. This doctrine of the two swords of Church and State had assured the protection of the unity of

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<sup>61</sup>"De Relationibus inter Ecclesiam et Statum", in Acta Synodalia, vol. 4-1-4, pp. 65-74.

the Church and the extermination of heresy.<sup>62</sup> This approach was rejected by the Council Fathers.<sup>63</sup>

B. The dignity of the human person

The treatment of religious liberty from the singular viewpoint of Church and State was judged to be deficient for the modern age. The starting point for discussion was the dignity of the human person, not the realm of Church and State. A reformulation of the teaching on religious freedom was also necessary if the ecumenical agenda of Vatican II was to be acceptable and credible. The language of tolerance of other religions was offensive and inconsistent with the ecclesiological affirmations of LG.

The recognition of the dignity of the human person is a more inclusive approach. All persons have a right to this dignity which is manifested especially in religious matters. This motif of human dignity first surfaced in a more developed form in the third schema (textus emendatus): "The increased consciousness of their own dignity led men to

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<sup>62</sup>J.C. MURRAY, "The Problem of Religious Freedom", in Theological Studies, 25(1964), p. 516.

<sup>63</sup>P. PAVAN, loc. cit., pp. 49-50.



want greater freedom in all spheres, especially in religious matters."<sup>64</sup> The limited competence of government was asserted in relation to the person's quest for values which are indigenous to the human spirit.<sup>65</sup> The state is to provide the necessary freedoms in this regard. In the forum of human rights, "the principle of freedom is paramount".<sup>66</sup>

The declaration outlines the basic components of this new perspective on religious freedom. The free exercise of religion holds a priority in man's search for human values. In response to this "sign of the times", Vatican II asserts that this phenomenon of personal consciousness is "in accord with truth and justice" (art. 1). All persons should be "impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth" (art. 2). This search requires both an immunity from coercion arising from individuals and civil authorities and psychological freedom. All persons have a right to this freedom whether or not they

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<sup>64</sup>Ibid., p. 53. The text on religious freedom only emerged as a separate document with the third draft. Previously it was incorporated into UR.

<sup>65</sup>R. REGAN, Conflict and Consensus; Religious Freedom and the Second Vatican Council, New York, The Macmillan Company, 1967, p. 173.

<sup>66</sup>J.C. MURRAY, commentary on Dignitatis humanae in W. ABBOTT, op. cit., p. 676, n.3.

assume the obligation to seek the truth. The dignity of the human person is most deeply manifested in this search for the truth; therefore each person is free to follow his conscience in religious matters. This right to freedom has its foundation in the dignity of the human person itself.

C. Freedom from coercion

The content of this right is essentially negative: freedom from coercion.<sup>67</sup> Coercion here has a dual meaning: no one is to be compelled to act in a certain religious manner; nor is one to be forced to refrain from professing his religious beliefs. The negative dimension of coercion must be recognized "to avoid the idea that the object of the right to religious liberty is connected with the content of religious faith."<sup>68</sup> The content of religious faith cannot be structured legally. Faith concerns a metaphysical or moral relationship between the content and persons. A legal relationship is established only between physical and moral persons.<sup>69</sup>

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<sup>67</sup>P. PAVAN, loc. cit., p. 65.

<sup>68</sup>Ibid.

<sup>69</sup>Ibid., p. 66.

The right to religious freedom arises from the free and intelligent nature of the person who must always be free to act and to be immune from coercion. Hence DH 11 can state that God respects the dignity of the human person, even in the God-man relationship. Although individuals may discover the truth, "they are bound in conscience but they stand under no compulsion." The person assumes full responsibility for his decisions concerning his relationship with God and with truth. Confrontation with the truth is presented as a religious duty which involves three factors: knowledge, love and action. The truth is only known in the light of truth itself; the embrace of the truth must be a free act of love which results from a personal decision.<sup>70</sup>

#### D. Religious freedom and Revelation

Chapter II of the declaration examines religious freedom in the light of divine revelation where the doctrine is only implicitly affirmed. The data from revelation is important since it discloses "the dignity of the human person in its full dimensions" (DH 9). Revelation allows people to recognize "the constitutive elements of their own

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<sup>70</sup>Ibid., p. 68. Pavan is commenting on DH 2.

nature and hence also their personal dignity... men realize much more clearly, and as it were experience, that man's relation to God is conscious, free and responsible."<sup>71</sup> Since the doctrine is also rooted in revelation, there is some bases to regard religious freedom as a right.

The source of religious freedom in Christian revelation is illustrated by examples of Christ's refusal to coerce his hearers to receive his message. His miracles were intended "to rouse faith in His hearers... not to exert coercion upon them" (DH 11). Christ witnessed to the truth; he did not forcefully impose it. He and the apostles likewise recognized the rights of the civil government without ascribing to them a supremacy over the search for the truth (cf. Mt 22:21; Rom 13:1-2).

The declaration draws the parallel between religious freedom in society and the free act of embracing the Christian faith. DH 10 recalls a major tenet of Catholic doctrine: "man's response to God in faith must be free. Therefore no one is to be forced to embrace the Christian faith against his will."<sup>72</sup> The act of faith must be free.

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<sup>71</sup>Ibid., p. 78.

<sup>72</sup>W. ABBOTT, op. cit., p. 689. This is also stated in both the 1917 Code (c. 1351) and 1983 Code (c. 748, §2) with

This freedom is necessary because "once a man has come to a sufficient knowledge of revealed truth and has realized his duty to consent to it, he can do so only by a free personal decision."<sup>73</sup> This is a traditional Catholic doctrine which is presented as being consistent with the declaration's general principles of religious freedom.

The emphasis on non-coercion, while traditionally taught by the Church, was not always respected in its history. The Council is historically honest when it admits in DH 12 that individuals and church institutions have sometimes employed coercive measures to compel individuals to join or remain in the Church.

The declaration repeatedly emphasizes the necessity of freedom from coercion in "civil society". Several times this freedom is explicitly designated as a "right" (ius). But this "right" is only recognized vis-a-vis the civil society which is to afford it constitutional protection. It is the presence of this freedom which allows man to embrace

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a noteworthy difference. Canon law refers to the embrace of the "Catholic faith" while DH refers to the "Christian faith". In light of the new ecclesiological affirmations of Vatican II, the distinction is significant.

<sup>73</sup>P. PAVAN, loc. cit., p. 78.

the truth once it is known. Thus the declaration does not base this right on subjectivism, i.e., "freedom of conscience" taken in its broadest sense.<sup>74</sup>

E. Religious indifferentism

All persons live under moral imperatives when confronted with truth and justice. This creates a tension between the recognition of an obligation and the exclusion of coercion. This is contrasted with the "traditional Catholic doctrine on the moral duty of men and societies toward the true religion and toward the one Church of Christ" which is left unaltered in the conciliar reformulation of religious freedom.<sup>75</sup>

Yet the declaration does not state that if a Roman Catholic within his conscience realizes the truth in another religion, he has the right to seek it there. During the conciliar debates on the declaration, the danger of religious indifferentism was repeatedly raised in the interventions. One bishop even expressed the criticism that the

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<sup>74</sup>J.C. MURRAY, p. 679, n. 5.

<sup>75</sup>P. PAVAN, op. cit., p. 64.

declaration might allow a believer to conclude that he could abandon the Catholic religion in good faith and there would no longer be the sin of heresy or apostasy.<sup>76</sup>

The basic Catholic position is that the act of faith must always be free. This freedom is expressed in the following terms: "once a man has come to a sufficient knowledge of revealed truth and has realized his duty to consent to it, he can do so only by a free personal decision."<sup>77</sup> When all coercion is excluded, a milieu is created whereby the act of faith is easily professed. Religious freedom is based on the obligation to seek the truth. Hence there is no contradiction between religious freedom and this obligation. Secondly, the theological foundation of the right to religious freedom is also based on Christ's mandate to preach the Gospel which is a "truth of the transcendent order."<sup>78</sup> It was necessary to assert this in order to avoid

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<sup>76</sup>"Igitur ad dictam consequentiam eruendam, ut declaratio facit, opus esset admittere omnes religiones legitimas et aequae voluntas a Deo, ut media apta ad salutem christianam habendam. Sed hoc est indifferentismus religiosus!", in Acta Synodalia, vol. 3-3-2, p. 623.

<sup>77</sup>P. PAVAN, loc. cit., p. 78.

<sup>78</sup>J.C. MURRAY, "The Issue of Church and State at Vatican Council II", in Theological Studies, 27(1966), pp. 590-591.

the implication of advocating religious indifferentism. Criticisms of potential religious indifferentism and subjectivism are unfounded if the conciliar texts are carefully examined.<sup>79</sup>

Dignitatis humanae specifically asserts the right of all persons to immunity from coercion in religious matters in "civil society." This position of the declaration restricts its authority to the rights of the individual vis-a-vis civil government. Although the sources of this right to religious freedom are found in both human reason and revelation, the question can be raised whether the same principles of religious freedom would also be applicable to the ecclesial society as such. The relatio of the fifth schema (textus recognitus) specifically stated that it is not the intention of the declaration to consider the internal structures of the Church.<sup>80</sup> However, it has been asserted that the declaration does indeed have significance

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<sup>79</sup>Ibid., p. 591; Cf. R. REGAN, op. cit., p. 152.

<sup>80</sup>Relatio, Pars altera, n.74: "Libertas, de quo in declaratione, non agit de relationibus inter fideles et auctoritates in Ecclesia; agit vero de relationibus hominum cum hominibus singulis, cum coetibus socialibus, cum potestate civili", in Acta Synodalia, vol. 4-4-5, p. 150. R. REGAN, op. cit., p. 186, n. 16, reports that this disavowal was inserted into the relatio at the direction of Paul VI.



for the internal life of the Church. One author has observed that "the Church's affirmation of the value of freedom in the polity is bound to influence the evolution of freedom in the Church herself."<sup>81</sup>

F. Dignitatis humanae and canonical reflection

This question of religious freedom is particularly significant for the examination of the act of defection from the Church. Several canonists have examined this situation in light of the declaration. Various recommendations have been proposed to amend the Church's position on the permanence of incorporation. One canonist has suggested that canonical penalties against anyone who defected from the Church are considered as incompatible with the principles of the declaration. Such a decision to separate must be respected by the Church's legal structure. However, this is not identical to declaring that apostasy itself is a subjective right.<sup>82</sup> L. Spinelli similarly proposed that a

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<sup>81</sup>R. REGAN, op. cit., pp. 183-184.

<sup>82</sup>This position is ascribed to P. Ciprotti in response to a question at a congress of canonists as reported in F. POTOSCHNIG, "'Persona in Ecclesia' - Probleme der Rechtlichen Zugehörigkeit zur 'Kirche Christi'", in P. Leisching, F. Potoschnig, and R. Potz (eds.), Ex aequo et bono, Innsbruck, Universitätsverlag Wagner, 1977, p. 290.

reformulation of the canonical delicts against the faith and unity of the Church is necessary in fidelity to the declaration. The Church needs to respect the desire of a person's conscience if he formally declares the wish to leave the Church. Penalties should only be applied if an individual does not intend to leave the Church.<sup>83</sup>

A singularly strong recommendation is that of P. Colella, who believes that separation from the Church is a "right" which necessarily flows from the perspective of the protection of religious liberty.<sup>84</sup> With specific reference to DH 2 and 3, immunity from coercion should apply, Colella holds, not only at the moment of the initial act of faith, but also to later situations. If someone in full conscience declares he no longer wishes to belong to the Catholic Church, this decision should be respected and accommodated in the canonical legislation. The fundamental rationale, he says, is the single fact that he is a human being.<sup>85</sup>

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<sup>83</sup>L. SPINELLI, "La chiesa e la libertà religiosa", in La chiesa dopo il concilio, Milano, A. Giuffrè, 1972, vol. 2, p. 307.

<sup>84</sup>P. COLELLA, La libertà religiosa nell'ordinamento canonico, Napoli, Jovene, 1979, p. 86.

<sup>85</sup>Ibid., p. 88: "per il solo fatto di essere uomo."

## III. UNITATIS REDINTEGRATIO

Unitatis redintegratio and Lumen gentium complement one another in their presentation of the Council's ecclesiological formulations. The Constitution cultivated a particular ecumenical sensitivity, especially with its reflections on the nature of the Church of Christ and incorporation into the Catholic Church. The decree on ecumenism further develops these reflections into Catholic principles of ecumenism.

A. Separated brethren

The decree is specifically concerned with the relationship of the Roman Catholic Church to other Christian communions; the status of the individual separated Christian is only considered vis-a-vis his incorporation into another Christian communion. Those born into other Christian communions are no longer considered as having abandoned the Catholic Church. Such individuals are referred to now affectionately as "separated brethren" (fratres seiuncti).<sup>86</sup>

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<sup>86</sup>J. FEINER, loc. cit., p. 71, notes that the latin phrase fratres seiuncti loses its nuance in the English and German languages. The latin word seiungere indicates a less radical sense of separation that separare.

Separated Christians are believers who have received a fruitful baptism and share in the grace of the Holy Spirit and therefore possess the right to be called Christian (UR 3).

There is no movement to impute guilt to other Christians for the divisions of Christianity. The Council exhibits a strong historical consciousness when it honestly admits that people of "both sides were to blame" (UR 3). Various disagreements in the past resulted in large communities of believers withdrawing from the Catholic Church. "Full communion" (communio plena) is the decree's description and development of LG, 14 description of "full incorporation". In consequence to the qualification "full", there is also recognized various degrees of communion, otherwise known as "imperfect communion." As Feiner observes, "one can only speak meaningfully of a communio plena if one takes into account the possibility of a communio non plena or imperfecta."<sup>87</sup> The relationship of the baptized with the Catholic Church is realized in degrees.

#### B. Baptism and communion

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<sup>87</sup>Ibid., p. 72.

The initial cause of communion is baptism. This sacrament "constitutes a sacramental bond of unity linking all who have been reborn by means of it" (UR 22). All the baptized, as individuals and communities are in a fundamental communion with one another. Imperfect communion with the Catholic Church exists when baptized individuals do not recognize certain institutional elements of the Catholic Church. This may be one or all of the three bonds indicated in LG 14 as the basis of full incorporation: faith, sacraments and governance.<sup>88</sup> Within this context, the ecumenical movement is presented, not as a pretense for a "return" to the Catholic Church, but rather as the restoration of full communion with it.<sup>89</sup> The emphasis here is not upon the degree of separation, but upon the degree of communion with the Catholic Church.

The decree addresses the status of those Christians who have been born into ecclesial communities separated from the Catholic Church. There is no attempt to impute to them the responsibility for the division of Christianity; absent

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<sup>88</sup>LG 14 also states, as discussed above, that a Catholic may accept all the institutional elements of the Church but not live in a state of grace. Such Catholics are in a more serious state of imperfect communion.

<sup>89</sup>J. FEINER, op. cit., p. 72.

from the decree is any polemical language which describes them as heretics, apostates or schismatics. In canonical terms, they are no longer considered as under the penalty of excommunication as prescribed in c. 2314, §1 of the 1917 Code.

#### IV. GAUDIUM ET SPES

Gaudium et spes, 14-22 address the dignity of the human person in light of Christian anthropology, sin, conscience, liberty, and atheism. The most pertinent sections are articles 16 and 17 which discuss the role of conscience and the excellence of liberty. The methodology is basically psychological: the foundations of the human conscience and the demands for liberty articulate a stance which emphasizes dimensions of the issue not otherwise covered by Dignitatis humanae. In this respect the two documents complement one another.

A. Article 16

Article 16 treats of the dignity of the moral conscience. In contemporary society there are many interpretations, often contradictory, about the role of the human conscience. The Council here simply presents a general outline of the Christian conscience: it is the ultimate forum wherein God is revealed to the human person. "For man has in his heart a law written by God. To obey it is the very dignity of man."<sup>90</sup> The supremacy of the conscience commands ultimate obedience, even before ecclesiastical authority.<sup>91</sup>

The conscience is the "principle of objectivity."<sup>92</sup> Careful review of its dictates reveals the basic values of human existence.<sup>93</sup> Its fundamental summons is the embrace of

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<sup>90</sup>GS 16 in W. Abbott, op. cit., p. 213.

<sup>91</sup>J. RATZINGER, "Commentary on Part I, Chapter I", in H. Vorgrimler, op. cit., vol. 5, p. 134, who judges the text to be an application of J.H. Newman's thought on the role of conscience.

<sup>92</sup>Ibid., p. 135.

<sup>93</sup>E. SCHILLEBEECKX, "Foi chrétienne et attente terrestre", in K. Rahner et al. (eds.), L'Eglise dans le monde de ce temps: Constitution "Gaudium et Spes", Tours, MAME, 1967, p. 126.

the good. The conscience always summons the person "to love good and avoid evil: do this, shun that." The objective character of conscience is distinguished from an ethics of subjectivism; obedience to one's conscience implies "an end to subjectivism" in order to eliminate any hint of an arbitrary decision of conscience.<sup>94</sup>

The constitution's presentation on the Christian conscience is applicable to many situations of Christian living. The immediate relevance for this study is the recognition of the "supremacy of the conscience." If conscience is freely and correctly informed, then there should be the necessary freedom whereby one may follow it without impunity. This is particularly applicable to the situation whereby one in conscience decides to leave the Catholic Church.

#### B. Article 17

Article 17 addresses the excellence of liberty. The approach is not the protection and guarantee of religious liberty which is to be secured by civil society in

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<sup>94</sup>J. RATZINGER, loc. cit., p. 135.



religious matters as outlined by Dignitatis humanae. The Council here restricts its consideration basically to the psychological dimension with a limited concern: freedom of choice. The value of freedom is affirmed on the basis of faith.<sup>95</sup> The human person is a free agent who must autonomously seek his own self-realization. He is to be free from any external or instinctual coercion.

For its part, authentic freedom is an exceptional sign of the divine image within man. For God has willed that man be left "in the hand of his own counsel" so that he can seek his Creator spontaneously, and come freely to utter and blissful perfection through loyalty to Him. Hence man's dignity demands that he act according to a knowing and free choice. Such a choice is personally motivated and prompted from within. It does not result from blind internal impulse nor from mere external pressure.<sup>96</sup>

Article 17 is a more precise explication of DH 2 where reference was made to psychological freedom and

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<sup>95</sup>Ibid., p. 139.

<sup>96</sup>"Vera autem libertas eximium est divinitae imaginis in homine signum. Voluit enim Deus hominem relinquere in manu consilii sui, ita ut Creatorem suum sponte quaerat et libere ad plenam et beatam perfectionem ei inhaerendo perveniat. Dignitas igitur hominis requirit ut secundum consciam et liberam electionem agat, personaliter scilicet ab intra motus et inductus, et non sub caeco impulsu interno vel sub mera externa coactione", in SACROSANCTUM OECUMENICUM CONCILIUM VATICANUM II, op. cit., p. 702; English translation in W. ABBOTT, op. cit., p. 214.

immunity from external coercion.<sup>97</sup> There is no exact construction of a religious option. Despite the calls of Dignitatis humanae and Gaudium et spes for immunity from coercion in matters of faith and religion, Vatican II remains inconclusive. One cannot abstract the notion of a religious option from any significance for salvation. One author frankly notes that "it is this ambiguity which has made the Catholic Church suspicious for a long time about 'liberty of conscience', especially since the time of the Syllabus in the last century, and even in the conciliar debates of Vatican II."<sup>98</sup>

#### CONCLUSION

This chapter has identified several issues in the documents of the Second Vatican Council which are significant for our investigation of defection from the Church. These conciliar texts emerge from two principal directions: ecclesiological and theo-philosophical. The ecclesiological reflections present the Church's self-understanding as a

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<sup>97</sup>R. SEJOURNE, L'option religieuse des mineurs et l'autorité parentale; droit français et attitude de l'Eglise catholique, Paris, Beauchesne, 1972, p. 203.

<sup>98</sup>Ibid., p. 202.

communion. This approach demonstrates the immanence of various relationships with the Church, and has articulated a revised understanding of the relationship with the Ecclesia Christi and other churches and ecclesial communities. Coupled with these issues are the theo-philosophical discussions which have enlarged the context of our investigation to include a consideration of religious freedom and the role of conscience.

The ecclesiology of communion has permitted the development of a new articulation of belonging to the Church. However, even when this understanding is viewed alongside the new ecumenical overtures, the implications for defection and their canonical expression are not immediately identified in the conciliar texts. What is important, however, is how these teachings are received into the 1983 Code.

Nonetheless, it also must be noted that these ecclesiological reflections do signal the particularity of the Catholic Church. This ecclesial particularity is reflected most especially in the subsistit in declaration, the criteria for full communion, and the moral obligation of belonging to the Church. A certain tension thus begins to emerge when these various questions are related to

defection. This tension is symbolized by the objective demands of the institution and the subjective expectations of the individual person.

CHAPTER THREE  
THE 1983 CODE OF CANON LAW

The ecclesiology of communion is a principal theological theme in the 1983 Code.<sup>1</sup> The Pontifical Commission for the Revision of the Code (hereafter Code Commission) had considered the ecclesiology of communion as the principle of unification for the revised Code. This idea was ultimately rejected. The principal reason given for this rejection was that its adoption would necessitate a total restructuring of the Code. The Code Commission wanted to respect the express insistence of Paul VI that the revised Code utilize the 1917 Code as a central reference. Also such a decision would jeopardize a continuity with historical canonical tradition.<sup>2</sup> Consequently, certain institutes of the 1917 Code were retained with discernible tension between the ecclesiological models of "communion" and "perfect society". W. Aymans has noted that such tensions were already anticipated in LG 8, which thus implies that canon law is more an

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<sup>1</sup>JOHN PAUL II, Apostolic Constitution, "Sacrae disciplinae leges", in AAS, 75(1983), Pars II, p. xi.

<sup>2</sup>R. CASTILLO LARA, "La communion ecclésiale dans le nouveau Code de droit canonique", in Studia canonica, 17(1983), pp. 332-333.

expression of the Church as a society rather than as a mystery.<sup>3</sup>

But the society furnished with hierarchical agencies and the Mystical Body of Christ are not to be considered as two realities, nor are the visible assembly and the spiritual community, nor the earthly Church and the Church enriched with heavenly things. Rather they form one interlocked reality which is comprised of a divine and human element. For this reason, by an excellent analogy, this reality is compared to the mystery of the incarnate Word.<sup>4</sup>

The presence of these two ecclesiological models, communion and perfect society, in the 1983 Code is particularly reflected in the issue of defection from the Church. Although this area is contextualized within the idiom of communion, the absence in the 1983 Code of specific

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<sup>3</sup>W. AYMANS, "Ecclesiological Implications of the New Legislation", in Studia canonica, 17(1983), p. 67. For another critique of this tension cf., H. MUELLER, "Utrum 'communio' sit principium formale-canonicum novae codificationis iuris canonici ecclesiae latinae?", in Periodica, 74(1985), pp. 91-98. The ten principles for the revision of the Code also reflect this tension. The fifth principle specifically referred to the basic need of any society to strengthen and confirm its legislative unity. The ninth principle justified coercive power as proper to every perfect society. Cf. "Principia quae Codicis iuris canonici recognitionem dirigant", in Communicationes, 1(1969), pp. 77-85.

<sup>4</sup>English translation from W. Abbott (ed.), The Documents of Vatican II, Chicago, Follett Publishing Company, 1966, p. 22.

procedures whereby an individual may withdraw from full communion continues, in a certain sense, the stance of the perfect society model.

The methodology employed in this chapter must necessarily be limited. First, since defection is essentially withdrawal from the condition of full communion, a brief exposition of the concept of full communion will establish the appropriate context. Secondly, the various positions towards defection which emerged during the revision period will be identified. Thirdly, the specific expressions of defection in the 1983 Code will be examined, with particular focus upon their evolution in the various schemata. Fourthly, the immediate consequences of defection will be examined. Finally, a conclusion will offer a synthesis of the new legislation in this regard.

## I. FULL COMMUNION AND DEFECTION

### A. Full communion

Lumen gentium and Unitatis redintegratio identified the ecclesiological particularity of the Roman Catholic Church. The assertion of Lg 8 that the Church of Christ subsists in the Catholic Church allowed for the recognition

of the proper and distinct ecclesial reality of other Christian churches and ecclesial communities. One consequence of this ecclesiological assertion was the revision of the concept of belonging to the Roman Catholic Church. The notion of full (or perfect) communion was outlined in LG 14 and UR 4 as the new basis for understanding membership (although the term "membership" itself is not employed either in the conciliar texts or in the 1983 Code).

Many conciliar criteria for full (or perfect) communion were incorporated into the 1983 Code of Canon Law. Its foundation is presented in c. 96 which states that baptism accomplishes "incorporation" into the Church of Christ and constitutes an individual as a persona with particular duties and rights according to that person's condition. J. Provost has observed that "full communion" is a technical distinction between "incorporation into the Church of Christ and degrees of communion with the Catholic Church."<sup>5</sup> Baptism alone does not effect full communion; it is incorporation into the Church of Christ which follows from baptism which effects it; communion is a consequence of this

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<sup>5</sup>J. PROVOST, "The Christian Faithful", in The Code of Canon Law, A Text and Commentary, J. Coriden, T. Green, and D. Heintschel (eds.), New York, Paulist Press, 1985, p. 127.



incorporation.<sup>6</sup> While full communion describes the ordinary condition of belonging to the Catholic Church. It is a designation employed only in reference to the Roman Catholic Church, not to the Church of Christ.

Canon 205 identifies who among the baptized are in full communion with the Catholic Church. Baptism, the three vincula of faith, sacraments and governance, and belonging to a visible Church are the requisite criteria. These requirements, following LG 14, were recast in c. 205, with however one significant omission: the primary conciliar foundation of full communion, "possessing the Spirit of Christ" (Spiritum Christi habentes), is omitted. This pneumatological foundation, allied with the bonds of faith, sacraments and governance, expresses the centrality and inseparability of the internal and external elements of full communion.<sup>7</sup>

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<sup>6</sup>V. DE PAOLIS, "Communio et excommunicatio", in Periodica, 70(1981), p. 293.

<sup>7</sup>A. GRILLMEIER, "Dogmatic Constitution on the Church, Chapter II", in Commentary on the Documents of Vatican II, H. Vorgrimler (ed.), New York, Herder and Herder, 1967, vol. 1, p. 174.

Several authors have argued for the juridical significance of this conciliar phrase. F. Coccopalmerio values it as critical for determining the condition of a sinner in the Church.<sup>8</sup> E. Corecco proposes that the reduction of the conciliar criteria to the three vincula implies that grace is not recognized as a constitutive element in the institution of the Church.<sup>9</sup> These criticisms reflect a desire for c. 205 to integrate both the external and internal fora, something that could not be easily accommodated in law.

One response to these criticisms is that the internal dimensions of full communion are presupposed in c. 205: the gift of the Spirit, and unity in the virtues of faith, hope and charity. The juridical emphasis, then, is demonstrated by the references to the external ordering of the Church:

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<sup>8</sup>F. COCCOPALMERIO, "Quid significant verba 'Spiritus Christi habentes'?", in Periodica, 68(1979), p. 253.

<sup>9</sup>E. CORECCO, "Ecclesiological Bases of the Code", in Concilium, 185:3(1986), p. 10; A. STENSON, "The Concept and Implications of the Formal Act of Defection of Canon 1117", in Studia canonica, 21(1987), p. 184, holds that the phrase cum Christo in c. 205 is equivalent to Spiritus Christi habentes. Stenson notes that LG 14 also refers to the bond of communion which is likewise omitted in the 1983 Code. However, A. DULLES, Church Membership as a Catholic and Ecumenical Problem, The Père Marquette Lecture 1974, Milwaukee, Marquette University Press, 1974, p. 17, believes that communion adds nothing to the other three bonds.

"on this earth" (in terris), and in its "visible structure" (compage visibili). The three vincula are thus external criteria which are subject to a certain verification.<sup>10</sup>

J. Provost has further identified several juridic consequences of full communion. First, the concept specifies those who are actually responsible for the unique mission of the Catholic Church. Those in full communion are, prior to any hierarchical distinction, participants in this mission. The presence of the Catholic Church his in terris is thus particularized, since the Catholic faithful are here distinguished from other baptized Christians. Secondly, particular ecclesial obligations and rights are received upon entering into full communion. Their exercise and vindication within the institutional structure of the Catholic Church are dependent upon status and canonical condition. With the enlarged focus on obligations and rights in the 1983 Code, their observance is a responsibility of full communion. Thirdly, full communion reflects the sacramental dimension of the Church in which the faithful participate. The experience of communion is celebrated sacramentally by the faithful who enjoy full communion.

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<sup>10</sup>R. CASTILLO LARA, loc. cit., p. 337.

They thereby uniquely witness to the presence of the Church of Christ in the world.<sup>11</sup> These three features are instructive of the importance and centrality of the condition of full communion; it is thus the foundation for participation in the life and mission of the Church.

The 1983 Code remains essentially within the mainstream of canonical tradition by refraining from recognizing complete separation from the Church. There are no established canonical procedures whereby an individual can voluntarily withdraw from full communion. However, there is a greater recognition of defection with the expansion of the consequences of defection in comparison with those of the the 1917 Code. This represents something of an innovation in the law, and suggests new understandings of defection.

#### B. Defection in the revision process

The notion of defection from the Catholic Church was discussed on several occasions by the Code Commission. The published reports in Communicationes, as well as the schemata themselves indicate that throughout the entire period

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<sup>11</sup>J. PROVOST, loc. cit., p. 129.

of revision there were various shifts in attitude towards the issue. Several proposals opposed any canonical recognition of defection; others urged a more accommodating position. The most extensively reported discussions on defection occurred during the revision of two canons of the 1917 Code: c. 12 - the subject of merely ecclesiastical law;<sup>12</sup> and c. 1099 - the obligation of the canonical form of marriage.<sup>13</sup> A review of these discussions will serve to indicate the genesis of the Code's expanded recognition of defection.

#### 1. The subject of merely ecclesiastical law

The 1917 Code in c. 12 stated the Church's claim of jurisdiction over all the baptized. Once baptism occurred, a person became subject to the laws of the Catholic Church, except where exempted. Since the 1917 Code did not recognize complete severance from the Church, it likewise did not recognize the cessation of subjection to its laws.<sup>14</sup> Release

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<sup>12</sup>Communicationes, 14(1982), pp. 132-133.

<sup>13</sup>Communicationes, 8(1976), pp. 56-63.

<sup>14</sup>In the 1983 Code's restriction of the subject of c. 11 to Catholics only, there is an implicit release of all other baptized Christians from subjection to merely ecclesiastical laws.

from legal obligations could be granted by dispensation, custom, or favor. The presumption was that legal subjection is permanent due to the indelible baptismal character. This situation prompted a question within the Code Commission: does a person who defects from the Catholic Church continue to be subject to merely ecclesiastical laws? <sup>15</sup>

The 1980 Schema stated in c. 11, §3 that those who defected from the Catholic Church continued to be bound by merely ecclesiastical laws, unless expressly provided otherwise.<sup>16</sup> This formulation sought to avoid any legal ambiguity regarding the condition of an individual who defects. When the Code Commission reviewed the 1980 Schema, it was questioned whether the proposed c. 11, §3 was legitimate and conforming to an evangelical spirit. The norm appeared as a coercive measure against those who have clearly manifested their will to depart from the Church. Appeal was made to c. 707, §2, (1980 Schema), which stated

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<sup>15</sup>Communicationes, 14(1982), p. 132.

<sup>16</sup>PONTIFICIA COMMISSIO CODICI IURIS CANONICI  
RECOGNOSCENDO, Codex iuris canonici: Schema Patribus  
Commissionis reservatum, Città del Vaticano, Libreria  
editrice Vaticana, 1980, c. 11, §3: "Firmo praescripto §2,  
eadem leges iis applicantur qui ab Ecclesia catholica  
defecerint, nisi aliud iure expresse caveatur."

that no one was to be forced to embrace the Catholic faith.<sup>17</sup> An amendment to c. 11, §3 was proposed to the extent that if someone defected from the Catholic Church by a formal and public act, subjection to merely ecclesiastical law would cease. This proposal was rejected on the basis that it evolved from an erroneous ecclesiology which portrays the Church as a voluntary society from which one could freely depart.<sup>18</sup> The very nature of ecclesiastical law would be threatened; its obligations could be avoided by merely declaring a formal public defection from the Church. The appeal to c. 707, §2 was also rejected; this canon was interpreted as applicable only to initial incorporation into the Church. Otherwise, apostasy would no longer be a punishable delict.<sup>19</sup>

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<sup>17</sup>Communicationes, 14(1982), pp. 132-133.

<sup>18</sup>Ibid., p. 133. The Code Commission specifically referred to J. Klein as an example of someone who held such an erroneous position. Cf. J. KLEIN, Grundlegung und Grenzen des kanonischen Rechts, Tübingen, Mohr, 1947. This book was registered on the Index on September 20, 1950; cf. SUPREMA CONGREGATION S. OFFICII, Decretum, September 20, 1950, in AAS, 42(1950), p. 739.

<sup>19</sup>Communicationes, 14(1982), pp. 132-133.

A similar question was posed about the condition of schismatics and apostates: did they continue to be subject to merely ecclesiastical law if they defected and enrolled in another Church or ecclesial community? An indirect response was given when c. 11, §2 (1980 Schema) was amended to state that those baptized outside the Catholic Church and not received into it were not directly bound by ecclesiastical laws.<sup>20</sup> Implicit in this amendment is a response to the question of condition: those baptized in the Catholic Church or received into it are permanently bound by merely ecclesiastical law, unless otherwise exempted. Thus c. 11, §3 was rendered superfluous and suppressed.

## 2. The obligation of canonical form

The Coetus de matrimonio first convened on October 24-29, 1966. At this initial meeting, the obligation of canonical form and the formulation of c. 1099 (1917 Code) were reviewed. A revision of the canon was proposed whereby it would be stated that the form be observed if at least one of the contractants was baptized in the Catholic Church or

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<sup>20</sup>Ibid.: "Baptizati extra Ecclesiam catholicam, qui in eandem recepti non sunt, iisdem legibus directe non obligantur."



received into it; but the obligation would cease if the Catholic party defected from the Church notoriously or by means of a formal act. This proposal introduced a major modification to c. 1099, particularly after the abrogation of par. 2b by Pius XII in 1948. The majority of the coetus favored that Catholics who openly and formally left the Church should be permitted to contract a valid marriage elsewhere.<sup>21</sup> Although no definition of a formal act of defection was presented, this is the earliest reported reference to it in the revision process.

Later on in the process, when the coetus convened on February 9, 1971 to consider the obligation of canonical form, two formulations were proposed as the basis for discussion. The first was that the canonical form would be obligatory only as long as one was enrolled in the Catholic Church.<sup>22</sup> The second proposal was more complex: 1) those

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<sup>21</sup>Communicationes, 3(1971), p. 80: "ut forma canonica servanda sit si saltem alterutra pars matrimonium contrahentium in Ecclesia catholica baptizata est vel in eam recepta, nec et hic habetur immutatio gravis normae canonis 1099, §1, actu formali aut notorie ab ea defecit. Maiori enim parti coetus placuit ut illi, qui Ecclesiam catholicam palam reliquerunt ideoque formam canonicam celebrationis matrimonii numquam observent, nihilominus validum matrimonium contrahere possint, servatis utique aliunde servandis."

<sup>22</sup>Communicationes, 8(1976), p. 56: "Baptizati qui

baptized in the Catholic Church or received into it, would be bound to the form of marriage, unless upon reaching the age of reason, (or upon the completion of 14 years of age; or, from infancy), they were raised outside the Church; 2) if after reaching the age of reason or 14 years of age, they left the Church by a formal act, that is, with a written declaration given to their pastor, they would no longer be bound.<sup>23</sup> The second formulation was eventually accepted for discussion.<sup>24</sup>

This formulation is significant because it offered a practical definition of a formal act, albeit a very schematic one, without any specification of requisite format, content or modalities of registration of such a declaration.

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*Ecclesiae catholicae (sive a recepto baptismate sive postea) adscripti sunt, si inter se matrimonium ineunt (quamdiu Ecclesiae adscripti manent)[...]"*

<sup>23</sup>Ibid., p. 57: 1. "Baptizati qui Ecclesiae catholicae (sive a recepto baptismate sive postea) adscripti sunt vel fuerunt, si inter se matrimonium contrahunt (aut: ineunt); nisi ab adepto rationis usu (aut: ab anno decimo quarto impleto; aut: ab infantia) extra eam educati fuerint; vel post adeptum rationis usum (aut: post annum decimum quartum impletum) ab ea formali actu (aut: declaratione proprio parrocho in scriptis data) defecerint, nec ad eam reversi fuerint [...]"

<sup>24</sup>Ibid.

A more comprehensive formula was later proposed which encompassed defection either through a formal act of the will or as a result of upbringing outside the Church, provided that at the time of marriage the party had not defected;<sup>25</sup> otherwise the obligation of canonical form continued.

One consultor wished to restrict the exemption from canonical form to defection only by a "formal" act.<sup>26</sup> "Public" defection was considered too ambiguous; even the mere non observance of the Christian life could be erroneously interpreted as defection. Therefore, the essential element was the existence of a clear manifestation of the reality that an individual no longer wished to be a Catholic. This observation offers insights into one important element of a formal act; the clear manifestation of intention, and into the necessity of verifiable criteria. Although several Code Commission members objected to the recognition of any form of defection, a ballot showed the Code Commission at that time in favor of incorporating the

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<sup>25</sup>Ibid., p. 58: "[...] dummodo momento matrimonii ab ea non defecerint."

<sup>26</sup>Ibid., p. 58: "Melius est si tantum defectio formalis ab Ecclesia attendatur pro canone redigendo."

twofold notion of the formal act and of notorious defection as acceptable grounds for exemption from canonical form.<sup>27</sup>

The introduction to the 1975 Schema de sacramentis reported that several substantial innovations concerning impediments in genere were introduced into the proposed marriage canons. For instance, those who defected from the Church by a formal act, or notoriously, (according to the proposed cc. 263, 285, and 319,§1), were to be considered equivalent to baptized non-Catholics regarding marriage impediments of merely ecclesiastical law.<sup>28</sup>

The 1975 Schema de sacramentis was revised at the October 1977 assembly of the Code Commission. It was unanimously agreed to delete the notion of notorie in c. 319, §1 as a basis for exemption from canonical form because of

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<sup>27</sup>Ibid., p. 60.

<sup>28</sup>PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Schema documenti pontificii quo disciplina canonica de sacramentis recognoscitur, Romae, Typis polyglottis Vaticanis, 1975, (hereafter cited as 1975 Schema de sacramentis), p. 13: "Ad subiectum impedimentorum quod attinet, proponitur ut illi qui actu formali aut notorie ab Ecclesia defecerunt habeantur in hac materia uti non-catholici baptizati ita ut impedimentis iuris mere ecclesiastici non teneantur."

inherent difficulties in juridical precision.<sup>29</sup> Thus, only the formal act of defection was retained as grounds for exemption from the obligation of form.<sup>30</sup> The 1980 Schema *Codicis iuris canonici* incorporated this amendment whereby defection by a formal act, without any reference to "notorious", appeared in three marriage canons: c. 1039 (disparity of cult); c. 1072 (obligation of canonical form); and c. 1078 (mixed marriages).

## II. Defection in the revised legislation

In contrast to previous canonical legislation, the 1983 Code possesses a broader recognition of defection.

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<sup>29</sup>A critique of the marriage canons of the 1975 Schema *de sacramentis* by the Canon Law Society of America recommended that c. 263, which concerned impediments of merely ecclesiastical laws, could "be improved if leaving the Church were not defined somewhat restrictively as actus formali and notorie but more broadly in terms such as palam." Cf. CANON LAW SOCIETY OF AMERICA, "Report of a Special Committee of the Task Force of the Canon Law Society of America on the Marriage Canons of the Proposed Schema documenti pontificii quo disciplina canonica de sacramentis recognoscitur", in *CLSA Proceedings*, 37(1975), p. 205. Cf. further, THE CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND, "Report on Schema documenti pontificii quo disciplina canonica de sacramentis recognoscitur", October 1975, pp. 68-69, which recommended that the term notorie be substituted by a more practical criterion in c. 319, §1.

<sup>30</sup>Communicationes, 10(1978), p. 97.

Eight canons refer to defection under three different headings: "defection by a formal act" (cc. 1086, §1; 1117; 1124); "public defection" (cc. 194, §1, 2°; 316); and "notorious defection" (cc. 171, §1, 4°; 694, §1, 1°; 1071, §1, 4°). The canonical consequences are either exemption from certain ecclesiastical laws (formal act) or, the infliction of an inhabilitating penalty (public or notorious defection).

The reservations of the Code Commission were essentially two: recognition of defection would threaten the credibility of ecclesiastical law, and it would encourage apostasy and schism. But, despite appeals to statements of Vatican II on religious liberty and the like, the inherent nature of permanent subjection to merely ecclesiastical laws was preserved.

A. The formal act of defection

Three canons in the 1983 Code refer to a formal act of defection from the Catholic Church (actu formali ab Ecclesia catholica deficere): cc. 1086, §1, 1117, and 1124. This expression occurs only in the marriage canons. Thus, any interpretation of this new canonical construct encounters an initial difficulty: there are no parallel canons, and the Code does not offer a definition of the formal act.

This absence of a definition has prompted commentators to propose various possible expressions. L. Örsy holds that since the content and context of each act strongly influences any interpretation, a "universally applicable theoretical definition of 'formal act' is virtually impossible."<sup>31</sup> On the other hand, N. Ruf and J.L. Santos require the declaration of defection, written or oral, to be executed in the presence of an ecclesiastical authority.<sup>32</sup> J. Castaño argues that the act should be expressed in a manner determined by ecclesiastical authorities.<sup>33</sup> But among the authors, it is T. Lenherr who has authored the most systematic study of formal defection from the Catholic Church.<sup>34</sup> His inclusive method of inquiry identifies two principal

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<sup>31</sup>L. ÖRSY, Marriage in Canon Law, Wilmington, Delaware, Michael Glazier, 1986, pp. 113-114.

<sup>32</sup>E.g., N. RUF, Das Recht der katholischen Kirche nach dem neuen Codex iuris canonici für die Praxis erläutert, Freiburg, Herder, 1984, p. 259; J.L. SANTOS, "La forma", in Nuevo derecho canónico: Manual universitario por los catedráticos de derecho canónico, A. Mostaza Rodríguez et al. (eds.), Madrid, Editorial católica, 1983, p. 296.

<sup>33</sup>J.F. CASTAÑO, "Il consenso e la forma canonica", in Apollinaris, 54(1984), p. 129.

<sup>34</sup>Cf. T. LENHERR, "Der Abfall von der katholischen Kirche durch einen formalen Akt", in Archiv für katholisches Kirchenrecht, 152(1983), pp. 107-125.

components in need of interpretation: actus formalis and ab Ecclesia catholica deficere. His exposition identifies several critical dimensions towards the construction of an interpretation of what is meant by "formal defection from the Catholic Church."

### 1. actus formalis

T. Lenherr's exposition of the expression "formal act" commences with a consideration of the word actus. When viewed independently, actus possesses a broad generality. Its specific meaning is achieved only with an attribute, as occurs frequently in the 1983 Code.<sup>35</sup>

The basic interpretation of the formal act is derived from the notion of juridic acts,<sup>36</sup> a new title in cc. 124-128 of the 1983 Code. The substance of this title on juridic acts was present in the 1917 Code, but the canons

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<sup>35</sup>E.g., actus iudicialis (cc. 124-128); actus administrativus (cc. 35-47); actus voluntatis (cc. 1057); actus contritionis (c. 962, §2); actus collegialis (cc. 119; 337, §2); actus iudicialis (cc. 1467; 1622, 5°; 1656, §2).

<sup>36</sup>F. AZNAR GIL, El nuevo derecho matrimonial canónico, Salamanca, Universidad Pontificia de Salamanca, 1983, p. 189.



were not assembled together within one title.<sup>37</sup> Its essence centers upon the relationship between the intention of the agent and the juridical effect.<sup>38</sup> In this respect, the definition of a juridic act proposed by O. Robleda is useful: "an externally manifested act of the will whereby a certain juridical effect is intended."<sup>39</sup> Although juridic acts have various objects, their realization is dependent upon the "exhibited intention of the agent."<sup>40</sup> Since the act concerns the external forum, this intention must be externally manifested, a process which M. Hughes describes as the "dynamic character" of the juridic act.<sup>41</sup> The intended effect must be expressed, even if the law does not explicitly require it. Hughes inquires whether it is the intention itself that is essential, or the declaration which corresponds to the intention? Here he draws a parallel with the

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<sup>37</sup>Cf. 1917 Code, cc. 103-105, 1680, §1, 1681.

<sup>38</sup>M. HUGHES, "A New Title in the Code: On Juridical Acts", in Studia canonica, 14(1980), p. 393.

<sup>39</sup>"Voluntatis actum externe manifestatum quo certus effectus iuridicus intenditur." Cf. O. ROBLEDA, "De conceptu actus juridici", in Periodica, 51(1962), p. 419.

<sup>40</sup>M. HUGHES, loc. cit., p. 393.

<sup>41</sup>Ibid.

law on simulation of marital consent where the critical element is the inner intention, not the declaration.<sup>42</sup> No matter what the answer, any expression of a formal act must be intimately associated with the intention of the agent.

Following this argumentation, G. Michiels' division of juridical acts into negotio formalis and negotio non formalis is also useful.<sup>43</sup> The negotio formalis demands the observance of legally prescribed formalities for validity. The will of the agent must be declared in an established form or with the essential formalities for the validity of the act. Otherwise the will of the agent effects nothing. The negotio non formalis does not require any established legal solemnities. Any private declaration of the will suffices, provided it is clearly manifested. The declaration of the will may be explicit or implicit, unless the law demands otherwise.<sup>44</sup>

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<sup>42</sup>Ibid., p. 402.

<sup>43</sup>G. MICHELIS, Principia generalia de personis in Ecclesia; commentarius libri I Codicis iuris canonici, Canones praeliminares 87-106, Tornaci, Desclée, 1955, p. 591.

<sup>44</sup>Ibid. Michiels offers the example of c. 879.1, 1917 Code, where the faculty for hearing the confessions of religious must be expressly granted.

According to T. Lenherr, the modifier formalis most frequently means a "legally prescribed form".<sup>45</sup> However, like G. Michiels, he recognizes that certain procedures do not require a prescribed form for validity. Thus his second interpretation of formalis is the "expressive" or intentional formality.<sup>46</sup> In support of this, he appeals to the example of the formalis contradictio in c. 1726 (1917 Code) where there is provision for the defendant to challenge the plaintiff's accusation with a formal contradiction. No procedure is established which the defendant must observe. C. Augustine comments that "no special or set formality is required, and the issue in pleading is valid even if the words or terms or rejoinders are not pronounced or composed with technical correctness."<sup>47</sup> Thus, Lenherr concludes, since the Code does not present any prescribed format for the actus formalis, its interpretation cannot be restricted to the more common meaning of formalis as "according to

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<sup>45</sup>"Formgerecht", in T. LENHERR, loc. cit., p. 112.

<sup>46</sup>Ibid., "Ausdrücklicher".

<sup>47</sup>C. AUGUSTINE, A Commentary on the New Code of Canon Law, St. Louis, B. Herder Book Co., 1925-1936, vol. 7, p. 174; cf. also E. REGATILLO, Institutiones iuris canonici, Santander, Sal Terrae, 1941-1942, vol. 2, p. 216, who likewise observes "nulla solemnitas est necessaria."

form" (or following G. Michiels, a negotio formalis). The adjectival modifier formalis of cc. 1086, §1, 1117 and 1124 can therefore also be interpreted as an "expressive" term (or negotio non formalis). This interpretation allows the possibility whereby formal defection from the Catholic Church may assume a broad variety of expressions. However, this does not preclude the possibility that a particular interpretation may be standardized for a specific region.

T. Lenherr also contrasts the nature of formalis against its counterpart virtualis. A formal action corresponds exactly to the nature of the act performed.<sup>48</sup> The Code Commission had considered the notion of the actus formalis from the perspective of the virtualis/formalis distinction. The declaration of the will to defect from the Church was viewed by the marriage coetus as originating in two possible sources: a formal or a virtual act.<sup>49</sup> Formal

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<sup>48</sup>A. MICHEL, art. "Formellement", in Dictionnaire de théologie catholique, A. Vacant and E. Mangenot (eds.), Paris, Letouzey et Ané, 1903-1950, vol. 21, col. 592: "l'intention correspond exactement à la nature de l'acte accompli."

<sup>49</sup>T. LENHERR, loc. cit., p. 115, with reference to Communicationes, 8(1976), p. 59: "Comprehendit scilicet illos qui formaliter vel virtualiter defecerunt, sed non illos qui, etsi non bene vivant, tamen catholicos considerari volunt."

defection is exhibited in the express declaration of the will to defect. Virtual defection is concluded from the action and behavior of the person who has defected, i.e., nonobservance of the tenets of the Catholic Church. Due to the possible inconclusive nature of virtual defection, this was unacceptable to the coetus as a basis for exemption from ecclesiastical law. Lenherr thus concludes that formal defection means to bring others to the knowledge of the will to defect from the Catholic Church.<sup>50</sup> This manifestation of the will can be explicit ("I leave the Catholic Church"), or implicit ("I join the Protestant Church").

This exposition of the constitutive elements of the formal act allows for several conclusions. First, the fundamental element is the external manifestation of the will of the person who intends the object of the act itself; this expression of the will to defect must be verifiable in the external forum, but need not follow any prescribed legal formalities. Secondly, others are to be brought to the knowledge of the intention to defect from the Catholic Church. These are two distinctive characteristics of the formal act. It could be noted in passing that since the

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<sup>50</sup>Ibid., p. 117.

description first proposed by the Coetus de matrimonio (written notification to one's proper pastor) was not incorporated into the promulgated text, any interpretation of actus formalis cannot be restricted to this element.

## 2. Ab Ecclesia catholica deficere

The expression actus formalis is employed only in conjunction with the phrase deficere ab Ecclesia catholica. This latter is the specific requisite intention which must be exhibited. The interpretation of Ecclesia catholica is a critical component to a proper understanding of formal defection. The Ecclesia catholica is the institutional expression of the Church of Christ, the visible, juridical society with which one enters into full communion (c. 205). This is the sole object of formal defection which T. Lenherr has aptly described as withdrawal from "institutional" communion.<sup>51</sup> This characterization identifies the external or institutional dimension of full communion. It is the expressed intention of formal defection: to separate oneself from the visible structure of the Church. But this separation is not a total eradication of communion with the

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<sup>51</sup>"Institutionelle", Ibid., p. 118.

Church; the foundational bond of communion established at baptism remains. This interpretation is congruent with the purpose of the law, which permits the faithful who no longer wish to be Catholics to enter valid marriages outside the Church.<sup>52</sup>

### 3. Juridical consequences

#### i. The impediment of disparity of cult (c. 1086, §1)

The first instance where the 1983 Code presents the formal act of defection as a basis of exemption from ecclesiastical law is c. 1086, §1 which applies the diriment impediment of disparity of cult only to baptized Catholics.<sup>53</sup> The basis of the impediment is either baptism or reception into the Catholic Church, or re-admission to full communion. Catholics baptized in infancy, but not raised as

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<sup>52</sup>Ibid., p. 119.

<sup>53</sup>This restriction is identical to the provision of c. 1070, §1 (1917 Code). However, c. 60 of Crebrae allatae declared that all the baptized were bound by this impediment. Cf. PIUS XII, Motu Proprio, "Crebrae allatae", February 22, 1949, in AAS, 41(1949), p. 102.

Catholics, continue to be bound by the impediment.<sup>54</sup> Exemption from the impediment is gained only through defection from the Catholic Church by a formal act, or by a dispensation.<sup>55</sup> Formal defection as the means for gaining an exemption is an innovation in the law. By allowing an exemption based on a formal act of defection, the Church avoided the multiplication of invalid marriages.<sup>56</sup>

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<sup>54</sup>Cf. also the affirmative reply of the Code Commission, April 29, 1940, to an inquiry regarding the ab acatholicis nati of c. 1099, §2 (1917 Code), in AAS, 32(1940), p. 212. One Commission member desired to impose the additional criterion of the profession of the faith which Christ and the Church intended. The proposal was rejected because all marriages among the baptized are sacraments; cf. 1981 Relatio, p. 253.

<sup>55</sup>It was also proposed that if the non-baptized were a catechumen, the impediment would also cease. This was rejected because of serious difficulties in determining the actual commencement of an individual's status as a catechumen. See Communicationes, 9(1977), p. 363.

<sup>56</sup>Ibid., p. 252. T. DOYLE, "Marriage", in CLSA Commentary, p. 768, argues that a second basis of exemption exists. Following the commentators of the 1917 Code on c. 750, he concludes that children of non-Catholic parents, baptized by a Catholic minister contrary to c. 868, §1,2° also gain an exemption since there is absent any founded hope of education in the Catholic religion or any such intention on the part of the parents. However, the basis of the exemption is valid baptism in the Catholic Church or reception into it. Canon 868 addresses only the liceity of baptism, not its validity. Thus T. Doyle's proposal cannot be accepted.



Dispensation from the impediment is granted easily, but only upon the fulfillment of the prescriptions of c. 1086, §2, which refers to the mixed marriage promises outlined in cc. 1125 and 1126. However, marriages entered into with this dispensation are not totally identical to a mixed marriage between a Catholic and a baptized non-Catholic, although the requirements for the dispensation are identical. The latter marriage is sacramental; the former is not.

L. Örsy alerts the interpreter to the pragmatic purpose of the canon. It does not attempt to resolve the more subtle and complex theological issue of whether or not the marriage covenant can symbolize a sacramental sign for the Christian party. Catholic theology has traditionally not recognized in these marriages such a sacramental sign.<sup>57</sup> The canon only regulates who among the baptized, more specifically among baptized Catholics, are bound by the impediment of disparity of cult. Exemption from this impediment is recognized when a formal act of defection from the Catholic Church has occurred. Otherwise, a dispensation must be obtained from the proper authority.

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<sup>57</sup>L. ÖRSY, op. cit., p. 113.

## ii. Canonical form of marriage (c. 1117)

Canon 1117 represents a substantial change in the legislation regarding canonical form.<sup>58</sup> This canon determines the occasions when either the ordinary or extraordinary canonical form of marriage is to be observed: whenever at least one of the contractants was baptized into the Catholic Church or was received into it and has not defected from it by a formal act.<sup>59</sup> Canon 1117 thus continues the abrogation of the exemption of c. 1099, §2b (1917 Code):<sup>60</sup>

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<sup>58</sup>A.A. ARTEAGA, "Bautizados en la Iglesia católica no obligados a la forma canónica del matrimonio: Problemas que presenta", in Le nouveau Code de droit canonique, Proceedings of the 5th International Congress of Canon Law, M. Thériault and J. Thorn (eds.), Ottawa, Université SaintPaul, 1984, p. 903.

<sup>59</sup>Following the strict literal reading of the latin text, A. STENSON, loc. cit., p. 177, asks whether the conjunction "vel" in c. 1117 is disjunctive, since no comma follows the words "recepta sit." This syntax thus interpreted implies that those baptized in the Catholic Church are permanently bound to the form, unless dispensed from the obligation; only those who were received into the Church and later left it by a formal act could gain the exemption. Stenson does recognize that this distinction is unnecessary, since the discussions of the Code Commission clearly view both expressions as comprehended by the formal act. This is further supported by a comparison with c. 1124 where the word "recepta" is followed by a comma.

<sup>60</sup>PIUS XII, motu proprio, "Decretum Ne temere", August 1, 1948, in AAS, 40(1948), p. 305.

infants born of non-Catholic parents who received Catholic baptism are bound to the canonical form.<sup>61</sup>

The exemption is singular; it is only acquired by a formal act of defection.<sup>62</sup> Thus, those who defect by a formal act may enter into a valid marriage by observing a non-canonical form, even a non-public one. The requirement of a public form imposed by c. 1127, §2 concerns only marriages involving an exemption from canonical form, not an exemption from it. Because of the exemption, marriages entered into otherwise are valid. Therefore, a petition for nullity cannot be granted on the grounds of defect of form in such cases.<sup>63</sup>

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<sup>61</sup>The Pontifical Commission for the Interpretation of the Decrees of Vatican II also stated that the local Ordinary may dispense from the obligation of canonical form if a Catholic party marries a baptized Catholic who has defected from the faith and converted to a non-Catholic confession. Cf. AAS, 64(1972), p. 397.

<sup>62</sup>The original formulation in the 1975 Schema de sacramentis, c. 319, §1 was significantly broader; it provided exemption either for a formal act or notorious defection. The subsequent schemata and promulgated text restricted the grounds to the formal act only.

<sup>63</sup>F. BERSINI, Il nuovo diritto canonico matrimoniale, Leumann, Torino, Editrice Elle di Cie, 1985, p. 163. Bersini further observes that the marriage is valid not because the civil law was observed, but because there is not lacking any requirement of ecclesiastical law. L. PIVONKA,

It could be asked, though, whether those who defect by a formal act may celebrate marriage with the canonical form? The canon does not prohibit this possibility; it only presents the grounds for exemption from the form.<sup>64</sup>

iii. Mixed marriages (c. 1124)

The formal act of defection from the Catholic Church is also followed, according to c. 1124, by an exemption from the prohibition against mixed marriages. The express permission of the competent authority is not required for marriage between a baptized non-Catholic and a person baptized in the Catholic Church or received into it, and who has defected by a formal act. In this instance, the baptized Catholic

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"Ecumenical or Mixed Marriages in the New Code of Canon Law", in The Jurist, 43(1983), p. 118, recommends that defect of form questionnaires should inquire if there was any prior formal act of defection.

<sup>64</sup>J. HERVADA, "Matrimonial Law, Commentaries on 1055-1165", in I. Gramunt, J. Hervada and L. Wauck, Canons and Commentaries on Marriage, Collegeville, Minnesota, The Liturgical Press, 1987, p. 29, views the formal act of defection as delictual, being either, apostasy, heresy, or schism. Since these delicts incur a latae sententiae excommunication (c. 1361,\$1), the author applies c. 1331, \$1,2°, concluding that the individual who formally defects is prohibited from receiving the sacraments. This interpretation implies another consequence of the formal act. If these actions were necessarily delictual, why would the law allow an exemption to be effected by them?

functions within the parameter of the law on mixed marriages as a non-Catholic.<sup>65</sup> Nevertheless, such marriages are not mixed marriages in the strict sense because the Catholic partner who has formally defected is still regarded in other respects as a Catholic by the law; hence the marriage partners do not fulfill the definition of a mixed marriage as presented in c. 1124. However, when a Catholic wishes to marry a person who has left the Catholic Church by a formal act, this would constitute a mixed marriage as defined by the canon, and therefore the necessary permission must be obtained.<sup>66</sup>

The introduction of the formal act of defection in the marriage canons creates a unique ecclesial situation within the law: those who formally defect are viewed as non-Catholics for the purpose of the respective marriage canons, even though in other matter they are subject to the

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<sup>65</sup>The Code Commission, on July 30, 1934, indicated that Catholics who are members of atheistic sects are to be considered the equivalent to having enrolled in non-Catholic sects for the purposes of marriage and ordination. Cf. AAS, 26(1934), p. 494.

<sup>66</sup>T. DOYLE, loc. cit., p. 801. Following Matrimonia mixta, c. 1124, §1 specifically refers to the declaration of the Catholic party to remove any dangers of falling away from the faith.

provisions of merely ecclesiastical law. In formal defection, the natural right to marry is preserved and the multiplication of invalid marriages is reduced. The new provisions symbolize the primary importance the Church ascribes to the sacredness of the total communion of life to be enjoyed in marriage between two Catholic partners who are in full communion with the Catholic Church.

#### B. Notorious and public defection

The 1983 Code also recognizes two other modalities of defection which are enacted either notoriously (notorie) or publicly (publice). Unlike the formal act, these expressions were found in the 1917 Code, but less frequently. The objects of these defections are multiple: either from the Catholic faith (a fide catholica) or from the communion of the Church (a communione Ecclesiae) or from both. This section, then, will examine the characteristics of notorious and public defection in the 1983 Code, the evolution of the expressions, and the different objects of defection.

##### 1. Notorious defection

Notorious defection (notorie deficere/abiecere) is referred to in three canons of the 1983 Code which cover a

broad spectrum: c. 171, §1,4° (ineligibility to participate in a canonical election); c. 694, §1,1° (ipso facto dismissal from a religious institute); c. 1071, §1,4° (prohibition against assistance at a marriage without permission of the local Ordinary).<sup>67</sup> For the basic meaning of notorious, commentators refer to c. 2197 (1917 Code) where a delict was defined as notorious either by notorietas iuris (c. 2197, 2°) or by notorietas facti (c. 1297, 3°).<sup>68</sup> A delict became notorietas iuris after judgment by a competent judge when it became a res iudicata; or, after a judicial confession by the accused according to the norm of c. 1750 (1917 Code). This delict was considered provable in the external forum. Notorietas facti defined a delict known and so committed that it cannot be concealed; no legal defense can excuse it. The action itself is known by the community and provable.

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<sup>67</sup>The word "notorious" was also found in c. 1065, §1 (1917 Code), which urged that the faithful be deterred from contracting marriage with those who have notoriously abandoned (abiecerunt) the Catholic faith.

<sup>68</sup>F.R. AZNAR GIL, op. cit., p 129; Codigo de derecho canónico, seventh revised edition, L. De Echeverria et al. (eds.), Madrid, Editorial católica, 1986, p. 121; D. ANDRES, El derecho de los religiosos, second edition, Madrid, Publicationes Claretianas y Commentarium pro religiosis, 1984, p. 622.

No formal act is necessary for an action to gain notoreity, although proof may be exhibited in a formal act.<sup>69</sup>

The 1975 Schema de sacramentis had proposed in c. 281 that the permission of the local ordinary be required to assist at the marriage of one who had notoriously abandoned the Catholic faith.<sup>70</sup> When the Code Commission reviewed this schema, it noted that c. 281 was criticized because the concept of "notorious" was not sufficiently clear to determine instances of abandonment of the Catholic faith. Several consultors then responded that although doubts could arise, the juridical concept of notoriety was well established in law; hence the proposed norm offered a valid basis to require the necessary permission to assist at a marriage.<sup>71</sup>

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<sup>69</sup>L. ÖRSY, op. cit., p. 83.

<sup>70</sup>1975 Schema de sacramentis, c. 281: "Matrimonio eius qui notorie aut catholicam fidem abiecit, etsi ad communitatem acatholicam non transierit, aut societati ab Ecclesia prohibita adscriptus est, parochus ne assistat nisi Ordinarius loci, servatis normis de quibus in c. 277, ad singulos casus (convenienter) aptatis, licentiam dederit."

<sup>71</sup>Communicationes, 9(1977), p. 144. Additional comment on "notorious" surfaces when the Commission considered c. 1747 (1917 Code) which stated that notorious facts, as defined by c. 2197, 2°, 3°, do not require proof. One



Canon 319, §1 of the 1975 Schema de sacramentis had permitted an exemption from the canonical form of marriage when an individual defected from the Catholic Church either by a formal act or notoriously. Significant in this formulation was the fact that the object of notorious defection was "from the Catholic Church" and not the "from the Catholic faith". One principal criticism of the canon was that it contradicted c. 281 of the same schema, which implied that those who notoriously abandoned the "Catholic faith" were still obliged to the canonical form of marriage.<sup>72</sup> Here the Code Commission appeared to identify "Catholic faith" with "Catholic Church". Because of this, the Code Commission voted unanimously to eliminate "notoriously" as a basis for exemption from canonical form in c. 319, §1, although one consultor argued that it was not proper to oblige to the

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consultor commented that some facts do appear to be notorious, but yet are not true; another consultor responded that notorious facts are proven more easily because of their notoriety. On the basis of this reason, c. 1747 (1917 Code) was not retained in the 1983 Code. Cf. Communicationes, 11(1979), p. 98.

<sup>72</sup>Communicationes, 10(1978), pp. 96-97: "De verbo 'notorie', quod habetur in par. 1, plures petierunt ut supprimatur sive quia difficultates pariet, sive quia contradictio habetur cum can. 281 (Matrimonio eius qui notorie aut catholicam fidem abiecit... parochus non assistat...), ubi indirecte innuitur eos qui in tali conditione versantur forma canonica teneri."

canonical form even those who notoriously abandoned the faith.

The three canons in the 1983 Code which refer to notorious defection/abandonment are an expansion of the 1917 Code's use of the expression.<sup>73</sup> The consequences of notorious defection/abandonment in cc. 171, §1,4°; 694, §1,1° and 1071, §1,4° are penal; no exemptions from the law arise from these actions. Thus a strict interpretation must be applied (c. 18). Authors have suggested various expressions of notorious defection/abandonment. For instance, L. De Echeverria distinguishes between attraction to a non-Catholic sect and abandonment of the Church.<sup>74</sup> Actual enrollment in another Church or ecclesial community is not required for notoriety.<sup>75</sup> The behavior of a person who conducts himself

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<sup>73</sup>There is a certain innovation in the 1983 Code's use of notorie as a qualifying ground. The 1917 Code only spoke of "notorie abiecere" (to abandon, reject notoriously), and not "notorie deficere" (to defect, leave notoriously). In the 1983 Code, "abiecere" is only employed with the phrase "a fide catholica" (c. 316, §1 and 1071, §1,4°; §2; but this latter phrase also occurs with "deficere" (c. 194, §1,2°). Both verbs are synonymous in the 1983 Code.

<sup>74</sup>L. DE ECHEVERRIA, op. cit., p. 154.

<sup>75</sup>F. R. AZNAR GIL, op. cit., p. 129. Canon 1024, 1980 Schema had provided that permission of the local ordinary

as if outside the Church, e.g., by publications, may be recognized as notorious.<sup>76</sup> As was the case with the formal act of defection, there is no standardized description of notorious defection.<sup>77</sup>

## 2. Public defection

"Public defection" (publice deficere) is referred to in the 1983 Code in cc. 194, §1,2° (loss of ecclesiastical office) and 316, §1 (reception into public associations of the Christian faithful). An interpretation of "public" is also provided by canon 2197, 1° (1917 Code) where a delict is defined as public when it is already divulged, or the circumstances can lead to the prudent conclusion that it can and will easily become known. A delict is considered "divulged" when it is known by the majority of inhabitants

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was necessary for the marriage of one who notoriously abandoned the Catholic faith, even if he had not transferred to a non-Catholic ecclesial community.

<sup>76</sup>F. BERSINI, op. cit., p. 40.

<sup>77</sup>Advocates registered with the Roman Curia may lose their standing as curial advocates if they notoriously defect from the Catholic faith. Cf. JOHN PAUL II, Apostolic Letter, "Iusti iudicis", June 28, 1988, art. 6, §1,1: "Ex Albo praeterea expungantur: qui notorie a fide catholica defecerint", in Osservatore Romano, July 13, 1988, p. 4.

of a particular area or will eventually be known. "Public" is distinguished from "notorious"; in the latter case, the community is aware that a delict has been committed and that it cannot be hidden or excused by any juridical action.<sup>78</sup> This is where the distinction between the two notions is found. A delict may be public in one region, occult in another, or even forgotten after a period of time has elapsed. "Public" enjoys a lesser degree of awareness by the community than "notorious". Nevertheless, it must be recognized that the distinction between the two concepts is very nuanced and frequently difficult to apply concretely.

### 3. Defection from the Catholic faith

The second object which is central to an interpretation of notorious and public defection is the declared intention: either from the "Catholic faith" or the "communion of the Church". With the exception of c. 316, §1, only the parallel canons which referred to defection "from the Catholic faith" in the 1917 Code employ the identical phrase in the 1983 Code.<sup>79</sup>

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<sup>78</sup>R. NAZ, op. cit., p. 585.

<sup>79</sup>Cf. cc. 188, 4° and 1065, §1 (1917 Code). The

The declared intention of defection "from the Catholic faith" is different from that of formal defection (from the Catholic Church); therefore this distinction must be maintained in any interpretation. The elements of the meaning of "Catholic faith" are presented in the definition of divine and Catholic faith in c. 750. This canon essentially recapitulates c. 1321, §1 (1917 Code) along with the incorporation of several elements of Dei verbum. Drawing on DV 10, the canon declares that only "one deposit of faith" exists which is "divinely revealed" and is constituted of Sacred Scripture, tradition, and the solemn or ordinary and universal magisterium. This is the subject of divine and Catholic faith. J. Boyle observes that the canon's reference to "common adherence" thus "manifests the fact that there has been an infallible exercise of teaching authority." This obligation to believe is incumbent upon every

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parallel to c. 316 (cc. 693, §1 and 696, §2) did not speak of defection but of non-Catholics and members of condemned sects. This expanded recognition of defection "from the Catholic faith" raises questions as to whether the retention of the phrase in the 1983 Code was consciously deliberate to preserve a stylistic continuity, or if there was another rationale. The published reports of the Commission do not suggest a more developed rationale; rather there was constant concern over potential ambiguities in the law.

member,<sup>80</sup> and is thus an essential component of Catholic identity.

Additional support for this interpretation is in the principle offered by F. Sullivan that "the faith of the Church is normative for the individual who wishes to belong to it."<sup>81</sup> Although the initial decision to join the Catholic Church is free on the part of an adult, the mandatory profession of faith is not a selective exercise whereby one can accept or reject certain articles of faith. The unity of the community is symbolized by the common profession of the same apostolic faith.<sup>82</sup> Sullivan's primary emphasis is upon the acceptance and profession of creedal statements, but his observation is also applicable to the broader corpus of the magisterium's teachings, which, according to c. 750, "must be believed with divine and catholic faith." This is

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<sup>80</sup>J. BOYLE, "Church Teaching Authority in the 1983 Code", in The Jurist, 45(1985), p. 147-148; L. ÖRSY, The Church: Learning and Teaching, Wilmington, Delaware, Michael Glazier, 1987, p. 61, concurs: "The canon clearly implies that there are two ways of teaching infallibly: by solemn magisterium or by ordinary magisterium."

<sup>81</sup>F. SULLIVAN, Magisterium, Teaching Authority in the Catholic Church, Dublin, Gill and Macmillan, 1983, p. 12.

<sup>82</sup>Ibid., p. 13.

what the canon understands as normative for those who belong to the Church. Therefore the phrase "Catholic faith" assumes a particular significance. An individual may profess the "Christian faith", but not the "Catholic faith" as professed by the society of the Catholic Church.<sup>83</sup> The ecclesiological particularity of Vatican II here demands a greater specificity in the understanding of "Catholic" versus "Christian" faith. There are tenets of faith proper to the Catholic Church which are not professed by other Christians.<sup>84</sup>

The application of c. 750, which focuses on the obligation of common adherence to the single deposit of

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<sup>83</sup>Canon 751 defines apostasy as "total repudiation of the Christian faith". Commentators on the 1917 Code often identified the expression "Christian faith" with "Catholic faith". Cf. A. VERMEERSCH, "Annotationes", in Periodica, 19(1930), p. 268; F. Sullivan, op. cit., p. 20, suggests that any future dogmatic definition of Catholic beliefs would necessitate that other Christians share it also.

<sup>84</sup>J.L. SANTOS, op. cit., p. 297, advocates a more minimalist understanding of "Catholic faith." Its interpretation cannot follow the letter of the law; otherwise the canons lose any rational foundation. He appeals to c. 1071, §1, 4°; why would an individual who has abandoned the Catholic faith wish to receive the sacrament of marriage or even how could the proper authorization be given? Thus he suggests that a practical interpretation is the simple abandonment of religious practice, but not literally the faith itself.

faith as normative for belonging to the Church provides an attractive context for an interpretation of what is meant by "Catholic faith." The common profession of the Catholic faith is a unitive element of communion. When this obligation is not respected, an integral dimension of communion is absent.

#### 4. Defection from the communion of the Church

Notorious or public defection from the "communion of the Church" (a communione Ecclesiae) is indicated in three canons of the 1983 Code: cc. 171, §1, 4°, 194, §1, 2° and 316; Canons 1194, §1, 2° and 316 possess dual objects of defection: from the "Catholic faith" and the "communion of the Church". The expression "communion of the Church" was employed in the 1917 Code, but the ecclesiological teaching of Vatican II suggests a revised context for interpretation. Various expressions in the 1983 Code designate "communion"<sup>85</sup> which in turn denotes the quality of relationship or

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<sup>85</sup>Communio cum Ecclesia: cc. 209, §1, 437, §1; plena communio cum Ecclesia: cc. 383, §3, 463, §3, 512, §1, 844, §3, §4, 883, 2°, 908, 933, 1124; plene in communione: c. 205; communio ecclesiastica: cc. 96, 840, 1741, 1°; communio Ecclesiae: c. 149, §1. These expressions are not always synonymous; critical attention must be given to context and the expression of degrees of communion.



condition which an individual enjoys within the Church. Among the obligations and rights enumerated in cc. 208-223, c. 209, §1 presents the initial and primary obligation as the preservation of communion with the Church.

The baptized in full communion enjoy a particular relationship with the hierarchy. The Christian faithful are exhorted further in c. 212, §1 to show obedience to the pastors of the Church. Secondly, communion is the basis of the exercise of rights in the Church. Indeed, ecclesial rights are exercised only within the communion of the Church. Loss of communion has an immediate effect upon canonical condition, and hence upon the exercise of rights.

In the catalogue of obligations and rights of the Christian faithful in cc. 208-223, following Cardinal Castillo Lara, there is the presumption of "communion" with the Church. The integral realization of these obligations and rights requires the context of "full communion." Their exercise only achieves complete meaning only within such a context. Otherwise, these ecclesial obligations and rights are misinterpreted as applicable to all the baptized, a conclusion contrary to c. 11. Therefore, the canons on defection "from the communion of the Church" are based on the presumption that the term "communion" is to be

interpreted as "full communion." Only defection from the condition of full communion is possible; defection from a lesser condition is not possible. Only individuals who enjoy full communion can incur the exemptions and penalties that follow defection.

This interpretation is demonstrated by the requirement of c. 149, §1, which indicates that for eligibility for an ecclesiastical office, a person must be "in the communion of the Church" (debet esse in Ecclesiae communionem). Since the canon does not explicitly refer to "full communion", one possible interpretation is that baptized non-Catholics are eligible for appointment, because they possess a certain fundamental baptismal communion with the Catholic Church.<sup>86</sup> However, some authors interpret the canon to require "full communion".<sup>87</sup> This interpretation is also supported by the requirements for several particular ecclesiastical offices. For instance, c. 492, §1 requires that at least three members of the "Christian faithful"

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<sup>86</sup>Cf. UR 3.

<sup>87</sup>F.J. URRUTIA, De normis generalibus, Romae, Pontificia Universitas Gregoriana, 1983, p. 101. The author refers to c. 96 as the source for understanding the term to imply "full communion". Cf. further L. DE ECHEVERRIA, op. cit., pp. 114-115.

(christifidelibus) be appointed to the diocesan finance council. The term "Christian faithful" as used here has been variously interpreted. J. Alesandro understands it restrictively to mean Catholics only,<sup>88</sup> while A. Farrelly promotes a broader, more inclusive position which also encompasses baptized non-Catholics.<sup>89</sup>

Eligibility for membership on the diocesan pastoral council, according to c. 512, §1, is clearly restricted to the Christian faithful in full communion with the Catholic Church (in plena communione sint cum Ecclesia catholica). Canons 492, §1 and 512, §1 both present criteria for membership on diocesan consultative bodies, which, upon a cursory reading, are different. However, an examination of the immediate context, i.e., Book II, Title III - the internal ordering of particular Churches - further suggests an interpretation which restricts the understanding of the

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<sup>88</sup>J. ALESANDRO, "Title III: The Internal Ordering of Particular Churches (cc. 460-572)", in CLSA Commentary, p. 398; cf. also R. PARALIEU, Guide pratique du Code de droit canonique, Bourges, Editions Tardy, 1985, p. 169.

<sup>89</sup>A. FARRELLY, The Diocesan Finance Council: A Historical and Canonical Study, Ottawa, Saint Paul University, 1987, (ms), p. 178.

"Christian faithful" to Catholics who are in full communion and not burdened with a canonical sanction.<sup>90</sup>

C. Consequences of notorious and public defection

Consideration of the inhabilitating consequences of notorious and public defection serves to illustrate their application in the 1983 Code. The immediate specific consequences will now be examined. When helpful, their evolution in the schemata will be indicated.

1. Dismissal from a religious institute

(c.694, §1,1°)

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<sup>90</sup>J. PROVOST, "The Christian Faithful", in CLSA Commentary, p. 124, in discussing the meaning of christifidelis in c. 204, understands the canon to include any baptized person. But he also states that the context relates more strictly to Latin Rite Catholics (p. 125). In addition, he refers to a comment of a working group of the Lex Ecclesiae fundamentalis that the reference to obligations and rights presumes the condition of full communion (Cf. Communicationes, 12(1980), p. 33). But, Provost holds that an interpretation of "communion" as "full communion" goes beyond a strict interpretation as required by c. 18. For a fuller discussion of the various meanings of christifidelis, cf. F. COCCOPALMERIO, "I 'christifideles' in genere e i 'christifideles laici' ", in E. Cappellini and F. Coccopalmerio (eds.), Temi pastorali del nuovo codice, Brescia, Editrice Queriniana, 1984, pp. 15-54.

Profession of the Catholic faith is a fundamental requirement for admission to a religious institute. Canon 597, §1 requires that an individual must be catholicus. Canon 694, §1,1° declares that a member is ipso facto dismissed who has notoriously defected from the Catholic faith (a fide catholica notorie defecerit). This dismissal, similar to a latae sententiae penalty, is established for the protection of the common good of the institute against conduct of members contrary to the values of consecrated life.<sup>91</sup> The dismissal is automatically incurred by the act of notorious defection itself. It is not necessary for the major superior and council to execute the act of dismissal for its effect, although it is recommended that a statement be issued for the record, particularly in matters relating to the liability of the institute for actions of the former member.<sup>92</sup>

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<sup>91</sup>E. McDONOUGH, "Separation of Members from the Institute: Canons 684-709", in A Handbook on Canons 573-746, J. Hite, S. Holland and D. Ward (eds.), Collegeville, The Liturgical Press, 1985, p. 253. Also C. O'LEARY, Religious Dismissed after Perpetual Profession, Canon Law Studies, no. 184, Washington, D.C., The Catholic University of America Press, 1943, p. 46. Otherwise, when full communion ceases, one is obliged to abandon this form of life. Cf. D. ANDRES, op. cit., p. 46.

<sup>92</sup>Ibid., p. 622. The Code Commission declared on July 30, 1934, in reference to c. 646 (1917 Code), that the declaration of the fact of automatic dismissal was not

The evolution of the present formulation demonstrates the concern generated during the revision period over the norms for dismissal of religious. The 1977 Schema of the canons for institutes of consecrated life proposed in c. 84, §1 that the supreme moderator, with the consent of the council, could immediately dismiss a member who had publicly professed apostasy, heresy or schism.<sup>93</sup> This was an expansion of c. 646, §1's (1917 Code) singular ground of public apostasy. Absent in the 1977 Schema was the ipso facto dismissal of the 1917 Code. However, it was reinstated in the 1980 Schema, but the grounds of heresy, schism and apostasy were replaced by the more general expression of

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necessary for legitimacy. Cf. AAS, 26(1934), p. 494.

<sup>93</sup>PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Schema de institutis vitae consecratae, Città del Vaticano, Typis polyglottis Vaticanis, 1977, (Hereafter cited as 1977 Schema), c. 84, §1: "Supremus Moderator de consensu sui consilii statim dimittere potest sodalem qui: 1) apostasiam, haeresim, schisma publice professus fuerit[...]" One critique of the schema recommended that the canon be omitted because the grounds of apostasy, heresy and schism were "too vague" to be a basis of immediate dismissal. Cf. RELIGIOUS AFFAIRS COMMITTEE, "The Schema of Canons on Institutes of Life Consecrated by Profession of the Evangelical Counsels", in CLSA Proceedings, 39(1977), p. 109. In the 1917 Code, occult apostasy did not constitute sufficient grounds for dismissal. However, at least one author held that the former law also applied if the delict was notorious. Cf. A. TABERA ARAOZ, Derecho de los religiosos, Madrid, Cocala, 1948, p. 499.

public defection "from the Catholic faith".<sup>94</sup> This new expression may possibly imply that the former and the latter are equivalent. In the promulgated text, the "public" nature of the delict was amended to read "notoriously", thus introducing a greater restriction against an ipso facto dismissal.

## 2. Assistance at marriage (c. 1071, §1,4°)

Canon 1071, §1 identifies seven occasions where the permission of the local ordinary is necessary to assist at a marriage. Among them, c. 1071, §1,4° stipulates that permission is required for the marriage of a person who has "notoriously rejected the Catholic faith" (notorie catholicam fidem abiecerit). This is further expanded by c. 1071, §2 which in such instances requires observance of the norms for mixed marriages (c. 1125) with the necessary adaptations. But, if the defection is not notorious, the permission of the local ordinary is not necessary.<sup>95</sup>

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<sup>94</sup>1980 Schema, c. 620, §1,1°: "Ipso facto dimissus a Instituto habendus est sodalis qui: 1) a fide catholica publice defecerit[...]"

<sup>95</sup>J. HERVADA, loc. cit., p. 15. L. ÖRSY, Marriage in Canon Law, p. 83, recommends that when both parties have notoriously rejected the Catholic faith and desire the

The 1983 Code and the 1917 parallel (c. 1065, §1) employ the phrase "notorious rejection of the Catholic faith", but in different contexts.<sup>96</sup> The 1975 Schema de sacramentis in c. 281 essentially reproduced the 1917 formulation.<sup>97</sup> The permission of the local ordinary was necessary to assist at the marriage of anyone who notoriously rejected the Catholic faith or enrolled in a condemned society or non-Catholic community. Absent was the exhortation to deter Catholics from entering marriages with such individuals.

When the Code Commission reviewed the 1977 Schema, several members urged that rejection of the Catholic faith should constitute an impediment. The consultors rejected the proposal; a person who rejected the Catholic faith did not lose the right to enter marriage. Due to the

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<sup>96</sup>The 1917 Code's expression occurred in the context of impedient impediments; the 1983 Code's proper context is the pastoral care and preparation for marriage.

<sup>97</sup>1975 Schema de sacramentis, c. 281: "Matrimonio eius, qui notorie aut catholicam fidem abiecit, etsi ad communitatem acatholicam non transierit, aut societati ab Ecclesia prohibita adscriptus est, parochus ne assistat, nisi Ordinarius loci, servatis normis de quibus in can. 277, ad singulos casus (convenienter) aptatis, licentiam dederit."



inseparability of contract and sacrament, there can only be a Christian marriage among the baptized.<sup>98</sup>

The 1980 Schema incorporated further revisions in c. 1024, §1,4°. <sup>99</sup> Permission of the local Ordinary was required to assist at marriages of those who had notoriously rejected the Catholic faith, even if there is no transfer to a non-Catholic ecclesial community. This later phrase was patterned after c. 167, §1,4° (1917 Code). However, The promulgated text omits any reference to affiliation with another non-Catholic ecclesial community. This was an improvement, since the reference could be interpreted as ecumenically insensitive. The qualifications of the 1917 Code and schemata are now simplified in the 1983 Code with the more general expression of "notorious rejection of the Catholic faith."

### 3. Ineligibility for canonical elections

(c. 171, §1,4°)

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<sup>98</sup>Communicationes, 9(1977), p. 144.

<sup>99</sup>1980 Schema, c. 1024, §1,4°: "[...] matrimonio eius qui notorie catholicam fidem abiecerit, etsi ad communitatem ecclesiam non catholicam non transierit."

Canon 171, §1,4° is the only canon in the 1983 Code which speaks of notorious defection "from the communion of the Church." The inhabilitating consequence of this action is disqualification from participation in a canonical election. The formulation of the canon, like the other ones on defection, is broader than in the 1917 parallel (c. 167, §1,4°), which stated that those who are enrolled in, or publicly adhere to, a heretical or schismatic sect could not vote in a canonical election.<sup>100</sup> The 1983 Code incorporates a greater ecumenical sensitivity with the omission of any reference to heretical or schismatic sects. The focus, as in c. 1071, §1,4°, is upon the action of "defection from" and not upon any specific post-defection action.

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<sup>100</sup>The disqualification of c. 167, §1,4° (1917 Code) included both those who were born into such sects, or who defected from the Catholic Church and enrolled in them. The mere private espousal of heretical or schismatic positions did not incur the disqualification. Cf. T. MOCK, Disqualification of Electors in Ecclesiastical Elections, Washington, D.C., Canon Law Studies, no. 365, The Catholic University of America Press, 1958, p. 111, draws a parallel with c. 542, 1° (1917 Code), which stated that admittance to a canonical novitiate was invalid if individuals "sectae acatholicae adhaeserunt." An authentic interpretation on this canon stated that the disqualification was not incurred by those born into heresy or schism, but later converted to the Catholic faith. It only applied to those who defected from the faith and joined a non-Catholic sect. Cf. CI, responsum, AAS, 11(1919), p. 477.

Canon 168, §1,5° (1980 Schema) directly incorporated certain elements from its 1917 parallel. Ineligibility to vote was incurred if a person enrolled in a Church or ecclesial community separated from the Catholic Church, or, had formally defected from communion.<sup>101</sup> There was an explicit distinction between enrollment in another ecclesial communion and defection from the communion of the Catholic Church. Either action incurred the disqualification.

Although the 1983 Code's formulation is broader in its grounds for exclusion from an election, it is also more restrictive by the new requirement of notoriety. In this respect the canon's evolution is similar to that of c. 694, §1,1°.

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<sup>101</sup>1980 Schema, c. 168, §1,5°: [...] "1. Inhabiles sunt suffragium ferendi:...5) qui Ecclesia aut communitati ecclesiali ab Ecclesia catholica seiunctae adscriptus est, aut ab eiusdem communione formaliter defecit." The 1981 Relatio, p. 44, reported that this formulation constituted a contradiction with c. 166 of the 1980 Schema, which stated that for validity, no one is to be admitted to an election who did not belong to the electoral body. The proposed c. 168, §1,5° implied that members of separated ecclesial communions could belong to the electoral body, although they could not exercise a vote. The schema was amended to restrict from suffrage only those who have notoriously defected from communion with the Church. The Relatio does not explain why formaliter was amended to notorie.

#### 4. Loss of ecclesiastical office (c. 194, §1,2°)

Canons 194, §1,° and 316 establish penalties for two actions: public defection from and abandonment of "the Catholic faith" or public defection from "the communion of the Church." The presence of two objects of defection within one canon emphasizes the importance of distinguishing between them. This duality of objects of defection represents a strong bias against defection in relation to ecclesiastical offices and public associations of the faithful. Adherence to the magisterium and a positive relationship with the hierarchical structures of the Church are registered as significant dimensions of ecclesiastical offices and public associations. These duties emphasize their Catholic identity.

Ipsa iure removal from ecclesiastical office is effected, according to c. 194, §1,2° by public defection either "from the Catholic faith" or "from the communion of the Church". The defection does not execute the removal by the law itself. Rather, c. 194,§2 states that the removal is enforced only by a declaration from the competent authority. This declaration licitly establishes the vacancy of the office; only then may its provision on another individual

proceed. When the conditions of c. 194, §1 are present, the office holder is removed.<sup>102</sup>

The dual grounds of defection were consistently present in the schemata. As already indicated, one possible reason was the Code Commission's desire to emphasize the Catholic identity of ecclesiastical offices, especially since the laity were now eligible to occupy them in light of the expanded definition presented in cc. 145, §1 and 228, §1.

#### 5. Membership in public associations (c. 316)

Canon 316, §1 prohibits the valid reception into public associations of the faithful of those who have publicly rejected the Catholic faith, defected from ecclesiastical communion, or are under an imposed or declared excommunication.<sup>103</sup> If a member enters into one of these

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<sup>102</sup>Canon 188 (1917 Code) spoke of "tacit resignation" rather than removal "ipso iure" from ecclesiastical office. Canon 188, 4° stipulated tacit resignation when a person publicly defected from the Catholic faith.

<sup>103</sup>It is noted that c. 316, §1 identifies the defection as a communione ecclesiastica; this phrase differs from c. 194, §2 's expression of a communione Ecclesiae. The two expressions are synonymous.

situations, possible dismissal may follow, after due respect for the proper law of the association and the right of recourse to ecclesiastical authority (c. 316, §2).<sup>104</sup> The Catholic identity of public and private associations was a principle underlying the revision of the common norms for both categories of associations. Canon 307, §1 declares that the reception of members must follow the norms of law and statutes proper to each association. The schemata witnessed to a progressively negative position against the membership of non-Catholics in both public and private associations. The 1977 Schema De Populo Dei in c. 46, §3 declared that "non-Catholic Christifideles" may join associations of the faithful, unless the competent authority decided it would be detrimental to the goals of the association and dangerous to the Catholic faith.<sup>105</sup> Canon 681, §4,

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<sup>104</sup>The 1917 Code contained very specific criteria for membership in pious associations. Canon 693, §1 prohibited non-Catholics (acatholici) from valid membership. The expression "non-Catholics" was interpreted inclusively as meaning the non-baptized, apostates from the Christian faith, and those raised in heresy. However, converts to the Catholic faith could be validly received. Cf. S. DE ANGE-LIS, De fidelium associationibus tractatus ratione et usu digestus, Neapoli, M. D'Auria, 1952, vol. 2, p. 22.

<sup>105</sup>1977 Schema canonum Libri II de Populo Dei, c. 46, §3: "Non- Catholici adscribi possunt christifidelium consociationibus, nisi iudicio auctoritatis de qua in can. 44, §2 id fieri non possit sine detrimento actionis consociationi propriae aut exinde oriatur periculum ne

of the 1980 Schema was more restrictive; non-Catholics could not be admitted to public associations; however, the competent authority may permit their membership in private associations if there is no detriment to the goals of the associations and no scandal would arise.<sup>106</sup> The conditions for membership in public associations were further restricted in c. 692, §1 which proposed that whoever notoriously rejects the Catholic faith, or publicly defects from ecclesiastical communion, or incurs an imposed or declared excommunication, may not be validly received into public associations.<sup>107</sup> The 1981 Relatio reports one proposal to

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catholicorum fides in discrimen vocetur." A Canon Law Society of America critique of the 1977 Schema de Populo Dei viewed the proposed canon as "rather negative" in its attitude towards non-Catholics, and exhorted that certain risks are inherent in any ecumenical enterprise. Cf. CANON LAW SOCIETY OF AMERICA, "Initial Report of Task Force Committee on the Draft of the Canons of Book Two: The People of God", Washington, DC, U.S.C.C. Publications, June 13, 1978, p. 12.

<sup>106</sup>1980 Schema, c. 681, §4: "Non-Catholici christifidelium consociationibus publicis adscribi non possunt; consociationibus vero privatis ne adscribantur nisi iudicio auctoritatis competentis id fieri possit sine detrimento actionis associationis propriae et nullum oriatur scandalum."

<sup>107</sup>1980 Schema, c. 692, §1: "Qui fidem catholicam notorie abiecerit vel publice a communione ecclesiastica defecerit vel excommunicatione irrogata aut declarata irretitus sit, valide in consociationibus publicis recipi non potest."

eliminate any reference to defection in the canon as a condition against membership in public associations. It recommended that such norms be placed in the statutes of the association. The proposal was rejected.<sup>108</sup>

The 1977 and 1980 schemata restricted to the competent authority the reception of non-Catholic Christian faithful into public associations. However, there is no parallel provision in the 1983 Code. Those who publicly reject the faith or abandon ecclesiastical communion are similar to the acatholici of the 1917 Code.

#### CONCLUSION

The various expressions of defection in the 1983 Code are principally directed towards the question of canonical condition within the visible, juridic society of the Roman Catholic Church. Thus defection is an action which concerns the external forum. The effects upon one's canonical condition is primarily realized in the exercise of ecclesial obligations and rights. The exemptions derived

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<sup>108</sup>1981 Relatio, p. 163.



from defection by a formal act are granted because the law regards as non-Catholics those who defect in this manner. The rights of the individual, specifically the natural right to marry, holds precedence over ecclesial rights. The inhabilitating consequences of notorious and public defection restrict the exercise of specific obligations and duties. Unlike the consequences of the formal act, here the rights of the society of the Church hold priority over those of the individual.

Within this context of condition and ecclesial obligations and rights, the issue of Catholic identity assumes an important dimension. The consequences of defection are limited, but other supplementary consequences may also be incurred. (i.e., denial of burial). Within this limited context, all other ecclesial obligations and rights remain. Thus the revised legislation on defection, although a broader accommodation in comparison with previous canonical norms, still does not recognize a total withdrawal from full communion with the society of the Catholic Church. There is only a limited recognition of this within the ambit of the formal act of defection. Otherwise, individuals are still considered to be fundamentally Catholic since the law continues to claim jurisdiction.

This restricted recognition of defection also represents the desire of the 1983 Code to promote and protect the communion of the Church. Actions which threaten this communion are addressed with a penal response (notorious and public defection). Defection is not a right within the communion of the Catholic Church.

## CHAPTER FOUR

### RELATED QUESTIONS ON DEFECTION

The canons on defection possess a modest collective presence within the 1983 Code; their immediate consequences are specific and essentially disciplinary. Nevertheless, an analysis of defection that would be restricted only to its modalities and particular consequences would not yield a comprehensive canonical understanding of this institution. Its significance, then, necessitates further investigation within a broader context. For instance, various issues related to the canonical perspectives on incorporation into and exclusion from the Church could profitably be integrated into such a discussion.

These issues are quite numerous. For this reason, our task of interpretation must be necessarily limited. This inquiry, then, will be restricted to a consideration of certain related themes arising within the parameters of the 1983 Code. The Code's integration of the conciliar ecclesiology of communion suggests several areas for investigation which will hopefully enable us identify elements that would contribute towards a greater systematic understanding of defection.

First, the Code's presentation of obligations and rights as constitutive of Catholic identity will be explored, with a particular focus upon cc. 96 and 209, §1. Secondly, c. 1364, §1 and the penal provisions for heresy, apostasy and schism will be examined, with particular attention devoted to the discussion regarding the inherent delictual nature of defection. The issues raised here will be examined for their contribution towards understanding the canonical condition of the christifidelis who defects. Thirdly, several issues related to canonical praxis and defection will be explored.

#### I. THE 1983 CODE'S COMPLEXUS OF OBLIGATIONS AND RIGHTS

The complexus of duties/obligations and rights in the 1983 Code represents the actualization of communion with the Roman Catholic Church. Their observance is a distinguishing characteristic of the christifidelis who enjoys plena communio with the Church. The refusal or failure to exercise these actions may precipitate a harmful effect upon the exercise of communion and personal Catholic identity. The canonical institute of obligations and rights thus enjoys a critical function within the Code. This function will be briefly examined. After reviewing the general

purpose of obligations and rights, canons 96 (canonical personality) and 209, §1 (the obligation to preserve communion) will be investigated for their significance in the discussion of defection.

#### A. Obligations and Rights

Pope John Paul II declared in the Apostolic Constitution Sacrae disciplinae leges that the duties and rights of the christifideles are linked to their participation in the threefold priestly, prophetic and royal office of Christ.<sup>1</sup> The degree of this participation is determined by the status of the particular individual. Prior to such distinctions as to status, the common duties and rights of the christifideles are gathered together in cc. 208-223 under a specific title, thereby illustrating their "juridical status" within ecclesiastical discipline.<sup>2</sup> Indeed,

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<sup>1</sup>JOHN PAUL II, Apostolic Constitution, "Sacrae disciplinae leges", in Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus, Libreria editrice Vaticana, 1983, p. xii.

<sup>2</sup>R. CASTILLO LARA, "Some General Reflections on the Rights and Duties of the Christian Faithful", in Studia canonica, 20(1986), p. 18. The three other principal

the sixth of the ten principles of revision called for the articulation of the rights and obligations of the faithful. It is of methodological significance that these common obligations and rights are recognized prior to the identification of those proper to a particular status. This provision symbolizes and advocates the imperative for all christifideles to participate in the mission of the Church.<sup>3</sup> This complexus of common obligations and rights itself has been identified as an expression of constitutional law, whereby the canons in this particular title possess a greater

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classifications of obligations and rights: laity (cc. 224-231), clerics (cc. 273-289), and religious institutes and members (cc. 662-672) present further specifications for the actualization of communion according to one's canonical status.

<sup>3</sup>The majority of these obligations and rights were originally designated as "fundamental" in the proposed Lex Ecclesiae fundamentalis. When they were inserted into the Code, this qualification was omitted. P. VALDRINI, "Fidèle et pouvoir", in Praxis juridique et religion, 1(1984), p. 190, fn. 46, observes that this omission reveals a desire to locate these obligations and rights outside the habitual category where such entities are recognized as fundamental in the juridic organization of the state.

significance than other canons.<sup>4</sup> However, this designation also has been challenged.<sup>5</sup>

Canons 208-223 can be divided into two principal categories regarding their ontological foundation. One third of the canons derive from the tria munera of Christ. The other two thirds are located within the realm of natural law or of the general principles of law. Within the context of baptism, they are operative for the protection of those values rooted in divine law and not in natural law. Furthermore, these duties and rights experience a certain limitation or extension which is inherent to the supernatural values they uphold.<sup>6</sup>

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<sup>4</sup>Cf. P. Lombardia and J.I. Arrieta (eds.), Código de derecho canónico, edición bilingüe y anotada a cargo del Instituto Martín de Azpilcueta, anotada, fourth edition, Pamplona, Ediciones Universidad de Navarra, S.A. (EUNSA), 1987, p. 173.

<sup>5</sup>Cf. R. CASTILLO LARA, loc. cit., pp. 14-20, argues against the concept of fundamental rights within the context of the Church. When the canons from the Lex Ecclesiae fundamentalis were integrated into the Code, the category of "fundamental" was omitted. Furthermore, the collection of cc. 208-223, in his view, does not reflect a true constitution, since such a document involves more than rights and duties.

<sup>6</sup>THE SECRETARIAT FOR PROMOTING CHRISTIAN UNITY, "Ecumenical Aspects of the New Code of Canon Law", in Information Service, 60(1986) nos. I-II, p. 59.

The institution of obligations and rights thus provides the juridical locus for the participation of the People of God in the mission of the Church. This juridical function thus may be described as the infrastructure of communion. This infrastructure is primarily directed towards with the activity of the christifidelis within the visible society of the Roman Catholic Church. The tria vincula of faith, sacraments and governance, the requisite legal criteria for communion as provided in c. 205, are thus given juridical specification within this infrastructure.<sup>7</sup>

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<sup>7</sup>The exercise of certain ecclesial rights by Christians who do not enjoy plena communio is also implicitly recognized. These include the right to the Word of God, and under certain conditions, also the right to several sacraments (c. 844). Both separated Christians and the non-baptized may also exercise certain rights: the administration of baptism in case of necessity (c. 861, §1), participation in a canonical trial (c. 1476), and the vindication of this latter right (c. 1400, §1, 1°). However, in accord with c. 11, there is no explicit imposition of any canonical obligation. Cf. THE SECRETARIAT FOR PROMOTING CHRISTIAN UNITY, loc. cit., p. 59.



### B. Obligation and Catholic Identity

Canonical discussion has noted the prioritization of obligation over right within the 1983 Code.<sup>8</sup> This sequence of "obligation and right", adopted during the latter stages of the Code revision process, reflects the principle that rights are derived from duties: iura sunt propter officia.<sup>9</sup> The canonical profile projected by this priority of duty is that the christifidelis is primarily and intrinsically under obligation. This emphasis thus reveals, within the context of church order, the imperative of the actualization of full communion.<sup>10</sup>

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<sup>8</sup>Cf. R.J. CASTILLO LARA, loc. cit., pp. 21-22; R. SOBANSKI, "L'ecclésiologie du nouveau Code de droit canonique", in Le nouveau Code de droit canonique, Actes du Ve Congrès international de droit canonique, M. Thériault and J. Thorn (eds.), Ottawa, Université Saint-Paul, 1986, pp. 250-254; E. CORECCO, "Ecclesiological Bases of the Code", in Concilium, 185:3(1986), pp. 3-13; THE SECRETARIAT FOR PROMOTING CHRISTIAN UNITY, loc. cit., p. 59.

<sup>9</sup>Cf. R. SOBANSKI, loc. cit., p. 251.

<sup>10</sup>Ibid., p. 251, serves the important reminder that the Christian is not constituted by obligation but by grace.

During the 1981 plenaria of the Code Commission, it was proposed that the revised Code preserve the traditional sequence of "right and obligation". The response stated that such an amendment was unnecessary since both rights and obligations flow from the sacraments.<sup>11</sup> However, J. Provost considers this response, while instructive, to be too exclusive. It suggests that the philosophy of rights operative within the Code is that status determines proper obligations, and that the respective rights are subsequently deduced therefrom. He likewise concludes that the approach itself is too exclusive regarding the source of rights since baptism is constitutive a priori of certain fundamental rights, regardless of distinction of canonical status.<sup>12</sup> Rights themselves also are a source of obligations. The promotion of the common good through the exercise of a right suggests a concurrent obligation.<sup>13</sup> Stronger criticism of this sequence is voiced by R. Sobanski, who suggests that

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<sup>11</sup>Cf. PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Relatio complectens synthesim animadversionum ab. Em.mis atque Exc.mis Patribus Commissionis ad novissimum schema codicis iuris canonici exhibitarum, cum responsionibus a secretaria et consultoribus datis, 1981, Città del Vaticano, Typis polyglottis Vaticanis, 1981, p. 62, (hereafter 1981 Relatio).

<sup>12</sup>Cf. J. PROVOST, "The People of God", in CLSA Comm, pp. 137-138.

<sup>13</sup>Cf. ibid., p. 138.

the understanding of law and underlying anthropology exhibits a principal weakness of the Code's ecclesiology. This sequence seriously impedes the potential for the animation of the faithful in the Church. The revision of the Code appears to be more concerned with the division of competence rather than the promotion of various charisms.<sup>14</sup>

#### C. Canon 96: Canonical Personality

Two principal theological and juridical effects follow the reception of baptism. According to c. 96, baptism incorporates an individual into the Ecclesia Christi and constitutes him or her as a person with duties and rights. Canonical personality is thus constituted within the person. These duties and rights are exercised within the context of a specific ecclesial community.<sup>15</sup> Without

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<sup>14</sup>Cf. R. SOBANSKI, loc. cit., pp. 251-252; E. CORECCO, "La réception de Vatican II dans le Code de droit canonique", in La réception de Vatican II, G. Alberigo and J.P. Jossua (eds.), Paris, Editions du Cerf, 1985, pp. 332-333.

<sup>15</sup>Cf. F. URRUTIA, De normis generalibus, Adnotationes in Codicem, Liber I, Romae, Pontificia Universitas Gregoriana, 1983, p. 60.

seeking to expand the parameters of c. 11, these duties and rights are characterized as "Christian".<sup>16</sup>

The acquisition of canonical personality is permanent. This permanence is reflected in the capacitas habendi of obligations and rights. This capacity is essentially founded upon baptism and the inamissibility of incorporation into the Ecclesia Christi. However, the parameters for the capacitas agendi are defined by certain criteria also presented in c. 96. The exercise of this capacity can be restricted.

Three canonical qualifications upon this capacitas agendi are stated in c. 96. These are condicio canonica, communio ecclesiastica, and the lata legitime sanctio. The principal elements of each qualification will be identified, with particular attention given to their relationship to the question of defection.

#### 1. Condicio canonica

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<sup>16</sup>Unlike the 1917 parallel c. 87, one cannot impose an absolute identification between "Christian" and "Catholic". This distinction is also critical regarding the definition of apostasy (c. 751).

The 1983 Code has introduced the expression "condicio canonica" to refer to the juridical status of the individual and the exercise of ecclesial obligations and rights.<sup>17</sup> A. Borrás has proposed a useful definition of condicio canonica: "the concrete configuration of the patrimony of subjective rights and correlative duties."<sup>18</sup> This definition underscores the juridical significance of obligations and rights for the ecclesial identity of the christifidelis, although it obscures somewhat the recognized priority of obligation over right.

Borrás elaborates upon this definition with the identification of three categories within this patrimony. The first category comprises the common obligations and rights enjoyed by all the christifideles. The second refers to the particular status in which each individual christifidelis is situated: clerical, lay, or religious (cf. c. 207). The third category groups the collective horizon of

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<sup>17</sup>The expression occurs in the rubric of Book I, Title VI, Chap 1, "De personarum physicarum condicione canonica" and in c. 711; the Code also speaks of conditio juridica (c. 155) and simply of condicio (cc. 96; 204, §1; 208; 210; 216; 281, §1; 394, §2; 705).

<sup>18</sup>A. BORRAS, L'excommunication dans le nouveau Code de droit canonique, essai de définition, Paris, Desclée, 1987, p. 194: "La concrète configuration du patrimoine de droits subjectifs et de devoirs corrélatifs."

particular facts and juridic actions that influence the juridical performance of the subject.<sup>19</sup>

This third collective category signals a revised canonical condition for those individuals who have performed an act of defection. According to the particular modality, defection releases an individual from specific obligations (actus formalis) or imposes a restraint upon the capacitas agendi of particular rights (notorie/publice deficere). Defection thus introduces the individual into a revised canonical condition whereby the exercise of certain ecclesial obligations and rights is significantly altered.

This release from canonical obligation suggests an alteration in one's ecclesial identity. Albeit in a very restricted sense, the individual, within a specific context, is not required to act as a catholicus. Formal defection illustrates how obligation is inherent to Catholic identity. The only modality of defection which releases from certain ecclesial obligations relates to marriage. This was already noted in the introduction to the 1975 Schema de sacramentis, where the christifidelis who defects was characterized as a

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<sup>19</sup>Ibid., p. 101.

non-Catholic for the purpose of the specific impediments.<sup>20</sup> This designation as non-catholicus is an accommodation in the law to limit the number of invalid marriages. There is no indication here, though, of a shift in the canonical understanding of the permanence of incorporation into the Roman Catholic Church. Those who formally defect are still otherwise to be considered Catholic.<sup>21</sup>

## 2. Communio ecclesiastica

The expression "communio ecclesiastica" designates the quality of the relationship with the Church which entitles the christifidelis to exercise his or her duties and rights. It is the Code's expression for the full communion of the baptized with the visible society of the

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<sup>20</sup>Cf. PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Schema documenti pontificii quo disciplina canonica de sacramentis recognoscitur, Typis polyglottis Vaticanis, 1975, p. 13, states that those who defect by a formal act or notoriously are to be considered as non-catholici baptizati for the purpose of the marriage impediments. The Holy Office, in a private reply dated February 27, 1937, stated that apostates are to be considered non-Catholics as regards the right to appear as plaintiffs in marriage cases, in Periodica, 26(1937), p. 400.

<sup>21</sup>A. ABATE, "La forma della celebrazione del matrimonio nel nuovo Codice di diritto canonico", in Apollinaris, 59(1986), p. 168.

Catholic Church.<sup>22</sup> Significant is the canon's use of the term "ecclesiastica" (and not "ecclesialis") with a specifically canonical designation.<sup>23</sup> On the basis of the expression plena in communione employed in LG 14 and c. 205, it could have been anticipated that the legislator would have utilized identical terms in c. 96. However, if the conciliar formulation had been adopted, this restrictive clause would appear to be directed only towards separated Christians.<sup>24</sup> But, the expression communio ecclesiastica is more inclusive; it encompasses all the baptized under the provisions of the canon, those who enjoy plena communio and those who are in a state of non plena communio.

The distinction of "degrees" of communion with the Catholic Church is thus operative here. However, this is

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<sup>22</sup>A. BORRAS, op. cit., p. 99.

<sup>23</sup>It is critical to maintain the distinction between the two terms. The adjective ecclesialis is employed in the Code only with the noun communitas (cf. cc. 364, 6°; 463, §3; 713, §2; 869, §2; 908; 933, 1124; 1183, §3) to express the ecclesiological character of a church or communion separated from the Roman Catholic Church. The term is a neologism devised at Vatican II in order to properly distinguish from the juridical associations of ecclesiasticus. Cf. J. FEINER, "Commentary on the Decree", in The Documents of Vatican II, H. Vorgrimler (ed.), Freiburg, Herder and Herder, 1967-1969, vol. 2, pp. 77-78.

<sup>24</sup>A. BORRAS, op. cit., p. 99.



not to suggest there exist also degrees of full communion; either the christifidelis is or is not in full communion with the Catholic Church. When obligations and rights are restricted, this does not give juridical recognition to a lesser degree of full communion. The expression of full communion proper to a catholicus is restricted, but not its existence.

### 3. Lata legitime sanctio

The third qualification of c. 96 declares that duties and rights may be impeded by a lata legitime sanctio. The exact nature of a sanctio is not explained. The 1917 Code's parallel c. 87 employed the term censura; the tripartite definition of censura presented by c. 2255, §1 was either excommunication, interdict or suspension.<sup>25</sup> The term sanctio possesses a plurality of meanings, but essentially it implies the intervention of the competent authority in

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<sup>25</sup>The term sanctio first surfaced in the textus ultimus of the Lex Ecclesiae fundamentalis, c. 5, but there is no reported rationale for this change. Cf. Communicationes, 8(1976), p. 85.

conformity with the law.<sup>26</sup> In a certain sense, the imposition of a sanctio is conditioned by the previous restriction: the subject must already be in ecclesiastical communion. The imposition of canonical sanctions are realized in the case of notorious and public defection by the accompanying restrictions imposed on the exercise of several ecclesial rights.

D. Canon 209, §1: The Obligation to Preserve Communion

This investigation has already noted that the ecclesial identity of the christifidelis is essentially defined by obligation. This function of obligation is particularly represented by c. 209, §1. The non-observance of obligations (and rights) results in an impediment to the expression of communion which is proper to those in ecclesiastical communion.

After the assertion of the true equality (vera aequalitas) of the christifideles (c. 208), c. 209, §1

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<sup>26</sup>Cf. A. BORRAS, op. cit., p. 197.

presents the first specification of cc. 208-223: the christifideles are obliged always to preserve communion with the Church (ad communionem semper servandum cum Ecclesia).<sup>27</sup> The preservation of communion is the preeminent duty of the christifidelis.<sup>28</sup> Broader than a specific action, it stipulates the necessity of promoting the consciousness of communion in all activities of the christifideles. It is a specific obligation of those in plena communio. This is especially realized in the interaction between those who exercise the munus regendi and those who must promote communion in their actions.<sup>29</sup> This obligation of communion also emerges elsewhere in the catalogue of common obligations and rights, specifically where the legislator limits the exercise of rights.<sup>30</sup>

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<sup>27</sup>This canon originated in the 1977 Schema de Populo Dei, c. 19, which stated that the christifideles were irrevocably (irrevocabiliter) incorporated into the Ecclesia Christi. It is noteworthy that c. 209, §1 refers only to the Ecclesia, and not the Ecclesia Christi.

<sup>28</sup>Cf. R. CASTILLO LARA, loc. cit., p. 29.

<sup>29</sup>P. VALDRINI, loc. cit., p. 192.

<sup>30</sup>Ibid., p. 190. The author illustrates this by reference to c. 212, §3, whereby the right and duty of the faithful is recognized to voice their opinions; however the canon also exhorts to have regard, among other items, for faith and morals, and pastors. Those engaged in research must have a due respect for the magisterium (c. 218). Valdrini also believes that c. 221, concerning the defense of rights, seems to avoid the duty of communion, especially

Although the term communio is employed in c. 209, §1 without qualification, its meaning within this context indicates full or ecclesiastical communion.<sup>31</sup> This interpretation follows the Code Commission's position that within the context of the Code, the term christifidelis is understood to refer exclusively to those in full communion.<sup>32</sup> The obligation of communion is also explained by its opposite: the obligation not to lose ecclesiastical communion implies not committing any delictual offenses against communion.<sup>33</sup>

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when it concerns recourse against a superior.

<sup>31</sup>Among the qualifications for promotion to an ecclesiastical office, c. 149, §1 states that one must be in Ecclesiae communione. Here this qualification also regards full communion. This expression of c. 149, §1 is also located in several defection canons (cc. 171, §1, 4°; 194, §1, 2°) where the only possible interpretation also is full communion; thus, Münsterischer Kommentar zum Codex iuris canonici, K. Lüdicke (ed.), Essen Ludgerus Verlag, 1985 -, p. 149/2; L. de Echeverria (ed.), Código de derecho canónico, 1986, seventh revised edition, Madrid, Editorial católica, 1984, p. 114.

<sup>32</sup>Cf. 1981 Relatio, p. 50. J. PROVOST, loc. cit., pp. 124, 139, argues for a broader interpretation whereby the term includes all the baptized. In a certain sense, one might argue that the applicability of the Code Commission's clarification commences with c. 209.

<sup>33</sup>Cf. V. DE PAOLIS, "Communio in novo codice iuris canonici", in Periodica, 77(1988), p. 543.

This obligation of communion occupies a critical function within the spectrum of ecclesial obligations and rights. Philosophically, it defines the parameters of Christian liberty within the Church,<sup>34</sup> for incorporation into the Ecclesia Christi creates the christifidelis, the subject of specifically Christian duties and rights. Their expression was already qualified by the various restrictions presented in c. 96. Canon 209, §1 establishes communion as another qualification. Although this qualification is presented considerably after c. 96, its context within the catalogue of the common duties and rights serves to emphasize its significance.

Communion signifies an organic bond which unites Christians among themselves within a hierarchically structured ecclesial framework. Thus communion is, as Cardinal R. Castillo Lara and G. Ghirlanda observe, a prerequisite for the exercise of rights. This priority of communion must be visible in one's ecclesial actions.<sup>35</sup> The obligation

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<sup>34</sup>Cf. P. BONNET, "De omnium christifidelium obligationibus et iuribus", in P. Bonnet and G. Ghirlanda, De Christifidelibus, De eorum iuribus, de laicis, de consociationibus, Adnotationes in codicem, Romae, Pontificia Universitas Gregoriana, Tipografia P.U.G., 1983, pp. 45-47.

<sup>35</sup>R. CASTILLO LARA, loc. cit., p. 29; G. GHIRLANDA, "De obligationibus et iuribus christifidelium in communione

promotes the interaction between the faithful and pastors in conformity with the legal requirements of communion.<sup>36</sup>

This critical role of communion is described in different terms by E. Corecco, who suggests that communion identifies "the ontological structure of the faithful, outlining both their anthropological and ecclesial identity."<sup>37</sup> When this duty of communion is not respected, there is a detrimental effect upon ecclesial relations, and thus upon ecclesial identity.<sup>38</sup>

Several authors have suggested that the obligation of communion is also paralleled by the right to communion. Cardinal R. Castillo Lara observes that certain rights are not explicitly granted by the legislator, but enjoy recognition because they are inherent in the Christian status and are prior to the determination of positive law. Among these

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<sup>36</sup>Cf. THE SECRETARIAT FOR PROMOTING CHRISTIAN UNITY, loc. cit., p. 59.

<sup>37</sup>E. CORECCO, "Ecclesiological Bases", p. 10.

<sup>38</sup>L. GEROSA, La scomunica è una pena? Saggio per una fondazione teologica del diritto penale canonico, Fribourg [Suisse], Editions universitaires, 1984, p. 267, suggests that the litmus test of communion with the Church is eucharistic communion. When the expression of full communion is diminished, the substance of the eucharistic mystery is not preserved.

is the right to communion with the Church.<sup>39</sup> J. Provost holds that this is recognized implicitly in the right to the pluralities of theological systems, spiritualities (c. 214) and religious practices. This right to communion is especially critical in the tension which may arise between the demands on the level of the local church vis-à-vis those of the church universal.<sup>40</sup> Similarly, G. Ghirlanda perceives this right to communion evidenced in the right to receive the integra fides (cf. cc. 747 §1; 760), the preaching of the Word of God and sacraments (c. 213), and a Christian education (c. 217). The exercise of the right to communion serves the greater purpose of promoting communion among the christifideles.<sup>41</sup>

Several canons concerning notorious or public defection explicitly refer to the communion of the Church (cc. 171, §1, 4°; 194, §1, 2°), or to the public rejection of ecclesiastical communion (c. 316, §§1,2). These canons have already been investigated in Chapter Three. However, our reflections on c. 209, §1 and the obligation to preserve

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<sup>39</sup>R. CASTILLO LARA, loc. cit., p. 20.

<sup>40</sup>Cf. J. PROVOST, loc. cit., p. 142.

<sup>41</sup>Cf. G. GHIRLANDA, loc. cit., p. 335.

communion within the broader context of the Code have occasioned several further reflections relating to them.

Communion is the source of the enjoyment of all obligations and rights for the christifideles. Without the preservation of communion, its juridical infrastructure is weakened. This is further underscored with the 1983 Code's introduction of a title specifically dedicated to obligations and rights. The preservation of communion is one example of what Pope Paul VI once called "personal responsibility in the observance of canon law."<sup>42</sup>

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<sup>42</sup>PAULUS VI, "Allocutio Ad Tribunalis Sacrae Romanae Rotae Decanum, Praelatos Auditores, Officiales et Advocatos, novo Litibus Iudicandis ineunte anno, de protectione iustitiae perfectiore reddenda", (4 February 1977), in AAS, 69(1977), p. 151. On this same occasion the Pontiff remarked that rights and duties can only be exercised within the communion of the Church, ibid., p. 149. This reference appears in R. CASTILLO LARA, loc. cit., p. 23, n. 44.



E. Defection and the expression of communion

The exercise of communion and the ecclesial identity of the christifidelis are promoted by the juridical recognition of duties and rights. The comprehensive complexus of duties and rights juridically structures the participation of the christifidelis in the Church. The effects of defection upon the expression of communion and ecclesial identity will now be examined. This inquiry will first investigate the anti-ecclesial actions of heresy, apostasy and schism, then the penal provisions for these actions, and their relationship to defection. Following these observations, we will offer some reflections on Catholic identity and defection.

1. Canon 751: heresy, apostasy, schism

The paramount anti-ecclesial actions are heresy, apostasy, and schism. Each action is a form of separation from the Church, either regarding doctrine and faith (heresy and apostasy) or submission to the Roman Pontiff and relationships within communion (schism). The response to these

actions is in continuity with the tradition on the permanence of incorporation in the Church. Since they were understood as injurious to the unity of the Church, canonical discipline sought to protect this unity with numerous provisions concerning these actions. However, in contrast to the 1917 Code, the 1983 Code possesses very few explicit references to heresy, apostasy and schism.<sup>43</sup>

The 1917 Code had generally regarded all baptized non-Catholics as heretics, apostates or schismatics; since all the baptized were technically under the jurisdiction of the 1917 Code, following its c. 2314, these non-Catholics were also theoretically under censure as excommunicated Catholics.<sup>44</sup> But the 1983 Code (in fidelity to the assertion of UR 3 that the sin of separation cannot be imputed to those members born into separated churches and communions), does not operate under this presumption. Since canonical jurisdiction is now asserted only over those baptized in the

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<sup>43</sup>Canons 751 and 1041, 2°; cc. 1184, §1, 1° refer to the act of heresy, apostasy, or schism; canons 1364, §1 and 1044, §1, 2° concern the author of these actions.

<sup>44</sup>Cf. T. GREEN, "The Revised Code of Canon Law: Some Theological Issues", in Theological Studies, 47(1986), p. 644.

Catholic Church or received into it, heresy, apostasy or schism are imputable only to Catholics.<sup>45</sup>

Canon 751 presents the definitions of heresy, apostasy and schism with certain modifications from the 1917 Code (c. 1325, §2). The principal change is found in the style of definition. The 1983 Code defines the action itself, whereas the 1917 Code defined the authors of the actions. Variations from the 1917 Code are principally in the greater forcefulness of terminology. Thus, the apostate in the 1917 Code was characterized as one who totally "withdrew" (recedit) from the Catholic faith, whereas c. 751 describes apostasy as total "repudiation" (repudiatio), giving a stronger emphasis to rejection of the faith. The 1917 Code characterized the schismatic as "refusing" (renuit) to submit to the Roman Pontiff or to be in communion with his subjects; the formulation of the 1983 Code describes schism as a "rejection" (detractio). While these modifications do not essentially alter the definition of apostasy or schism, they do suggest that they are now more serious since they are anti-ecclesial actions.

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<sup>45</sup>Cf. ibid.

The fundamental element of these actions is the presence of mala fides. Although the canon does not explicitly declare this criterion, the Code Commission emphasized its necessity.<sup>46</sup> Several characteristics can be noted about this requirement. Essentially it is the conscious, intentional and defiant knowledge that certain positions are contrary to Church teaching.<sup>47</sup> Coupled with these elements is the obstinate and pertinacious denial or doubt after honest endeavors to recognize the truth. J. Coriden cautions, though, that it is important to recognize as operative the hierarchy of truths. The denial or doubt must concern the fides divina et catholica, and not lesser doctrines, theological disputes or ecclesiastical discipline.<sup>48</sup>

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<sup>46</sup>Cf. PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Schema canonum libri III de ecclesiae munere docendi, Romae, Typis polyglottis Vaticanis, 1977, p. 3: "[...] atque affirmatur haeresis, apostasiae aut schismatis reos tantum esse qui mala fide talis admiserint." Cf. also the relatio of the coetus de magisterio ecclesiastico, in Communicationes, 7(1975), p. 150.

<sup>47</sup>J. CORIDEN, "The Teaching Office of the Church", in CLSA Comm, p. 548; F. URRUTIA, "De magisterio ecclesiastico. Observationes quaedam ad propositam reformationem partis IV, libri III, CIC", in Periodica, 68(1979), p. 328.

<sup>48</sup>J. CORIDEN, loc. cit., p. 548.

The consequences of heresy, apostasy, and schism upon church membership have been the subject of an extensive theological and canonical literature. Various nuanced distinctions have been proposed to characterize these actions of separation from the Church.<sup>49</sup> Here it is useful to recall the observation voiced at the first session of the coetus de matrimonio concerning c. 12 (1917 Code) and the issue of formal defection. Legal recognition of defection with a general release from all merely ecclesiastical laws was not only rejected, but it was observed that such release implied that apostasy would cease to be a punishable delict.<sup>50</sup> This observation reflects the position upon which the canonical tradition approaches the action of separation from the Church: all such actions are essentially delictual. The penalties for these actions will now be investigated.

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<sup>49</sup>Cf. K. RAHNER, "Membership of the Church according to the Teaching of Pius XII's Encyclical 'Mystici Corporis Christi'", in Theological Investigations, vol. 2, translated by K. Kruger, Baltimore, Helicon Press, 1963, pp. 1-35, which provides an overview of the various approaches to this discussion; Y. Congar, art. "Schisme", in Dictionnaire de théologie catholique, Paris, Letouzey et Ané, 1903-1950, vol. 54, cols. 1306-1307, states that tradition unanimously affirms that schismatics are outside the Church. They remain only a member secundum quid due to the baptismal character.

<sup>50</sup>Cf. Communicationes, 14(1982), pp. 132-133.

II. CANON 1364, §1A. Evolution of the canon

Canon 1364, §1 prescribes the penalty of latae sententiae excommunication for the delicts of heresy, apostasy, and schism.<sup>51</sup> This provision is identical to the 1917 Code's ipso facto excommunication in c. 2314, §1,1°. The evolution of the type of penalty during the revision process reveals a varied history. The latae sententiae qualification of the excommunication was omitted in the various schemata and this action generally received favorable support from the different consultative bodies.<sup>52</sup> This

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<sup>51</sup>It is interesting to note that the schema for the proposed Oriental Code locates the definitions of heresy, apostasy, and schism in de delictis, not de magisterio. Cf. PONTIFICIA COMMISSIO CODICI IURIS CANONICI ORIENTALIS RECOGNOSCENDO, Schema Codicis iuris canonici, Romae, Stampata nella Scuola Tipografica Italo-Orientale, 1986, cc. 1451; 1452; this schema is also reprinted in Nuntia, 24-25 (1987), pp. 1-268.

<sup>52</sup>The ferendae sententiae provision was consistent. Cf. PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Schema documenti quo disciplina sanctionum seu poenarum in ecclesia latina denuo ordinatur, Typis polyglottis Vaticanis, 1973: c. 48, §1 provided that heresy be punished with a censure; c. 48, §2 imposed excommunication upon the schismatic; idem, Schema codicis iuris canonici, Romae, Libreria editrice Vaticana, 1980, c. 1316, §1; idem, Codex iuris canonici: schema novissimum [...] iuxta placita Patrum

revision reflected the ninth of the principles for the revision of the Code which urged a reduction of latae sententiae penalties so that they would be applicable only in the gravest situations. However, the reinstatement of this automatic qualification was advocated by several members at the 1981 plenarium. This proposal was resisted principally because of the difficulty in securing juridical certitude.<sup>53</sup> However, during the final redaction of the Code, this provision ultimately was reinstated into the present c. 1364, §1. L. Gerosa justifies this provision as a reflection of a theology of law whereby juridical security cannot prevail upon a substantial theological truth. Furthermore, juridical security is never rigorously determined in instances of latae sententiae penalties. For him, the elimination of this category of canonical penalty would be tantamount to imitating the positivistic legal system of the modern state.<sup>54</sup>

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Commissionis deinde emendatum atque Summo Pontifici praesentatum, In Civitate Vaticana, Typis polyglottis Vaticanis, 1982, c. 1364, §1.

<sup>53</sup>Cf. 1981 Relatio, pp. 300-301.

<sup>54</sup>L. GEROSA, op. cit., pp. 238-240.

Nevertheless, in spite of this explanation, criticisms of the latae sententiae provision have continued since the promulgation of the Code. T. Green cautions that in this present era of theological pluralism and ecumenical relationships, it is increasingly difficult to determine legally whether these delicts do indeed exist.<sup>55</sup> Similarly, A. Taché has questioned the merit of an automatic censure when the certain existence of an offense is not determined. Thus, he concludes, c. 1364, §1 will either be the basis for abuse or misinterpretation, or will be "disregarded".<sup>56</sup> These criticisms of the latae sententiae excommunication provision signal potential legal confusion. The principal difficulty is the established presence of the delict itself. Here a strict interpretation of the law must be applied (c. 18).

Several supplementary penalites are also established in c. 1364, §1. The reference to c. 194, §1, 2° concerns the ipso iure removal from an ecclesiastical office of one who has publicly defected from the Catholic faith or from

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<sup>55</sup>Cf. T. GREEN, "Sanctions in the Church", in CLSA Comm, p. 920.

<sup>56</sup>A. TACHE, "The Code of Canon Law and Ecumenical Relations", in Le nouveau Code de droit canonique, p. 418.



the communion of the Church. The 1981 Relatio reported that this removal is an administrative provision independent of any penalty.<sup>57</sup> However, it should be recalled that among the consequences of excommunication, c. 1331, §1, 3° stipulates that excommunicated individuals may not discharge any ecclesiastical office. In view of this provision, the necessity of the reference in c. 1364, §1 to c. 194, §1, 2° appears to be superfluous. This canon is also the only instance in the 1983 Code where defection and the three anti-ecclesial actions are addressed together.

The rationale describing removal from office as an administrative procedure suggests a possible distinction between defection, on the one hand, and heresy, apostasy or schism on the other. It would appear, at least in this situation, that defection is not necessarily equivalent to an anti-ecclesial action as penalized in c. 1364, §1. The removal from office prescribed by c. 194, §1, 2° is due to the act of defection and not to excommunication. Removal from ecclesiastical office could be effected ipso iure without necessarily incurring excommunication.

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<sup>57</sup>Cf. 1981 Relatio, p. 301.

The positive value of canonical penalties is the prohibition against participation in the communion of the Church. Indeed, this prohibition reflects the contemporary reality of the potestas coactiva.<sup>58</sup> The purpose of excommunication is medicinal: to urge a return to communion. Catholics under the censure of excommunication remain in the communion of the Church and retain their Catholic identity. The canonical effects of excommunication do not place the individual outside of full communion.

The canonical condition of the authors of heresy, apostasy, and schism is unique. Due to the violation of the tria vincula, their actions have placed them outside the visible unity of the Church. This loss of the exercise of plena communio following defection concerns communion in the institutional sense, especially as a consequence of formal defection.<sup>59</sup> It is the performance of the delict that injures this enjoyment of communion, and not the latae sententiae excommunication of c. 1364, §1.<sup>60</sup>

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<sup>58</sup>Cf. P. HUIZING, "Problemas de derecho canonico penal", in Jus canonicum, 8(1968), p. 205.

<sup>59</sup>T. LENHERR, "Der Abfall von der katholischen Kirche durch einen formalen Akt", in Archiv für katholisches Kirchenrecht, 152(1983) p. 119.

<sup>60</sup>A. BORRAS, op. cit., pp. 201-207.

The canonical condition of those excommunicated for these anti-ecclesial actions has been characterised in negative terms as a defectus dolosus communionis.<sup>61</sup> This designation has a utilitarian merit. It reserves the expression communio non plena to characterize the situation of separated non-Christians. This enables us to distinguish properly this category of the baptized from those who have defected from the Catholic Church.<sup>62</sup>

#### B. Defection as delictual

Defection and the delicts of heresy, apostasy and schism share several similar material characteristics. Fundamentally, these actions violate the tria vincula, the requisite criteria for plena communio with the Catholic Church (c. 205). If one or more of these criteria is injured, then there is a detrimental effect upon plena communio. However, the authors of heresy, apostasy and schism are not liable to penalties unless there is present

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<sup>61</sup>Ibid., p. 96.

<sup>62</sup>Ibid.

the habitual intention to depart from the Church. Without this intention, the action is not delictual but is merely a form of disobedience.<sup>63</sup>

Within this framework, the Code appears to approach defection as heresy, apostasy or schism and therefore as an inherently delictual act.<sup>64</sup> Therefore, the censure stipulated in c. 1364, §1 must be imposed upon the establishment of the act of defection. The Code does not distinguish between the delictual act and the mere fact of separation from the Church.

The various modalities of defection in the 1983 Code do indeed possess certain parallels with heresy, apostasy or schism. Defection from the Catholic faith (cc. 194, §1, 2°; 316, §§1,2; 694, §1, 1°; 1071, §1, 4°) parallels the canonical definition of heresy or apostasy as the denial of some

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<sup>63</sup>R. NAZ, art. cit., col. 886.

<sup>64</sup>A. BORRAS, op. cit., p. 102; J. CORIDEN, loc. cit., p. 548; J. HERVADA, "Matrimonial Law, Commentaries on Canons 1055-1165", in I. Gramunt, J. Hervada and L. Wauck, Canons and Commentaries on Marriage, Collegeville, Liturgical Press, 1987, p. 29; T. LENHERR, loc. cit., pp. 107-125; A. STENSON, "The Concept and Implications of the Formal Act of Defection of Canon 1117", in Studia canonica, 21(1987), pp. 175-194.

or all truths of divine and catholic faith. Formal defection from the Catholic Church relates to the canonical definition of schism as the refusal of submission to the Roman Pontiff or of communion with members of the Church. Yet, despite these common similarities, the various modalities and objects of defection as presented in the 1983 Code cannot be precisely schematized as either heresy, apostasy or schism. Such schematization is not evidenced in the construction of the Code.

#### C. Defection as non-delictual

The advocacy by several canonists for the recognition of defection or departure from the Church has already been noted in Chapter Two of this study. The basis for these proposals was the principle of religious freedom outlined in Dignitatis humanae. The application of this and similar principles would recognize the act of departure from the Catholic Church as non-delictual.<sup>65</sup> The desirability

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<sup>65</sup>Cf. R. SEJOURNE, L'option religieuse des mineurs et l'autorité parentale, droit français et attitude de l'Eglise catholique, Paris, Beauchesne, 1972, p. 172, fn. 114.

of imposing penalties for self-removal from the communion of the church was raised during the period of revision. For instance, L. Örsy has questioned the value of the imposition of canonical penalties in this situation. Since the individual has removed himself or herself from the Church's jurisdiction, the Church should simply declare this individual's faith to be incompatible with that of the Church community as a result of this severance of communion.<sup>66</sup> However, notwithstanding these opinions, it says at the present time that we must conclude to the delictual nature of defection.

#### D. Defection and Catholic Identity

The theological axiom semel catholicus semper catholicus reflects the canonical and sacramental tradition of the permanence of incorporation into the Catholic Church.

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<sup>66</sup>L. ÖRSY, from unpublished class notes, The Catholic University of America, Chapter 17, pp. 3-4, as reported in T. GREEN, "The Future of Penal Law in the Church", in The Jurist, 35(1975), pp. 234-235; similar proposals are also presented in "Report of the Special Committee of the Task Force of the Canon Law Society of America on the Proposed Schema De delictis et poenis", in CLSA Proceedings, 36(1974), p. 135.

Two observations about this characteristic of permanence can be noted. The first is sacramental: it is impossible to return to one's pre-baptismal status. The inamissibility of the indelible baptismal character evidences this observation. The second observation is the singular consequence of baptism administered in (or reception into) the Catholic Church.<sup>67</sup> It results in the imposition of a permanent personal Catholic identity. The legislator has considered juridical incorporation into the Catholic Church as a particular effect of baptism. Other Christian Churches may possess valid baptism, but this baptism does not possess the juridical force of incorporation into the Catholic Church.<sup>68</sup>

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<sup>67</sup>Cf. J. KEATING, "'Conversion' Which Binds to the Canonical Form of Matrimony", Ius Populi Dei, Miscellanea in honorem Raymundi Bidagor, U. Navarette (ed.), Romae, Universita Gregoriana Editrice, 1972, vol. 3, p. 655, notes that the clauses in catholica Ecclesia and ad catholicam Ecclesiam are practical juridical distinctions. The legislator does not intend to distinguish categories of church membership.

<sup>68</sup>Thus A. ARTEAGA, "Bautizados en la Iglesia católica no obligados a la forma canónica del matrimonio: problemas que presenta", in Le nouveau Code de droit canonique, p. 909. For an interesting discussion on Catholic identity from the perspective of the 1917 Code, especially in light of the exemption of c. 1099, §2 (later abrogated by Pius XII) for children born of non-Catholics who were baptized in the Catholic Church but raised since infancy outside it, cf. W. ALLEN, "The Test of Catholicity", in The Jurist, 3(1943), pp. 595-602; ID., "The Test of Catholicity Under Canon 1099: Objections Resolved", in The Jurist, 4(1944), pp. 124-129.

This permanence of Catholic identity must now be applied to the question of defection from the Church. Given the 1983 Code's treatment of defection as an inherently delictual action, this action is not recognized as constitutive of the cancellation of aggregation or withdrawal from full communion with the visible society of the Church. Rather, the juridical consequence of this action can best be described as a restriction, through penal remedy, upon the exercise of full communion. Personal Catholic identity remains intact.

There is no established canonical classification to characterize individuals who disaffiliate themselves from the Catholic Church.<sup>69</sup> The identification of defection with heresy, apostasy or schism does not serve to describe adequately the intention of the individual. Thus there is a tension between the intention of the law (the permanence of incorporation and Catholic identity) and the individual's intention (disaffiliation).

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<sup>69</sup>K. LÜDICKE, "Die Kirchengliedschaft und die plena communio", in Recht im Dienste des Menschen: eine Festgabe Hugo Schwendenwein zum 60. Geburtstag, K. Lüdicke, H. Paarhammer, D. Binder (eds.), Graz, Verlag Styria, 1986, p. 381.



Potentially serious ecumenical consequences may follow the refusal of the law to recognize disaffiliation. When defection is followed by incorporation into a separated Church or ecclesial communion there arises the further question of the recognition of this incorporation.<sup>70</sup> E. Corecco has offered a pertinent ecclesiological observation in this regard. The "subsistit in" affirmation of LG 8 acknowledged the many ecclesial elements possessed by those communities separated from the Church of Rome. This statement carries, according to Corecco, significant canonical implications. For instance, incorporation by baptism into the Ecclesia Christi enjoys a permanence due to the baptismal character, and thus the significance of the axiom semel christianus semper christianus. However, the axiom semel catholicus semper catholicus does not enjoy such an absolute value.<sup>71</sup> Corecco thus concludes that the transfer of affiliation to another Christian confession is possible without

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<sup>70</sup>Although incorporation into another Christian communion may not receive canonical recognition, the receiving Church does regard the individual as a member. In a certain sense, then, there is the anomaly of dual membership. For further discussion, cf. A. DULLES, Church Membership as a Catholic and Ecumenical Problem, The Père Marquette Theology Lecture 1974, Milwaukee, Marquette University Press, 1981, pp. 95-103.

<sup>71</sup>E. CORECCO, "La sortie de l'Eglise pour raison fiscale" in Austritt aus der Kirche, Sortir de l'Eglise, L. Carlen (ed.), Freiburg, Universitätsverlag, 1982, pp. 18-19.

ceasing to belong to the Ecclesia Christi.<sup>72</sup> However, the absence of this recognition suggests further insight into the absoluteness of plena communio. All who have ever been baptized in the Catholic Church or received into it are in plena communio. All other baptized or non-baptized are in communio non plena.<sup>73</sup>

### III. DEFECTION AND CANONICAL PRAXIS

The act of defection carries important implications in canonical praxis. Several of these practical issues will now be examined: the effects of defection upon the canonical condition of children, the readmission to ecclesiastical communion, and the registration of the act of defection.

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<sup>72</sup>Ibid., pp. 19-22.

<sup>73</sup>Thus we prefer to differ from T. LENHERR, loc. cit., p. 120, who observes that the "typos" of the Catholic who defects is equivalent to those baptized outside the Catholic Church and not received into it. He thus concludes that such an individual is not the "typos" of the disobedient Catholic; likewise F. AZNAR GIL, Nuevo derecho matrimonial canonico, Salamanca, Universidad pontificia de Salamanca, 1983, p. 189.

### A. Children and Defection

The act of defection by parents raises a critical question regarding its effect upon the canonical condition of the children. This question involves the rights of both the parents and the Church. Formal defection carries certain exemptions which concern the validity of marriage (cc. 1086, §1; 1117) only if it is clearly established for the individual concerned.

Our inquiry has already seen that defection requires the external manifestation of the will to disaffiliate from the Catholic Church. This requirement establishes the inherently personal nature of defection. Relative to this issue is the difference between the pre-baptismal and post-baptismal status. While the intention to join the Catholic Church may be supplied by parents/guardians for an infant (cf. c. 868, §1, 1°), it is also necessary that founded hope exists that the infant will be raised in the Catholic religion (cf. c. 868, §1, 2°). In the past the Church has asserted its right to protect the Catholic upbringing of the baptized (thus the celebrated Mortara and Finley cases).

This question of the consequences of defection upon children has occasioned itself in canonical discussion, especially because of the exemption from the canonical form of marriage as provided in c. 1117. At least two authors have concluded that due to the specific and personal nature of formal defection, the parents' defection does not communicate this exemption to their children. The principal reason for this conclusion is that the children have not personally articulated their intention to separate from the Catholic Church.<sup>74</sup> However, there is one published private reply from the Apostolic Nunciature in the U.S.A. to the effect that the "rebaptism" in a fundamentalist sect with his parents of a 7½ year old child previously baptized in the Catholic Church constituted a presumption of a formal act of defection and its accompanying consequences.<sup>75</sup>

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<sup>74</sup>Cf. J. JUKES, "Formal Defection from the Church, Canon 1117", in CLSGBI Newsletter, 74(June 1988), p. 12; K. LÜDICKE, loc. cit., p. 381, who further observes that the child does not receive any penalty.

<sup>75</sup>Cf. CANON LAW SOCIETY OF AMERICA, Roman Replies and CLSA Advisory Opinions 1989, Washington, DC, 1989, pp. 17-19. Canon 111, §2 provides that at the age of 14 years, an individual to be baptized may elect which Ritual Church to enroll in. Canon 112, §1, 3° establishes that children under 14 years whose parents transferred to another Ritual Church sui iuris may return to the Latin Church upon the completion of 14 years of age. However, the canon does not concern defection from the Catholic Church, only transfer between Ritual Churches.

This conclusion would also be applicable to the situation whereby the child independently of the parents seeks to defect from the Church. The establishment of the freedom to defect would commence with the age of 18 years. Prior to this, the minor remains subject to the authority of the parents or guardians (c. 98, §2).

B. Readmission to ecclesiastical communion

Readmission to ecclesiastical communion is an important corollary to an inquiry into the issue of defection. Since the enjoyment of plena communio is a permanent acquisition, there is a distinction between "readmission" and "reception" into the Church. "Readmission" applies to Catholics who have defected from the Church and who seek to re-enter into ecclesiastical communion and the full exercise of their ecclesial obligations and rights. "Reception" is the proper designation for the entrance of separated Christians into full communion.

The provision for readmission was presented in the post-conciliar Directory Ad totam Ecclesiam<sup>76</sup> in art. 19.<sup>77</sup> This norm reiterates the teaching of Ur 3 that individuals born and baptized outside the Catholic Church cannot be impugned with the sin of separation. The principal distinction here is between the baptized born into separated ecclesial communities and those members of the Catholic Church who knowingly and publicly have abjured its faith. The former who seek to enter into full communion are only required to recite a profession of faith according to the norms established by the local ordinary.

Article 19 also establishes norms for those who

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<sup>76</sup>SECRETARIATUS AD CHRISTIANORUM UNITATEM FOVENDAM, Directorium, Ad totam Ecclesiam, in AAS, 59(1967), pp. 574-592 (hereafter Ecumenical Directory).

<sup>77</sup>Ibid., p. 581: "19. Iuxta rationem decreti De Oecumenismo fratres extra communionem Ecclesiae catholicae visibilem nati et baptizati sedulo distinguere debent ab iis qui, in Ecclesia catholica quidem baptizati, eius fidem scienter et publice eiuraverunt. Secundum decretum enim, 'qui nunc in talibus Communitatibus (seiunctis) nascuntur et fide Christi imbuuntur, de separationis peccato argui nequeunt' (ibidem, n. 3); quamobrem, absente tali culpa, si fidem catholicam qua sponte suscipere volunt, a poena excommunicationis absolvi non indigent, sed professione fidei facta, secundum normas ab Ordinario loci statutas, in plenam communionem Ecclesiae catholicae admittantur. Praescriptiones vero can. 2314 ad eos solummodo pertinent, si casus ferat, qui postquam a fide vel communione catholica culpabiliter defecerunt, cum matre Ecclesia reconciliari contriti postulant."

have culpably defected from the faith or Catholic communion and seek reconciliation with the Church. The directory presumes that those who have defected have incurred the ipso facto excommunication of c. 2314 (1917 Code) for heresy, apostasy or schism. Thus those who have defected from the Church would first have to have this excommunication lifted in the external forum, and then they would recite the profession of faith.<sup>78</sup>

The Ordo admissionis valide iam baptizatorum in plenam communionem ecclesiae catholicae (an appendix to the Ordo initiationis christianae adultorum, implements the provisions of the Ecumenical Directory for the reception into full communion of those born and baptized in separated ecclesial communities.<sup>79</sup> Article 8 grants the faculty to administer confirmation to the priest who receives a separated Christian into full communion. This faculty was later

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<sup>78</sup>Art. 20 establishes the same provision for the abjuration of heresy. Although the directory applies c. 2314, §3 for the absolution of this excommunication, it does not explicitly equivocate the aforesaid delicts with the act of defection. It is possible that it recognizes defection as analogous to these delicts, and thus legislates its remedy with c. 2314.

<sup>79</sup>Rituale Romanum, Ordo initiationis christianae adultorum, In Civitate vaticana, Typis polyglottis Vaticanis, 1972, pp. 181-185.

expanded by the Commission for Interpretation of the Decrees of Vatican II to include the occasion of "the readmission of an apostate from the faith".<sup>80</sup>

The norms of the Ordo admissionis are now codified in c. 883, 2°, but without specific reference to the faculty granted for the confirmation of readmitted unconfirmed apostates. Commentators have noted that this canon must be broadly interpreted in light of the previous authentic interpretations.<sup>81</sup>

#### C. Registration of the Act of Defection

Formal defection from the Catholic Church can be enacted without any ecclesiastical intervention or witness. It is sufficient that any person witness the demonstration

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<sup>80</sup>COMM. VAT. II INTERP., April 25, 1975, in AAS, 67(1975), p. 348. A second interpretation, dated December 21, 1979, later extended the same faculty to a Catholic adult who, without personal culpability, was instructed in or was affiliated with a non-Catholic religion, in AAS, 72(1980), p. 105.

<sup>81</sup>F. MCMANUS, "The Sacrament of Confirmation", in CLSA Comm, p. 636; J. HUELS, The Pastoral Companion, Chicago, Franciscan Herald Press, 1986, p. 62.



of the intention to separate from the Catholic Church. However, since the action carries important exemptions from canonical obligations that impact upon the validity of marriage (cc. 1086, §1; 1117), it is important that a notation of this action be registered in the appropriate record.

Every parish is mandated by c. 535, §1 to possess parish registers for baptism, marriage and death records. The same canon also indicates that the conference of bishops or the diocesan bishop may prescribe other registers. One such register may be reserved for the notation of acts of formal defection.<sup>82</sup> Although the Code does not require the registration of these acts, they should be registered at least in the baptismal record. Canon 535, §2 indicates what items are to be entered in the baptism register. This itemization is not taxative, and thus formal defection should be

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<sup>82</sup>Cf. R. PARALIEU, Guide pratique du Code de droit canonique, Bourges, Editions Tardy, 1985, p. 328; the Münsterischer Kommentar zum Codex iuris canonici, unter besonderer Berücksichtigung der Rechtslage in Deutschland, Österreich und der Schweiz, K. Lüdicke et al. (eds.), Essen, Ludgerus Verlag, 1985, p. 535/6, suggests a specific register for apostates (Apostatenbuch).

registered since it affects the canonical status of the christifidelis.<sup>83</sup>

#### CONCLUSION

The fundamental consequence of defection within the canonical system is the introduction of the christifidelis into a revised canonical condition. Unlike other actions against communion, defection is the deliberate expression of the intention against full communion. The present canonical structures can only recognize this action as inherently delictual. No other category or designation exists which is applicable. Therefore, defection is understood as at least apostasy or schism, and therefore receives the penalty of a latae sententiae excommunication (c. 1364, §1). With the imposition of this penalty, the canonical condition can be described as one of impeded communion.

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<sup>83</sup> Similarly, L. PIVONKA, "Ecumenical or Mixed Marriages in the New Code of Canon Law", in The Jurist, 43(1983), pp. 117-118, recommends that defect of form questionnaires should give proper consideration to the verification of formal defection.

The consequence of excommunication is the suspension of the exercise of most duties and rights derived from full communion. However, the individual canonically remains in full communion and still retains a Catholic identity. This penal response reflects the canonical tradition that incorporation into the Catholic Church is permanent. Only the individual may exercise self-exclusion.

The Church's claim to continued jurisdiction over those who have defected reflects a conflict with the intention of the christifidelis who defects and no longer desires to be in full communion. While the Church does not possess the coercive power to impose the exercise of its jurisdiction, it can nevertheless limit participation in the communion of the Church by the person who has defected.

## GENERAL CONCLUSION

The 1983 Code continues the canonical tradition of the permanence of incorporation in the Catholic Church. This tradition is a legal development and expression of the sacramental principle of the inamissibility of the baptismal character and incorporation into the Ecclesia Christi. Indeed, the issue of defection from the Church is, in a certain sense, alien to the canonical system. Within the understanding of canon law as a series of norms for the structuring of the Church's saving mission, any form of separation is viewed negatively. The basis of canon law is thus an integration of both spiritual and juridical values. These dimensions are particularly critical in a discussion of church membership, where they are almost inextricable from one another.

(1) The permanence of incorporation receives new expression in the 1983 Code with its embrace of the conciliar ecclesiology of communion. The realization of communion at various levels reflects the unity existing within the People of God. Canonical discipline serves to promote this unity further. The prominence of the obligation of the preservation of communion (c. 209, §1) demonstrates how communion must animate all actions of the christifideles. This

obligation of communion achieves a particularly strong expression regarding plena communio. Although the capacitas agendi of ecclesial rights flowing from plena communio may be restricted or suspended, the capacitas habendi remains.

(2) However, despite this context of permanent incorporation, there is the de facto situation whereby individuals do indeed separate from the Church and the 1983 Code has initiated a response to this reality. Canonical response has traditionally classified these actions as heresy, apostasy or schism. The latae sententiae excommunication for these delicts communicates the fundamental value that canon law considers to lie in the permanence of belonging to the Church. This penal provision perhaps serves to emphasize the medicinal dimensions of canonical penalties as an impetus to return to the full expression of communion.

(3) Although the 1983 Code preserves the tradition of permanent incorporation, it also has introduced in this area a significant mutatio legis. This is the introduction of the modality of defection from the Church by the actus formalis. This study already has indicated that during the revision process the issue of defection was considered by the Code Commission. Proposals to grant full release from the observance of merely ecclesiastical laws when an

individual has defected were rejected. The reasons put forward were that this would threaten the very integrity of canon law and the actions of apostasy and schism as punishable delicts. The actus formalis was accepted on the basis of a singular practical rationale: to avoid the multiplicity of invalid marriages. Individuals who defected via this modality enjoy an exemption from the observance of canonical form (c. 1117) and the diriment impediment of disparity of cult (c. 1086, §1). If the canonical requirements relating to these were not otherwise observed, the marriage would be invalid. (A further exemption (c. 1124) is enjoyed from the requirement of the permission of the competent authority before entering a mixed marriage was also incorporated into the law.) Apart from these exemptions, all other canonical obligations remain, even though they might not be observed. This indicates the limited effects of the actus formalis.

While the introduction of the actus formalis is significant, it does not essentially modify or violate the canonical tradition of permanent incorporation. It is a practical response to a restricted context: the situation of Catholics who have defected and who did not intend to observe certain canonical norms relating to the celebration of marriage. Thus the actus formalis is a variation of the

celebrated c. 1099, §2 of the 1917 Code (later abrogated by Pius XII in 1948) which provided an exemption from canonical form for those born of non-Catholics, and baptized in the Catholic Church but raised outside of it. Therefore the actus formalis is yet another development in the canonical concern for the validity of marriage and the Church's attempt to accommodate its law to certain circumstances.

This restricted response must be contextualized within the issues of incorporation and defection. It should be recognized that the actus formalis provisions are located in only three marriage canons. This is instructive in itself. If it was intended to be a juridically recognized departure with universal effects, it would not be presented only amidst the marriage canons. Rather, it would more properly belong among the norms for ecclesiastical laws, (particularly c. 11). In a certain sense, there is an implicit presupposition that the actus formalis is defined elsewhere in the Code.

(4) The modalities of "notorious" and "public" defection, also represented in the 1917 Code, possess a different function within the 1983 Code. As already indicated in this study, these two modalities largely mirror their 1917 parallels and were uncritically preserved in the 1983 Code

with their exclusively penal consequences. Insufficient recognition of the dimensions of the actus formalis has resulted in a certain confusion. Is it really juridically practical to distinguish notorious and public defection, despite the meanings of these qualifications in law? Would not it have been preferable to replace all the 1917 Code's references to defection with the actus formalis? With the introduction of the actus formalis, notorious or public defection cannot be interpreted as an elective modality of defection. These latter categories are not actions by which an individual christifidelis deliberately elects to separate from the Church. Rather, they are the resultant circumstances when an individual has not properly fulfilled the requisite criteria for the actus formalis. Discussion of defection within the canonical spectrum must therefore ordinarily be interpreted as the actus formalis.

(5) The very restricted references to defection suggest several unresolved areas in the 1983 Code. These involve certain ambiguities that continue to exist in the law itself. First, there is the question of the canonical condition of the individual who has defected. This study has indicated that fundamentally this individual is inserted into a revised canonical condition.



Two principal interpretations of this revised canonical condition have been proposed: the delictual and the non-delictual. Within the present canonical framework, it is difficult not to locate these actions under the heading of apostasy or schism. This analysis reflects a continuity with canonical tradition. Thus, in accordance with this delictual interpretation, the latae sententiae excommunication of c. 1364, §1 is incurred. The individual is still considered in full communion with the Catholic Church. A major criticism of this approach is the potential for a multiplicity of excommunications. Since the Church does not possess the potestas coactiva to enforce this penalty, it will generally be disregarded by individuals who no longer claim affiliation with the Catholic Church and thus dismiss its jurisdiction. This situation in turn raises the issue of the credibility of canonical norms which do not reflect the actual life of the community.

This delictual interpretation of defection does not canonically recognize defection as a separation or disaffiliation from the Church. The Catholic identity of the individual remains intact from the perspective of the law. However, this is in obvious tension with the intention and behavior of the individual.

The non-delictual interpretation, which we do not see as possible at this moment within the present construct of the law, recognizes the seriousness of defection, but does not regard it as apostasy or schism. The act of defection is principally regarded to have the institution of the Church as its object, and does not necessarily involve the level of faith. The individual may be merely regarded as a disobedient or non-observant Catholic.

(6) This non-recognition of full departure from the Church echoes certain dimensions of the societas perfecta perspective. There is detected thus within the Code a conflation of the perfect society and the communion models of the Church. The consistent refusal to recognize canonically a full separation from the Church suggests a static view of church membership which is characteristic of the societas perfecta model. The conciliar model of communion suggests a more dynamic understanding of belonging to the Church, including the termination of this belonging. Thus within this schematic there needs to be more reflection on the phenomenon of separation from communion.

(7) One important element of such reflection would be further exploration of the canonical consequences of the subsistit in affirmation of LG 8. E. Corecco has signaled

our attention to the potential for such discussion. Since the Church no longer claims an exclusive identification of the Ecclesia Christi with the Ecclesia Catholica, this may have significant impact upon church structures and ecumenical life, certainly much broader than the generally cautious norms for communicatio in sacris in the present legislation. In particular, it suggests a re-evaluation of the consequences of baptism as the basis for canonical jurisdiction. While permanent incorporation by baptism into the Ecclesia Christi is not really challenged, the axiom semel catholicus semper catholicus may be vulnerable to future revision.

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The tensions and legal ambiguities surrounding the question of defection from the Church necessitate a re-examination of fundamental ecclesiological and canonical questions regarding communion and jurisdiction. A more clearly established protocol for disaffiliation will serve to strengthen the expressions of communion in the Church and its sacramentality.

## BIBLIOGRAPHY

### A. SOURCES

#### I. DOCUMENTS OF THE ROMAN PONTIFFS AND OF COUNCILS

Acta Sanctae Sedis, 41 vols., Romae, 1865-1908.

Acta Apostolicae Sedis, [Romae, 1909-1929], Civitate  
Vaticana, Typis polyglottis Vaticanis, 1929-.

BENEDICT XV, Codex iuris canonici, Pii X Pontificis Maximi  
iussi digestus, Benedicti Papae XV auctoritate promul-  
gatus, Praefatione, fontium annotatione et indice  
analytico-alphabetico ab E.mo Petro Card. Gasparri  
auctus, Romae, Typis polyglottis Vaticanis, 1974, pp.  
lv-916.

CONCILIIUM VATICANUM I, Acta et decreta sacrosancti oecumen-  
ici Concilii Vaticani, cum permultis aliis documentis  
ad Concilium eiusque historiam spectantibus, Friburgi  
Brisgoviae, Herder, 1892, 7 vols.

JOHN PAUL II, Apostolic Constitution, "Sacrae disciplinae  
leges", in AAS, 75(1983), Pars II, pp. vii-xiv.

PAUL VI, Allocution, "Who are Members of the Church?", in  
The Pope Speaks, 11(1966), p. 372-374.

PIUS X, Apostolic Letter, "Provida", January 18, 1906, in  
Acta Sanctae Sedis, 39(1906), pp. 81-84.

PIUS XII, Encyclical Letter, "Mystici corporis", June 29,  
1943, in AAS, 35(1943), pp. 193-248.

-----, Encyclical Letter, "Humani generis", August  
12, 1950, in AAS, 42(1950), pp. 561-578.

-----, Motu Proprio, "Abrogatur alterum comma paragraphi  
secundae can. 1099", August 1, 1948, in AAS, 40(1948),  
pp. 305-306.

-----, Motu Proprio, "Crebrae allatae", February 22,  
1949, in AAS, 41(1949), pp. 89-117.

SACROSANCTUM OECUMENICUM CONCILIIUM VATICANUM II, Acta et  
documenta, Series I: Anteparaepraeparatoria, cura et studio  
Secretariae Generalis Concilii Oecumenici Vaticani II,

Civitate Vaticana, Typis polyglottis Vaticanis, 1960-1969, 4 vols, 15 parts.

-----, Acta et documenta, Series II: Praeparatoria, cura et studio Secretariae Generalis Concilii Oecumenici Vaticani II, Civitate Vaticana, Typis polyglottis Vaticanis, 1960-1969, 3 vols, 7 parts.

-----, Constitutiones, Decreta, Declarationes, cura et studio Secretariae Generalis Concilii Oecumenici Vaticani II, Civitate Vaticana, Typis polyglottis Vaticanis, 1974, pp. xxiv-1292.

## II. DOCUMENTATION

ABBOTT, W. (ed.), The Documents of Vatican II, J. Gallagher, translation editor, Chicago, Association Press/Follet Publishing Company, 1966, xxii-792p.

CANON LAW SOCIETY OF AMERICA, Roman Replies and CLSA Advisory Opinions, 1984-.

BOUSCAREN, T. (ed.), Canon Law Digest, vols. 1-3; Bouscaren, T. and J. O'Connor, (eds.), Canon Law Digest, vols. 4-6, Milwaukee, Bruce Publishing Co, 1935-1969; O'Connor, J. (ed.), Canon Law Digest, vols. 7-10, Mundelein, Illinois, Canon Law Digest, Chicago Province, S.J., 1975-1986.

DENZINGER, H. (ed.), Enchiridion symbolorum, definitionum et declarationum de rebus fidei et morum, 35th revised edition, A. Schönmetzer (ed.), Fribourg, Brigovia, Herder, 1973, xxxii-954p.

FLANNERY, A. (ed.), Vatican II: The Conciliar and Postconciliar Documents, Dublin, Dominican Publications/Northport New York, Costello Publishing Company, Inc., 1975, xxiv-1062p.

GASPARRI, P. and I. SEREDI (eds.), Codicis iuris canonici fontes, Romae, Typis polyglottis Vaticanis, 1926-1939, 9 vols.

MANSI, G. (ed.), Sacrorum conciliorum nova et amplissima collectio, Paris, H. Welter, 1901-1927, 53 vols.

SCHROEDER, H., Canons and Decrees of the Council of Trent, St. Louis, B. Herder Book Co, 1941, xxxiii-608p.

## III. CURIAL DOCUMENTS

PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Communicationes, vols. 1-15, 1969-1983; PONTIFICIA COMMISSIO AD CODICEM IURIS CANONICI AUTHENTICE INTERPRETANDO, vols. 16-20, 1984-1988; PONTIFICIA CONSILIUM DE LEGUM TEXTIBUS INTERPRETANDIS, vols. 21-, 1989-.

-----, Schema documenti quo disciplina sanctionum seu poenarum in Ecclesia latina denuo ordinatur, Romae, Typis polyglottis Vaticanis, 1973, 31p.

-----, Schema documenti pontificii quo disciplina canonica de sacramentis recognoscitur, Romae, Typis polyglottis Vaticanis, 1975, 95p.

-----, Schema canonum libri III de Ecclesiae munere docendi, Romae, Typis polyglottis Vaticanis, 1977, 39p.

-----, Schema canonum de institutis vitae consecratae per professionem consiliorum evangelicorum, Romae, Typis polyglottis Vaticanis, 1977, xiii-37p.

-----, Schema canonum libri I de normis generalibus, Romae, Typis polyglottis Vaticanis, 1977, 58p.

-----, Schema canonum libri II de Populo Dei, Romae, Typis polyglottis Vaticanis, 1977, 158p.

-----, Codex iuris canonici: Schema patribus commissionis reservatum, Città del Vaticano, Libreria Editrice Vaticana, 1980, xxiii-382p.

-----, Relatio complectens synthesim animadversionum ab Em.mis atque Exc.mis Patribus Commissionis ad novissimum schema codicis iuris canonici exhibitarum cum responsionibus a secretaria et consultoribus datis, Città del Vaticano, Typis polyglottis Vaticanis, 1981, 358p.

-----, Codex iuris canonici, Schema novissimum post consultationem S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Curiae Romanae, Universitatum Facultatumque ecclesiasticarum necnon Superiorum Institutum vitae consecratae recognitum, iuxta placita Patrum Commissionis deinde emendatum atque Summo Pontifici praesentatum, In Civitate Vaticana, Typis polyglottis Vaticanis, 1982, xviii-308p.

SACRA CONGREGATIO PRO DOCTRINA FIDEI, Declaration, "Mysterium ecclesiae", June 24, 1973, in AAS, 65(1073), pp. 396-408.

## B. LITERATURE

### I. BOOKS

ACERBI, A., Due ecclesiologie: ecclesiologia giuridica ed ecclesiologia de comunione nell "Lumen gentium", Bologna, Edizioni Dehoniana, 1975, 596p.

ALBERIGO, G. and J.P. JOSSUA (eds.), La Réception de Vatican II, Paris, Editions du Cerf, 1985, 465p.

ALBERIGO, G. (ed.), Les Eglises après Vatican II, Paris, Beauchesne, 1981, 360p.

ANDRES, D., El derecho de los religiosos, second edition, Madrid, Publicationes Claretianas y Commentarium pro religiosis, 1984, 737p.

ANDRE-VINCENT, P., La liberté religieuse: droit fondamental, Paris, P. Téqui, 1976, 254p.

AQUINAS, T., Summa theologiae, Petri Caramello (ed.), Taurini, Marietti, 1948, 4 vols.

-----, Summa theologiae, translation by the Fathers of the English Dominican Province, New York, Benzinger Brothers Inc., 1947-48, 3 vols.

ARGENTI, C., H. BRUSTON, Y. CONGAR, and P. GOUYON (eds.), Le schisme, sa signification théologique et spirituelle, Lyon, Editions Xavier Mappus, 1967, 109p.

AUGUSTINE, C., A Commentary on the New Code of Canon Law, third edition, St. Louis, B. Herder Book Co., 1925-1936, 8 vols.

AZNAR GIL, F., El nuevo derecho matrimonial canónico, Bibliotheca Salmanticensis, Estudios 60, Salamanca, Universidad Pontificia de Salamanca, 1983, 442p.

BAKER, D. (ed.), Schism, Heresy and Religious Protest, Cambridge, University Press, 1972, 404p.

- BELLARMINI, R., Opera omnia, J. Fèvre (ed.), Paris, L. Vivès, 1874, 12 vols.
- BERSINI, F., Il nuovo diritto canonico matrimoniale, third edition, Leumann, Torino, Editrice Elle di Cie, 1985, 269p.
- BEYER, J., Du Concile au Code de droit canonique: La mise en application de Vatican II, Paris, Editions Tardy, 1985, 126p.
- BLAT, A., Commentarium textus Codicis iuris canonici, Romae, ex Typographia Pontificia in Instituto Pii IX, 1921-1938, 5 t.
- BOISVERT, L., Doctrina de membris Ecclesiae iuxta documenta magisterii recentiora; a Concilio Vaticano primo ad encyclicam "Mystici corporis", Montréal, Editions franciscaines, 1961, 179p.
- BONNET, P., and G. GHIRLANDA, De Christifidelibus, De eorum iuribus, de laicis, de consociationibus, Romae, Pontificia Universitas Gregoriana, Tipografia P.U.G., 1983, 134p.
- BORRAS, A., L'excommunication dans le nouveau Code de droit canonique, essai de définition, Paris, Desclée, 1987, 350p.
- BOUDREAUX, W.L., The "acatholicis nati" of Canon 1099, A Historical Synopsis and Commentary, Canon Law Studies, no. 227, Washington, D.C., The Catholic University of America, 1946, xi-110p.
- BOULARD, F. et al., L'Appartenance religieuse, 7e Conférence internationale de sociologie religieuse, Königstein, 1962, Bruxelles, Editions du Cep, 1965, 228p.
- BROWNLIE, I. (ed.), Basic Documents on Human Rights, second edition, Oxford, Clarendon Press, 1981, x-505p.
- BURGHARDT, W. (ed.), Religious Freedom: 1965-1975, A Symposium on a Historic Document, New York, Paulist Press, 1977, v-75p.
- CABEROS DE ANTA, M. (ed.), Commentarios al Código de derecho canonico, Madrid, Editorial católica, 1963-64, 4 vols.
- CAPPELLINI, E., and F. COCCOPALMERIO, Temi pastorali del



- nuovo Codice, Brescia, Editrice Queriniana, 1984, 114p.
- CAPPELLO, F.M., Summa iuris canonici, fourth edition, Romae, Apus Aedes Universitatis Gregoriana, 1945 [vol. 1:1940], 3 vols.
- , Tractatus caonico-moralis de sacramentis, Romae, Taurinorum Augustae, 1921-1239, 3 t. in 6 vols.
- CARLEN, L. (ed.), Austritt aus der Kirche, Sortir de l'Eglise, Freiburg, Universitätsverlag, 1982, 323p.
- CARRIER, H., The Sociology of Religious Belonging, translated by Arthur J. Arrieri, New York, Herder and Herder, 1965, 335p.
- CIGOgnANI, A., Canon Law, second revised edition, translated by J. O'Hara and F. Brennan, Philadelphia, Dolphin Press, 1935, xiv-892p.
- CIPROTTI, P., Contributo alla teoria della canonizzazione della leggi civili, Roma, Edizioni Universitarie, 1941, 97p.
- CLARKSON, J., et al. (eds.), The Church Teaches, Documents of the Church in English Translation, St. Louis, B. Herder Book Co., 1961, xiv-400p.
- COCCHI, C., Commentarium in Codicem iuris canonici, Roma, Taurinorum Augustae, Marietti, 1932-1942, 5 t. in 8 vols.
- COLELLA, P., La libertà religiosa nell'ordinamento canonico, Napoli, Editore Jovene, 1979, viii-170p.
- CONGAR, Y., Diversités et communion: dossier historique et conclusion théologique, Paris, Editions du Cerf, 1982, 260p.
- CONGRESSUS INTERNATIONALIS IURIS CANONICI, Acta Congressus Internationalis iuris canonici, Romae in aedibus Pont. Universitatis Gregoriana 25-30 Septembris 1950, Romae, Officium Libri Catholici, 1953, 244p.
- CORECCO, E., N. HERZOOG, and A. SCOLA (eds.), Les droits fondamentaux du chrétien dans l'Eglise et dans la société, Actes du IVe Congrès International de Droit Canonique - Fribourg (Suisse), [October 6-11, 1980] ),

- Fribourg, Editions Universitaires, 1981, xxxvi-1328p.
- CORIDEN, J. (ed.), The Case for Freedom: Human Rights in the Church, Washington, Corpus Books, 1969, x-175p.
- CORIDEN, J., T. GREEN, and D. HEINTSCHEL (eds.), The Code of Canon Law, A Text and Commentary, New York/Mahwah, Paulist Press, 1985, xxvi-1152p.
- CORONATA, M. CONTE A, Institutiones iuris canonici, Taurini, Marietti, 1933-1939, 5 vols.
- CYPRIAN, SAINT, Treatises, translated and edited by R.J. Ferrari, New York, Fathers of the Church, Inc. 1958, vol. 36.
- D'AVACK, P., Tratto di diritto canonico; Introduzione sistematica generale, Milano, A. Giuffrè, 1980, v-413p.
- DE ANGELIS, S., De fidelium associationibus tractatus ratione et usu digestus, Neapoli, M. D'Auria, 1952, 2 vols.
- DE ECHEVERRIA et al. (eds.), Código de derecho canónico, edition bilingue comentada por los profesores de la facultad de derecho canonico, seventh revised edition, Madrid, Editorial católica, 1986, iii-921p.
- DE LA BROSSE, O., et al., Lateran V et Trente, Paris, Editions de l'Orante, (1975-1981), 2 vols.
- DE LA CHAPPELLE, P., Droits de l'Homme et Catholicisme, Paris, R. Pichon et R. Durand-Auzias, 1965, viii-490p.
- DENIS, H., Chrétiens sans Eglise, Paris, Desclée de Brouwer, 1979, 149p.
- DIONNE, J.R., The Papacy and the Church, A Study of Praxis and Reception in Ecumenical Perspective, New York, Philosophical Library, 1987, 524p.
- D'SOUZA, H., The Right of the Church to Baptize Children Born of Infidel Parents, Calcutta, Catholic Orphan Press, 1952, xi-144p.
- DULLES, A., Church Membership as a Catholic and Ecumenical Problem, The Père Marquette Theology Lecture 1974, Milwaukee, Marquette University Press, 1981, 112p.
- , Models of the Church, Garden City, NY, Doubleday &

- Company, Inc., 1974, 216p.
- DUVAL, A., Des sacrements au Concile de Trente, Paris, Editions du Cerf, 1985, 406p.
- EICHMANN, E. (ed.), Lehrbuch des Kirchenrechts auf Grund des Codex iuris canonici, Paderborn, F. Schöningh, 1964-1979, 3 vols.
- FARRELLY, A., The Diocesan Finance Council: A Historical and Canonical Study, Ottawa, Saint Paul University, 1987, xii-279p.
- FONTAINE, J., Culture et spiritualité en Espagne du IVe au VIIe Siècle, London, Variorum Reprints, 353p.
- FORNES, J., La noción de "status" en derecho canónico, Pamplona, Ediciones Universidad de Navarra, 1975, 349p.
- FRAGHI, S., De membris Ecclesiae, Romae, Officium libri catholici, 1937, 122p.
- GALLAGHER, C., Canon Law and the Christian Community, The Role of Law in the Church According to the Summa Aurea of Cardinal Hostiensis, Analecta Gregoriana, no. 208, Series Facultatis iuris canonici, sectio A, n. 8, Roma, Università Gregoriana Editrice, 1978, 242p.
- GALLEN, J., Canon Law for Religious, New York, Alba House, 1983, vi-218p.
- GEROSA, L., La scomunica e una pena? Saggio per una fondazione teologica del diritto penale canonico, Fribourg, Editions universitaires, Fribourg [Suisse], 1984, xxiv-428p.
- GIGON, A., De membris Ecclesiae Christi, Fribourg, Typographia Canisiana, 1949, 38p.
- GOMEZ, DE A., Gli infedeli e la personalità nell'ordinamento canonico, Milano, A. Giuffrè, 1971, 2 vols.
- GONZALEZ DEL VALLE, J., Derecho canonico matrimonial: segun elCodigo de 1983, Pamplona, Ediciones Universidad de Navarra, 1983, 183p.
- GRAMUNT, I., J. HERVADA, and L. WAUCK, Canons and Commentaries on Marriage, Collegeville, Minnesota, The Liturgical Press, 1987, 198p.

- GRATIANUS, Decretum Magistri Gratiani, A. Richter and E. Friedberg (eds.), Lipsiae, Ex Officina B. Tauchnitz, 1928, 2 vols.
- GREENSLADE, S., Schism in the Early Church, London, SCM Press, 1953, 247p.
- GROGAN, V. and L. RYAN, Religious Freedom, Dublin, Scepter Books, 1967, 78p.
- HAGEN, A., Die Kirchliche Mitgliedschaft, Rottenburg, a. Neckar, Bader'sche Verlagsbuchhandlung, 1938, xv-129p.
- HAMER, J., L'Eglise est une communion, Unam Sanctam, no. 20, Paris, Editions du Cerf, 1962, 263p.
- HEFELE, C.J., A History of the Christian Councils, translated and edited by W. Clark (vols. 1,4,5), H. Oxenham (vol. 2), and E. Plumptre (vol. 3), second revised edition, Edinburgh, T. & T. Clark, 1883-1896, 5 vols.
- HEINEMANN, H., Die rechtliche Stellung der nicht-katholischen Christen und ihre Wiedersöhnung mit der Kirche, München, M. Hueber, 1964, xx-222p.
- HENEGHAN, J., The Marriages of Unworthy Catholics, Canons 1065 and 1066: An Historical Synopsis and Commentary, Canon Law Studies, no. 188, Washington, D.C., The Catholic University of America Press, 1944, xv-213p.
- HERTLING, L., Communio: Church and Papacy in Early Christianity, translated with an Introduction by J. Wicks, Chicago, Loyola University Press, 1972, 86p.
- HITE, J., S. HOLLAND, and D. WARD (eds.), A Handbook on Canons 573-746, Collegeville, The Liturgical Press, 1985, 400p.
- HOSTIENSIS, CARD., Summa Aurea, Lugduni, 1588.
- HYLAND, F., Excommunication: Its Nature, Historical Development and Effects, Canon Law Studies, no. 49, Washington, D.C., The Catholic University of America Press, 1928, viii-181p.
- JANSSENS, L., Liberté de conscience et liberté religieuse, Paris, Desclée de Brouwer, 1964, 207p.
- JARCZYK, G., La liberté religieuse, 20 ans après le concile,

- Paris, Desclée de Brouwer, 1984, 161p.
- KINNEY, J., The Juridic Condition of the People of God, Rome, Officium Libri Catholici, 1972, viii-99p.
- KLOPPENBURG, B. The Ecclesiology of Vatican II, translated by M.J. O'Connell, Chicago, Franciscan Herald Press, 1974, xv-373p.
- LACHAPELLE, P., La déclaration universelle des droits de l'homme et le catholicisme, Paris, R. Pichon et R. Durand-Auzias, 1965, viii-490p.
- LEEMING, B., Principles of Sacramental Theology, Westminster, Md, The Newman Press, 1963, lviii-490p.
- LECLER, J., Toleration and the Reformation, translated by T.L. Westow, New York, Association Press, 1960, 2 vols.
- LISTL, J., H. MÜLLER, and H. SCHMITZ (eds.), Grundriss des nachkonziliaren Kirchenrechts, Regensburg, F. Pustet, 1980, xliii-1211p.
- LOMBARDIA, P. and J.I. ARRIETA (eds.), Código de derecho canónico, Pamplona, Ediciones Universidad de Navarra, 1983, 1149p.
- LOURDAUX, W. and D. VERHELST (eds.), The Concept of Heresy in the Middle Ages (11th-13th C.), Proceedings of the International Conference, Louvain, June 13-16, 1973, Mediaevalia Lovaniensia, Series I, Studia IV, Leuven, University Press/The Hague, Martinus Nijhoff, 1976, viii-232p.
- LÜDICKE, K., Eherecht: Codex iuris canonici, canones 1055-1165, Essen, Ludgerus Verlag, 1983, 190p.
- LUTHER, M., Luther's Works, J. Pelikan (vols. 1-30) and H. Lehmann (vols. 31-54) (eds.), Philadelphia, Muhlenberg Press/Fortress Press, 1958-1967, 54 vols.
- MANSI, G. (ed.), Sacrorum conciliorum nova et amplissima collectio, Paris, J. Welter, 1901-1927, 53 vols. in 60.
- MCCLOSKEY, J., The Subject of Ecclesiastical Law According to Canon 12, Canon Law Studies, no. 165, Washington, D.C., The Catholic University of America Press, 1943, xvii-246p.
- MCDEVITT, G., The Renunciation of an Ecclesiastical Office,

- Canon Law Studies, no. 218, Washington, D.C., The Catholic University of America Press, 1946, xiv-179p.
- McNAMARA, K. (ed.), Vatican II: The Constitution on the Church, London, G. Chapman, 1968, 437p.
- MAGUIRE, E., Is Schism Lawful?, Dublin, M.H. Gill, 1915, xx-323p.
- MANARE, A., Proposta di vita per cristiani marginali; "approccio pastorale", Rome, Pontificia Università Lateranense, 1983, 236p.
- MARA, M., Problemi di storia di Cristianesimo antico e moderno: intolleranze e scismi, L'Aquila, L.V. Japadre, 1976, 164p.
- MARANTONIO SQUERZO, E., I delitti contro la fede nell'ordinamento canonico, secc. I-V, Milano, Giuffrè, 1979, viii-202p.
- MCDONAGH, E., Freedom or Tolerance? The Declaration on Religious Freedom of Vatican Council II; The Text with Commentary in the Context of the Church-State Discussion, Albany, Magi Books, 1967, 155p.
- MEINHOLD, P. (ed.), Das Problem der Kirchengliedschaft heute, Darmstadt, Wissenschaftliche Buchgesellschaft, 1979, vii-442p.
- MICHIELS, G., Principia generalia de personis in Ecclesia, commentarius libri I Codicis iuris canonici, canones praeliminaries 87-106, Tornaci, Desclée, 1955, xviii-708p.
- MIRABELLI, C., L'appartenanza confessionale, Padova, Cedam, 1975, xii-377p.
- MOCK, T., Disqualification of Electors in Ecclesiastical Elections, Canon Law Studies, no. 365, Washington, D.C., The Catholic University of America Press, 1958, xi-210p.
- MUSURILLO, H.A. (ed.), The Fathers of the Church, Toronto, New American Library of Canada, 1966, 272p.
- NAZ. R., Traité de droit canonique, Paris, Letouzey et Ané, 1947-1949, 4 vols.
- OCHOA, X., Index verborum ac locutionum codicis iuris

canonici, editio secunda et completa, Città del Vaticano, Libreria Editrice Lateranense, 1984, xvi-592p.

O'LEARY, C., Religious Dismissal After Perpetual Profession, Canon Law Studies, no. 184, Washington, D.C., The Catholic University of America Press, 1943, x-213p.

OTTAVIANI, A., Institutiones iuris publici ecclesiastici, fourth edition, Vatican City, Typis polyglottis Vaticanis, 1958, 2 vols.

ÖRSY, L., From Vision to Legislation: From the Council to a Code of Laws, The Père Marquette Theology Lecture 1985, Milwaukee, Marquette University Press, 1985, 59p.

-----, Marriage in Canon Law, Wilmington, Delaware, M. Glazier, 1986, 328p.

-----, The Church: Learning and Teaching, Wilmington, Delaware, M. Glazier, 1987, 172p.

PARALIEU, R., Guide pratique du Code de droit canonique, Bourges, Editions Tardy, 1985, 460p.

PAVAN, P., La liberté religieuse, Déclaration "Dignitatis humanae", introduction, commentaires et postface, translation by A. Bombieri, A.A. Tours, Mame, 1967, 237,[2]p.

PETRONCELLI, M., Diritto canonico, Napoli, Jovere, 1983, 415p.

PHILIPS, G., L'Eglise et son mystère au IIe Concile du Vatican, Paris, Desclée, 1967-1968, 2 vols.

PIÑERO CARRION, J.M., La ley de la Iglesia: instituciones canónicas, Madrid, Sociedad de Educación Atenas, 1985, 1 vol.

RAHNER, K., Schisme dans l'Eglise?, translation by René Virion, Sherbrooke, Editions Paulines, 1969, 58p.

REED, A.A., The Juridical Aspect of Incorporation into the Church of Christ - Canon 87, Carthage, Ohio, Messenger Press, 1960, xix-123p.

REGAN, R., Conflict and Consensus: Religious Freedom and the Second Vatican Council, New York, The Macmillan

- Company, 1967, ix-212p.
- REGATILLO, E., Institutiones iuris canonici, Santander, Sal Terrae, 1941-1942, 2 vols.
- REGATILLO, E., and M. ZALBA, Theologiae moralis summa, Matriti, Biblioteca de Autores Cristianos, 1952-1954, 3 vols.
- ROBLEDA, O., La nulidad del acto juridico, second edition, Analecta Gregoriana, no. 143, Series Facultatis iuris canonici, 7, Roma, Libreria editrice dell' Università Gregoriana, 1964, viii - 358p.
- RUF, N., Das Recht der katholischen Kirche nach dem neuen Codex Iuris Canonici für die Praxis erläutert, Freiburg, Herder, 1984, 448p.
- SAIER, O., "Communio" in der Lehre des Zweiten Vatikanischen Konzils, München, Max Hueber Verlag, 1973, xxxi-302p.
- SCHAEFER, T., De religiosis ad normam codicis iuris canonici, fourth edition, Città del Vaticano, Typis polyglottis Vaticanis, 1947, lxiv-1214p.
- SCHWENDENWEIN, H., Das neue Kirchenrecht: Gesamtdarstellung, Graz, Verlag Styria, 1983, 638p.
- SEBOTT, R., Das neue kirchliche Eherecht, Frankfurt am Main, J. Knecht, 1983, 232p.
- SEGRETARIATO PER L'UNITA DEI CRISTIANI, Atti del simposio Card. Agostastino Bea, Roma, December 16-17, 1981, Roma, Libreria Editrice, 1983, viii-234p.
- SEJOURNE, R., L'option religieuse des mineurs et l'autorité parentale, droit français et attitude de l'Eglise catholique, Paris, Beauchesne, 1972, xxxvi-340p.
- SIPOS, I., Enchiridion iuris canonici, sixth edition, revised by L. Galos, Romae, Orbis Catholicus - Herder, 1954, x-913p.
- STRANSKY, T., The Decree on Ecumenism of the Second Vatican Council, Glen Rock, NJ, Paulist Press, 1965, 86p.
- SUAREZ, F., Opera omnia, M. André and C. Bertran (eds.), Paris, L. Vivès, 28 vols. in 30 t.



- SZAL, I., The Communication of Catholics with Schismatics, Canon Law Studies, no. 364, Washington, D.C., The Catholic University of America Press, 1948, xii-217p.
- TABERA ARAOZ, A., Derecho de los religiosos, Madrid, Cocala, 1948, xx-605p.
- URRUTIA, F., De normis generalibus: adnotationes in Codicem, Liber I, Rome, Pontificia Universitas Gregoriana, 1983, 145p.
- VACANT, A., Etudes théologiques sur les constitutions du Concile du Vatican d'après les Actes du Concile, Paris, Delhomme et Briquet, 1895, 2 vols.
- VERDOODT, A., Naissance et signification de la déclaration universelle des droits de l'homme, Louvain, Société d'études morales et juridiques, Louvain-Paris, Editions Nauwelaerts, 1964, xiv-356p.
- VERMEERSCH, A. and CREUSEN, J., Epitome iuris canonici, fifth edition, Mechliniae-Romae, H. Dessain, 1933-1936, 3 vols.
- VILLEY, M., La Croisade; Essai sur la formation d'une théorie juridique, Paris, J. Vrin, 1942, 284p.
- VORGRIMLER, H. (ed.), Commentary on the Documents of Vatican II, Freiburg, Herder and Herder, 1967-1969, 5 vols.
- WERNZ, F., Ius canonicum, Romae, Universitas Gregoriana, 1921-1938, 8 vols. in 7 t.
- ZAPP, H., Codex iuris canonici: Lemmata Stichwortverzeichnis, Elektronische Datenverarbeitung: Peter Ullrich, Freiburg, Verlag Rombach, 1986, 677p.

## II. ARTICLES

- ABATE, A.M., "La forma della celebrazione del matrimonio nel nuovo codice di diritto canonico", in Apollinaris, 59(1986), pp. 131-187.
- ALBERIGO, G., "La condamnation des communistes en 1949", in Concilium, 107(1975), pp. 113-123.

ALLEN, W., "The Test of Catholicity Under Canon 1099", in The Jurist, 3(1943), pp. 595-602.

-----, "The Test of Catholicity Under Canon 1099: Objections Resolved", in The Jurist, 4(1944), pp. 124-129.

ARIAS, J., "Bases doctrinales para una nueva configuración jurídica de los cristianos separados", in Jus canonicum, 8(1968), pp. 29-120.

-----, "Principios basicos para la reforma del derecho penal canónico", in Jus canonicum, 10(1970), pp. 185-208.

ARTEAGA, A.A., "Bautizados en la Iglesia católica no obligados a la forma canónica del matrimonio: problemas que presenta", in Le nouveau Code de droit canonique, Actes du Ve Congrès international de droit canonique, M. Thériault and J. Thorn (eds.), Ottawa, Université Saint-Paul, 1986, pp. 897-930.

AYMANS, W., "Die Kanonistische Lehre von der Kirchengliedschaft im Lichte des II. Vatikanischen Konzils", in Archiv für katholisches Kirchenrecht, 142(1973), pp. 397-417.

-----, "Ecclesiological Implications of the New Legislation", Studia canonica, 17(1983), pp. 63-93.

BEAUPERE, R., "Double Belonging", in One in Christ, 18(1982), pp. 31-43.

BENDER, M. L., "Persona in ecclesia - membrum in ecclesia", in Apollinaris, 32(1959), pp. 105-119.

BERNHARD, J., "Des membres de l'Eglise", in Revue de droit canonique, 11(1961), pp. 215-226.

BERTRAMS, W., "De gradibus 'communio' in doctrina Concilii Vaticani II", in Gregorianum, 47(1966), pp. 287-305.

BEYER, J., "La 'communio' comme critère des droits fondamentaux", in Les droits fondamentaux du chrétien dans l'Eglise et dans la société, Actes du IVe Congrès international de droit canonique, 6-11 Octobre, 1980, E. Corecco, N. Herzog and A. Scola (eds.), Fribourg, Suisse, Editions universitaires, 1981, pp. 79-96.

- , "De iuribus humanis fundamentalibus in statuto iuridico christifidelium assumendis", in Periodica, 58(1969), pp. 29-58.
- BONNET, P.A., "De Christifidelium consociationum lineamentorum, iuxta schema 'De Populo Dei' codicis recogniti anni 1979, adumbratione", in Periodica, 71(1982), pp. 531-604.
- BOYLE, J.B., "Church Teaching Authority in the 1983 Code", in The Jurist, 45(1985), pp. 136-170.
- BRUNDAGE, J., "The Votive Obligations of Crusaders", in Traditio, 24(1968), pp. 77-118.
- CANAVAN, F. "The Declaration on Religious Liberty", in America, 113:21(November 20, 1965), pp. 635-636.
- , "The Catholic Concept of Religious Freedom as a Human Right", in Religious Liberty: An End and a Beginning, The Declaration on Religious Freedom: An Ecumenical Discussion, J.C. Murray (ed.), New York, The MacMillan Company, 1966, pp. 65-80.
- CASTAÑO, J.F., "Il consenso e la forma canonica", in Apollinaris, 59(1984), pp. 117-129.
- CASTILLO LARA, R., "La communion ecclésiale dans le nouveau Code de droit canonique", in Studia canonica, 17(1983), pp. 331-355.
- , "Some General Reflections on the Rights and Duties of the Christian Faithful", in Studia canonica, 20(1986), pp. 7-32.
- CAVALLERA, F., "Le décret du Concile de Trente sur les sacrements en général", in Bulletin de littérature ecclésiastique, 7(1915-1916), pp. 66-88.
- CIPROTTI, P., "Il dritto penale della Chiesa dopo il Concilio", in La Chiesa dopo il Concilio, Atti del Congresso internazionale di diritto canonico, 14-19 January 1970, 1972, Milano, A. Giuffrè, 1972, vol. 1, pp. 518-534.
- COCCOPALMERIO, F., "La dottrina dell'appartenenza à la Chiesa nell'insegnamento del Vaticano II", in La Scuola cattolica, 98(1970), pp. 215-238.
- , "De natura iuris poenalis ecclesiae", in

Periodica, 65(1976), pp. 317-330.

-----, "Responsio animadversionibus De Paolis in meum scriptum", in Periodica, 65(1976), pp. 343-346.

-----, "Il diritto penale nella Chiesa: riflessioni e proposte", in Problemi e prospettive di diritto canonico, F. Cappellini (ed.), Brescia, Queriniana, 1977, pp. 265-285.

-----, "De communione ecclesiali iuxta doctrinam Vaticani II", in Investigationes theologico-canonicae, Roma, Università Gregoriana Editrice, 1978, pp. 99-114.

-----, "Quid significant verba 'Spiritus Christi habentes' (Lumen gentium 14,2)?", in Periodica, 68(1979), pp. 253-276.

CONGAR, Y., "Note sur les mots 'Confession', 'Eglise', et 'Communion' ", in Irenikon, 23(1950), pp. 3-36.

-----, art. "Schisme", in Dictionnaire de théologie catholique, A. Vacant, E. Mangenot, E. Amann (eds.), Paris, Letouzey et Ané, 1903-1950, vol. 54, cols. 1286-1312.

-----, "What Belonging to the Church Has Come to Mean", in Communio, 4:2(1977), pp. 146-160.

CORECCO, E., "Considerazioni sul problema dei dritti fondamentali del cristiano nella Chiesa", in Les droits fondamentaux du chrétien dans l'Eglise et dans la société, Actes du IVe Congrès international de droit canonique, 6-11 October 1980, E. Corecco, N. Herzog, and A. Scola (eds.), Fribourg, Suisse, Editions universitaires, 1981, pp. 1207-1234.

-----, "La sortie de l'Eglise pour raison fiscale", in Austritt aus der Kirche, Sortir de l'Eglise, L. Carlen (ed.), Freiburg, Universitätsverlag, 1982, pp. 11-67.

-----, "La Réception de Vatican II dans le Code de droit canonique", in La Réception de Vatican II, G. Alberigo and J.P. Jossua (eds.), Paris, Editions du Cerf, 1985, pp. 328-391.

-----, "Ecclesiological Bases of the Code", in Concilium, 185(1986), pp. 3-13.

COUGAR, C. and C. COUTURIER, "Sortir de l'Eglise, comme dans un club sportif par exemple?", in Praxis juridique et

religion, 4(1987), pp. 63-68.

CREUSEN, I., "Annotationes", in Periodica, 37(1948), pp. 334-344.

DE FILIPPO, T., "La separazione dei religiosi dall' istituto", in Vita consecrata, 20(1984), pp. 114-128.

DEJAIFVE, G., "L'appartenance à l'Eglise du Concile de Florence à Vatican II", in Nouvelle revue théologique, 99(1977), pp. 21-50.

DE PAOLIS, V., "In scriptum F. Coccopalmerio animadversiones", in Periodica, 65(1976), pp. 331-342.

-----, "Totum ius poenale ad externum tantum forum limitatum est", in Periodica, 65(1976), pp. 297-315.

-----, "Communio et excommunicatio", in Periodica, 70(1981), pp. 271-302.

-----, "Communio in novo codice iuris canonici", in Periodica, 77(1988), pp. 521-552.

DEUTSCHE BISCHOFSKONFERENZ, "Erklärung der Diözesanbischöfe der Bundesrepublik vom Dezember 1969 zu Fragen des kirchlichen Finanzwesens", in Archiv für katholisches Kirchenrecht, 138(1969), pp. 557-559.

DIVERRES, F., "L'excommunié est-il séparé de l'Eglise?", in Sciences ecclésiastiques, 15(1963), pp. 39-57.

DUMONT, C., art. "Schism" in Sacramentum mundi, K. Rahner (ed.), London, Burnes & Oates, 1968-1970, vol. 6, pp. 6-8.

EGAN, J., "The Sin of Schism: A Contribution to the Discussion of Membership in the Church", in The Thomist, 27(1963), pp. 59-77.

ELSBERND, M., "Rights Statements: A Hermeneutical Key to Continuing Development in Magisterial Teaching", in Ephemerides theologicae lovanienses, 62(1986), pp. 308-332.

ETCHEGARAY, R., "La législation de l'Eglise sur le baptême d'enfants de catholiques non-pratiquants", in Maison Dieu, 32(1952), pp. 90-117.

EYT, P., "L'ordre du discours et l'ordre de l'Eglise,

Hypothèse sur les structures profondes d'un texte des 'controverses' de Bellarmin", in Bulletin de littérature ecclésiastique, 73(1972), pp. 229-249.

-----, "En marge de la réforme de Code de droit canonique, Les transformations du sens de l'appartenance ecclésiale et leurs conséquences dans la 'discipline' chrétienne", in Nouvelle revue théologique, 97(1975), pp. 842-853.

FENTON, J., "The Baptismal Character and Membership in the Catholic Church", in American Ecclesiastical Review, 122(1950), pp. 373-381.

-----, "Contemporary Questions About Membership in the Church", in American Ecclesiastical Review, 145(1961), pp. 39-57.

FÜRST, G., "Jurisdiktion und communio ecclesiastica", in La Chiesa dopo il Concilio, Atti del Congresso internazionale di diritto canonico, Roma, 14-19 January 1970, Milano, A. Giuffrè, 1972, vol. 2-1-2, pp. 669-686.

GHIRLANDA, G., "De obligationibus et iuribus christifidelium in communione ecclesiali deque eorum adimplentione et exercitio", in Periodica, 73(1984), pp. 329-378.

GOMMENGINGER, A., "Beudeutet die Exkommunikation verlust der Kirchengemeinschaft?", in Zeitschrift für katholische Theologie, 73(1951), pp. 1-71.

GRADAUER, P., "Die Kirchenaustritt und seine Folgen", in Theologische-praktische Quartalschrift, 132(1984), pp. 64-75.

GRANFIELD, P., "The Rise and Fall of Societas Perfecta", in Concilium, 157(1982), pp. 3-8.

GREEN, T., "The Future of Penal Law in the Church," in The Jurist, 35(1975), pp. 212-275.

-----, "The Revised Schema De Matrimonio: Text and Reflections", in The Jurist, 40 (1980), pp. 57-127.

-----, "Penal Law Revisited: The Revision of the Penal Law Schema", in Studia canonica, 15(1981), pp. 135-198.

-----, "The Revised Code of Canon Law: Some Theological Issues", in Theological Studies, 47(1986), pp. 617-652.

- GROTE, H., "Wie steht es um 'Konfessionswechsel' und 'Kirchenübertritt'?", in Materialdienst des Konfessionskundlichen Instituts Bensheim, 5(1985), pp. 88-90.
- HELMHOLZ, R.H., "Excommunication as a Legal Sanction", in Zeitschrift Savigny Stiftung, 68(1982), pp. 202-218.
- HUERTH, F., "De inculpabili defectione a fide", in Gregorianum, 7(1926), pp. 3-27; 203-224.
- HUGHES, M., "The Juridical Nature of the Act of Joining the Catholic Church", in Studia canonica, 8(1974), pp. 45-74; 379-431.
- , "A New Title in the Code: On Juridical Acts", in Studia canonica, 14(1980), pp. 391-403.
- HUIZING, P., "Crime and Punishment in the Church", in Concilium, 8:3(1967), pp. 57-64.
- , "Problemas de derecho canonico penal", in Jus canonicum, 8(1968), pp. 203--214.
- , "Le droit d'exclure", in Lumière et vie, 28: 141(1979), pp. 47-57.
- JOYCE, J., "The Battle Begins: Just What does the New Code Mean?", in The Clergy Review, 68(1983), pp. 181-184.
- JUKES, J., "Formal Defection from the Church, Canon 1117", in CLSGBI Newsletter, 74(June 1988), pp. 12-13.
- KAISER, M., "Aussagen des Zweiten Vatikanischen Konzils über die Kirchengliedschaft", in Ecclesia et Ius, Festgabe für Ardomar Scheuermann zum 60. Geburtstag, K. Siepen (ed.), Munich, F. Schöningh, 1968, pp. 121-135.
- KEATING, J., "'Conversion' Which Binds to the Canonical Form of Marriage", in Ius Populi Dei, Miscellanea in honorem Raymundi Bidagor, U. Navarrete (ed.), Roma, Università Gregoriana Editrice, 1972, vol. 3, pp. 653-663.
- LAWLOR, F., art. "Membership in the Church", in New Catholic Encyclopedia, New York, McGraw-Hill, 1967, vol. 9, pp. 637-639.
- , "Occult Heresy and Membership in the Church", in Theological Studies, 10(1949), pp. 541-554.

- LE GALL, P., "L'excommunication est-elle une peine?", in Revue de droit canonique, 37(1987), pp. 106-117.
- LENHERR, T., "Der Abfall von der katholischen Kirche durch einen formalen Akt", in Archiv für katholisches Kirchenrecht, 152(1983), pp. 107-125.
- LÜDICKE, K., "Die Kirchengliedschaft und die plena communio", in Recht im Dienste des Menschen: eine Festgabe Hugo Schwendenwein zum 60. Geburtstag, K. Lüdicke, H. Paarhammer, D. Binder (eds.), Graz, Verlag Styria, 1986, pp. 377-391.
- LYNCH, J., "The Limits of Communio in the Pre-Constantinian Church", in The Jurist, 36(1976), pp. 159-190.
- MICHALON, P., "The Directory on Ecumenical Matters: A Commentary (Part 1)", in One in Christ, 4(1968), pp. 24-51.
- MICHEL, A., art. "Formellement", in Dictionnaire de théologie catholique, A. Vacant and E. Mangenot (eds.), Paris, Letouzey et Ané, 1903-1950, vol. 21, cols. 591-594.
- MOINGT, J., "L'initiation chrétienne des jeunes", in Etudes, 336(1972), pp. 599-613.
- MÖRSDORF, K., "Der Codex iuris canonici und die nichtkatholischen Christen", in Archiv für katholisches Kirchenrecht, 130(1961), pp. 31-58.
- , "Persona in Ecclesia Christi", in Archiv für katholisches Kirchenrecht, 131(1962), pp. 345-393.
- , "Zum Problem der Exkommunikation. Bemerkungen zum Schema Documenti quo disciplina sanctionum seu poenarum in Ecclesia latina denuo ordinatur", in Archiv für katholisches Kirchenrecht, 143(1974), pp. 64-68.
- MÜLLER, H., "Zugehörigkeit zur Kirche als Problem der Neukodifikation des Kanonischen Rechts", in Österreichisches Archiv für Kirchenrecht, 28(1977), pp. 81-98.
- , "Utrum 'communio' sit principium formale-canonicum novae codificationis iuris canonici ecclesiae latinae?", in Periodica, 74(1985), pp. 85-108.
- MURRAY, J.C., "The Problem of Religious Freedom", in



- Theological Studies, 25(1964), pp. 503-575.
- , "The Issue of Church and State at Vatican Council II", in Theological Studies, 27(1966), pp. 580-606.
- , "The Declaration on Religious Freedom", in Vatican II: An Interfaith Appraisal, J. Muller (ed.), Notre Dame, University of Notre Dame Press, 1966, pp. 565-576.
- NAVARETTE, U., "El matrimonio de los catolicos 'no practicantes' y 'no creyentes' ", in Sal terrae, 61(1973), pp. 875-885.
- NAZ, R., art. "Délit", in Dictionnaire de droit canonique, Paris, Letouzey et Ané, 1935-65, vol. 4, cols. 1084-1097.
- , art. "Schisme et schismatique", in Dictionnaire de droit canonique, Paris, Letouzey et Ané, 1935-65, vol. 7, cols. 886-887.
- NEUMANN, J., "Kirchenrechtliche Überlegungen zur Kindertaufe", in Christsein ohne Entscheidung oder Soll die Kirche Kinder Taufen?, W. Kaspar (ed.), Mainz, Matthias-Grünwald-Verlag, 1970, pp. 207-224.
- NICOLAS, J.H., "L'appartenance à l'Eglise selon la théologie catholique", in Austritt aus der Kirche, Sortir de l'Eglise, L. Carlen (ed.), Freiburg, Universitätsverlag, 1982, pp. 129-172.
- ONCLIN, W., "Membres de l'Eglise: Personnes dans l'Eglise", in L'Année canonique, 9(1965), pp. 11-32.
- O'CONNOR, J., "The Church of Christ and the Catholic Church", in Homiletic and Pastoral Review, 84:4(1984), pp. 10-21.
- O'NEILL, C., "St. Thomas on the Membership in the Church", in The Thomist, 27(1963), pp. 88-140.
- PIVONKA, L., "Ecumenical or Mixed Marriages in the New Code of Canon Law", in The Jurist, 43(1983), pp. 103-124.
- POTOSCHNIG, F., "Persona in Ecclesia - Probleme der Rechtlichen Zugehörigkeit zur 'Kirche Christi'", in Ex Aequo et Bono (Willibald M. Plochl zum 70. Geburtstag), P. Leisching, F. Potoschnig and R. Potz (eds.), Innsbruck, Universitätsverlag Wagner, 1977, pp. 277-294.

- POTTMEYER, H.J., "Vers une nouvelle phase de réception de Vatican II", in La Réception de Vatican II, G. Alberigo and J.P. Jossua (eds.), Paris, Editions du Cerf, 1985, pp. 43-64.
- , "Ecclesial Rights", in CLSA Proceedings, 42(1982), pp. 41-62.
- , "The Christian Faithful (cc. 204-329)", in The Code of Canon Law: A Text and Commentary, J. Coriden, T. Green and D. Heintschel (eds.), New York, Paulist Press, 1985, pp. 119-173.
- PUJOL, C., "Religiosus, etiam ob heresim, ipso facto a religione dimittitur", in Periodica, 65(1976), pp. 159-181.
- RAHNER, K., "Membership in the Church According to the Teaching of Pius XII's Encyclical 'Mystici Corporis Christi'", in Theological Investigations, vol. 2, translated by Karl H. Kruger, Baltimore, Helicon Press, 1963, pp. 1-88.
- RIUDOR, I., "La pertenencia a la Iglesia en los dos primeros capítulos de la constitución 'Lumen Gentium' del Concilio Vaticano II", in Estudios eclesiásticos, 40 (1965), pp. 301-318.
- ROBERTI, I., "Quinam acatholici careant iure accusandi matrimonium?", in Apollinaris, 10(1937), pp. 111-113.
- ROBLEDA, O., "De conceptu actus iuridici", in Periodica, 51(1962), pp. 413-446.
- ROUQUETTE, R., "L'Eglise et le baptême des enfants juifs", in Etudes, 277(1953), pp. 99-110.
- RYAN, W., "The Teaching of St. Thomas in the Summa concerning the Baptismal Character", in American Ecclesiastical Review, 149(1963), pp. 361-385.
- SALVADOR, C., "Incorporación a la Iglesia por el bautismo y sus consecuencias juridicos", in Revista española de derecho canonico, 19(1964), pp. 817-854.
- SCHILLEBEECKX, E., "Foi chrétienne et attente terrestre", in L'Eglise dans le monde de ce temps: Constitution 'Gaudium et Spes', K. Rahner, et al. (eds.), Tours, Mame, pp. 117-158.

SECRETARIAT FOR PROMOTING CHRISTIAN UNITY, "Ecumenical Aspects of the New Code of Canon Law", in Information Service, 60(1986), pp. 53-70.

SOBANSKI, R., "'Communio' als Formalprinzip des kirchlichen Rechts", in Theologie und Glaube, 72(1982), pp. 175-188.

-----, "L'Ecclésiologie du nouveau Code de droit canonique", in Le nouveau Code de droit canonique, Actes du Ve Congrès international de droit canonique, M. Thériault and J. Thorn (eds.), Ottawa, Université Saint-Paul, 1986, pp. 243-270.

SPINELLI, L., "La Chiesa e la libertà religiosa", in La Chiesa dopo il Concilio, Atti del Congresso internazionale di diritto canonico, Roma, 14-19 January 1970, Milano, A. Giuffrè, 1972, vol. 1, pp. 290-319.

STENSON, A., "The Concept and Implications of the Formal Act of Defection of Canon 1117", in Studia canonica, 21 (1987), pp. 175-194.

SULLIVAN, F., "Subsistit in", in One in Christ, 22(1986), pp. 115-123.

TACHE, A., "The Code of Canon Law of 1983 and Ecumenical Relations", in Le nouveau Code de droit canonique, Actes du Ve Congrès international de droit canonique, M. Thériault and J. Thorn (eds.), Ottawa, Université Saint-Paul, 1986, pp. 401-421.

URUTTIA, F., "Adnotationes quaedam ad propositam reformationem libri primi Codicis iuris canonici", in Periodica, 64(1975), pp. 633-659.

-----, "Pertinacia y mala fe en la nocion canonica de herejia", in Estudios de Deusto, 26(1978), pp. 253-272.

-----, "De magisterio ecclesiastico. Observationes quaedam ad propositam reformationem partis IV, libri III, CIC", in Periodica, 68(1979), pp. 327-367.

VALDRINI, P., "Fidèle et pouvoir", in Praxis juridique et religion, 1(1984), pp. 177-193.

VOGEL, C., "Pénitence et excommunication dans l'Eglise et durant le Haut Moyen Age", in Concilium, 107(1975), pp. 11-22.

- WALF, K., "The Church Tax as a Means of Subsistence", in The Finances of the Church, translated by F. McDonagh, W. Bassett and P. Huizing (eds.), New York, The Seabury Press, 1979, pp. 20-27.
- , "Lacunes et ambiguïtés dans l'ecclésiologie de Vatican II", in Les Eglises après Vatican II, G. Alberigo (ed.), Paris, Beauchesne, 1981, pp. 207-221.
- WALLACE, R., "A Model of Change of Religious Affiliation", in Journal for the Scientific Study of Religion, 14(1975), pp. 345-355.
- WILLEMS, B., "Who Belongs to the Church?", in Concilium, 1(1965), pp. 62-71.
- ZANNI, G.L.M., "Nuovi documenti sul 'Caso Mortara'", in Rivista de storia della Chiesa in Italia, 13(1959), pp. 239-279.