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THE RIGHT OF THE FAITHFUL TO THE SACRAMENTS

REV. TERENCE E. TIERNEY*

The emergence within the Church of a chorus of enlightened voices singing the praise of freedom and responsibility is a hallmark of the forces unleashed at Vatican II. It is not that these two laudable concepts were never given notice prior to the council, but rather that only since Vatican II has the full impact of the *status fidelis* been recognized, acknowledged, and accorded its rightful position in the theocanonical priorities of the Church. That believers have as a basic and inviolable right full and free access to the mysteries of Christ expressed in sacramental sign is a thesis which will cause many churchmen much uneasiness in future years.

Viewing the believer as possessing a fundamental right to the "signs of salvation" will necessitate an elucidation of both the elemental and pristine foundation upon which this notion of right in the Church is grounded and the relationship of this foundational principle to the concept of baptism. Clearly this is a task requiring voluminous scholarly treatment. This Article, however, will attempt to scratch the surface of the problem by touching upon many of the critical areas involved in such a discussion.

CONCEPT OF RIGHT

For a thorough understanding of the problem of the inherent right of the faithful to full *communio in sacris* despite his or her individual difficulties with the visible Church, it is crucial to examine the concept of right as it affects the *status fidelis*. It has always been universally acknowledged that a right is a *facultes exigendi*, a power to demand something from either an individual person or a corporate-moral personality, such as society or the Church.¹ Frequently, the concept of person is given short shrift in the discussion of subjective rights and duties. Inherent in any granting of a right is the implied promise that a certain degree of autonomy will accompany the exercise of that right. This autonomous character usually

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¹ See A. DEL PORTILLO, FAITHFUL AND LAITY IN THE CHURCH 30 (1972) [hereinafter cited as FAITHFUL & LAITY]; A. DOGLIO, DE CAPACITATE LAICORUM AD POTESTATEM ECCLESIASTICUM PRAESERTIM TUDICIALEM 26-27 (1962) [hereinafter cited as DE CAPACITATE]; G. MICHIELS, PRINCIPIA GENERALIA DE PERSONIS IN ECCLESIA 10-13 (1955) [hereinafter cited as MICHIELS].

obtains when it is a question of rights which are circumscribed by the society or person granting the right. Autonomy, however, runs into difficulty when natural rights are at issue, as a result of the absolute, pervasive quality of natural rights.

Since the person is the master of his own activity, a measure of inviolable autonomy accompanies him which frequently brings the individual into conflict with societal authorities. This difficulty stems from the dominion accorded the person in natural-divine law. Freedom and autonomy imply the right to regulate one's own conduct according to the rules of one's good judgment and discretion. The individual is subject to no one else while he is within the sphere of personal autonomy. This principle, however, involves a measure of responsibility. One is always required to give an accounting to his God, and since this duty admits to no exception, one will be required at times to render a like accounting to society.²

Implicit in the principles of right, freedom, and autonomy is the equally significant concept of personal conscience. The autonomy of one's conscience ought not to be obscured when discussing the ability of the faithful to exercise their rights in accord with their faith consciousness and in light of the qualifying conditions and changing circumstances which directly effect the personal sphere of individual lives. It is conscience which allows an individual, or a group of individuals, to depart from generally held opinions, policies, guidelines, and even precepts. This freedom of conscience, which is a natural right of a person as a member of the human community and is therefore extended in kind to the faith community, ought to be considered as normative for the individual, even if it brings him into open conflict with the laws of a given society.³

DECLARATION ON RELIGIOUS FREEDOM AND THE ISSUE OF CONSCIENCE

The declaration on religious freedom of Vatican II furthered the understanding by churchmen of the autonomy which ought to be accorded all men in their particular expression of belief.⁴ It also appears to contain

² See FAITHFUL & LAITY, *supra* note 1, at 30; POPE JOHN XXIII, PACEM IN TERRIS (1963); Prieto, *Los Derechos Subjectivos Publicos de la Iglesia*, 19 REVISTA ESPANOLA DE DERECHO CANONICO 865 (1964).

³ Consider for example the controversy surrounding the Encyclical Letter of Pope Paul VI, *Humanae Vitae*, issued in 1968, which treated the subject of artificial contraception. See, e.g., N.Y. Times, Oct. 1, 1968, at 1, col. 4; *id.*, Oct. 10, 1968, at 28, col. 4.

⁴ The Second Vatican Council stated:

This Vatican Synod declares that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that in matters religious no one is to be forced to act in a manner contrary to his own beliefs. Nor is anyone to be restrained from acting in accordance with his own beliefs whether privately or publicly, whether alone or in association with others, within due limits.

This Synod further declares that the right to religious freedom has its foundation in the very dignity of the human person, as this dignity is known through the revealed word of God and by reason itself. This right of the human person to religious freedom

some insights which the Roman Church might develop in the service of its own ecclesiality and jurisprudence. Pietro Pavan stated his understanding of the implications of this Concilium statement as follows:

1). Every human person has the right to religious freedom. 2). This right has as its object or content an immunity from coercion at the hands of individuals, social groups or public powers. 3). The immunity is understood in two senses: (a) No one must be forced to act against his conscience in religious matters. (b) No one must be restrained—in those same religious matters—from acting in conformity with his conscience whether privately or publicly, whether alone or with others, within due limits.⁵

It is noteworthy that Pavan delineated precisely the crucial distinction which must be drawn in matters of freedom and conscience. He stated that there is in large measure a fundamental difference between not being constrained to act in violation of one's conscience and not being impeded from acting in conformity with it.⁶ Pavan noted that the immunity spoken of in No. 3 of the Declaration on Religious Freedom has always been admitted in Catholic tradition, at least on a doctrinal level and especially regarding the freedom proper to the act of faith. The idea, however, that the latter immunity is a right has been admitted only in recent times.⁷ What is being asserted is that society, including *a fortiori* the ecclesial society, may not impede a person who acts in conscience.

THE QUESTION OF MEMBERSHIP IN THE CHURCH

The question arises as to what constitutes membership in the Church and thereby gives rise to the right to the spiritual nourishments promised by Christ to those who believe in and love Him. It is generally understood that the valid reception of baptism confers upon the faithful all rights and duties of the christian life and is an act by which one is constituted a person in the Church of Christ.⁸ Baptism, however, must be accorded a

is to be recognized in the Constitutional law whereby society is governed. Thus it is to become a civil right.

Declaration on Religious Freedom of the Second Vatican Council No. 2, reprinted in DOCUMENTS OF VATICAN II 678-79 (W. Abbot ed. 1966).

⁵ Pavan, *Right to Religious Freedom in the Conciliar Declaration*, 18 *CONCILIUM* 37, 39 (1966). Pavan also stated that "[t]he right has its foundation in the dignity of the human person as this dignity can be known in the light of revelation as well as through reason. . . . [and] demands recognition and sanction in the constitutional law whereby society is governed." *Id.*

⁶ *Id.* at 41.

⁷ *Id.*

⁸ CANON 87 provides:

In virtue of his baptism, one becomes a person in the Church of Christ with all the rights and obligations of a Christian, unless, with regard to rights, there exists an obstacle which impedes the bond of ecclesiastical union, or a censure imposed by the Church.

1 J. ABBO & J. HANNAN, *THE SACRED CANONS* 124 (2d rev. ed. 1960). See also 1 P. GASPARRI & J. SEREDI, *CODICIS IURIS CANONICI FONTES* 73 (1926); 1 E. REGATILLO, *INSTITUTIONES IURIS CANONICI* 69 (1963) (Canon 68); Pope Pius XII, *Motu Proprio, Cleri Sanctitati*, in 49 *ACTA*

much broader theocanonical understanding, particularly in light of the expanded theological insight and rejuvenated ecclesiastical psychology unleashed at Vatican II. Bouscaren, in commenting upon Canon 87, states that

the church is a society established by Jesus Christ with divine authority for all mankind. Hence human beings can become members of the church, and as such they acquire a new juridical personality. Baptism of water was established by Christ as the external sign and effective cause of membership in His Church.⁹

Interestingly, there exists quite a discussion in scholarly circles as to what constitutes the *Persona in Ecclesia Christi* to which Canon No. 87 refers. Bouscaren has identified this phrase with the acquisition of a "new juridical personality." However, the arresting question "in what does personality in Canon Law consist?" appears to intimate still more difficult theological and canonical questions. Portillo takes a decidedly different point of view from Bouscaren regarding the definition of personality in canon law. He asserts that it is doubtful whether the expression *Persona in Ecclesia Christi* in Canon 87 should be taken simply or identically with the concept of physical person or in the usual understanding of personality in law.¹⁰ Portillo's fear, as well as that of Lombardia, is of the besetting temptation to confuse the concept of personality in the sense of Canon No. 87 with that of the capacity to have rights and obligations. The former, according to Portillo, implies an effective title to specific rights and obligations; the latter refers to a potential aptitude to become entitled to those rights. Portillo further states:

Canon 87 in fact does not speak of a person in *Jus Canonico*, but of a *Persona in Ecclesia Christi*, and does not refer to the capacity to acquire all the rights and obligations recognized by Canon Law, but to the actual title to all the rights and duties which derive directly from actual membership of the faithful.¹¹

APOSTOLICAE SEDIS 177 (1957) (Canon 16) [hereinafter cited as *Motu Proprio*]; Salvador, *Incorporacion a La Iglesia Por El Bautismo Y Sus. Concecuencias Juridicas*, 19 REVISTA ESPANOLA DE DERECHO CANONICO 817 (1964).

⁹ T. BOUSCAREN, A. ELLIS & F. KORTH, *CANON LAW: A TEXT AND COMMENTARY* 78 (4th ed. 1963) [hereinafter cited as BOUSCAREN, ELLIS & KORTH]. See generally Bender, *Persona In Ecclesia—Membrum Ecclesiae*, 32 APPOLLINARIS 105 (1959); Lombardia, *El Estatuto Juridico Del Catecumeno Segun Los Textos del Concilio Vaticano II*, 6 JUS CANONICUM 534 (1969); Morsdorf, *Persona in Ecclesia Christi*, 6 ARCHIV FÜR KATHOLISCHES KIRCHENREICH 345 (1962).

¹⁰ FAITHFUL & LAITY, *supra* note 1, at 153. In Sipos, *Enchiridinn*, 2 IURIS CANONICI 68 (1960), the author states:

A capacitate iurium distinguenda est capacitas agendi, i.e., exercendi iura sive ponendi actus iuridicos. Quae capacitas agendi in Catholicis capacitates iurium habentibus omnino de esse (in infantibus et usu rationis habitualiter oestitutis) vel coarctata esse potest (in minoribus).

See also MICHIELS, *supra* note 1, at 5-6.

¹¹ FAITHFUL & LAITY, *supra* note 1, at 153. Portillo cites to Pope Pius XII, *Motu Proprio*, *supra*

ECCLESIOLOGICAL CONJECTURES

Where does all this lead one ecclesiological speaking? It is crucial that rights be protected in the Church; for the good ordering of ecclesiastical society, there ought to be a legal framework which reflects the principles of justice. Yet this ought not to cloud the ecclesiological implication of law applied to the faithful, nor must the preservation of principles interfere with the intrinsic *Communio Vitae* which is to exist between the believer and the Lord of his life. What should obtain, however, is a law which recognizes the *Persona in Ecclesia Christi* as grace-filled standing in the presence of God, a trinitarian image of that interpersonal character which so characterizes the word "belief," for faith is given to a person in love. The bond which arises thereupon is not a legal one, albeit it must be legally protected in canon law, but a spiritual union in faith which entitles the believer to fully participate in the acts of love given in sacramental signs.

The covenantal relationship of the people of God to their Lord and of individuals to their God is not strictly legal in the sense of a contract. While the biblical understanding is that the covenant arises in a quasi-legal manner, based on the suzerainty pacts, neither law nor duty are ever viewed in legalistic terms. The spirit of the law is always the overriding and deciding factor in legal discussions. Since the ecclesiological implication of Vatican II points toward the enthronement of covenant or image of interpersonal relationships rather than the Roman law concept of contract, it follows that the faithful believer by virtue of baptism is entitled to and not merely capacitated for the fundamental rights arising from that covenanted bonding which is to be understood in terms of intra/interpersonal *relatio*.¹² While the Church certainly possesses the right to determine matter, form, time, and place for reception, it ought not to "legalize" grace so as to place a condition on who can receive a sacrament after baptism.

The present Code of Canon Law provides grounds upon which rights may be lost, withdrawn, or conditioned. For instance, any baptized Christian may voluntarily withdraw from visible communion with a particular church or deny his belief in the particular faith into which he has been baptized. On the other hand, the Church, for properly circumscribed crimes including heresy and schism, can excise the guilty person from his external communion by pronouncing a censure against him. Since these sanctions apply only in regard to rights, it would seem that membership in a noncatholic Christian community directly excuses a validly baptized person from his duties as a member of the Church.¹³

note 8, in reference to his study of title and its relationship to Canon 87. FAITHFUL & LAITY, *supra* note 1, at 553. See also DE CAPACITATE, *supra* note 1, at 26-27.

¹² But see W. BASSETT, THE DETERMINATION OF RIGHT 163 (1967); J. KINNEY, THE JURIDIC CONDITION OF THE PEOPLE OF GOD 18 (1972).

¹³ BOUSCAREN, ELLIS & KORTH, *supra* note 9, at 78. Accord, Onclin, *Considerationes de Iurum Subjectivorum in Ecclesia Fundamento et Natura*, 8 EMPHEMERIDER IURIS CANONICI 9, 9-23 (1952).

It is a universal truism that rights and duties are related to each other by definition. No person can be obliged to perform actions which are not connected with a right from which a duty is to flow. On the other hand, no right may exist without a duty corresponding to that right. Admittedly, a civil right can be lost through violation of the law which protects those rights. This is necessary if society is ever to be well ordered and sane. While this principle is utilized to a stricter and more narrow degree in canon law, church law is not civil law. The inherent distinction between the two is so vast that the analogy tends to falter in many areas. The question arises, as it did in Luther's mind, whether the Church can penalize its members within a salvific context. Simply stated, should the Church, which has as its *raison d'être* the mission to lead all men to Christ, be permitted to impose upon its members penalties which would inhibit or hinder their free access to the signs of salvation? Luther answered this question in the negative.¹⁴

The Roman Church has always avoided this difficulty by viewing baptism as the only sacrament necessary for salvation. Needless to say, this theological configuration loses its vitality in light of the ecclesiastical understanding of sacramentology emanating from Vatican II. Quite simply, believers need much more than baptism to sustain the journey toward salvation, for baptism alone will not be sufficient for the task. The faithful need to be nourished at the table of the Lord in word and in sacrament. They have a natural right as people of God and members of His Body, the Church, to have the Word intelligently preached to them, and the sacraments rightly and properly administered. Full access to the table of the Word and the Bread and Cup are natural, or perhaps supernatural, rights which inhere in the profession of belief and celebration of baptism. How then can a right of such a nature be lost through penalty as proscribed by authority within a grace-filled context?¹⁵ These questions are indeed vexatious.

¹⁴ Note should be taken of Martin Luther's concept of justification, understood as it is in light of St. Paul's Epistle to the Romans and Galatians, which serves as a basis for his views on the use of penalties. See M. LUTHER, *THE BONDAGE OF THE WILL* 313-14 (J. Packer & O. Johnston trans. 1937).

¹⁵ Excommunicated persons can be denied the sacraments and a Christian burial. CANON 2260. They may not, absent exigency, administer the sacraments, CANON 2261, and are ineligible to receive spiritual favors such as indulgences, CANON 2262. Such persons are also excluded from ecclesiastical court, CANON 2263, and may not vote for or hold Church offices, CANON 2265.

Age may also disqualify a Catholic from certain Church institutions. A person under 15 may not make a valid novitiate, CANON 555(1), and may not be able to receive Last Rites, see CANON 944(1). There can be no valid marriage if the male is under 16 or the female under 14, CANON 1067(1), and neither wives nor children under the age of puberty may independently choose their place of burial, CANON 1223(2). An infant must sue in ecclesiastical court through a guardian, CANON 1648(3), but may only be subject to educative measures, not censure, CANON 2230.

Some exceptions to the limitations on the spiritual activity of excommunicated persons are provided as well. Any penitent in danger of death can be absolved by a priest, CANON 882, and an Act of Perfect Contrition may serve the same purpose in an emergency situation,

RIGHT OF THE FAITHFUL TO SPIRITUAL GOODS OF THE CHURCH

Everyone has the inherent and intrinsic natural right to be accorded access by virtue of baptism to the spiritual nourishment of the sacraments, just as every human being has a right to the natural elements of the earth necessary for his or her physical sustenance.¹⁶ One can rightly be denied a judicial standing in the community as a result of some public misdeed. For instance, one can be denied the right to hold office or to have an active voice or participation in ecclesiastical decision making.¹⁷ But one should not be denied the natural "spiritual" right to the fruits of salvation accomplished in Christ.

The Constitution of the Church of the Second Vatican Council states that the laity have the right, as do all Christian faithful, to receive in abundance from their sacred pastors the spiritual goods of the Church, especially the assistance of the Word of God and the sacraments.¹⁸ A more cautious and qualified form of this principle can be found in Canon 682 of the 1917 Code of Canon Law, which states: "The laity have a right to receive from the clergy in accordance with ecclesiastical discipline, the spiritual good and especially the aid necessary for salvation."¹⁹ The phrase "in accordance with ecclesiastical discipline," is the qualifier. Under this belongs the proscription which may be invoked to "prevent" a full *communio in sacris* to those not in accord with Church discipline. Oftentimes the discipline of which the Code speaks has little to do with one's spiritual well-being and everything to do with the community's social well-being, as the authors of the Code understand and interpret ecclesiastical well-being. Portillo correctly points out that Canon 682 is minimal in tone while the *Lumen Gentium* is maximal in character.²⁰

CANON 856. The Last Rites can be given conditionally when doubts exist as to a person's penitence, CANON 942, and absolution is provided for in urgent cases, CANON 2254. Cf. E. GENICOT, J. SALSAMAN & A. GORTEBECKE, *INSTITUTIONES THEOLOGIAE MORALIS*, No. 427 (17th ed. 1957); *Decree on Oriental Catholic Churches No. 27*, reprinted in *DOCUMENTS OF VATICAN II* 441, 450 (A. Flannery ed. 1975); *Ecumenical Directory No. 55*, 59 *ACTA APOSTOLICAE SEDIS* 574, 590 (1967).

¹⁶ See CANON 853; *The Constitution on the Church: Lumen Gentium of the Second Vatican Council No. 37*, reprinted in *DOCUMENTS OF VATICAN II* 350, 394 (A. Flannery ed. 1975) [hereinafter cited as *Lumen Gentium*]; *The Constitution of Sacred Liturgy: Sacrosanctum Concilium No. 14*, reprinted in *DOCUMENTS OF VATICAN II* 1, 7-8; *The Decree on the Laity: Apostolicae Actuositaten No. 25*, reprinted in *DOCUMENTS OF VATICAN II* 766, 790-91.

¹⁷ CANONS 2256(2), 2294(1).

¹⁸ *Lumen Gentium*, *supra* note 16, at 394-95. This passage contains some rather interesting ramifications for ecumenism, speaking as it does of "all Christian faithful."

¹⁹ As is indicated by the words "in accordance with ecclesiastical discipline," Canon 682 is restrictive of the right to spiritual goals.

²⁰ In *FAITHFUL & LAITY*, *supra* note 1, at 42, Portillo states:

[*Lumen Gentium*] is therefore much more expressive and maximalist, and acknowledges plainly, that the object of this right on the part of the faithful is the abundant reception of spiritual goods. This right then, which is an authentic subjective right, extends not only to the minimum necessary for salvation, but to that abundance of means which every Christian needs in order to fulfill properly his vocation to sanctity.

Portillo contends that the *Lumen Gentium* states that the right to receive both the Word and sacraments is a fundamental public right enjoyed by all the faithful. It is perhaps the most fundamental and elementary of all rights because it involves the "*conditio sine qua non*," the necessary and rightful means by which the faithful exercise the unre-nounceable primary right to belong to the Church and to participate in the realization of its common goals.²¹ It appears that the *Lumen Gentium* has surpassed the Code in good legal judgment and the establishment of outstanding legal principles, for the *Lumen Gentium* addresses the issue of subjective rights per se, while under the 1917 Code the "rights of the faithful" to receive the sacraments are treated as legally protected interests rather than genuine subjective rights.²²

The touchstone here is ecclesiology. Juridical cognizance must take into account the understanding of the Church as the people of God and the notion of the priesthood of all believers. The mission of each and every Christian is one of service in love. The prolongation of acts of love, especially sacramental action, belong to all the people as a right. Thus, it is not given to clerics to be the sole dispensers of God's mysteries, nor is it given to any one group within the ecclesiastical structuring of the Church to limit participation in the sacraments by others who have access to the spiritual goods of God by natural and divine right. As Portillo notes, "if a member of the faithful reasonably and legitimately requests a sacrament, he is exercising a right which has a corresponding duty on the part of the minister—he is not asking for a favor which may be granted solely out of charity."²³

The right discussed herein is a natural one arising from a person's baptism in Christ and not merely from his juridical position under Church law. Determination of what constitutes a reasonable and legitimate request for reception of a sacrament devolves upon the conscience of the individual and not upon the discretion of a particular clergyman. So long as the atmosphere and condition worthy of sacramental dignity obtains, one's standing in law is secondary to the right in conscience to seek the signs and wonder of salvation.

Frequently, the life situation in which the faithful find themselves will render facile and "legal" reception of sacraments almost impossible, as, for example, with persons in "canonically" invalid second marriages.²⁴ A per-

²¹ *Id.* at 43.

²² *Id.* Besides implying grave ignorance of the rights of the faithful, Canon 892 has another even more serious consequence. It permits the breakdown of the constitutional nature of the right to the sacraments, for it is based not on the concept of personality *in ecclesia*, which is the priestly character of the people of God, nor on the relationship between hierarchy and faithful, but on the relationship which arises from the office itself.

²³ FAITHFUL & LAITY, *supra* note 1, at 45. Cf. *Le problème pastoral des chrétiens divorcés et remariés*, *VIE SPIRITUELL*, *supp.* 109, at 125-54 (1974).

²⁴ See *Le problème pastoral des chrétiens divorcés et remariés*, *VIE SPIRITUELL*, *supp.* 109, at 125-54 (1974).

son is saved within the context of his own life circumstances, however, and pursues the "pilgrim's" way in the light of his own conscience. Since all are called to holiness, each man must search for sanctification in his own way and in complete accord with his own true conscience, although this may bring him into conflict with the law. This has been patently affirmed by the Council in its decree, *Lumen Gentium*, and the *Gaudium Et Spes*, as well as in its Declaration on Religious Freedom.²⁵

SACRAMENTS AND CANONICAL ORDERING OF SACRAMENTS

The 1917 Code in Canon 731 states principally what Baltimore Catechism II has asserted regarding the definition of a sacrament.²⁶ This understanding of sacraments as a means to salvation, a channel of grace, and a divine enabler is legitimate within the historical context from which the definition arose, but it is insufficient to the task of identifying to modern man, in light of the Second Vatican Council, the true nature and function of *res et sacramenti*.²⁷

The sacraments are the official presence of grace in the public history of mankind and, as such, are signs of salvation. They are given for men by God by virtue of His incarnation. This incarnational aspect of sacrament leads to a sacramental anthropology which draws man up into the very being of divinity. All of life is sanctified by incarnation since the humanity of Jesus raises our humanity to a level of divinity, insofar as humanity and divinity are indivisible in Jesus. From this understanding of incarnation flows a comprehension of sacramentality which signals active divine presence within the Church as sign and symbol. The sacra-

²⁵ See, e.g., *Lumen Gentium* No. 41, reprinted in DOCUMENTS OF VATICAN II 398 (A. Flannery ed. 1975), which provides in pertinent part:

The forms and tasks of life are many but holiness is one—that sanctity which is cultivated by all who act under God's spirit and, obeying the Father's voice and adoring God the Father in spirit and in truth, follow Christ, poor, humble, and cross-bearing, that they may deserve to be partakers of his glory. Each one, however, according to his own gifts and duties must steadfastly advance along the way of a living faith, which arouses hope and works through love.

²⁶ CANON 731 provides:

Since all the sacraments of the New Law, instituted by Christ our Lord, are the principal means of sanctification and salvation, the greatest care and reverence must be used in the administration and in the reception of them at the right time and in the right way.

²⁷ Barberena, *The Canonical Ordering of the Sacraments*, 38 CONCILIUM 5, 6 (1968) [hereinafter cited as Barberena], states:

This conception seems to assume that God at a given moment established by the Church as a visible and hierarchically ordered society, and that later seven means of sanctification were placed at the disposal of this ready-made Church, and these are what we call the sacraments. Now this understanding of the sacraments is not that of Vatican Council II, and one might call it erroneous because the sacraments are part of the essential, inner structure of the Church, and are precisely what gives the Church her outer, visible character.

ments are our signs to the world since the Church is the primary sacrament and its inner life is nourished by the signs left us by our Lord.²⁸

When one speaks of the canonical ordering of sacraments one is implying a jurisdictional exercise of power for ordering which in no way ought to be understood as a binding pronouncement of faith on a *modus operandi* that admits of no exception. While the good order of the Church and the availability of the sacraments demand a rightful canonical ordering, this ordering must reflect the sound, reflective understanding of Vatican II ecclesiology. Jurisdictional ordering ought not to interfere with the proper and free exercise of the faithful's subjective natural right to the sign of salvation. Additionally, it must not too tightly circumscribe access to the sacraments lest it impede the free exercise of conscience in the reception thereof. One should not be forced to receive a sacrament in conscience because the legal ordering of the Church has eliminated his free access by way of penalty.²⁹ It appears then that the intrinsic personal activity which so characterizes one's reception of a sacrament is beyond the scope of jurisdictional power.³⁰

Ecclesiologically, there are two fundamental dimensions to the Church. First, there is the exteriorized dimension, the outer visible reality characterized by objective features and established by the living tradition of the Church, realized and actualized within an evolutive historical process and circumscribed by positive ecclesiastical law. Second, there exists an interiorized dimension typified by the trinitarian level of inter-subjectivity, a relationship which is accomplished between the believer and his God through grace. This represents the inner life of the Church accorded visibility through the prolongation of acts of worship in the daily lives of its members as they interact within their particular secular context.

Although the visible reality of the Church as it exists in and through the world requires a measure of ordering so that ecclesiastical society is

²⁸ As Barberena explains:

The formal visibility of the Church consists in the fact that her mystery is made apparent in her organization, in her hierarchical and juridical relations, because everything in the Church—people, things, structure—is informed by a supernatural principle that effects an interior transformation.

Id. at 9.

²⁹ In FAITHFUL & LAITY, *supra* note 1, at 58-59, Portillo declares: "The Council has repeatedly emphasized, it must confine itself to expanding principles and forming conscience of the faithful so that they themselves may freely and responsibly make the decisions which each particular case may require." Cf. *Lumen Gentium* Nos. 36 & 37, reprinted in DOCUMENTS OF VATICAN II 393-95 (A. Flannery ed. 1975); *Gaudium et Spes* Nos. 33, 36, 43, 76, 91, reprinted in DOCUMENTS OF VATICAN II 903, 933, 935, 943-45, 984-85, 999; *Christus Dominus* Nos. 12 & 19, reprinted in DOCUMENTS OF VATICAN II 564, 569-70, 575; *Presbyterorum Ordinatio* Nos. 4, 6, 9, reprinted in DOCUMENTS OF VATICAN II 863, 868-70, 872-75, 880-81; *Apostolicam Actuositatem* Nos. 5, 7, 21, reprinted in DOCUMENTS OF VATICAN II 766, 772, 773-75, 788.

³⁰ Portillo explains: "Precisely because it is not a dominative power, the hierarchy's *jurisdictum* cannot enter into the sphere of the individual's personal activity . . ." FAITHFUL & LAITY, *supra* note 1, at 59.

enabled to function sociologically and politically, the unique essence and status of the Church render an absolute canonical ordering inadvisable and even untenable. The inner reality of the Church is a grace-filled condition accomplished formally through sacramental celebration, which does not, and indeed cannot lend itself to some human barometric reading.

As a result of the condition of sacramentality within the Church, one must walk warily when attempting to circumscribe conditions under which a member of the faithful may approach the sacraments. The inner reality of the Church as sacrament consists of the *Res*, which is the incarnational presence of grace. Although the *Res* in a sacrament cannot be separated from the visible sign or *Sacramentum* by which the faithful recognize this reality, the Church must incorporate within its understanding of mission the open-ended approach to law which allows only a critical and indispensable form of ordering to be enthroned in its law.

The Church is the means by which Christ acts in history and through which His saving action is made available to all who call upon it. Christ is the sacrament of God. The Church is the sacrament of Christ, and the sacrament of the Church is her sacred signs. We therefore view the sacraments as expressions and actions of the resurrected Lord in the world. This presence and symbolic activity of God in Christ is ordained to bring about and support a relationship between God and man.³¹ The Lord not only establishes His Church and constitutes believers as His own people, but He also provides the means by which faith is supported and nourished and the journey towards Sinai guided. Christ places the means necessary for sanctification at our disposal.

The metaphysical insertion into a resurrection community accomplished through baptism bears a measure of fundamental rights grounded in this unique sacramental relationship. These rights flow from the inner nature of the Church as the people of God, covenanted in faith and expressed in time. While the right is objective by virtue of the communitarian character of Church or society, it is most properly a subjective right existing between the believer and his Lord in view of the love between them and the promise of and thirst for eternal life. This right is basic and inalienable and must not be conditioned by positive ecclesiastical law with a view to the establishment of a penalty. The Church should not sacramentally penalize its members for an inescapable violation of ecclesiastical law. Counsel them, exhort them, correct them, even at times reprimand them, but do not penalize them spiritually.

The right to profess belief is inextricably bound up with the duty to

³¹ In the words of Barberena:

When the sacrament is realized in an individual, it functions as an action of the Church, by which the saving act of Christ is made present in the person receiving the sacrament. . . . Sacramentality only has meaning in a human context, because the sacraments exist to bring about a relationship between God and man.

Barberena, *supra* note 27, at 14-15.

pursue grace and salvation. Once given faith, which is a gift from our Lord, the means necessary to accomplish fully the actualization of that faith are not to be denied, save when one theoretically or practically renounces his faith. Otherwise the overriding duty to celebrate faith takes precedence over the purely canonical ordering of sacraments.³² Pedro Lombardia has this to say regarding this topic:

One must take into account the fact of their [faithful] elevation to the supernatural order by baptism if one is to grasp the full ontological and sacramental scope alike of that in which these rights are grounded and of their relation with the mystery of the Church. . . . [A] declaration of fundamental rights in a constitutional canonical text will necessarily bear the character of a *historic option* in virtue of which the legislator, in the light of the basic principles of the Church's sacramental nature and taking into account the signs of the times, enumerates those rights of the faithful which can be considered fundamental by reason of universality and their connection with a person's ontological-sacramental insertion into the people of God. . . . [I]ncorporation in the Church through baptism implies personal incorporation into Christ for each member of the faithful. That is why every truly fundamental entitlement either to powers or to rights has a sacramental basis within the Church. It follows that in this field one will always be treating of forms of entitlement that find their full sense in Christ.³³

The conclusion here rests on the notion of rights within the ontological-sacramental order. Not that the fundamental right to receive the sacraments is exclusive of the social and canonical order of the Church, but that the right as it exists within canonical order must always be subordinate and differential to the higher sacramental order. That the Church possesses the right to order itself is fundamental and not at issue here. What is at issue is the subjective right of all faithful to the sign of salvation apart from how the law views them at a particular time, save if they have unmistakably renounced faith personally or have through astounding public scandal practically denied their own belief in God. Otherwise, let all the faithful be accorded free access to the sacraments and impute neither bad faith nor insincerity to those who, when approaching the Lord in sacramental activity, may at some time be at odds with the common precept of the law regarding marriage, family life, and the like. The right should be such that it is recognized as basic even if one chooses to exercise it in disagreement with the official Church's position on a peculiar point of law. Quite simply, what is at issue here is this: law is not for keeping people *in*, but for keeping them growing and spiritually alive unto eternal life.

³² Cf. Concilium General Secretariat, *Human Rights*, 48 CONCILIUM 161 (1967), wherein it was stated: "The specific character of legal relationships within the ecclesial community lies in that the faithful not only have their own autonomous freedom with regard to each other, but are all personally united to the Lord and are all personally responsible to him." *Id.* at 170.

³³ Lombardia, *The Fundamental Rights of the Faithful*, 48 CONCILIUM 81, 85-86 (1969).