

CATHOLICS FOR A FREE CHOICE

RIGHTS IN THE CHURCH

NOTES ON
CANON LAW
NO. 2

NOTES ON CANON LAW SERIES

Notes on Canon Law is a series developed by Catholics for a Free Choice designed to enhance ordinary Catholics' understanding of canon law.

As we live our lives as Catholics, the laws of the church influence us in many ways. Canon law both explains the rights of Catholics and emphasizes the protection of those rights. These laws regulate the celebration of the sacraments—they tell us what we must do to get married in the church, to baptize our children and to bury our dead. They also tell us what we can and should expect from our church leaders, what they can expect from us and how we can participate in the church's mission.

We hope that the *Notes on Canon Law* series serves Catholics to better understand their church community and to strengthen their full and active participation in the life of the church. For our readers who aren't Catholic, we offer this series as an insight into our tradition and law.

INTRODUCTION

Can divorced and remarried Catholics receive communion? Can a prochoice Catholic politician be turned away from the altar? Do parishioners have a right to know how the pastor and the bishop are spending their contributions? Who can use parish facilities for meetings? Should parishioners have a voice in how their money is spent? Do you have a right to disagree with fellow Catholics—even bishops—about social issues?

Canon law demands respect for people’s rights. When he published the most recent version of the law in 1983, Pope John Paul II said one of the code’s most important contributions was its recognition of the rights of the laity.¹ Lay Catholics have a right to know what’s going on in their churches, they have a right to speak out about important issues, both religious and secular, and they have the right to be treated fairly, especially if a church authority is trying to punish them.

Unfortunately, most Catholics don’t know what their rights are. For a long time, the laity heard to the message “pay, pray and obey.” But is that the whole truth? And do our church leaders have any responsibilities to us?

WHAT IS CANON LAW?

In the Catholic church, canon law refers to the *Code of Canon Law*, the book containing many of the laws that govern Catholics who celebrate according to the Latin Rite. There are other church laws as well, including liturgical laws, local laws, international treaties and even laws for just one or a few people.

Canon law provides order to the external life of the church. It cannot be a substitute for faith; rather, it should be a reflection of that faith. It is not permanent or set in stone, like the Ten Commandments. It changes as the church changes. The code that we have today was released in 1983, and it is a legal expression of the values and faith that were articulated in the Second Vatican Council.

While canon law is closely tied to theology, morals and faith, its purpose is not to tell Catholics how or what to think. It is designed, by and large, to tell people how to act. Once you are a Catholic, these laws apply to you. As we live our lives as Catholics, these laws influence us in many ways. They prescribe who can celebrate the Eucharist and how it must be celebrated. They tell us what we must do to get married in the church, to baptize our children, to bury our dead and what rights we have.

Canon law requires that we interpret its laws very narrowly, focusing only on the case at hand, and dissuades us from making broad generalizations.² Canon law urges authorities not to rush to judgment, but rather to use every other means of instructing or admonishing a member of the church before resorting to outright punishment—especially when that punishment involves the restriction of a Catholic's rights, including the right to the sacraments.³

In the church's law, rights and obligations are interwoven and often interdependent. They must be seen in the context of a community, whether that community is strictly limited to members of the Catholic church or is more inclusive. Some rights have qualifiers attached, usually to protect the rights of others or to avoid conflicts of rights between people. All of the rights in the code are also subject to some regulation. Specifically, church authorities, usually bishops, have the responsibility to moderate the exercise of rights by individuals and groups in the interest of the common good, for instance, in order to balance conflicting rights in a specific situation.⁴

Even the bishops follow the rules, and while they may have additional rights and responsibilities because of their roles in the church, the bottom line is this: the church's law unequivocally recognizes the fundamental equality of all of its members.⁵

CATHOLICS HAVE A RIGHT TO KNOW

Education

Catholics have the right to receive an education. Catholics' right to education extends beyond a religious education to include a general education, and this includes the right to culturally appropriate technical or professional training and the opportunity to pursue advanced studies for those well suited to it. The code says that "parents as well as those who take their place are obliged and enjoy the right to educate their offspring."⁶ It also directs bishops to provide for professional, technical or other specialized schools "whenever this would be advantageous."⁷

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All the Christian faithful, according to the code, have a right to a Christian education as well.⁸ The church has both a right and a duty to educate children in religious formation.⁹ Parents are to work together with teachers and with church leaders to see that children receive both types of education that the law requires.¹⁰

Children’s education should be designed to result in “well-rounded personal and social development.”¹¹ Well-rounded development must include not only education about intellectual topics, but also about the human being as a person. Appropriate instruction about sex and sexuality is a necessary element in education—from childhood and continuing through adolescence and young adulthood. As the church requires a healthy and accurate understanding of sexuality as a prerequisite to celebrating marriage in the church¹² and to being ordained,¹³ sexuality education is essential for Catholic youth.

Occasionally, we hear reports of parents demanding that a local Catholic school deny entry to children whose parents are divorced, are homosexuals or are simply not Catholic. The media will sometimes cover incidents of schools expelling students who are pregnant or denying them participation in graduation ceremonies. There are no provisions in canon law to support or reject these actions. In fact, canon law makes no mention of what criteria must be used in order to exclude a student, perhaps explaining why so few students are excluded for such reasons. The local pastor or head teacher must therefore balance the right of every Catholic to receive an education and the admonition to care for students “in such a way that their physical, moral and intellectual talents may develop in a harmonious manner, so that they may attain a greater sense of responsibility and a right use of freedom, and be formed to take an active part in social life.”¹⁴

Those involved in the “sacred disciplines,” including the range of religious studies in universities and seminaries, enjoy a “just freedom of inquiry.”¹⁵ The church teaches that scholarship in the sacred sciences is not an end in itself, but serves to contribute to the community’s greater understanding, appreciation and development of the faith. The canon requires appropriate deference to the church’s teachers. This does not mean, however, an unwavering defense of every statement uttered by a church official. It does, on the other hand, require a “well-founded respect for and attempt to understand a particular teaching of the magisterium”¹⁶ before one publicly questions its legitimacy. It also recognizes the legitimate gradations of authority that exist in the church’s teaching, and though we may not dissent from those beliefs contained in the deposit of faith,¹⁷ much of the teaching of the church is contained elsewhere. It is the right and responsibility of religious scholars to help investigate, explain and, at times, advance the church’s teaching.

Information

In accord with Catholic tradition, the bishops of the United States have taught that the right to be informed is a “natural, inherent right...given by God...not a privilege conferred by any authority.”¹⁸ Recently, bishops around the world, notably many in the United States, have been exposed for withholding information from the very people who need it and whom they are ordained to serve—the members of their church. Whether it is information about priests who have committed crimes against children or about money paid to silence victims or to pay attorneys, the bishops have not respected this right.

When it comes to money and property, many people view the pastor or the bishop as the exclusive authority for decisions about how best to use these resources. However, there are cases when those men are required

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by law to seek the advice—at times even the consent—of a group of advisors.¹⁹ Certainly these advisors must have the information they need, and yes, they may be lay people.

People who contribute to the church have a right to know how the church is handling the funds they donated. The church authority who handles monies and other goods donated to the church is required to present a regular accounting to the people regarding those contributions.²⁰

CATHOLICS HAVE A RIGHT TO DECIDE

Each person is “bound to follow [his or her] conscience faithfully in all activity....” People “must not be forced to act contrary to [their] conscience. Nor must [they] be prevented from acting according to...conscience.”²¹ Following logically from the rights to education and information is the right and responsibility for Catholics to critically evaluate and freely decide how to act in response to the information they have received. The ability to decide, based on accurate information, is integral to the ability to exercise another right: that to share one’s opinion with fellow members of the church.

CATHOLICS HAVE A RIGHT TO SPEAK OUT

Individuals

All Catholics have a right to speak their minds on matters that affect them and the church; all Catholics have a right to tell their priests and bishops what they need from the church.²² Even more, canon law recog-

nizes the right, and “at times even a duty,” for those who possess special knowledge, competence or status to express their opinions on matters that affect the church to their bishops as well as to the rest of the faithful.²³

Inside the church, the law recognizes that many people may have something to say, and it gives them a specific role or function that allows them to do so. Parents can speak out about the quality of education their children receive.²⁴ Teachers and catechists, too, should be heard insofar as they have specialized knowledge about methods of instruction so that education can be improved. Finance officers, advisors and members of church tribunals all have expertise that rightfully comes to bear on the actions of decision-makers in the church.

Religious scholars again, as a result of their special knowledge, have more than reasonable academic freedom to study; they have a similar right to discuss and publish their work. The law says they have the right to “express their opinion prudently,”²⁵ perhaps through publication in scholarly journals or through participation in conferences, academic gatherings and other opportunities that engage experts on both sides of a question to have a reasonable debate. Like the freedom to study outlined above, these scholars must remain respectful of the church’s teaching, even when they are in disagreement with it.²⁶

The church is active in the world, too. Catholics, especially lay Catholics, have a vast amount of experience and knowledge to share with church officials. Doctors, lawyers and historians can teach the church. Children, parents, business people and elected leaders all have something to contribute. The church teaches that “views openly and commonly expressed which reflect the aspirations of the people should always be carefully considered. This is especially binding on those in authority, whether civil or religious.”²⁷

Groups and Associations

The law explicitly gives Catholics the right to join together into groups for several purposes. The groups formed and governed by Catholics are suitable for pursuing charitable and religious purposes, as well as for promoting the Christian life.²⁸ This does not preclude the right of individuals to join together to pursue other goals that are not listed in the canons, but these are noted as particularly appropriate.

The rights that Catholics have as individuals are not surrendered when they join such a group. In some ways, one could expect that these rights would be strengthened as each Catholic gains in knowledge and experience from working together with others.

CATHOLICS HAVE A RIGHT TO BE TREATED FAIRLY

The law addresses this right in two key areas. The first is the protection in the code for a person's rights to privacy and to his or her good reputation. The second is through due process in the church's juridical and administrative actions.

Privacy and Reputation

The protection of a person's privacy and reputation is a basic right. Our human dignity demands that we are allowed to control some important aspects of our lives, and the safeguarding of privacy enables us to do that. Catholics also have a right to a good reputation. Slander and libel are against the church's law. Sadly, there is no effective mechanism to defend oneself or to demand reparations when one Catholic defames another. Too often, this has allowed vocal individuals or groups to attack a fellow Catholic publicly with no fear of retribution from the church authorities.

One of the worst examples of violating this right is when a Catholic is told he or she is “not a Catholic” or that one cannot call himself or herself a Catholic. This is a tactic used by individuals and groups, clergy and laity alike, to damage the reputation and privacy of a fellow Catholic. These claims often come out in the press and are most commonly related to political issues. What is the same about all of these declarations is that they are false. The church claims all baptized Catholics as members, and despite one’s standing in the church, one’s degree of participation or one’s favor with local hierarchy, no one can tell a baptized Catholic that she is not or cannot call herself a Catholic. Indeed, even the excommunicated Catholic is just that—a Catholic.

Due Process

The church’s law unambiguously asserts the role of due process for Catholics in three key areas.

First, canon law affirms the right of every Catholic to defend his or her rights in a church forum.²⁹ This is heartening for those who believe their rights have been infringed, but where are they to find such a “forum?” Sadly, it is nearly impossible for Catholics to defend their rights in this way because, with almost no exceptions, the bishops have failed to establish places for this to happen.

Second, if and when Catholics are to be judged, they can only be judged by a person with the legal authority to do so. In most cases, this authority is a bishop or the pope, or a person specially appointed by the hierarchy to judge a case. For example, groups claiming to defend the faith, parish priests and principals of parochial schools do not have the right or the responsibility to judge another Catholic according to the law.

Third, punishment is only to be imposed according to the rule of law. Arbitrary punishments are unacceptable, as in any punishment that a Catholic receives without some kind of fair, canonical process. Here again, though, the people who have the oversight of these processes are often the very ones who have a vested interest in the outcome of a case—the hierarchy. They are also the ones who have control over the availability of the sacraments, and frankly, over the action of most ministers and employees of the church.

Catholics should know that some process is required before they can be punished. In many cases, this includes receiving a written warning that a punishment is threatened, a chance to respond in a reasonable amount of time and an opportunity to defend oneself.³⁰

CATHOLICS HAVE A RIGHT TO PARTICIPATE IN THE CHURCH

Sacramental Life

The sacraments in the church fulfill a complex role wherein we worship God and express our faith, and at the same time we participate in the increasing holiness of each worshipper and of the church. While there may be restrictions on when and where the sacraments will be celebrated, they exist to be celebrated. Catholics have the right to participate in the faith life of the church. We have a right to receive the sacraments. The unjust denial of the sacraments to a Catholic fulfills no good purpose. In fact, it obstructs the very work the church sets out to fulfill.

There may be times when a Catholic cannot receive a sacrament. For example, a person who is excommunicated cannot receive communion. However, once the person has been reconciled with the church and the punishment has been lifted, he or she is to be welcomed back to receive the sacraments with the rest of the community. During those times, the person is certainly not excluded from attending worship.

It would be simple to give a list of stories from the news in which bishops, priests or lay people have announced that one or another Catholic should be denied the sacraments because they support or fail to support some public policy. Unfortunately, most of these claims are not founded in the law. The people who make the claims are uninformed about the church's law and about the specifics of the cases.

People are to be judged individually in canon law and according to the principles of due process. Above all, they should be judged in charity by their bishops—not by a simple priest, an angry mob or the press—and the sacraments, since they are so central an expression of our faith, should be denied only in the most serious circumstances.

Divorced and Remarried Catholics

The issue of divorce and remarriage deserves specific attention, as it affects many Catholics. Canon 915 provides certain circumstances in which Catholics can be denied communion, namely, those “who obstinately persist in manifest grave sin.” This has implications for Catholics who have divorced and remarried. (A divorce on its own does not incur penalty.) While there has been many calls for a change in this law, including one from three German bishops (Karl Lehmann of Mainz, Oskar Saier of Freiburg and Walter Kasper of Rottenburg-Stuttgart) who called for

clemency to take into account the many “complex individual cases,” the Congregation for the Doctrine of the Faith has so far rejected any change. “If the divorced are remarried civilly, they find themselves in a situation that objectively contravenes God’s law. Consequently, they cannot receive Holy Communion as long as this situation persists,” it said. While Pope John Paul II, who considered the matter at some length in his Apostolic Exhortation, *Familiaris Consortio*, recognized that each case should be treated differently, he did reaffirm the penalty.

“Pastors must know that, for the sake of truth, they are obliged to exercise careful discernment of situations. There is in fact a difference between those who have sincerely tried to save their first marriage and have been unjustly abandoned, and those who through their own grave fault have destroyed a canonically valid marriage. Finally, there are those who have entered into a second union for the sake of the children’s upbringing, and who are sometimes subjectively certain in conscience that their previous and irreparably destroyed marriage had never been valid.”³¹

However, he continued by reaffirming the practice “of not admitting to Eucharistic Communion divorced persons who have remarried.” He advised pastors that only those who cannot separate, “for serious reasons, such as for example the children’s upbringing,” should be excluded from the penalty provided they “live in complete continence, that is, by abstinence from the acts proper to married couples.”

The reality is, however, that it is only the local pastor who can impose this penalty. Any judgment of a “persistent sin” requires that a pastor both witness the sin and warn the parishioner against repetition. Therefore a blanket ban on receiving communion cannot be imposed.

Spiritual Life and Roles in the Church

Catholics also have a right to follow a spiritual life that they choose, provided it is consistent with church teaching. Together with this spirituality is a right to choose how to live one's life in the church, whether it is as a single or married lay person, whether in a religious community or in the secular world, and for men, whether or not to pursue a vocation as a priest. Catholics must be prepared and qualified for these roles and should expect their leaders to assist them in that preparation. There are some restrictions on who may be accepted into these different states of life in the church, but some people argue there are restrictions where there are not.

For example, many people have been arguing that gay men may not be ordained to the priesthood. This is unjust discrimination under the law. Canon law does put limits on who may be ordained—namely, baptized men only³²—but the exclusion of a man solely because he is gay is not based in the church law.

The law does exclude women from receiving orders, and while there is debate about the legitimacy of the reasons for the exclusion, it is nonetheless present in the law.

CONCLUSION

We often hear that “the church is not a democracy.” True enough, but neither is it a dictatorship or merely a vehicle for the opinions of one or even a few powerful men. The law of the church does not allow for anyone to be treated as a second-class citizen. It does not allow for deception or misinformation by leaders and administrators. It does not allow for all dissenters to be silenced. People who tell you otherwise are either uninformed or not being honest.

On the other hand, the law of the church does allow, even require, many things. Catholics have a right to know, a right to decide, a right to speak out, a right to be treated fairly and a right to participate in the life of their church. In order to realize these rights, ordinary Catholics must first know what their rights are. Then, they must demand that their rights be recognized by other Catholics—lay and ordained—and they must act in accord with these rights and their related responsibilities. When their rights are violated, they should seek to solve the dispute internally.

Unfortunately, the rights of ordinary Catholics do not get a lot of attention from the hierarchy. And even more unfortunately, the bishops of the world have not made the effort to establish—as the code indicates they should—avenues for Catholics to defend their rights. Is this because the rights of Catholics are more often infringed or violated by the hierarchy than by lay Catholics? Is it because the bishops and priests fear a well-informed, active laity?

Whatever the reason, it is unacceptable. It is time for the church—the people—to demand accountability from its leaders. Knowing and exercising your rights as a Catholic is a good place to start.

ENDNOTES

The Code of Canon Law: Auctoritate Ioannis Pauli PP. II promulgatus, Codex Iuris Canonici, Libreria Editrice Vaticana, 1983. Reprinted in *Code of Canon Law, Latin–English Edition*, Canon Law Society of America, 1983.

English translations of the *Code of Canon Law* from Beal, John P., James A. Coriden and Thomas J. Green, eds, *New Commentary on the Code of Canon Law*, Paulist Press, 2000.

- ¹ Pope John Paul II, “Apostolic Constitution, *Sacrae Disciplinae Leges*, of the Supreme Pontiff Pope John Paul II for the Promulgation of the New Code of Canon Law,” January 25, 1983.
- ² Canon 18.
- ³ Canons 213, 221§3, 912 and 1341.
- ⁴ Canon 223 § 2.
- ⁵ Canon 208.
- ⁶ Canon 793 §1.
- ⁷ Canon 802 §2.
- ⁸ Canon 217.
- ⁹ Canon 794.
- ¹⁰ Canons 796-806.
- ¹¹ Pope Paul VI, “Declaration on Christian Education *Gravissimum Educationis*,” October 28, 1965.
Pope John Paul II, “Apostolic Exhortation *Familiaris Consortio* of Pope John Paul II to the Episcopate, to the Clergy and to the Faithful of the Whole Catholic Church on the Role of the Christian Family in the Modern World,” November 22, 1981.
- ¹² Canons 1063, 1064, 1096.
- ¹³ Canon 241 §1.
- ¹⁴ Canon 795.
- ¹⁵ Canon 218.
- ¹⁶ Canon Law Society of America, *New Commentary on the Code of Canon Law*, Paulist Press, 2000, p275.

- ¹⁷ See canon 750 §1: “Those things are to be believed by divine and Catholic faith which are contained in the word of God as it has been written or handed down by tradition, that is, in the single deposit of faith entrusted to the Church, and which are at the same time proposed as divinely revealed either by the solemn Magisterium of the Church, or by its ordinary and universal Magisterium, which in fact is manifested by the common adherence of Christ’s faithful under the guidance of the sacred Magisterium. All are therefore bound to avoid any contrary doctrines.”
- ¹⁸ US Bishops’ Committee on Social Communication (1967). *Inter Mirifica*, 5. Pope Paul VI, “Decree on the Media of Social Communications, *Inter Mirifica*,” December 4, 1963.
- ¹⁹ Canons 492-4.
- ²⁰ Canon 1287 §2.
- ²¹ Vatican II, Pope Paul VI, “Declaration on Religious Freedom, *Dignitatis Humanae*, On the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious,” Promulgated By His Holiness Pope Paul VI, December 7, 1965.
- ²² Canon 212.
- ²³ Canon 212 §3.
- ²⁴ Canon 796.
- ²⁵ Canon 218.
- ²⁶ Canon 218.
- ²⁷ Second Vatican Council, *Communio et progressio*, 32.
- ²⁸ Canon 215.
- ²⁹ Canon 221 §1.
- ³⁰ Canons 1717-31.
- ³¹ *Familiaris Consortio*.
- ³² Canon 1024.

If you are interested in this subject you may also be interested in the following publications from CFFC:

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ISBN: 0-915365-76-6