



Adrian Loretan

University of Lucerne, Switzerland

<https://orcid.org/0000-0002-7677-9706>

Dignity of the Human Person

Abstract: The Vatican II fundamentally changed the ecclesiastical view towards the human person. Especially in *Nostra aetate*, *Gaudium et spes*, and *Dignitatis humanae* it strengthens the dignity of the human person and personal freedom as base for a world with equal rights for all mankind. Therefore, the council qualified discrimination of all kind as against God's will. These statements have a huge impact on the necessary further development of theology and canon law.

Keywords: Roman Catholic Church, Second Vatican Council, Vatican II, human person, freedom, human dignity, human rights.

The Vatican II emphasized the dignity of the human person (*Dignitatis humanae* 1). This shows the human rights hermeneutic of the council in a new light, which will be demonstrated in this article. Of course, it will take a long time until the pre-conciliar Church, “whom God donated a Second Vatican Council, will be the Church according to the ideas of the council.”¹

¹ Original text: Karl Rahner, *Das Konzil – ein neuer Beginn*, ed. Andreas R. Batlogg and Albert Raffelt (Freiburg i. B.: Herder, 2012), 49: “Es wird lange dauern, bis die vorkonziliare Kirche, der ein II. Vatikanisches Konzil von Gott geschenkt wurde, die Kirche des II. Vatikanischen Konzils sein wird” (German quotes in this article are translated by the author).

In 2015, a conference in Munich was inspired by Rahner's quotation, cf. Christoph Böttigheimer and René Dausner, eds., *Vaticanum 21. Die bleibenden Aufgaben des Zweiten Vatikanischen Konzils im 21. Jahrhundert* (Freiburg i. Br.: Herder, 2016), 16. Cf. Franz Xaver Bischof, Gerd Häfner, and Johanna Rahner, “4. Reform kirchlicher Strukturen. Einführung,” in *Vaticanum 21. Die bleibenden Aufgaben des Zweiten Vatikanischen Konzils im 21. Jahrhundert*, ed. Christoph Böttigheimer and René Dausner (Freiburg i. Br.: Herder, 2016), 171, which starts quoting: Karl Rahner, *Strukturwandel der Kirche als Aufgabe und Chance* (Freiburg i. Br.: Herder, 1972).

When will it be possible to claim—even in court, if necessary—the following theological statements of Vatican II as legal texts? “No foundation therefore remains for any theory or practice that leads to discrimination between man and man or people and people, so far as their human dignity and the rights flowing from it are concerned” (*Nostra aetate* 5b). So “[t]here is, therefore, in Christ and in the Church no inequality on the basis of race or nationality, social condition or sex [...]” (*Lumen gentium* 32).

Following this path, *Gaudium et spes* concludes “with respect to the fundamental rights of the person, every type of discrimination, whether social or cultural, whether based on sex, race, color, social condition, language or religion, is to be overcome and eradicated as contrary to God’s intent” (29). The “basic principles of human coexistence, like, for example, the social doctrine of the Church, (analogously) also apply in the Church,”² because the Church “coalesces from a divine and a human element” (*Lumen gentium* 8). Therefore, the Church must follow a path of learning and change,³ “without losing the basic structure that is instilled in it from Christ.”⁴

Remigiusz Sobański mentioned that the texts of Vatican II lead to different approaches of the role that canon law should play in the Church, mainly if the Church is to be seen as a society or a *communio*. He is more in favor of the second option. According to him, canon law, rooted in the mystery of the Church, does not play a peripheral role (like the principle “ubi societas, ibi ius”), but is linked to the essence of the Church’s mission.⁵

Nonetheless, the texts of Vatican II also state that “the secret character does not cancel the social character of the Church.”⁶ Pope Francis explicitly encouraged “not be afraid to re-examine them [meaning customs and ecclesiastical norms]. [...] Saint Thomas Aquinas pointed out that the precepts which Christ and the apostles gave to the people of God ‘are very few.’”⁷

² Reinhard Marx, “Die Leitungsaufgabe des Bischofs. Anmerkungen und Perspektiven,” in *Geist – Kirche – Recht. Festschrift für Libero Gerosa zur Vollendung des 65. Lebensjahres*. Kanonistische Studien und Texte 62, ed. Ludger Müller and Wilhelm Rees (Berlin: Duncker & Humblot, 2014), 42–43.

³ Cf. Remigiusz Sobański, “Rechtstheologische Vorüberlegungen zum neuen kirchlichen Gesetzbuch,” *Theologische Quartalschrift* 163 (1983): 185: “Auch gibt es rechtlich relevante Aussagen des Konzils, die überhaupt keinen Widerhall hervorgerufen haben. Aufgabe der Kanonisten wird es sein, diesen Zustand nicht nur festzustellen oder gar zu beklagen, sondern seinen Ursachen nachzugehen.”

⁴ Marx, “Leitungsaufgabe,” 43.

⁵ Sobański, “Rechtstheologische Vorüberlegungen,” 182.

⁶ Marx, “Leitungsaufgabe,” 43; original text: “[...] ohne dass die Grundstruktur, die ihr von Christus her eingestiftet ist, verloren gehen würde. Es gilt [...]: Der Geheimnischarakter hebt den Sozialcharakter der Kirche nicht auf.”

⁷ Francis, “Apostolic Exhortation *Evangelii Gaudium* (November 24, 2013),” *AAS* 105 (2013): 1038, nr. 43, quoting Thomas Aquinas, *Summa theologiae*, trans. Andreas Speer (Berlin: Gruyter, 2005), I–II, q. 107, a. 4.

Which Concept of Freedom?

Karl Rahner stated that since Saint Paul, freedom had not been mentioned very often in the Catholic Church.⁸ Thus, the concept of freedom had to be redeveloped in theological studies and ecclesiastical legal studies. But according to the Roman jurist Ulpian, justice is the constant and perpetual will to allot to every man his due. And what is justly due to the other? What is (objectively) due to him, of course. Does that not also include his (subjective) right?⁹

Freedom rights had a bad reputation in the Church for a long time, and one could not distinguish between two forms of freedom:

1. Freedom in a negative sense: For Thomas Hobbes, a free man is “he, that in those things, which by his strength and wit he is able to do, is not hindered to do what he has a will to.”¹⁰ All life goals, no matter how irresponsible, are considered to serve the purpose of realizing one’s freedom as long as they do not violate other persons’ rights.
2. Freedom in a positive sense is something different: “Hence man’s dignity demands that he act according to a knowing and free choice [...] not under blind internal impulse nor by mere external pressure. Man achieves such dignity when, emancipating himself from all captivity to passion, he pursues his goal in a spontaneous choice of what is good, [...]” (*Gaudium et spes* 17). Positive freedom is a prerequisite for every moral or legal decision. This is also proven by the fact that coercion of a legal act makes it invalid.¹¹

⁸ Cf. Karl Rahner, “Die Freiheit in der Kirche,” in *Schriften zur Theologie II*, ed. Karl Rahner (Einsiedeln: Benziger Verlag, 1958), 95.

⁹ Cf. Ernst-Wolfgang Böckenförde, *Geschichte der Rechts- und Staatsphilosophie. Antike und Mittelalter* (Tübingen: Mohr Siebeck, 2002), 242.

¹⁰ Thomas Hobbes, *Leviathan or the Matter, form & Power of a Common-wealth Ecclesiastical and Civil* (London, 1651), chap. XXI of the liberty of subjects. What it is to be free, accessed July 13, 2022, https://www.gutenberg.org/files/3207/3207-h/3207-h.htm#link2H_4_0251; German translation: Thomas Hobbes, *Leviathan, oder Stoff, Form und Gewalt eines kirchlichen und bürgerlichen Staates*, ed. Iring Fetscher, trans. Walter Euchner (Frankfurt a. M.: Suhrkamp, 1984), 163.

¹¹ Cf. Ian Carter, “Positive and Negative Liberty,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Stanford University, 1997–). Article published February 27, 2003; last modified November 19, 2021, accessed July 14, 2022. Positive and Negative Liberty (Stanford Encyclopedia of Philosophy/Spring 2022 Edition). Cf. <https://plato.stanford.edu/entries/liberty-positive-negative/>. Isaiah Berlin, *Two Concepts of Liberty. An Inaugural Lecture Delivered before the University of Oxford on 31 October 1958* (Oxford: Clarendon Press, 1958). Berlin’s notion of positive liberty is different from the one I discuss.

Personal dignity casts the Church's teaching in a whole new light. Aristotle and Thomas¹² assumed that women were incapable of rational action. Today, the equal dignity of men and women is emphasized as a fundamental truth of Christian anthropology (*Lumen gentium* 32), which has implications for the inclusion of women in ecclesial ministry (*Lumen gentium* 33, c. 228 CIC 1983).

Right as a Function of Freedom

In view of the Christian claim to truth and its authoritative mediation in the Church, is autonomous freedom and its establishment in Church institutions possible at all?¹³ The human being is understood in all his or her social relations as a subject of responsible freedom. This constitutes his or her undetachable dignity as a human person, of which the Declaration on Religious Freedom speaks (*Dignitatis humanae* 1).¹⁴ A Church that sees itself as a “great movement for the defense and protection of human dignity,”¹⁵ as John Paul II put it, depends on Church personalities and Church institutions who stand up for human dignity and the rights of all people that flow from it. “At the same time, however, there is a growing awareness of the exalted dignity proper to the human person, since [...] his rights and duties are universal and inviolable” (*Gaudium et spes* 26). That this is of course—in contrast to Thomas's thinking—also true for women and recognized by the fathers of the council: “Where they have not yet won it, women claim for themselves an equity with men before the law and in fact” (*Gaudium et spes* 9).

A good definition whether a law is just or unjust, gives the US Baptist pastor Martin Luther King. He fought against legal and social forms of disregard for Black people in the USA. For him, “an unjust law is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is

¹² Cf. Thomas Aquinas, *Summa theologiae*, I q. 92, a. 1 ad 2: “Et sic ex tali subiectione naturaliter femina subiecta est viro, quia naturaliter in homine magis abundat discretio rationis.”

¹³ Cf. Adrian Loretan, *Wahrheitsansprüche im Kontext der Freiheitsrechte* [Religionsrechtliche Studien 3] (Zürich: Edition NZN bei TVZ, 2017).

¹⁴ Cf. Gerhard Luf, “Rechtsphilosophische Grundlagen des Kirchenrechts,” in *Handbuch des katholischen Kirchenrechts*. 3rd ed., ed. Stephan Haering, Wilhelm Rees, and Heribert Schmitz (Regensburg: Pustet, 2015), 54: “Gemäß dieser Sicht soll der Mensch in all seinen sozialen Bezügen als Subjekt verantworteter Freiheit begriffen und wechselseitig anerkannt werden. Das macht seine unverfügbare Würde als menschliche Person aus, von der die Erklärung des II. Vatikanums über die Religionsfreiheit so eindringlich spricht.”

¹⁵ John Paul II., “Encyclical *Centesimus annus* (May 1, 1991),” *AAS* 83 (1991): 794–798, nr. 3–4.

a human law that is not rooted in eternity and natural law. Any law that uplifts human personality is just. Any law that degrades the human person is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality.”¹⁶ As soon as these theological propositions are legally enforceable, the Church will be able to speak more credibly of justice. For example, it will be able to take a stand against discrimination on the basis of sex (*Lumen gentium* 32; *Gaudium et spes* 29), and create instruments within its own ranks that would make discrimination impossible in the long term, “since it is contrary to God’s plan” (*Gaudium et spes* 29).

Instrument for the Unity of Mankind

Human rights are universal, so religious communities cannot be human rights-free zones.¹⁷ However, this is only possible if the concept of the person used in religious communities is compatible with the universal concept of person that underlies human rights.¹⁸

The universal concept of person is a prerequisite of every right and is thus relevant for the rights of religious communities. Every right that does not represent the universal concept of person is internally contradictory. Theology and ecclesiastical jurisprudence¹⁹ could serve the substantive enforcement of the universal concept of person and thus of human rights. Then, the Church will become a “sign and instrument [...] of the unity of the whole human race” (*Lumen gentium* 1). As a sacrament²⁰ of justice, the Church will be a “sign and

¹⁶ Martin Luther King Jr., *Letter from Birmingham Jail*, accessed July 12, 2022, <https://letterfromjail.com>.

¹⁷ Cf. Peter Kirchschräger, *Menschenrechte und Religionen. Nichtstaatliche Akteure und ihr Verhältnis zu den Menschenrechten*. Gesellschaft, Ethik, Religion 7 (Paderborn: Ferdinand Schöningh, 2016).

¹⁸ Cf. Burkhard Josef Berkmann, *Nichtchristen im Recht der katholischen Kirche*. 2 vols. ReligionsRecht im Dialog 23 (Münster: LIT, 2017).

¹⁹ There are different scientific approaches to relationship of the juristic and theological elements in canon law. Remigiusz Sobański strengthens a more important role of the theological aspects cf. Remigiusz Sobański, “Erwägungen zum Ort des Kirchenrechts in der Rechtskultur,” *Archiv für katholisches Kirchenrecht* 155 (1986): 3–15; Remigiusz Sobański, *Grundlagenproblematik des katholischen Kirchenrechts* (Wien: Böhlau Verlag, 1987). Other authors like Gerhard Luf or Adrian Loretan rather represent a model that integrates both aspects, cf. Luf, “*Rechtsphilosophische Grundlagen des Kirchenrechts*,” 42–69.

²⁰ Cf. Peter Handke’s understanding of the sacrament in relation to the sacrament of marriage: “Experience fragmentarily – dream completely.” Peter Handke, *Mein Jahr in der Niemandsbucht. Ein Märchen aus den neuen Zeiten* (Frankfurt a. M.: Suhrkamp, 1994), 730.

instrument [...] of a very closely knit union with God” (*Lumen gentium* 1), who, according to Jesaja (42, 1–7) and Matthew (25, 31–46), is a God of justice (Jer 30, 18).

Bibliography

- Berkmann, Burkhard Josef. *Nichtchristen im Recht der katholischen Kirche*. 2 vols., ReligionsRecht im Dialog 23. Münster: LIT, 2017.
- Berlin, Isaiah. *Two Concepts of Liberty. An inaugural lecture Delivered before the University of Oxford on 31 October 1958*. Oxford: Clarendon Press, 1958.
- Bischof, Franz Xaver, Gerd Häfner, and Johanna Rahner. “4. Reform kirchlicher Strukturen. Einführung.” In *Vaticanium 21. Die bleibenden Aufgaben des Zweiten Vatikanischen Konzils im 21. Jahrhundert*, edited by Christoph Böttigheimer and René Dausner, 171–173. Freiburg i. Br.: Herder, 2016.
- Böckenförde, Ernst-Wolfgang. *Geschichte der Rechts- und Staatsphilosophie. Antike und Mittelalter*. Tübingen: Mohr Siebeck, 2002.
- Böttigheimer, Christoph, and René Dausner, eds. *Vaticanium 21. Die bleibenden Aufgaben des Zweiten Vatikanischen Konzils im 21. Jahrhundert*. Freiburg i. Br.: Herder, 2016.
- Carter, Ian. “Positive and Negative Liberty.” In *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta. Stanford University, 1997–. Article published February 27, 2003; last modified November 19, 2021, accessed July 14, 2022. <https://plato.stanford.edu/archives/spr2022/entries/liberty-positive-negative/>.
- Francis. “Apostolic Exhortation *Evangelii Gaudium* (November 24, 2013).” *AAS* 105 (2013): 1019–1137.
- Handke, Peter. *Mein Jahr in der Niemandsbucht. Ein Märchen aus den neuen Zeiten*. Frankfurt a. M.: Suhrkamp, 1994.
- Hobbes, Thomas. *Leviathan or the matter, form & power of a common-wealth ecclesiastical and civil*. London, 1651, accessed July 13, 2022, https://www.gutenberg.org/files/3207/3207-h/3207-h.htm#link2H_4_0251.
- Hobbes, Thomas. *Leviathan, oder Stoff, Form und Gewalt eines kirchlichen und bürgerlichen Staates*. Edited by Iring Fetscher. Translated by Walter Euchner. Frankfurt a. M.: Suhrkamp, 1984.
- John Paul II. “Encyclical *Centesimus annus* (May 1, 1991).” *AAS* 83 (1991): 793–867.
- King, Martin Luther Jr. *Letter from Birmingham Jail*. Accessed July 12, 2022, <https://letterfromjail.com>.
- Kirchschläger, Peter. *Menschenrechte und Religionen. Nichtstaatliche Akteure und ihr Verhältnis zu den Menschenrechten*. Gesellschaft, Ethik, Religion 7. Paderborn: Ferdinand Schöningh, 2016.
- Loretan, Adrian. *Wahrheitsansprüche im Kontext der Freiheitsrechte* [Religionsrechtliche Studien 3]. Zürich: Edition NZN bei TVZ, 2017.
- Luf, Gerhard. “Rechtsphilosophische Grundlagen des Kirchenrechts.” In *Handbuch des katholischen Kirchenrechts*. 3rd ed., edited by Stephan Haering, Wilhelm Rees, and Heribert Schmitz, 42–69. Regensburg: Pustet, 2015.

- Marx, Reinhard. “Die Leitungsaufgabe des Bischofs. Anmerkungen und Perspektiven.” In *Geist – Kirche – Recht. Festschrift für Libero Gerosa zur Vollendung des 65. Lebensjahres*. Kanonistische Studien und Texte 62, edited by Ludger Müller and Wilhelm Rees, 39–47. Berlin: Duncker & Humblot, 2014.
- Rahner, Karl. “Die Freiheit in der Kirche.” In *Schriften zur Theologie II*, edited by Karl Rahner, 95–114. Einsiedeln: Benziger Verlag, 1958.
- Rahner, Karl. *Strukturwandel der Kirche als Aufgabe und Chance*. Freiburg i. Br.: Herder, 1972.
- Rahner, Karl. *Das Konzil – ein neuer Beginn*, edited by Andreas R. Batlogg and Albert Raffelt. Freiburg i. B.: Herder, 2012.
- Sobański, Remigiusz. “Rechtstheologische Vorüberlegungen zum neuen kirchlichen Gesetzbuch.” *Theologische Quartalschrift* 163 (1983): 178–189.
- Sobański, Remigiusz. “Erwägungen zum Ort des Kirchenrechts in der Rechtskultur.” *Archiv für katholisches Kirchenrecht* 155 (1986): 3–15.
- Sobański, Remigiusz. *Grundlagenproblematik des katholischen Kirchenrechts*. Wien: Böhlau Verlag, 1987.
- Thomas Aquinas. *Summa theologiae*. Translated by Andreas Speer. Berlin: Gruyter, 2005.

Adrian Loretan

La dignité de la personne humaine

Résumé

Le concile Vatican II a fondamentalement changé la vision ecclésiastique de la personne humaine. En particulier dans *Nostra Aetate*, *Gaudium et Spes* et *Dignitatis Humanae*, il renforce la dignité de la personne humaine et la liberté personnelle comme bases d’un monde où tous les êtres humains jouissent de droits égaux. Par conséquent, le Concile a qualifié toute forme de discrimination comme étant contraire à la volonté de Dieu. Ces déclarations ont un impact considérable sur le développement nécessaire de la théologie et du droit canonique.

Mots-clés: Église catholique romaine, Concile Vatican II, Vatican II, personne humaine, liberté, dignité humaine, droits de l’homme

Adrian Loretan

Dignità della persona umana

Sommario

Il Vaticano II ha cambiato radicalmente la visione ecclesiastica nei confronti della persona umana. Soprattutto in *Nostra Aetate*, *Gaudium et Spes* e *Dignitatis Humanae* rafforza la dignità della persona umana e la libertà personale come base per un mondo con uguali diritti per tutta

l'umanità. Pertanto, il concilio ha qualificato la discriminazione di ogni tipo come contraria alla volontà di Dio. Queste affermazioni hanno un enorme impatto sul necessario ulteriore sviluppo della teologia e del diritto canonico.

Parole chiave: Chiesa cattolica romana, Concilio Vaticano II, Vaticano II, persona umana, libertà, dignità umana, diritti umani