Human Dignity in the Vatican City

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Contents

Abstract

While Vatican law does mention human dignity, the values thereof are found in canonical law. Canon law establishes that true equality regarding dignity and action among the faithful by providing plurality activities in which the Church can operate. One of the Church's goals is to elevate human dignity to create cohesion of social order. The Church's Magisterium affirms the dignities of each person's rights while rejecting acts which violate human integrity. Canon law and the Church's Magisterium are recognised as limiting the exercise of legislative power of the State. These sources create a general theory of human rights for the Vatican to ensure justice regardless of culture, religion and ideology. It can be assumed, though, that freedom of rights of Vatican citizens can be limited from the need to safeguard Vatican public order.

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1 Introduction

1.1 The Legal Status of the Vatican City State

The Vatican City State was born by express provision of article 3 of the Lateran Treaty (the 'Treaty'), signed by Italy and the Holy See on February 11, 1929 and ratified by the same parties on June 7 of the same year. With this legal instrument, the Italian Kingdom (subsequently, the Italian Republic) undertook to recognise the Holy See's *full ownership and the exclusive and absolute authority and sovereign jurisdiction* over a part of the city of Rome (with a particular regime provided for San Pietro square), as well as sovereignty and exclusive jurisdiction over the above-mentioned part, refraining and abstaining from any interference (art. 4).

The Lateran Treaty between the Kingdom of Italy and the Holy See was one of the three instruments – in addition to the Concordat and the financial Agreement – that have been enforced in accordance with the law n. 810 of May 27, 1929 with which the end of the '*roman question*' was ultimately marked. (Clementi 2009, p. 32–39 on the historical aspects related to the roman question and the Lateran Treaty. The question was born nearly 60 years before with the military occupation of the papal state by the Italian Government with the Breach of Porta Pia, on September 20, 1870.)

By virtue of its constitutional structure, the Vatican City State constitutes itself as an elective absolute monarchy whose Supreme Pope, the supreme guide of the Catholic Church, is declared '*Sovereign*' with fullness of '*legislative, executive and judicial powers*' (Fundam ental Law of the Vatican City State, 2000, Art. 1, para. 1); it is an enclave State as its territory is completely surrounded by the Italian State and it is qualified as '*neutral territory'* and '*inviolable'* as article 24, paragraph 2 of the Treaty states.

The Vatican City State was born to bring to the Holy See '*the absolute and visible independence*' and to guarantee '*an indisputable sovereignty in the international matters*', as indicated in the preamble of the Treaty, and therefore with instrumental function compared to the mission of the Holy See (the Treaty between the Holy See and Italy, 1929, Art. 2 says 'Italy recognizes the sovereignty of the Holy See in the international realm as an attribute in its nature in conformity with its tradition with the requirements of its mission to the world.'); the latter had full ownership as well as an absolute and exclusive power over the Vatican and its appurtenances (Trattato Fra La Santa Sede e l'Italia 1929, Art. 3). Between the Vatican City and the Holy See, there is an actual real union which involves the two subjects both having legal personality under international law (Cammeo 1932, p. 69); the Holy See will decide, from time to time, which of the two legal entities of the union will be called on to act within the international legal order.

These peculiarities led the doctrine considering the Vatican City State as a 'Patrimony State' of the Pope (Donati 1996, p. 33 et seq.), a definition borrowed

from the historic concept of *Patrimonialstaat*; this definition can be accommodated, however, bearing in mind that the Pontiff may have neither the Vatican territory nor the sovereignty in an absolute way. As to the first profile, if Holy See moves into other parts of the globe (as happened at the time of the so-called 'Avignon Papacy', the Vatican territory will return under Italian sovereignty (Cardia 2002, p. 255); as for the second, it should be recalled that, despite the Supreme Pontiff being the legislator of the State, this power is *ipso jure* limited by the divine law, either positive or natural.

Provided with autonomy, autodichia and autocracy, the Vatican City State (VCS) is configured as an original legal order capable of relating with others in a position of equality as to external affairs and on a position of supremacy on internal affairs. The VCS possesses a neutral and inviolable territory (the geographical area having a surface area of 0.49 km^2, delimited according to the map outlined in Annex 1 of the Treaty) in which it exerts an undisturbed supremacy in the carrying out of the legislative, executive and judicial powers as considered by the Holy See, understood in a narrower sense as the person or the office of Pontiff ex Canon 361 c.j.c. (Jemolo 1929, p. 193). In the Vatican territory, subject to the sovereignty of the Pope, the population (Cardia 1994, p. 21, we prefer to use the expression 'population' instead of 'people' by virtue of the observations made therein) consists of individuals among whom there is a necessary link founded only– notwithstanding any ethnic, linguistic, cultural, or political identity – on confessional membership and on citizenship (D'Avack 1994, p. 170 et seq.). In accordance with article 9 of the Treaty, it is not possible to obtain citizenship through birth; one is not born a Vatican citizen but you become one on the basis of criteria that are essentially, though not exclusively, functional (that is, by reason of the service provided by the Vatican citizen to the Holy See) (Ruffini 1936, p. 301 et seq.).

It is quite obvious that – in the case of the VCS – the peculiarity of its institutional purpose closely influences the *status civitatis*: you become Vatican citizen in the interest, and to the service of, the institution by actively contributing to achieve the aims that the Vatican State sets forth (Cardia 1994, p. 18 et seq.). There has been talk– in this regard – about citizenship which is possible to obtain *ex jure muneris*, namely as a tool to best fulfill [one's own] service as a function of the realisation of the constitutive element of the State. Vatican citizenship should be seen as a tool to realise the *diakonia*: not a condition for exercising rights, definitely not the political participation, not a means to build or strengthen a nonexistent national identity, but a legal condition able to optimise the possibilities for some *christifideles* to fulfil their pro bono *Ecclesia* service (Fumagalli Carulli 2003, p. 144; Berlingò 2010, p. 2 et seq.).

2 The System of Sources of the Vatican City State

The VCS's legal system looks like as an organic legal *corpus* and it is articulated in a wide range of sources, some of which specifically issued for the VCS by the Vatican legislator, others, with an heteronomous character, coming from other legal systems that, at the request of the sovereign, are employed in the Vatican legal system. Recently, there has been several regulatory interventions which have amended and

supplemented the original system of sources foreseen in 1929; there has been talk of '*season of regulatory renewal*' and of '*lush blooming*' (Dalla Torre and Boni 2014, p. 12) of legislative measures which affected the law of the VCS as a whole; an original system based on six laws, marked with roman numerals from I to VI, respectively entitled the *Fundamental law of Vatican City, Law on sources of law, Law on citizenship and residency, Law on administrative system, Law on economic, commercial and professional system and Law on public safety.* (The same laws have been published on the special *Supplemento* of the *Acta apostolicae Sedis* on June 8, 1929 and entered into force on the same day of their publication.) The six laws (Giannini 1993, p. 7; the elaboration of the six laws was the result of the professional competence and of the rigorous work done by experts appointed by Pope Pius XI, such as remarkable jurists like Francesco Pacelli and Federico Cammeo), together with the Lateran Treaty, represented from the beginning what efficaciously has been called the *fundamental outline of the Vatican legislation* (Bonnet 2009, p. 464), laying the foundations of the organisational structure of the Vatican State. However, over time, this first fundamental legislative apparatus, which constituted nearly a century the legal framework (Dalla Torre and Boni 2014, p. 12) of the State erected in 1929, has been changed and integrated through subsequent works. In fact, other laws and legal provisions have been enacted and some of those originally entered into force in 1929 have instead been revised.

Law N. I of 1929, the first of the six laws, identified the original institutional architecture of the VCS and the extent of the Pope's sovereign powers by the bodies delegated by him, so that it has been qualified as a *Fundamental Law*. In this context, the promulgation by the Supreme Pontiff John Paul II, on November 26, of a new fundamental law of Vatican City State, in force since February 22, 2001, was a moment of great importance for the Vatican legal system; it entirely replaced the previous legislation, repealing all the provisions contrary to it. In fact, in the 70 years thereafter, new needs appeared, and some innovations were necessary compared to the initial configuration of 1929, without, however, upsetting the original drawing.

The reasons for the innovation, briefly stated in the preamble of the *Fundamental Law*, were basically twofold: the need to provide systematic and organic form to the partial changes introduced in subsequent stages in the VCS's legal system, and the will to make the Vatican legal system correspond better to the institutional aims of the statehood entity.

As part of a systematic regulatory compliance of the VCS's legal system, after the enactment of the new fundamental law of 2000, review of law n. II of 1929 seemed appropriate, which, in direct connection and almost as a continuation of law n. I, defined how and on what terms the legislature could and should be exercised. (Law n. I 1929, Art. 5, Para. 1, regarding the power to issue laws peculiar of the Roman Pontiff, in its office of Head of State, the reservation of delegation of it, was required for the Pope, to determine disciplines or individual objects, to the Governor.)

Law n. II of 1929 was then repealed and replaced by the new *Law on the sources of law of Vatican City State*, n. LXXI, October 1, 2008, enacted with *Motu Proprio* by Benedict XVI, which confirmed the sources' system envisaged in the previous law, adapting it to the new configuration of the State powers outlined in the new

fundamental law of 2000. Under the new law on sources, the system is articulated through the integration of *proper* Vatican sources (enacted by VCS's authorities on behalf of the Supreme Pontiff, as sole and absolute holder of the sovereign power), canon law (which, as law of the Church, is in full force in the VCS, with the de facto limit on circumstances specific to the Vatican) and Italian State law (only in *supplementary* terms and with limits to non-opposition to the divine law, to the general principles of the *ius canonicum*, and to rules of the Lateran Pacts). To these sources, in accordance with article 1.4 of the law LXXI of 2008, the rules of international law must be added (both general and contractual rules, i.e. resulting from Treaties), as long as they are not contrary to canon law.

As a subject of international law, the Vatican State is enabled to draft Treaties and to comply with the obligations arising therefrom; its representation regarding diplomatic relations is reserved to the Supreme Pontiff, who exercises it through the Secretary of State (Canon n. 361 of the Codex Iuris Canonici).

But the Pope, upon whom the interests of both the Catholic Church that the VCS depend (being sovereign of both), is the one who acts internationally under the name of the Holy See without having the obligation, under international law, to specify every time in what capacity he acts. It is therefore usually the Holy See, and the Secretary of State, which negotiates and signs the effective Treaties of the VCS. In fact, as a general practice, it is possible to detect by papal chirographs three different formulas used by the Pope in which it is indicated that the performing actor is, respectively: the Holy See *(tout court)*, the Holy See *also and on behalf of the VCS*, or the Holy See in the name and on behalf of the VCS.

3 The Principle of the Respect for Human Dignity in the Vatican System

Analysing the Vatican legislation, it is noted that neither in the fundamental law, the law on the Government, nor in the law of sources can one find an explicit reference to the concept of human dignity. It would seem, therefore, that the principle of protection of human dignity – not being explicitly invoked in the core of the Vatican laws that form the outline of the State – does not constitute a basis of the Vatican constitutional system. This conclusion should be rejected, however, since the canon law, which is, as mentioned above, one of the heteronomous sources of the Vatican system itself, includes the principle of human dignity as the framework of the system.

In this regard, canon 208 states that *true equality regarding dignity and action* (Canon n. 208 of the Codex Iuris Canonici) exists among all the faithful in Christ, which is necessary for building up the Body of Christ, through the various tasks and functions for which everyone is responsible.

Therefore, there is, more precisely, an equality to allow the knowledge of a compendium of rights (and duties) deriving from the dignity of the faithful as a person in baptism (Navarro 1992, p. 154): the Codex includes many differences among the faithful but, considering the teaching of the Council, these would consist of providing different functions to each of the faithful, as well as the image of the

mystical body of Christ had taught, and they would no longer be based on a *status*. This is what is called the principle of variety, which preserves equality against the risk of egalitarianism, not only by providing for plurality of forms and activities with which the Church can operate, but also the various functions and occupations that relate to each of the faithful, admitting, as a matter of fact, the legitimacy of a hierarchical order (Hervada 1989, p. 37; Marzoa et al. 1996, p. 59–60). Indeed, the faithful are obliged with compliance towards pastors, representatives of Christ, and towards what they *declare as teachers of the faith or establish as rulers of the Church* (Canon n. 212 of the Codex Iuris Canonici).

Bear in mind, this is not a mechanical observance of imposed obligations, rather, every believer should have the right/obligation to share her or his own thought to the sacred Pastors in deference to a spirit of cooperation for the good of the Church, always preserving the common good and the dignity of people (Marzoa et al. 2002, p. 83). Such preachers of the divine word should propose to the faithful in primis *those things which one must believe and do for the glory of God and the salvation of humanity.* Secondly, they have the task of imparting *to the faithful also the doctrine which the magisterium of the Church sets forth concerning the dignity and freedom of the human person, the unity and stability of the family and its duties, the obligations which people have from being joined together in society, and the ordering of temporal affairs according to the plan established by God* (Canon n. 212 of the Codex Iuris Canonici). It is evident how this second point is one of the most interesting findings of the Vatican Council II, particularly with regard to the Church's mission in temporal reality. It has the primary task of pointing men to the way to salvation, but it also plays the other and no less important function of elevating human dignity with the aim of a full cohesion of social order and indispensable guide to every daily activity of man (Marzoa et al. 1996, p. 768).

However, human dignity is not only recognised to the faithful. In fact, the magisterium affirms that the dignity of the person –of each person – is a supreme value, and *universal and inviolable* (Gaudium et Spes 1965, 26) rights derive from it. Man, in function of it, should be able to satisfy his basic needs: the right to food, to clothing, to a home, to freely choose his status and to found a family, the right to education, to work, to reputation, to respect, to necessary information, to act according to conscience, to privacy, and to freedom of religion (Gaudium et Spes 1965, 26). At the same time it is necessary to firmly reject anything that violates the integrity of the human person (murder, abortion, euthanasia, mutilations, psychological compulsions, etc.) and that offends the dignity, such as *subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children, as well as disgraceful working conditions* (Gaudium et Spes 1965, 27). One notices that the Vatican concept of human dignity corresponds inextricably to those that the lay jurist would call the fundamental rights, which are as such for the Church, because only they can give substance and consistency to the concept of dignity, and, as such, they can only derive directly from the natural law.

Any discrimination against men or harassment of them because of their race, color, condition of life, or religion would be contrary to the will of Christ (Nostra Aetate 1965, 5). This principle, reiterated by the Vatican Council II, is of extreme

importance, as it is is the true pulsating heart of human rights as recognised by the majority of national and international sources.

It is precisely human dignity, with all that it brings, that is, the individual and inviolable rights placed in the united community in Christ, which constitutes the *foundation for the relationship between the Church and the world,* as well as *the basis for dialogue between them* (Gaudium et Spes 1965, 40). The Church has a mission on earth, which is the salvation of souls, and it is through mission that, by spreading the divine light upon the world, *heals and elevates the dignity of the person*, revealing the man the true and deep sense of his own existence (Gaudium et Spes 1965, 40).

Man will always grow a healthy tension to discover his own origins and meaning of life and the mystery of death, which only God, through the revelation of the Son, can reveal. The Church's task will be to spread the Gospel of Christ because only through it and not with human laws will man be truly free and his own dignity will be preserved from false opinions (Gaudium et Spes 1965, 41). It is the Church and the Church alone which *proclaims human rights*, which are protected only in God and they do not exist apart from Him (Gaudium et Spes 1965, 41).

By virtue of Canon 208 and the Church's Magisterium, the Vatican system recognises therefore a fundamental nucleus of inviolable rights that has its ontological root in the in-suppressible value of the dignity of the human person. This fundamental nucleus, linked to natural divine law, is in-suppressible by any human authority, and therefore constitutes a limit not only to the exercise of legislative power of the State, but also to the normative dimension of ecclesiastical authority (John XXIII, Pacem in Terris 1963, 5 and 46; Corecco and Gerosa 1995, p. 21 et seq.).

Moreover, because the canonical system is a tool at the service of the Church that aims to achieve the communion between the faithful, there is a need to ensure and refine those inviolable rights, highlighting their connection with the founding goal of the exercise of legislative power within the Church itself. A power of which the objective is not to create spaces of intrusion of the constituted authority in the subjective sphere of the individual, rather, its primary purpose is to 'give the assurance that Word and Sacrament celebrated in the Church today are still the same Word and Sacrament instituted by Christ' (Corecco 1981, p. 1221).

Hence, in the canonical system, an instrument connected to the mystery of the Incarnation that recurs in history through the mystery of the Church, the guarantee of human rights should be limited to that 'fundamental nucleus' able to fit itself into a theological-supernatural reality that, by nature, is connected with the charity of the Word and Sacrament of the Church (Errázuriz 1994, p. 33 et seq.).

It is therefore true that, under both Canon 208 and the Church's Magisterium, human dignity and natural law become Cartesian axes on which the Vatican system knows a general theory of human rights, understood as an instrument intended to ensure substantial justice, which knows no boundaries of cultures, religions, and ideologies, but stands as inescapable canon of respect for human dignity, the common good, peace among peoples, regardless that substantial justice requires that God be constituted as a postulate of practical reason, and that human rights cannot be considered as the result of an abstract mercantilist bargaining between

pressure group or, worse, as the automatic recognition of all claims brought by more or less influential pressure groups in the social body.

Human rights, according to Benedict XVI, become 'moral claims particularly meaningful, sustained and expressed by legal norms' (Pariotti 2008, p. 144). The legal reflection of some values is objectively necessary to ensure to man the full protection of its own human dignity, justice, freedom, and respect of universal moral law, so such rights cannot establish ethics, but it is the objective ethics that justifies their enucleation and respect (Gerosa 2009, p. 68 et seq.).

Upon such an explicit connection with the dignity of man and Revelation, any rule completely prohibiting, within the VCS, the exercise of fundamental rights rooted in natural law should be considered irrational, as any interpretation of Vatican law directed at fully repressing such rights should be considered erroneous and inapplicable. Instead, it is perfectly reasonable to assume that freedom rights of Vatican citizens and residents can be limited, as to their exercise, from the superior need to safeguard the Vatican public order (Paul VI, Dignitatis humanae, 7), intended to identify the set of fundamental principles on which the VCS's ethics structure is based on (Barile 1980, p. 1106 et seq.).

Hence, as an example, it can be said in the Vatican City that religious ceremonies of non-Catholic worships, the construction places of worship of confessions different from the Catholic ones (Law n. VI, art. 1), and the constitution of associations and confessional groups which do not have an organic relationship with the Catholic Church (Law n. VI, art. 3–4) (D'Avack 1994, p. 174) should still be regarded as prohibited, while worship acts made by non-Catholics are lawful, if they are citizens, residents, or authorized to enter, in private places as well as the possession of religious books aimed at carrying out acts of worship cannot be prohibited (Cammeo 1932, p. 384). And it can also be said that, within the borders of the State of Vatican City, freedom of the press and freedom of expression are fully protected, unless their exercise undermines the interests and fundamental values of the State.

4 Conclusion

The recognition of the superiority of principles of human dignity recognised in canon law and church doctrine forms the basis for human dignity in the Vatican City State. As the official function of the Pope as both head of the Vatican State and the Holy Sees are essentially combined, the canon law established by the Church applies fully to the law of the State. Since the establishment of the Vatican State through the Lateran Treaty, human dignity has come to form a fundamental point of governance for the state.

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