



CHAPTER 6

Dealing with Conflict and Dissent in the Roman Catholic Church. An Inventory from the Perspective of Canon Law

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Wherever people live together in communities, differences of opinion and disputes cannot be avoided. Usually, the law serves to resolve such conflicts within a community in an orderly manner and conduces to restore legal peace. Amongst people who form a community of faith, there are often conflicts about the right doctrine and its preservation or reform. It is especially those conflicts that raise the question of how a religious

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community deals with dissent, to what extent it is tolerated and perhaps even regarded as productive, or whether and, if so, at what point it fights dissent for the sake of the common conviction of faith.

The Catholic Church has differentiated legal rules and procedures on how to deal with conflicts and dissent within the communion, and it also uses legal means to try to prevent deviations that endanger the community and the faith. These canonical regulations convey the self-understanding of the Catholic Church and therefore the theology of the legislator, especially its ecclesiology. Therefore, the following remarks are not about a personal theological draft but aim to deliver realistic information on the official doctrine and applicable law of the Catholic Church.

PREVENTION OF CONFLICT AND DISSENT ...

... Through General Commitment of the Faithful

The Code of Canon Law (CIC) obliges all Catholics to always maintain communion with the church in expression and behavior (c. 209 § 1) and to fulfill their duties to the universal church and their respective particular church with “great diligence” (§ 2). According to canon law, Catholics have to “direct their efforts to lead a holy life and to promote the growth of the church as well as its ongoing sanctification” (c. 210) and “have the duty and right to work so that the divine message of salvation more and more reaches all people in every age and in every land” (c. 211). Above all, they are bound to follow with Christian obedience those things which the sacred pastors declare as teachers of the faith or establish as rulers of the Church (c. 212 § 1). A breach of this legal obligation is punishable by law and extends in matters of doctrine to all teachings presented by the Church’s Magisterium. It depends on the degree of the binding force of the respective doctrine which precise attitude of response is required to a declaration of the Church’s Magisterium and thus is to be determined according to the special norms of canon law: In the case of definitive, which means infallible, doctrines of the Revelation, canon law requires obedience of faith as an irrevocable assent to divine authority (c. 750 § 1). Definitive doctrines, which are not themselves contained within the Revelation, but are, according to official classification, closely related to it and presented as infallible, are, although merely requested by the Church “to be firmly embraced and retained” with an obedience that is equally irrevocable (c. 750 § 2). This, for example, applies to the Church’s

doctrine on the impossibility of women's ordination to the priesthood, the prohibition of euthanasia, or the illegitimacy of prostitution.¹

In the case of non-infallible doctrines of the authentic Magisterium, for example, the moral judgment on homosexuality or contraception, Catholics are obliged to a religious submission of intellect and will (cc. 752f.), meaning, to external observance and intellectual assent and appropriation of the respective doctrine.² An obedient silence is permissible, as the maximum deviation from non-infallible teachings of both the universal and particular church's Magisterium, and only in justified exceptional cases.³ The purpose of this *silentium obsequiosum* is "not allowing non-consent to become apparent beyond the private sphere."⁴ Any public dissent would violate the obligation to obey according to cc. 752f.⁵

Theologians and canonists have long criticized in particular the legal duty of obedience to teachings of the non-infallible universal Magisterium and its penal sanction: Some of them proclaim that the legal situation created by CIC/1983 "is more than problematic, at least in regards to the academic freedom of theology, the respect of freedom of conscience, and concerning the formation of a *sensus fidelium* in the Church"; canon law would do well "not to establish a legally sanctioned claim to obedience that gives the impression that obedience to the faith and orthodoxy is to be equated with consent to an abstract doctrinal system."⁶ However, Pope John Paul II only once modified the CIC with regard to the Church's teaching function: In 1998, he closed a legal gap regarding the faithful's duties to obey. Since then, all Catholics are legally obliged to adhere to all infallible doctrines that are not part of the Revelation (c. 750 § 2).⁷ Disobedience may be punishable by law (c. 1371 n. 1¹⁹⁹⁸; c. 1371 § 1²⁰²¹).

... Through Special Precautions for Clerics and Other Multipliers

Since 1983, canon law even provides specific requirements for candidates for the clerical state and for lay multipliers.

Clerics

All clerics are legally "bound by a special obligation to show reverence and obedience to the Supreme Pontiff and their own ordinary" (c. 273). When finally editing the CIC, Pope John Paul II deliberately placed this obligation at the top of the catalog of clergy duties and rights.⁸ To ensure that clerics actually yield the required obedience, they should be formed

accordingly through seminary education (c. 245 § 2). The diocesan bishop must convince himself of the suitability of a candidate twice during the period of formation, and once more each time ahead of the ordinations to diaconate and priesthood (cc. 1051f.). Before admission to the diaconate, each candidate must also make a profession of faith according to the formula approved by the Apostolic See (c. 833 no. 6), which signifies confessing his present “total identification with all the teachings of the Church.”⁹ For this purpose, the formula of the *professio fidei* was last amended in 1989, and “to complete it”, the obligation to take the oath of fidelity was extended to candidates for the ordination as deacons.¹⁰ This composition of a present confession and a promissory oath has served “like the former oath against modernism as a preventive assurance and safeguard of loyalty”¹¹ in the Latin Church ever since.

Any priest who later assumes the office of a pastor (*parochus*) or becomes vicar general, episcopal vicar, or judicial vicar must again take both the *professio fidei* and the oath of fidelity (c. 833 no. 5f.). All those who are appointed bishop or who are legally equal to the diocesan bishop are also obliged to take the *professio fidei* (no. 3); future bishops must also take a special oath of fidelity before taking office, in which they promise perpetual fidelity to the pope and commit, among other things, to giving an account of their conduct of office to the Apostolic See and to obediently accepting and carrying out its orders or advice.¹² Candidates for an episcopal office have previously undergone the so-called informative process by which the Apostolic Nuncio prepares their assessment of suitability by the Apostolic See (cc. 377 § 3; 378 § 2). In this procedure, which is carried out under the pontifical secret, the Apostolic Nuncio asks selected clerics and laypersons, among other things, for their assessment of the candidates’ fidelity to the Magisterium of the Church, in particular to the documents of the Holy See on the priesthood, the ordination of women to the priesthood, marriage, social justice, and sexual ethics.¹³ Thus, only those who can be expected to be obedient and conform to doctrine are expressly considered for the highest particular church government office of the diocesan bishop.

Teachers of Catholic Religious Education

Teachers of religious education are selected according to similar criteria: The diocesan bishop does not only have to regulate and watch over this area in general (cf. 804 § 1) but he must also ensure that all teachers of religious education within his diocese “are outstanding in correct

doctrine, the witness of a Christian life and teaching skill” (c. 804 § 2). He therefore “has the right to appoint or approve teachers of religion and even to remove them or demand that they be removed if a reason of religion or morals requires it” (c. 805).

Theologians

Lecturers in Catholic theology are also subject to preventive control by the Church’s authority: according to canon law, the latter must generally ensure that only those lecturers are appointed to ecclesiastical institutions of higher education who also “are outstanding in integrity of doctrine and probity of life” (c. 810 § 1; cf. c. 818). Those who teach a theological discipline also need a mandate from the competent ecclesiastical authority (c. 812). Theologians, who teach disciplines pertaining to faith or morals also have to take the *professio fidei* (c. 833 no. 7). Since 1989, they usually have to complete the *professio fidei* by taking the oath of fidelity. In addition, the “nihil obstat” of the Holy See must be obtained before each promotion to the highest category of teaching or before a permanent appointment of a lecturer.¹⁴

When Pope Francis revised the ecclesiastical law on higher education in 2017, he not only confirmed all these provisions but also reaffirmed the continued validity of the Instruction “on the ecclesiastical vocation of the theologian” with which the Congregation for the Doctrine of the Faith in 1990 inculcated and concretized the duty of obedience of theologians to the Magisterium (c. 218).¹⁵ In addition, the legal obligation remains that “[i]n studying and teaching the Catholic doctrine, fidelity to the Magisterium of the Church is always to be emphasized” at Faculties of Catholic Theology and that, “especially in the basic cycle, those things are, above all, to be imparted which belong to the received patrimony of the Church”. Opinions that are only probable, but not secured, and personal views of the teachers, “which come from new research are to be modestly presented [only] as such.”¹⁶

DEALING WITH AND PROCEDURES FOR CONFLICTS ...

In addition to the aforementioned obligations, all the faithful must always “take into account the common good of the Church, the rights of others, and their own duties toward others” (c. 223 § 1). None of the rights of the faithful in the Church, even if they are sometimes called “fundamental”, are fundamental rights in the sense of state law.¹⁷ They are always

subject to the reservation that the ecclesiastical authority may direct the exercise of rights in view of the common good of the Church (c. 223 § 2).¹⁸ If the faithful see their rights violated or threatened, they can certainly vindicate them within the Church and, if necessary, defend or enforce them by legal means (c. 221 § 1).

At the same time, every diocesan bishop is *ex officio* obliged “to promote the common discipline of the whole Church and therefore to urge the observance of all ecclesiastical laws” (c. 392 § 1). Furthermore, “he is firmly to protect the integrity and unity of the faith to be believed” (c. 386 § 2). His legal duty “to exercise vigilance so that abuses do not creep into ecclesiastical discipline”, regards amongst other things “especially [...] the ministry of the word” (c. 392 § 2). In the episcopal oath of fidelity, he specifically swore to be ever vigilant in that regard, before taking office.¹⁹ If the faithful dissent from binding church guidelines in matters of doctrine or personal conduct of life, it can have specific consequences under church law, for example, non-admission to sacraments or loss of the “*missio canonica*”. Some violations of church law or doctrine are even criminal offenses and can be prosecuted accordingly.

Against this background, different procedures are used in the Catholic Church, depending on the subject matter and constellation of the conflict, to settle a dispute, punish violations of the law through disciplinary or penal action, and to remove dissenting multipliers from their office if necessary.

... *Between Individual Catholics*

According to canon law, all the faithful “are to strive diligently to avoid litigation among the people of God as much as possible”, as long as justice is not compromised as a result, or “to resolve litigation peacefully as soon as possible” (c. 1446 § 1). However, they are also entitled to legitimately assert their rights in the Church and to defend them before the competent ecclesiastical authority according to the norm of law (c. 221 § 1). This common right of all faithful to legal protection is concretized in both Codes in the introductory provisions on procedural law: according to c. 1491, any right is in principle enforceable. The object of adjudication in the Church is both the prosecution or protection of rights of physical or juridic persons and the declaration of juridic facts.²⁰ An ecclesiastical court can therefore be called upon to enforce and protect subjective rights against endangerment or infringement, that is, to realize a legal claim.

The judge should “encourage and assist the parties” at the very beginning of a litigation, as well as at any other time in the trial, “to collaborate in seeking an equitable solution to the controversy,” whenever he sees any prospect of success in this regard (c. 1446 § 2). If a litigation only concerns the private good of the parties and not also the common good of the Church, the judge shall also consider whether the litigation can be ended by an agreement, that is an amicable settlement of the parties, or by a judgment of arbitrators according to cc. 1713–1716 (c. 1446 § 3).²¹

Canonists therefore have long called for the Church to “give greater importance to the guaranteed subjective rights of the faithful”: For wherever faithful receive appropriate attention from bishops and their tribunals, this can surely help to “overcome the current discomfort of many [...] that] having right(s) and getting one’s right is not the same within the *communio* of the Church.”²² Unfortunately, the indication of this problem is still relevant today.

... *Between Catholics and Church-Run Institutions*

A special case, which is to be mentioned only briefly because it is not regulated by universal church law, is that of conflicts between Catholics as employees and Church-run institutions as employers: Although, in principle, state labor law applies to all employment relationships under private law in Germany, the right to self-determination of religious communities opens up considerable scope for shaping employment relationships: Therefore, Church-run institutions in Germany do not have to set up work councils or personnel boards, but may go their own way through so-called “Mitarbeitervertretungen.” The negotiation of working conditions does not take place according to the system of collective labor agreements with possible collective action either, but in so-called “Arbeitsrechtlichen Kommissionen” filled with equal representation. According to the “Grundordnung des kirchlichen Dienstes” adopted by the German Bishops’ Conference, the relationship between Church institutions and their employees is not characterized by the opposition of contentious interests but by the guiding principle of the so-called “Dienstgemeinschaft”. Accordingly, all those working in the Church and its institutions, regardless of status, function, and religion, participate equally in the fulfillment of the mission.²³ Employers and employees provide a joint service; there may be different interests, but in view of the

common mission of the Church, they must be reconciled as consensually as possible.

Until 2022, the principle understanding of an employment as service in the Church also resulted in the so-called “Loyalitätsobliegenheiten” for employees, which went beyond the actual work performance, but affecting the personal conduct of life. Since according to Art. 3 (3) of the Basic Law for the Federal Republic of Germany no one may be disadvantaged because of their religious beliefs and the German state must ensure a legal balance in the event of conflict regarding employment relationships in the Church. For this reason, the scope and limits of the Church’s right to self-determination in the area of individual labor law are regularly reviewed by state labor courts. Up until now, German courts have generally been sympathetic to the church. Whether and to what extent this will change as a result of the case law of the Court of Justice of the European Union²⁴ remains to be seen.

There is a similar situation in the United States.²⁵ Here, church institutions can also make demands on the private lives of their employees and use Church membership as a hiring criterion. With the so-called “ministerial exception,²⁶” which is being traced back to the First Amendment to the U.S. Constitution, religious communities in the U.S. have even more far-reaching options than in Germany when it comes to structuring church employment relationships: If a Church institution in the U.S. classifies an employee as a “minister,” a complete exemption from anti-discrimination law is being established, so that state courts can no longer review a termination for any grounds of discrimination (e.g. disability, age). Whereas in the past the “ministerial exception” was merely used for clerics and professions related to annunciation, church schools are now increasingly classifying teachers as “ministers.” As well as this, an overall tightening of church labor law can be currently seen in the U.S.²⁷

... Between Catholics and Church Authorities ...

Conflicts between Catholics and church authorities can be caused by very different issues. Depending on the concrete subject matter and the legal character of a decision by the church authority as well as the hierarchical position of the conflicting parties, canon law offers various procedural paths for conflict resolution. Formally, a fundamental distinction must be made between administrative and judicial procedures. In penal law, for example, the competent church authority is usually free to choose which

of these procedures it will use to prosecute an offense (c. 1341 in connection with c. 1718 § 1). The faithful, on the other hand, may have no way of initiating a trial because, for example, administrative tribunals do not exist in the particular Churches of the Roman Catholic Church.

... *After Administrative Decisions*

Under the current canon law, controversies arising from an act of administrative power are not an object of trials at ordinary Church tribunals (c. 1400 § 2). Therefore, at least in their particular Churches, the faithful can only take action against an ecclesiastical administrative act by an appeal. Whoever considers himself or herself aggrieved by an administrative act (decree), must first “seek the revocation or emendation of the decree in writing from its author” (c. 1734). Only then he/she can propose the so-called “hierarchical recourse” as the only legal recourse (cc. 1732–1739)²⁸: In this procedure, the respective higher church authority reviews the legally challenged decision and can freely confirm, modify, or even revoke it (c. 1739 CIC; c. 1004 CCEO). Canonists criticize this complaint procedure “since it is only rudimentarily regulated in canon law, as suboptimal and out of touch with reality.”²⁹ They have also long criticized the lack of administrative tribunals for independent review of administrative acts in the particular Churches³⁰: After Vatican II, the “Würzburg Synod” of the (arch)dioceses of Germany (1971–1975) had already enacted an order for Church administrative tribunals, which, however, never came into force.³¹ Even the last overall draft during the process of revising the Code of Canon Law still intended particular church administrative tribunals, yet these canons were deleted by Pope John Paul II without any justification.³² Therefore, there is still only one administrative tribunal in the Catholic Church: the Second Section of the Supreme Tribunal of the Apostolic Signature. Thus, it is an accordingly big challenge for the faithful to approach this tribunal with a complaint.³³

... *in the Area of the Church's Discipline*

If Catholics fail to comply with their duty of obedience towards the sacred pastors as rulers of the Church (c. 212 § 1) or if they violate specific obligations of office or profession, this may be legally sanctioned by the competent hierarchical superior: Whoever disobeys a Church authority that lawfully commands or forbids, and persists in disobedience after being warned, shall even be punished.³⁴ As penalties are merely subsidiary in the Catholic Church, bishops may refrain from initiating a judicial or an

administrative procedure for the imposition or the declaration of penalties if they are convinced that, through fraternal correction, rebuke, or other means, they can sufficiently repair the scandal, restore justice, and reform the offender (c. 1341).³⁵ Pope Francis, however, revised the Church's penal law in 2021 to make it more manageable for bishops as a regular instrument of pastoral care.³⁶ Thereby he concretizes, what up until now was merely the undefined threat of a "just penalty" (c. 1371 no. 2 CIC¹⁹⁸³): Henceforth, anyone "who does not obey the lawful command or prohibition of the Apostolic See or the Ordinary or Superior and, after being warned, persists in disobedience, is to be punished, according to the gravity of the case with a censure or deprivation of office or with other penalties" (c. 1371 § 1 CIC²⁰²¹). In this regard, it is also new that fines can be imposed on church employees as penalty by withholding all or part of their ecclesiastical remuneration (c. 1336 § 4 no. 5 CIC²⁰²¹).

Even below the threshold of punishability, violations of the law and disobedience to a specific directive of church authority can have consequences: The sacred pastors can, for example, deem laypersons unsuitable for church offices and duties and withdraw or not confer them. Similarly, from the perspective of church authority, laypersons can, through insufficient fidelity to the law or a lack of obedience, disqualify themselves as experts and advisors, and can therefore be dismissed from corresponding functions or committees. A Catholic "who is in the proximate occasion of committing a delict" may be warned (c. 1339 § 1). Ordinaries may also issue a rebuke (*correptio*) whenever one of the faithful causes a scandal or a grave disturbance of order by their conduct of life (c. 1339 § 2). The revised penal law further gives the Ordinary the ability "to issue a penal precept in which he sets out exactly what is to be done or avoided" if previous "warnings or corrections have been made to someone to no effect" (c. 1339 § 4 CIC²⁰²¹). Church employees may have to expect consequences under labor law that go as far as and include dismissals. Clerics who owe special obedience to the Pope and their respective Ordinary (c. 273) must expect disciplinary measures: Beyond correction, warning, or rebuke, the competent Ordinary may order, among other things, transfers (cc. 190f.) or removals from office (cc. 192–195). A privation from office (*privatio*), however, can under canon law only be considered as a penalty for an offense (c. 196); moreover, the maximum penalty of dismissal from the clerical state can only be imposed by the universal Church's legislator (c. 1317).

Because the obedience required by canon law from all the faithful is to be rendered as “conscious of their own responsibility” (c. 212 § 1), some canonists see “responsible disobedience” as justified: Without it, “probably many wise innovations would not have taken place”³⁷ in the Catholic Church. However, this should not lead to idealizing disobedience in a false sense. The aforementioned canonists argue: The responsible disobedience is performed “after thorough consideration and out of deep conviction,” in order to “draw the community’s attention to misguided individual regulations” and to “protect it from possible aberrations.” Arbitrary disobedience, on the other hand, aims for an individual advantage and is “usually done out of convenience or hubris.” Therefore, “responsible disobedience also includes the willingness to accept and bear the legal consequences of the practiced violation of the law.”³⁸ This last remark is important as to not raise false hopes: Canon law does not recognize “responsible disobedience,” so invoking it does not protect anyone from the legal consequences of his/her actions.

... *in the Area of the Church’s Doctrine*

Even in the case of doctrinal dissent, Catholics face different legal consequences on a varying scale, depending on the specific violation and their respective position. The threats of punishment under canon law for disobedience of doctrines presented as binding by the Magisterium apply equally to all faithful. Pope Francis expressly adhered to them in his revision of penal law: Whoever denies a truth which is to be believed by divine and Catholic faith according to c. 750 § 1, or persistently doubts such a truth of faith, is a heretic and incurs the penalty of excommunication *latae sententiae* (c. 751 in connection with c. 1364 § 1). As soon as the penalty has been declared, the faithful in question may no longer exercise liturgical ministries, administer or receive sacraments, exercise ecclesiastical offices, functions and ministries, and may no longer validly perform acts of ecclesiastical governance (c. 1331).

Even non-heretics are liable to incur a penalty whenever they teach a doctrine condemned by the Roman Pontiff or an ecumenical council, or obstinately reject a doctrine presented in accordance with c. 750 § 2 or c. 752, despite official warning. They had to be punished with a “just penalty” (*iusta poena*) (c. 1371 no. 1¹⁹⁸³), and since December 8, 2021, they are threatened with concrete expiatory penalties, in addition to a censure and deprivation of office (c. 1365²⁰²¹).

Catholics in Politics, Profession, and Society

Potentially punishable violations of binding doctrinal guidelines can by no means only occur in catechesis, religious education, or theological teaching but also in the everyday social or political commitments of Catholics. In 2002, the Congregation for the Doctrine of the Faith, in a “doctrinal note,” specifically inculcated that even in these areas, Catholics are obliged to obey the Church’s Magisterium. Against “ambiguities” and “questionable positions,” the Congregation emphasizes: “It would be a mistake to confuse the proper autonomy exercised by Catholics in political life with the claim of a principle that prescind from the moral and social teaching of the Church.”³⁹ A “well-formed Christian conscience does not permit one to vote for a political program or an individual law which contradicts the fundamental contents of faith and morals.”⁴⁰ Whenever political activity of Catholics “comes up against moral principles that do not admit of exception, compromise or derogation, the Catholic commitment becomes more evident and laden with responsibility.”⁴¹ Catholic politicians may only in exceptional cases deviate visibly from magisterial guidelines when it is a matter of avoiding greater harm, and at the same time the doctrinal obedience of the acting persons is not only ensured in regard to content but also in that it is publicly known.⁴² Against this background, bishops and bishops’ conferences on various occasions have called on Catholic politicians to adhere to the Church’s doctrine regarding abortion legislation or have sanctioned their deviation from it.⁴³ Even as voters, Catholics may not vote to open the institution of marriage to same-sex couples.⁴⁴ As doctors and midwives, Catholics are not allowed to participate in abortions,⁴⁵ and as lawyers, they are not allowed to earn their money as divorce attorneys.⁴⁶ Corresponding and possible other violations of magisterial doctrine can lead to a denial of holy communion because, in the view of their bishops or pastors, a dissenter is “obstinately persevering in manifest grave sin” (c. 915).⁴⁷ Dissenting Catholics may also no longer be allowed to fulfill liturgical ministries and responsibilities, or they may be dismissed from advisory councils or ecclesiastical offices.

The same legal consequences also threaten Catholics if they violate doctrinal guidelines in their personal conduct of life; for example, when living together unmarried or in a marriage that is invalid under canon law. Laypersons employed by the Church must also expect consequences under employment law regarding all the above-mentioned violations, and clerics must reckon with the disciplinary consequences already mentioned.

Teachers of Catholic religious education and theologians can also be sanctioned as multipliers if they teach at state schools or universities.

Teachers of Catholic Religious Education

Every diocesan bishop has the canonical obligation to dismiss teachers of religious education or to demand their dismissal from school authorities if their teaching or their way of life offends binding doctrines of the Church (c. 805).

Theologians

Those who study theology usually become multipliers themselves and could contribute to spreading erroneous views. For this reason, the Church tries to protect students from deviations of the Church's official teachings by not allowing anyone to teach theology without an ecclesiastical mandate (c. 812). By virtue of the "nihil obstat," the Apostolic See decides on every permanent appointment of lecturers whereby the personal lifestyle is also regularly examined.⁴⁸ The fact that Catholic theology always has to be taught in fidelity to the Magisterium is not only regulated by canon law⁴⁹ but results from the self-understanding officially prescribed for all theologians: "Never forgetting that he is also a member of the People of God, the theologian must foster respect for them and be committed to offering them a teaching which in no way does harm to the doctrine of the faith."⁵⁰ Where teachers at ecclesiastical institutions of higher education no longer meet the necessary requirements, especially with regard to their orthodoxy and irreproachable conduct of life, the competent ecclesiastical authority must ensure that they are removed from office (c. 810; cf. c. 818). For the same reasons, theologians may be stripped of their mandate or "nihil obstat" and subsequently may no longer be members of Faculties of Catholic theology or teach or perform exams in theological courses at state universities.⁵¹

Unlike in the cases of clear violations of the Church's doctrine concerning the conduct of life, which can lead to the revocation of a mandate or the "nihil obstat," a doctrinal dissent and the corresponding violation of the duty of obedience (cc. 750 and 752f.) must first be established. This is the responsibility of the competent diocesan bishop, who is personally bound and authorized by canon law to protect the Church's doctrine of faith and morals by any means they deem appropriate (c. 386 § 2). Bishops' conferences worldwide have in many cases set up so-called committees of doctrine.⁵² Without prejudice to the guardianship of the bishops in the

particular Churches, the Dicastery (formerly: Congregation) for the Doctrine of the Faith has the universal ecclesiastical mandate and authority to promote and protect the doctrine of faith and morals throughout the Catholic Church.⁵³ That is why, in the case of dissenting theologians, the Apostolic See can also intervene at any time and start a doctrinal examination in accordance with the “Agendi ratio in doctrinarum examine” of 1997.⁵⁴

The theologians in question will only learn about the opening of such proceedings after the internal phase of the investigation has been completed and the Dicastery for the Doctrine of the Faith has come to the preliminary judgment that a proposition is objectionable.⁵⁵ At the same time, all competent dicasteries of the Roman Curia and the respective Ordinary of the theologian are also being informed,⁵⁶ which makes, according to insiders, “the author a *persona mortua* for the authorities, even if the further proceedings end favorably for him.”⁵⁷ The list of propositions considered as erroneous or dangerous, together with anonymized expert opinions and statements from the preliminary investigation are communicated to the author through the Ordinary with the request to present a written response within three months.⁵⁸ If this author’s response satisfies the Dicastery, the doctrinal examination is quietly suspended without any rehabilitation. If the response does not satisfy the Dicastery, it may, for example, withdraw the “*nihil obstat*,” obligate the author to a public self-correction, prohibit the use of objected texts in theological studies, or even impose or declare canonical penalties as far as excommunication. The doctrinal complaint is published in a final “notification” of the Dicastery in *L’Osservatore Romano*, online and later usually also in *Acta Apostolicae Sedis*.⁵⁹ At the latest, since the instruction “*Donum Veritatis*” (1990), it must have become obvious to theologians that not only a qualified, that is, organized dissent connected to a visible strategy of opposition or protest is considered sanctionable, but any public deviation from the Church’s magisterial doctrine.⁶⁰

APPRAISAL

The rules and procedures for dealing with conflict and dissent in the Catholic Church or for their preventive avoidance provided by canon law indicate what is important to the legislator: As early as 1983, Pope John Paul II dedicated a separate book in the CIC to the teaching function of the Church and in it affirmed the competence and jurisdiction of the

Church's Magisterium against inquiries from post-conciliar theology. He has, therefore, turned the general duty of obedience of the faithful into differentiated legal obligations, dependent on the degree of bindingness of an officially presented doctrine, and also for non-infallible doctrines. Thereby, he demanded an obedience which only allows an obedient silence as maximum deviation. The legal obligation to firmly embrace and retain infallible doctrines that stem from beyond the Revelation, which was initially missing in the CIC, was added in 1998. Since the 1970s/80s, the Congregation for the Doctrine of the Faith often reacted quickly and consistently to dissent from theologians and condemned dissenting teachings.⁶¹ It was only much later that the widespread laxity in dealing with sexual violence of clerics against minors had procedural consequences: It was not until 2001 that Pope John Paul II reacted to the failure of his bishops by revoking their responsibility for prosecuting sexual abuse and obliging them to report any suspicions, which are at least probable, to the Congregation for the Doctrine of the Faith.⁶² After that, it took another 20 years until sexual abuse was made a criminal offense against human life, dignity, and freedom (c. 1398²⁰²¹); until then, despite all the criticism, it had only been a punishable violation of celibacy. Until now, no pope has responded to the demand for improved legal protection for the faithful by establishing administrative courts in the particular Churches.

The Catholic Church offers only an extremely small space for conflict and dissent: Even disputes between the faithful are to be avoided as much as possible or are to be settled quickly, in a peaceful manner. Disobedience to Church authority is punishable if necessary, and Catholics can never legally deviate from binding doctrinal guidelines. Since Pope Francis wants to give a more practical importance to penal law through its current revision, doctrinal dissent could also soon be punished more consistently than it has been the case so far. But even if the Church does not take (penal) action against disobedient Catholics, this does not mean that the deviation is officially tolerated: Church authorities can also overlook violations of law or other grievances without condoning them if they can either not be prevented anyway or for fear of even greater evil if they intervene. Such a dissimulation as actively turning a blind eye by Church authority does not put dissenters in the right and does not protect them from later intervention; however, too frequent or even regular dissimulation undermines the Church's legal order and creates "the hardly correctable impression of double moral standards and untrustworthiness"⁶³ inside and outside the Church.

NOTES

1. For this and other examples, cf. Congregation for the Doctrine of the Faith, “Nota doctrinalis *professionis fidei* formulam extremam enucleans,” *Acta Apostolicae Sedis* 90 (1998): no. 11.
2. Cf. Congregation for the Doctrine of the Faith, Instruction “Donum veritatis,” *Acta Apostolicae Sedis* 82 (1990): no. 23–41; Norbert Lüdecke, *Die Grundnormen des katholischen Lehrrechts in den päpstlichen Gesetzbüchern und neueren Äußerungen in päpstlicher Autorität* (Würzburg: Echter, 1997), 328. On the development of this specific duty of consent, cf. for example, Justin M. Wachs, *Obsequium in the church. Sacred tradition, Second Vatican Council, 1983 Code, and sacred liturgy* (Montréal: Wilson & Lafleur, 2014), 72–118 and 134–55.
3. For the contouring of the *silentium obsequiosum* cf. Lüdecke, *Grundnormen*, 320–32 and 485–90 and in application to theologians Congregation for the Doctrine of the Faith, “Donum veritatis”, no. 31.
4. Lüdecke, *Grundnormen*, 330 (translation B.A.).
5. Cf. Eloy Tejero, [Commentary on c. 752], in *Exegetical Commentary on the Code of Canon Law*. Vol. III/1, ed. Ángel Marzoa et al. (Montréal: Wilson & Lafleur, 2004), 42.
6. Helmuth Pree, “Die Meinungsäußerungsfreiheit als Grundrecht des Christen,” in *Recht als Heildienst*, ed. Winfried Schulz (Paderborn: Bonifatius, 1989), 42–85, 81 (translation B.A.).
7. Cf. Pope John Paul II, *Motu proprio* “Ad tuendam fidem”, *Acta Apostolicae Sedis* 90 (1998): no. 4.
8. Cf. Rüdiger Althaus, “Priesterlicher Gehorsam und Hierarchischer Rekurs—ein unüberbrückbarer Widerspruch?,” *Theologie und Glaube* 103 (2013): 123.
9. Norbert Lüdecke and Georg Bier, *Das römisch-katholische Kirchenrecht. Eine Einführung* (Stuttgart: Kohlhammer, 2012), 91 (translation B.A.). Cf. Congregation for the Doctrine of the Faith, “Professio fidei et iusurandum fidelitas in suscipiendo officio in nomine Ecclesiae exercendo,” *Acta Apostolicae Sedis* 81 (1989): 105.
10. Cf. *ibid.*, 104.
11. Norbert Lüdecke, “Kommunikationskontrolle als Heildienst. Sinn, Nutzen und Ausübung der Zensur nach römisch-katholischem Selbstverständnis,” *Rottenburger Jahrbuch für Kirchengeschichte* 28 (2009): 77 (translation B.A.), with reference to Umberto Betti, “Professione di fede e giuramento di fedeltà. Considerazioni dottrinali,” *Notitiae* 25 (1989): 323.
12. Cf. the latin text of the episcopal oath of fidelity in force since 1987 in Georg Bier, *Die Rechtsstellung des Diözesanbischofs nach dem Codex Iuris*

- Canonici von 1983* (Würzburg: Echter, 2001), 266 with commentary *ibid.*, 265–69.
13. Cf. already *ibid.*, 89–92.
 14. Cf. Pope Francis, Apostolic Constitution “*Veritatis Gaudium*”, *L’Osservatore Romano*, September 14, 2018 (appendix): art. 27 § 2.
 15. Cf. *ibid.*, art. 26f. with reference to Congregation for the Doctrine of Faith, “*Donum Veritatis*”, no. 23–41. Cf. on this instruction the analysis of Lüdecke, *Grundnormen*, 452–97.
 16. Pope Francis, “*Veritatis Gaudium*”, art. 73.
 17. Cf. with detailed evidence already Bernhard Sven Anuth, *Das Recht katholischer Laien auf Anerkennung ihrer bürgerlichen Freiheiten (c. 227 CIC/c. 402 CCEO)* (Würzburg: Echter, 2016), 32–6.
 18. Cf. Jean-Pierre Schouppe, “Le droit d’opinion et la liberté de recherche dans les disciplines ecclésiastiques (cc. 212 et 218): nature et portée,” *L’année canonique* 37 (1995): 158 and 162.
 19. Cf. Heribert Schmitz, “‘Professio fidei’ und ‘Iusiurandum fidelitatis’. Glaubensbekenntnis und Treueid. Wiederbelebung des Antimodernisteneides?,” *Archiv für katholisches Kirchenrecht* 157 (1988): 379.
 20. Cf. c. 1400 § 1 no. 1. In addition, there are criminal offenses as *obiectum iudicii*.
 21. Cf. Matthias Pulte, “Konfliktlösung in der katholischen Kirche,” in *Konfliktlösung im 19. und 20. Jahrhundert*, ed. Peter Collin (Berlin: Springer, 2021), 317–28, 321.
 22. Dominicus M. Meier, “Subjektive Rechte und Rechtsschutzgarantien in der katholischen Kirche—eine Problemskizze auf dem Hintergrund eines Ehenichtigkeitsverfahrens,” *De processibus matrimonialibus* 8 (2001): 298 (emphasis in original; translation B.A.).
 23. Until 2022, within the “Dienstgemeinschaft” all employees also had to be guided by the Catholic Church’s doctrine of faith and morals and by its law. Cf. Secretariat of the German Bishops’ Conference, ed., *Grundordnung des kirchlichen Dienstes im Rahmen kirchlicher Arbeitsverhältnisse* (Bonn: German Bishops’ Conference, 2015), art. 1. This requirement has been deleted from the current version of the “Grundordnung des kirchlichen Dienstes”, in *Kirchliches Arbeitsrecht*, ed. Secretariat of the German Bishops’ Conference (Bonn: German Bishops’ Conference, 2023), 11–26.
 24. Cf. e.g. Andrea Edenharter, “‘Aggiornamento made in Europe’—Neujustierung des deutschen kirchlichen Arbeitsrechts durch den EuGH,” in *Rechtskultur und Rechtspflege in der Kirche*, ed. Christoph Ohly et al. (Berlin: Duncker & Humblot, 2020), 817–34.
 25. Cf. for an overview e.g. Carolyn Evans and Anna Hood, “Religious Autonomy and Labour Law: A Comparison of the Jurisprudence of the

- United States and the European Court of Human Rights,” *Oxford Journal of Law and Religion* 1 (2012): 83–94.
26. Cf. Amy Dygert, “Reconciling the Ministerial Exception and Title VII: Clarifying the Employer’s Burden for the Ministerial Exception,” *Washington University Journal of Law and Policy* 58 (2019).
 27. Cf. Sarah Röser, “Im Verteidigungsmodus. Kirchliches Arbeitsrecht in den USA,” *Herder-Korrespondenz* 74, no. 10 (October 2020).
 28. Cf. for example, G. Paolo Montini, *I ricorsi gerarchici (Cann. 1732–1739)* (Rome: G&B Press, 2020) or Aurimas Rudinskas, “The Procedure for Administrative Recourse. A Comparative Study of the Latin and Eastern Codes,” *Studia Canonica* 54 (2020).
 29. Pulte, “Konfliktlösung,” 324 (translation B.A.).
 30. On the desideratum of a particular ecclesiastical administrative jurisdiction, cf. in detail Dominicus M. Meier, *Verwaltungsgerichte für die Kirche in Deutschland? Von der gemeinsamen Synode 1975 zum Codex Iuris Canonici 1983*, (Essen: Ludgerus, 2001); Matthias Ambros, *Kontrolle kirchlichen Verwaltungsbandelns. Ein Beitrag zur Diskussion um die Errichtung von Verwaltungsgerichten auf Ebene der Bischofskonferenz* (Darmstadt: WBG, 2020).
 31. Cf. Gemeinsame Synode der Bistümer der Bundesrepublik Deutschland, “Beschluss: ‘Ordnung für Schiedsstellen und Verwaltungsgerichte der Bistümer in der Bundesrepublik Deutschland,’” in *Gemeinsame Synode der Bistümer der Bundesrepublik Deutschland. Offizielle Gesamtausgabe*, ed. Karl Lehmann (Freiburg i. Br.: Herder, 2012), 734–63.
 32. Cf. Ambros, *Kontrolle*, 34.
 33. For an overview of cases decided by the Apostolic Signature as administrative tribunal, cf. William L. Daniel, ed., *Ministerium Iustitiae. Jurisprudence of the Supreme Tribunal of the Apostolic Signatura* (Montréal: Wilson & Lafleur, 2011), 85–637.
 34. Cf. Stephen S. Doktorczyk, *Persistent disobedience to Church authority. History, analysis and application of Canon 1371, 2°* (Rome: Gregorian & Biblical Press, 2016).
 35. Cf. David Deibel, “Canon 1341: Pastoral Principles Within the Penal Process,” in *Towards Future Developments in Penal Law: U.S. Theory and Practice*, ed. Patricia M. Dugan (Montréal: Wilson & Lafleur, 2010), 83–115.
 36. Cf. Pope Francis, Apostolic Constitution “Pascite Gregem Dei,” *L’Osservatore Romano*, June 1, 2021, 2f.
 37. Sabine Demel, *Handbuch Kirchenrecht. Grundbegriffe für Studium und Praxis* (Freiburg i. Br.: Herder, 2013), 234 (translation B.A.).
 38. *Ibid.*, 234f. (translation B.A.).

39. Congregation for the Doctrine of the Faith, “Nota doctrinalis de christifidelium rationibus in publicis negotiis gerendis,” *Acta Apostolicae Sedis* 96 (2004): no. 6.
40. *Ibid.*, no. 4.
41. *Ibid.*
42. Cf. for example, Pope John Paul II, Encyclical “*Evangelium Vitae*,” *Acta Apostolicae Sedis* 87 (1995): no. 73; Congregation for the Doctrine of the Faith, “Nota de contubernalibus eiusdem sexus quoad iuridica consecraria contubernii,” *Acta Apostolicae Sedis* 96 (2004): no. 10.
43. Cf. for the reasons Raymond Leo Burke, “Canon 915: The Discipline Regarding the Denial of Holy Communion to those Obstinate Persevering in Manifest Grave Sin,” *Periodica de re canonica* 96 (2007).
44. Cf. Congregation for the Doctrine of the Faith, “Nota doctrinalis,” no. 5 and no. 10.
45. Vgl. c. 1397 § 2²⁰²¹.
46. Cf. in detail John J. Coughlin, “Divorce and the Catholic Lawyer,” *The Jurist* 61 (2001).
47. Cf. accordingly e.g. Burke, “Canon 915.”
48. Cf. Congregation for the Doctrine of the Faith, “Donum Veritatis,” no. 8.
49. Vgl. Pope Francis, “Veritatis Gaudium,” art. 73.
50. Congregation for the Doctrine of the Faith, “Donum Veritatis,” no. 11.
51. Cf. Heribert Schmitz and Ulrich Rhode, “Einführung,” in *Katholische Theologie und kirchliches Hochschulrecht*, ed. Secretariat of the German Bishops’ Conference (Bonn: German Bishops’ Conference, 2011), 132–41.
52. For an overview on actions of such doctrinal committees cf. Bradford E. Hinze, “A Decade of Disciplining Theologians,” in *When the Magisterium Intervenes. The Magisterium and Theologians in Today’s Church*, ed. Richard R. Gaillardetz (Collegeville: Liturgical Press, 2012), 21–23.
53. The former “Congregation” is now called “Dicastery for the Doctrine of the Faith”; its task is to assist the Pope and the bishops in proclaiming the Gospel throughout the world and to promote and safeguard the integrity of Catholic doctrine on faith and morals, cf. Pope Francis, Apostolic Constitution “*Praedicate Evangelium*,” *L’Osservatore Romano*, March 31, 2022 (appendix): art 69.
54. Cf. Congregation for the Doctrine of the Faith, “Agendi ratio in doctrinarum examine,” *Acta Apostolicae Sedis* 89 (1997) and in addition, for example, Jose A. Fuentes, “Nuevo regolamento de la Congregación para la doctrina de la fe sobre el examen de las doctrinas,” *Ius Canonicum* 38 (1998).
55. Cf. Congregation for the Doctrine of the Faith, “Agendi ratio,” art. 17.
56. Cf. *ibid.*, art. 16.

57. Lüdecke, “Kommunikationskontrolle,” 93 (translation B.A.).
58. Cf. Congregation for the Doctrine of the Faith, “Agendi ratio,” art. 17.
59. For a current overview, cf. the list of documents published since 1966 by the Congregation for the Doctrine of the Faith, which includes the notifications after doctrinal examinations published since then: https://www.vatican.va/roman_curia/congregations/cfaith/doc_doc_index.htm.
60. Cf. Congregation for the Doctrine of the Faith, “Donum Veritatis,” no. 32–41 and the analysis of Lüdecke, *Grundnormen*, 482–86.
61. Cf. for example, Paul Collins, ed., *The modern Inquisition: Seven prominent Catholics and their struggles with the Vatican* (Woodstock: Overlook Press, 2002).
62. Cf. Pope John Paul II, Motu proprio “Sacramentorum sanctitatis tutela”, *Acta Apostolicae Sedis* 93 (2001).
63. Georg Bier, “Dissimulieren? Notizen zu einem Prinzip der Rechtsanwendung,” in *Im Dienste der Gerechtigkeit und Einheit*, ed. Rüdiger Althaus et al. (Essen: Ludgerus, 2017), 196 (translation B.A.).

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