

# Stanislav Přibyl

---

## "Gaudium et Spes": Between Pastoral Character and Prescriptive Obligatoriety

---

Philosophy and Canon Law 2, 129-140

---

2016

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej [bazhum.muzhp.pl](http://bazhum.muzhp.pl), gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

**Stanislav Příbyl**

University in České Budějovice, Czech Republic

## *Gaudium et Spes:* Between Pastoral Character and Prescriptive Obligatoriness

**Abstract:** In the 1983 Code of Canon Law, Pope Saint John Paul II states that the Code is especially inspired by the Second Vatican Council constitution, that is, the Dogmatic Constitution *Lumen Gentium* and the Pastoral Constitution *Gaudium et Spes*. The second constitution does not have to be a source of inspiration to the formulation of legal norms. However, we can find there some support for future canonical regulations. This concerns, in particular, the extension of the idea of marriage which inspired the Code that defines, anew, the dissolution of marriage and clarifies the relations between the state and the Church on the basis of which the concordate law is developed in the post-Second Vatican Council times.

**Keywords:** Council, constitution, the Church, canonical law, marriage, concordate

## The Church's Attitude towards the World

The Pastoral Constitution *Gaudium et Spes* “On the Church in the Modern World,” promulgated on December 7, 1965<sup>1</sup> is, in a certain way, an antipole to the Dogmatic Constitution *Lumen Gentium*.<sup>2</sup> While the latter is oriented *ad intra*, that is, to the inner organization and life of the Church, *Gaudium et Spes* is oriented to the world outside, *ad extra*. In fact, the Church at Vatican II wanted

---

<sup>1</sup> *Gaudium et Spes*, in *Acta Apostolicae Sedis* [henceforth: AAS] 58 (1966): 1025–120.

<sup>2</sup> *Lumen Gentium*, in AAS 57 (1965): 5–71.

to show its sensitivity towards the world outside, in which especially those who are poor and afflicted experience their “joys and hopes, griefs and anxieties.”<sup>3</sup> Nevertheless, it is clear that incautious openness to the world could and still can result in renouncing the mission entrusted to it by Christ. The balance between being faithful to its own mission and being sensitive to the pressing needs of the world is aptly formulated as “not being identified,” while “not being closed” to the world.<sup>4</sup> Despite its clear openness, the constitution did not want to deny the very identity of the Church: “To a large extent, the Pastoral Constitution represents the principal line of the Council: finding the identity of the Church in relation to modernity. *Gaudium et Spes* can be understood as a programmatic expansion and methodological grasp of the *aggiornamento* as the crucial idea of the Council.”<sup>5</sup>

However, one cannot assume that prior to Vatican II the Church did not seek to accommodate to the civil society in a progressing world. Nevertheless, the presupposition of this accommodation was the a priori acknowledgement of the principles proclaimed by the Church. In the anti-Modernist decree *Lamentabili* (1907), the Holy Office under the pontificate of Pius X rejected the idea that the Church fails to accommodate to contemporary progress: “Scientific progress demands that the concepts of Christian doctrine concerning God, creation, revelation, the Person of the Incarnate Word, and Redemption be re-adjusted.”<sup>6</sup> We should also add that Pope John XXIII in his Apostolic Constitution *Humanae Salutis*, by which he summoned the Second Vatican Council, did not judge the world in a very optimistic way, rather, the contrary:

Today the Church is witnessing a crisis underway within society. While humanity is at the threshold of a new age, immensely serious and broad tasks await the Church, as in the most tragic periods of her history. It is a question, in fact, of bringing the perennial life-giving energies of the Gospel to the modern world, a world that boasts of its technical and scientific conquests but

<sup>3</sup> *Gaudium et Spes*, n. 1.

<sup>4</sup> “This Council represents a milestone in the life of the Church as regards the attitude to the world. Following the Council’s declarations, the Church is in no way identical with the world; however, she is not withdrawn from it. As it is expressed in the first paragraph of the constitution, the Church shows solidarity with the world: ‘The joys and the hopes, the griefs and the anxieties of the men of this age, especially those who are poor or in any way afflicted, these are the joys and hopes, the griefs and anxieties of the followers of Christ. Indeed, nothing genuinely human fails to raise an echo in their hearts.’” Aleš Opatrný, Kardinál Tomášek a pokoncilní proměna pražské arcidiecéze (Kostelní Vydří: Karmelitánské nakladatelství, 2002), 51.

<sup>5</sup> Ansgar Kreutzer, “Die Bedeutung von, *Gaudium et spes* zur Auslegung und Aktualisierung des II. Vatikanums,” in *Geist in Form. Facetten des Konzils*, ed. Thomas Dietrich, Thomas Herkert, and Pascal Schmitt (Freiburg im Breisgau: Herder, 2015), 124.

<sup>6</sup> Decree *Lamentabili*, 64, in Heinrich Denzinger, *Kompendium der Glaubensbekenntnisse und kirchlichen Lehrentscheidungen* (Freiburg im Breisgau: Herder, 1991), 939.

also bears the effects of a temporal order that some have wanted to reorganize by excluding God.<sup>7</sup>

## Openness and Obligatoriness of the Constitution

In contrast to the previous practice, the document changes the addressees to whom it is intended. In fact, the last encyclical published prior to Vatican II and dealing specifically with the Church, *Mystici Corporis* of Pope Pius XII (promulgated in 1943),<sup>8</sup> is addressed to the “venerable brethren, patriarchs, primates, archbishops, bishops and other local ordinaries enjoying peace and communion with the Apostolic See,” whereas *Gaudium et Spes* declares the following:

Hence this [...] Council, having probed more profoundly into the mystery of the Church, now addresses itself without hesitation, not only to the sons of the Church and to all who invoke the name of Christ, but to the whole of humanity. For the council yearns to explain to everyone how it conceives of the presence and activity of the Church in the world of today.<sup>9</sup>

This formulation “mystery of the Church” is an allusion to the encyclical *Mystici Corporis*; however, in this context it is primarily related to the constitution *Lumen Gentium*. Due to its explicitly dogmatic character, this constitution on the Church presents the most important source of inspiration of the Code of Canon Law (*Codex iuris canonici*), promulgated by Pope John Paul II in 1983.<sup>10</sup> The papal apostolic constitution *Sacrae Disciplinae Leges*, by which the Code is promulgated, states that “this new Code could be understood as a great effort to translate the same doctrine, that is, the conciliar ecclesiology, into canonical language.”<sup>11</sup> Together with the norms of the previous Code of Canon Law from 1917,<sup>12</sup> *Lumen Gentium* is the most frequently used source of the actual legal norms in the Code of John Paul II.

<sup>7</sup> *Humanae Salutis*, in AAS 54 (1962): 6.

<sup>8</sup> *Mystici Corporis*, in AAS 35 (1943): 193–248.

<sup>9</sup> *Gaudium et Spes*, n. 2. “There is a certain claim behind it, because the explanation says that this mission addressed to all people refers to God’s salvific will which has manifested itself in history and is still there ‘today,’” Johannes Schelhas, *Das Zweite Vatikanische Konzil. Geschichte—Themen—Ertrag* (Regensburg: Pustet, 2014), 89.

<sup>10</sup> CIC, in AAS 75, Pars II (1983), 1–317; further CIC/1983.

<sup>11</sup> *Sacrae Disciplinae Leges*, in AAS 75, Pars II (1983): VII–XIV, XI.

<sup>12</sup> CIC, in AAS 9, Pars II (1917): 5–593.

*Gaudium et Spes*, however, is a specific type of a document: it transcends the bounds of the possible implementation into the canonical or into any other legally normative regulation, which would distinguish between those standing “outside” and those remaining “inside” and thus determine obligatory rules of conduct to both of these groups.<sup>13</sup> Nevertheless, we need to point out that even such a “wide astridish” and in many ways historically conditioned document<sup>14</sup> presents the doctrine of the Church, to which the Canon Law ascribes obligatory status for the Catholic faithful:

Although not an assent of faith, a religious submission of the intellect and will (*religiosum intellectus et voluntatis obsequium*) must be given to a doctrine which the Supreme Pontiff or the college of bishops declares concerning faith or morals when they exercise the authentic magisterium (*magisterium authenticum*), even if they do not intend to proclaim it by definitive act; therefore, the Christian faithful are to take care to avoid those things which do not agree with it.<sup>15</sup>

## Individual Conscience

The constitution *Gaudium et Spes*, however, transcends the visible boundaries of the Catholic Church also in such a private thing, as the human conscience. It respects its dignity in a way unheard of in the magisterial documents until that time: “In fidelity to conscience, Christians are joined with the rest of men in the search for truth, and for the genuine solution to the numerous problems which arise in the life of individuals from social relationships. [...] Conscience frequently errs from invincible ignorance without losing its dignity.”<sup>16</sup>

<sup>13</sup> “The Church as People of God is, therefore, not a certain caste, which distances itself from the world because it is aware of its dignity, or which is immersed in itself and it ‘cultivates’ a dialogue or similar relations with the outside (the humanity). Rather, the Church is humanity itself inasmuch as it is incorporated into Christ and united with Him and inasmuch as this incorporation spreads to other people,” Karel Skalický, *Radost a naděje* (Rome: Křesťanská akademie, 1968), 228.

<sup>14</sup> “In more than a single example, the Council shows how trivially it uses its own criteria which it formulated. This was the case of the impact of the media on the modern society. Similarly, in a major part of the constitution *Gaudium et Spes* it adopted cheap historical optimism of the ‘Western’ type and the very same document also superficially declared the Gospel appeal of the nations for peace in the world,” Giuseppe Alberigo, *Stručné dějiny II. Vatikánského koncilu* (Brno: Barrister & Principal, 2008), 157.

<sup>15</sup> CIC/1983, Can. 752.

<sup>16</sup> *Gaudium et Spes*, n. 16.

Such a courageous formulation, however, required necessary clarification in accordance with the traditional Catholic approach: “The same cannot be said for a man who cares but little for truth and goodness, or for a conscience which by degrees grows practically sightless as a result of habitual sin.”<sup>17</sup> A concretization of the requirement to seek the truth and goodness may be seen in the insistence of the Declaration on Religious Freedom *Dignitatis Humanae*<sup>18</sup> of the same Council to seek the truth, especially “religious truth.”<sup>19</sup>

The legal-canonical transpositions of the fundamental principles of the declaration represents one of the programmatic norms of the Code of John Paul II: “All persons are bound to seek the truth in those things which regard God and his Church and by virtue of divine law are bound by the obligation and possess the right of embracing and observing the truth which they have come to know.”<sup>20</sup> In contrast to it, the 1917 Code obliged all people to “be immersed in the doctrine of the Gospel.”<sup>21</sup> The Church and the state found it sufficient to just kindly tolerate the churches and worldviews whose positions the Church could not accept, whereas positive support was supposed to be manifested exclusively to the right religion (*vera religio*), preached by the Catholic Church. The view of the Declaration on Religious Freedom, however, is based on the understanding of conscience we find in *Gaudium et Spes*, that is, its attention is drawn towards individual human person and his/her conscience seeking the truth.<sup>22</sup>

<sup>17</sup> *Gaudium et Spes*, n. 16. “The presence of two models joined into a single whole is probably a consequence of two streams at the Second Vatican Council—a traditional and a progressive one, respectively. One of them wished to join conscience with the obedience to the law, the second one with the sincerity of the person,” Ivan Kútny, “Svedomie—nescudziteľná svätyňa človeka—prvý zo všetkých Kristových zástupcov I,” *Teologický časopis* 1 (2015): 63–64.

<sup>18</sup> *Dignitatis Humanae*, in AAS 58 (1965), 929–46.

<sup>19</sup> Cf. *Dignitatis Humanae*, nn. 2, 3.

<sup>20</sup> CIC/1983, Can. 748 § 1.

<sup>21</sup> Cf. CIC/1917, Can. 1322.

<sup>22</sup> “In the course of the conciliar discussions, many people eagerly defended the concept of mere tolerance with the help of a logical argument: only the truth has rights; a blunder has no right at all. The Declaration on Religious Freedom chose a different principle as a point of departure: the dignity of human person (*Dignitatis Humanae*, 2). As the human person is endowed with reason and free will, he/she is bound to steer his/her behaviour as the highest instance of human conduct even in a case, in which the decision of the conscience would be—when judged objectively—at odds with the moral norms,” Johannes Mühlsteiger, “Glaubens und Religionsfreiheit,” in *Grundriß des nachkonziliaren Kirchenrechts*, ed. Joseph Listl, Hubert Müller, and Heribert Schmitz (Regensburg: Pustet, 1979), 436–37.

## Doctrine of the Ends of Matrimony

*Gaudium et Spes* had a remarkable impact on the canonical treatment of the basis of Christian marriage. The 1917 Code distinguished between primary ends of marriage, that is, procreation and education of the offspring (*procreatio atque educatio prolis*), from the secondary ends, namely, mutual help of the spouses and allaying concupiscence (*mutuum adiutorium et remedium concupiscentiae*).<sup>23</sup> Nevertheless, even prior to Vatican II, the idea of marriage was not fully exhausted in such a schematical concept. This can be documented by the encyclical of Pope Pius XI *Casti Connubii*:<sup>24</sup> “This mutual moulding of husband and wife, this determined effort to perfect each other, can in a very real sense, as the Roman Catechism teaches, be said to be the chief reason and purpose of matrimony, provided matrimony be looked at not in the restricted sense as instituted for the proper conception and education of the child, but more widely as the blending of life as a whole and the mutual interchange and sharing thereof (*vitae communio, consuetudo, societas*).”<sup>25</sup>

In contrast to its predecessor, the 1983 Code does not hierarchize the ends of marriage, but presents two equally valuable goals of marriage, namely, the “good of the spouses” (*bonum coniugum*)<sup>26</sup> and “the procreation and education of offspring.”<sup>27</sup> *Gaudium et Spes* understands marriage primarily as an “intimate partnership of married life and love”<sup>28</sup>; nevertheless, the term “good of the spouses” appears here not only in relation to the ends of marriage: “For the good of the spouses and their off-springs as well as of society, the existence of the sacred bond no longer depends on human decisions alone.”<sup>29</sup> Such a concept of marriage refers more to the close connection between the private life of the

<sup>23</sup> Cf. CIC/1917, Can. 1013 § 1.

<sup>24</sup> *Casti Connubii*, in AAS 22 (1930): 541–73.

<sup>25</sup> *Casti Connubii*, n. 24.

<sup>26</sup> “In accordance with the concept of Vatican II (at least from a formal point of view), the new Code got away with the hierarchization of the ends of marriage. Moreover, ‘the good of the spouses’ was made equivalent to ‘procreation and education of the offspring.’ This duly emphasised the mutual perfection of the spouses in accordance with modern ways of thinking and with the actual progress of biological, psychological, anthropological and other sciences,” Luigi Chiappetta, *Il matrimonio nella nuova legislazione canonica e concordataria. Manuale giuridico-pastorale* (Roma: Edizioni Dehoniane, 1990), 13–14.

<sup>27</sup> Cf. CIC/1983, Can. 1055 § 1.

<sup>28</sup> *Gaudium et Spes*, n. 48. “This made the personal aspect of marriage the decisive point in the doctrine of the Church. Postconciliar theology of marriage has not dropped it, and so it has remained—even though with a certain degree of weakening—anchored in the foundations of new marriage law.”—Otto Hermann Pesch, *Das zweite Vatikanische Konzil. Vorgeschichte—Verlauf—Ergebnisse—Wirkungsgeschichte* (Kevelaer: Topos, 2012), 336.

<sup>29</sup> *Gaudium et Spes*, n. 48.

spouses and their integration into the tissue of social relationships. We can, therefore, observe a certain affinity between the terms “good of the spouses” and “common good” or “common welfare” (*bonum commune*), which traditionally belong to the terminology of the Christian tradition or the social doctrine of the Church.<sup>30</sup> In a section specifically devoted to the ends of marriage, *Gaudium et Spes* names only a single one: “By their very nature, the institution of matrimony itself and conjugal love are ordained for the procreation and education of children, and find in them their ultimate crown.”<sup>31</sup> Such a married love, however, is “eminently human one since it is directed from one person to another through an affection of the will; it involves the good of the whole person.”<sup>32</sup> The mutual connection between the two ends of marriage is delineated already in the very constitution of the Council and the legislator of the Code creates a felicitous synthesis of the two. As for the contractors of marriage, the good of the spouses presupposes certain natural human qualities which the Canon Law expects.<sup>33</sup> According to *Gaudium et Spes*, impossibility or absence of procreation for legitimate reasons do not hinder the marriage contract:

Marriage to be sure is not instituted solely for procreation; rather, its very nature as an unbreakable compact between persons, and the welfare of the children, both demand that the mutual love of the spouses be embodied in a rightly ordered manner, that it grow and ripen. Therefore, marriage persists as a whole manner and communion of life, and maintains its value and indissolubility, even when despite the often intense desire of the couple, offspring are lacking.<sup>34</sup>

---

<sup>30</sup> “Since the good of the spouses transcends the good of the individual, it also becomes common good, although on a very elementary level. In this way, the expression acquires a firmer anchoring, because common good is an established term both in political philosophy, but also in the social doctrine of the Church. Thus the good of the spouses can be analysed in more detail as a particular type of common good,” Dominik Opatrný, “Dobro manželů v kontextu biblické etiky,” *Revue církevního práva* 57 (2014): 53–54.

<sup>31</sup> *Gaudium et Spes*, n. 48.

<sup>32</sup> *Ibid.*, n. 49.

<sup>33</sup> “Minimal requirements regarding the good or welfare of the spouses require sufficient use of reason to understand what marriage and family mean; further, it presupposes satisfactory judgement to assess the major rights and obligations which characterise family relations, and also inner psychic capabilities to live these relations in a permanent way while not refusing the mutual good of the spouses as the end of marriage,” Jiří Kašný, *Manželství v západní tradici. Soubor kanonických studií* (České Budějovice: Jihočeská univerzita, 2006), 35.

<sup>34</sup> *Gaudium et Spes*, n. 50.



## The Role of Lay Christians

The constitution *Gaudium et Spes* allows for the existence of a pluralistic society, in which the Church acts both as a whole, but also as individual citizens of the state who are Christians. Under these circumstances, one needs to distinguish the following things: “It is very important, especially where a pluralistic society prevails, that there be a correct notion of the relationship between the political community and the Church, and a clear distinction between the tasks which Christians undertake, individually or as a group, on their own responsibility as citizens guided by the dictates of a Christian conscience, and the activities which, in union with their pastors, they carry out in the name of the Church.”<sup>35</sup> In this context, the Code of John Paul II considered it fitting to include the requirement of the constitution not to confuse individual opinions with the message of the Gospel<sup>36</sup> into the list of the obligations and rights of the lay Christian faithful: “They are to take care that their actions are imbued with the spirit of the gospel and are to heed the doctrine set forth by the magisterium of the Church. In matters of opinion, moreover, they are to avoid setting forth their own opinion as the doctrine of the Church.”<sup>37</sup>

Although the attention paid by the Council to the lay Christians is manifested in a concentrated fashion in an independent decree *Apostolicam Actuositatem*,<sup>38</sup> the programmatic document in this context is again the constitution *Gaudium et Spes*: “Since they have an active role to play in the whole life of the Church, laymen are not only bound to penetrate the world with a Christian spirit, but are also called to be witnesses to Christ in all things in the midst of human society.”<sup>39</sup> This teaching of the Council later helped a more demonstrative differentiation of the actual grounds of the constitutional embedding of the “People of God” in the Code of John Paul II. Purely juridically speaking, the Code stipulates the following: “By divine institution, there are among the Christian faithful in the Church sacred ministers who in law are also called clerics; the other members of the Christian faithful are called lay persons.”<sup>40</sup> This definition is logically correct, however, lay persons are defined here negatively, only as “non-clerics.” Only in the catalogue of obligations and rights of lay Christian faithful, one can find the

<sup>35</sup> *Gaudium et Spes*, n. 76.

<sup>36</sup> Cf. *Ibid.*, n. 43.

<sup>37</sup> CIC/1983, Can. 227.

<sup>38</sup> *Apostolicam Actuositatem*, in AAS 58 (1966): 834–64. “Further implementing regulations is given by the decree on the apostolate of the lay Christians. When judged by the statements of the constitution on the Church, quite a few things may seem more reserved, colourless and ‘balanced.’” Otto Hermann Pesch, *Das zweite Vatikanische Konzil*, 206.

<sup>39</sup> *Gaudium et Spes*, n. 43.

<sup>40</sup> CIC/1983, Can. 207 § 1.

specific role of lay persons in the Church, inspired by the postulates of the constitution *Gaudium et Spes*: “According to each one’s own condition, they are also bound by a particular duty to imbue and perfect the order of temporal affairs with the spirit of the gospel and thus to give witness to Christ, especially in carrying out these same affairs and in exercising secular functions.”<sup>41</sup>

## The Relations between the State and the Church

The constitution also comes up with a new formulation of the relation between the state and the Church. The basic thesis—inspired by the Constitution of the Italian Republic<sup>42</sup>—is the following:

The Church and the political community in their own fields are autonomous and independent from each other. Yet both, under different titles, are devoted to the personal and social vocation of the same men. The more that both foster sounder cooperation between themselves with due consideration for the circumstances of time and place, the more effective will their service be exercised for the good of all.<sup>43</sup>

Such an equivalence of the secular and spiritual power does not correspond to the ideas of the Church from the time prior to Vatican II. The superiority of the Church in its relation to the state was justified by the higher supernatural purposes, for which the Church was constituted.<sup>44</sup> The state was understood as a contractual partner on the basis of the “concept of a privilege grounded in the theory of the mediating role of the Church in temporal issues (*teoria potestatis indirectae Ecclesiae in temporalibus*); the basis of such a concept was the understanding of the Church and the state as perfect communities, where the Church is—given its higher mission—a superior community. Such a theory

---

<sup>41</sup> CIC/1983, Can. 225 § 2.

<sup>42</sup> The Constitution of the Italian Republic, Art. 7, [https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf).

<sup>43</sup> *Gaudium et Spes*, n. 76.

<sup>44</sup> “We neither grant the subordination of the Church to the state, nor their mere coordination; since where coordination is, there is also subordination. In the same way, we do not demand the subordination of the state as regards its power, but distinctly require its right to conduct temporal issues, which are necessary to the spiritual ones, from which they can be distinguished only with great difficulty, if at all,” Silvestr M. Brait, *Cirkev. Studie apologeticko-dogmatická* (Olomouc: Dominikánská edice Krystal, 1946), 442.

stipulates that at the moment of contracting an agreement the sovereign Church concedes certain privileges to the state (e.g., the influence on the appointment of bishops).<sup>45</sup> In *Gaudium et Spes*, the Church tends to “purify” its spiritual mission, which may be compromised by an overt favor of the state: “She, for her part, does not place her trust in the privileges offered by civil authority. She will even give up the exercise of certain rights which have been legitimately acquired, if it becomes clear that their use will cast doubt on the sincerity of her witness or that new ways of life demand new methods.”<sup>46</sup> This approach subsequently influenced the practice of concluding contracts of the concordat type. In the period prior to Vatican II, the Church was forced to frequently adjust their relations with authoritative regimes, as it was the case of Italy (1929), Germany (1933), or Spain (1953). The increase in the number of concordats since the 1960s and their character is a testimony to the application of the principle of the relations between the state and the Church in accordance with the teachings of the constitution *Gaudium et Spes*.<sup>47</sup>

## Conclusion

It is clear that certain topics of *Gaudium et Spes* are—despite the pastoral character of the Constitution—juridically understandable. Moreover, the constitution itself represents an obligatory document of the Magisterium. Even though the respect to the sovereignty of each person’s conscience, even in the case of a conscience erring due to invincible ignorance, stands aloof from the possibilities of immediate legal regulation, the obligation to seek and find the truth about God and His Church has become a postulate, which has found its essential and programmatic place in the initial canons of the third book of the Code of Canon Law on the teaching function of the Church. Postconciliar development of concordat law is then an application of the principles of the relations between the state and the Church, as formulated precisely by the constitution *Gaudium et Spes*. The constitution had a significant impact also on the church doctrine

<sup>45</sup> Damián Němec, *Konkordátní smlouvy Svatého stolce s postkomunistickými zeměmi (1990–2008)* (Bratislava: Ústav pre vzťahy štátu a cirkví, 2010), 16.

<sup>46</sup> *Gaudium et Spes*, n. 76.

<sup>47</sup> “Approximately 70 percent of the countries concluded their international treaties with the Holy See after Vatican II, i.e. in the second half of the 20th century. Overall, it comprises about a half of all the treaties,” Marek Šmid, “Medzinárodnoprávna subjektivita Svätej stolice: bilaterálne medzinárodné zmluvy,” in *Clara pacta—boni amici. Zmluvné vzťahy medzi štátom a cirkvami*, ed. Marek Šmid and Michaela Moravčíková (Bratislava: Ústav pre vzťahy štátu a cirkví, 2009), 352.

regarding marriage and contributed—amongst other things—to a deeper understanding of the end of marriage, which was subsequently reflected in the marriage law of the Code. It is, therefore, no coincidence that the Apostolic Constitution *Sacrae Disciplinae Leges*, by which the Code of Canon Law was promulgated, states that “from this there is derived that character of complementarity which the Code presents in relation to the teaching of the Second Vatican Council, with particular reference to the two constitutions, the Dogmatic Constitution *Lumen Gentium* and Pastoral Constitution *Gaudium et Spes*.”<sup>48</sup>

## Bibliography

- Alberigo, Giuseppe. *Stručné dějiny II. vatikánského koncilu*. Brno: Barrister & Principal, 2008.
- Braito, Silvestr M. *Církev. Studie apologeticko-dogmatická*. Olomouc: Dominikánská edice Krystal, 1946.
- Chiappetta, Luigi. *Il matrimonio nella nuova legislazione canonica e concordataria. Manuale giuridico-pastorale*. Roma: Edizioni Dehoniane, 1990.
- Codex Iuris Canonici*. In AAS 9, Pars II (1917): 5–593.
- Codex Iuris Canonici*. In AAS 75, Pars II (1983): 1–317.
- Gaudium et Spes*. In AAS 58 (1966): 125–1120.
- Humanae Salutis*. In AAS 54 (1962): 5–13.
- Kašný, Jiří. *Manželství v západní tradici. Soubor kanonických studií*. České Budějovice: Jihočeská univerzita, 2006.
- Kreutzer, Ansgar. “Die Bedeutung von *Gaudium et spes* zur Auslegung und Aktualisierung des II. Vatikanums.” In *Geist in Form. Facetten des Konzils*, edited by Thomas Dietrich, Thomas Herkert, and Pascal Schmitt, 116–35. Freiburg im Breisgau: Herder, 2015.
- Kútňy, Ivan. “Svedomie—nescudziteľná svätýňa človeka—prvý zo všetkých Kristových zástupcov I.” *Teologický časopis* 1 (2015): 47–65.
- Lamentabili*. In Heinrich Denzinger, *Kompendium der Glaubensbekenntnisse und kirchlichen Lehrentscheidungen*, 932–939. Freiburg im Breisgau: Herder, 1991.
- Lumen Gentium*, In AAS 57 (1965): 5–71.
- Mystici corporis*, In AAS 54 (1962): 193–248.
- Mühlsteiger Johannes. “Glaubens- und Religionsfreiheit,” In *Grundriß des nachkonziliaren Kirchenrechts*, edited by Joseph Listl, Hubert Müller, and Heribert Schmitz, 435–440. Regensburg: Pustet, 1979.
- Němec, Damián. *Konkordátní smlouvy Svatého stolce s postkomunistickými zeměmi (1990–2008)*. Bratislava: Ústav pre vzťahy štátu a cirkví, 2010.
- Opatrný, Aleš. *Kardinál Tomášek a pokoncilní proměna pražské arcidiecéze*. Kostelní Vydří: Karmelitánské nakladatelství, 2002.
- Opatrný, Dominik. “Dobro manželů v kontextu biblické etiky.” *Revue církevního práva* 57 (2014): 49–63.
- Pesch, Otto Hermann. *Das zweite Vatikanische Konzil. Vorgeschichte—Verlauf—Ergebnisse—Wirkungsgeschichte*. Kevelaer: Topos, 2012.

<sup>48</sup> *Sacrae Disciplinae Leges*, XII.

*Sacrae Disciplinae Leges*. In AAS 75, Pars II (1983): VII–XIV.

Schelhas, Johannes. *Das Zweite Vatikanische Konzil. Geschichte—Themen—Ertrag*. Regensburg: Pustet, 2014.

Škalický, Karel. *Radost a naděje*. Rome: Křesťanská akademie, 1968.

Šmid, Marek. “Medzinárodnoprávna subjektivita Svätej stolice: bilaterálne medzinárodné zmluvy.” In *Clara pacta—boni amici. Zmluvné vzťahy medzi štátom a cirkvami*, edited by Marek Šmid and Michaela Moravčíková, 337–380. Bratislava: Ústav pre vzťahy štátu a cirkví, 2009.

Stanislav Příbyl

*Gaudium et Spes:*  
entre caractère pastoral et obligation imposée

Résumé

Dans la constitution apostolique du Code de droit canonique promulguée, Jean-Paul II constate que le code est inspiré particulièrement par les constitutions du Concile Vatican II, c'est-à-dire par la constitution dogmatique *Lumen Gentium* et la constitution pastorale *Gaudium et Spes*. La deuxième constitution n'est pas en elle-même la source d'inspiration pour formuler des normes juridiques. On peut néanmoins y trouver un certain appui pour les réglementations canoniques futures. Cela concerne en particulier l'étude de la notion de mariage qui a inspiré la création du Code tout en redéfinissant les fins du mariage et la nouvelle organisation des relations entre l'État et l'Église, sur la base desquelles le droit de concordat est développé à l'époque de l'après-concile.

Mots clés: Concile, constitution, Église, droit canonique, mariage, concordat

Stanislav Příbyl

*Gaudium et spes:*  
tra il carattere pastorale ed il dovere imposto

Sommarío

Nella costituzione apostolica proclamata del Codice di Diritto Canonico il Papa Giovanni Paolo II afferma che il codice è ispirato particolarmente dalle costituzioni del Concilio Vaticano II ossia dalla Costituzione Dogmatica *Lumen Gentium* e dalla Costituzione Pastorale *Gaudium et Spes*. La seconda costituzione non può essere di per sé la fonte di ispirazione per la formulazione di norme giuridiche. Tuttavia è possibile trovarci un certo sostegno per le future norme canoniche. In particolare ciò riguarda l'approfondimento della concezione di matrimonio che aveva ispirato la creazione del Codice con una nuova definizione dei termini del matrimonio, e una nuova organizzazione dei rapporti tra lo stato e la Chiesa sulla base dei quali il diritto concordatario viene sviluppato nei tempi post-conciliari.

Parole chiave: Concilio, costituzione, Chiesa, diritto canonico, matrimonio, concordato