

LEGAL ASPECTS OF POPE FRANCIS' TEACHING. PART I

ASPEKTY PRAWNE NAUCZANIA PAPIEŻA FRANCISZKA. CZĘŚĆ I

Rev. Doc. Dr. Stanislav Příbyl

University of South Bohemia in České Budějovice, the Czech Republic
e-mail: standa.pribyl@volny.cz; <https://orcid.org/0000-0002-2470-1405>

Abstract

During the years of his pontificate, Pope Francis has issued many amendments to the Code of Canon Law as well as other disciplinary norms. Even his magisterial documents, which are not sources of law in themselves, address legal issues. For example, teaching on human rights was complemented in Francis's *Laudato si'* in its reference to the right to drinking water which should be freely available to everybody. Nevertheless, in terms of the obedience of the faithful to the Magisterium, the question is whether this papal document on environmental protection binds the conscience of those faithful who are not convinced of the unquestionable validity of the theory of human-induced global warming. According to Francis's encyclical *Fratelli tutti*, the stark social inequalities in the world cause discrimination in people's access to basic human rights. Thus, the Pope advocates for completely unrestricted admission of migrants coming from poor countries to those ones which have, as the Pope suggests, gained undeserved and rather accidentally achieved prosperity.

Keywords: pope, law, magisterium, church structures, human rights, environment, migrants, evangelization, ecumenism

Abstrakt

W trakcie swojego pontyfikatu papież Franciszek wprowadził wiele zmian do Kodeksu Prawa Kanonicznego oraz innych norm dyscyplinarnych. Nawet jego dokumenty magisterialne, które same w sobie nie stanowią źródeł prawa, poruszają kwestie prawne. Na przykład nauczanie o prawach człowieka zostało uzupełnione w encyklice Franciszka *Laudato si'* poprzez odniesienie do prawa do wody

pitnej, która powinna być dostępna dla wszystkich bezpłatnie. Niemniej jednak, jeśli chodzi o posłuszeństwo wiernych wobec Magisterium, pojawia się pytanie, czy ten papieski dokument dotyczący ochrony środowiska wiąże sumienie tych wiernych, którzy nie są przekonani o niekwestionowanej słuszności teorii globalnego ocieplenia spowodowanego przez człowieka. Według encykliki Franciszka *Fratelli tutti* rażąca nierówność społeczna na świecie powodują dyskryminację w dostępie ludzi do podstawowych praw człowieka. Dlatego papież opowiada się za całkowicie nieograniczonym przyjmowaniem migrantów z biednych krajów do tych, które, jak sugeruje papież, osiągnęły niezasłużony i raczej przypadkowy dobrobyt.

Słowa kluczowe: papież, prawo, magisterium, struktury kościelne, prawa człowieka, środowisko, migranci, ewangelizacja, ekumenizm

1. The Catholic Church and Human Rights

Papal encyclicals or apostolic post-synodal adhortations (exhortations) are not usually seen as legal documents. Formally speaking, they are not even meant to be so. Encyclicals convey the teaching of authentic Magisterium and are not understood as sources of Church legislation. The post-synodal papal documents, on the other hand, may derive their extra-legal character directly from the fact that, according to the Code of Canon Law,¹ it is not for the Synod of Bishops to “resolve them or issue decrees about them or decide” the issues under discussion (Canon 343). Yet, paradoxically, law can be present even in situations where we would not otherwise look for it. Moreover, in the case of papal documents, the law at stake is not necessarily canonical, i.e., interior church law. Especially since the Second Vatican Council, the Church has increasingly turned to civil society as well as to individual states or the international community, which are governed by their own legal orders, whether national or international. This is particularly evident in the social doctrine of the Church, which affirms an important competence of the Catholic Church, also confirmed by the Code: “It belongs to the Church always and everywhere to announce moral principles, even about the social order (*principia moralia etiam de ordine sociali*), and to render judgement concerning any human affairs insofar as the fundamental rights of the human person or the salvation of souls requires it.” (Canon 747 § 2).

¹ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317 [hereinafter: CIC/83].

The Catholic Church began to approach the world in a far more friendly and solidaristic spirit than had been the case in the documents of the Church's Magisterium in the period prior to the Council. It is the Council's own constitution *Gaudium et Spes* on the Church in the modern world² and, above all, the encyclical of John XXIII *Pacem in terris* of 1963,³ which adapted to the Church's understanding of the concept of universal human rights. For the Catholic Church, the encyclical *Pacem in terris* has a programmatic character, similar to that of the *UN Charter of Human Rights* (1948) for the international community or the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (1950) for European states. Evidently, when these ground-breaking documents were completed, human rights discourse had not yet developed into the complexity we see today. At that time, the focus was still on the rights of two "generations" of human rights, the nature of which is aptly expressed in the titles of the two 1966 UN human rights covenants: the first generation is represented by the *International Covenant on Civil and Political Rights*, the second by the *Covenant on Economic, Social and Cultural Rights*.

Only gradually did the idea of another set of human rights emerge, which later came to be called "third-generation rights": "Those who tend to advocate third-generation human rights are, above all, the spokespersons for the third world. What is to be implemented, is no longer the ideal of liberty but the ideal of fraternal solidarity among all of humanity. This includes, among other things, the right to development, the right to environmental protection and the right to peace." [Seidl-Hohenveldern 2001, 287]. The Catholic Church has not been left out of this process. The Christian concept of the "right to development" had already been comprehensively articulated by Pope Paul VI in his 1967 encyclical *Populorum progressio*.⁴ Here, among other things, the then Pope states the following: "If development calls for an ever-growing number of technical experts, even more necessary still

² Sacrosanctum Concilium Oecumenicum Vaticanum II, Constitutio pastoralis de Ecclesia in mundo huius temporis *Gaudium et spes* (07.12.1965), AAS 58 (1966), p. 1025-115 [hereinafter: GS].

³ Ioannes PP. XXIII, Litterae encyclicae de pace omnium gentium in veritate, iustitia, caritate, libertate constituenda *Pacem in terris* (11.04.1963), AAS 55 (1963), p. 257-304.

⁴ Paulus PP. VI, Litterae encyclicae de populorum progressionem promovenda *Populorum progressio* (26.03.1967), AAS 59 (1967), p. 257-99 [hereinafter: PP].

is the deep thought and reflection of wise men in search of a new humanism, one which will enable our contemporaries to enjoy the higher values of love and friendship, of prayer and contemplation, and thus find themselves. This is what will guarantee man's authentic development – his transition from less than human conditions to truly human ones.” (PP 20).

Thus, according to Paul VI, the Church understands the development of nations not just unilaterally, i.e. in the form of economic growth and the distribution of its results, but as a complex process in which the spiritual component must not be absent. However, the rights of the third generation have greatly expanded since his pontificate, to the point where some of their claims are frequently contrary not only to Christian morality, but also to common sense.⁵

2. The Environment as a Human Rights Issue

The right to protect the environment has taken shape gradually, both in people's consciousness and also in terms of its corresponding legal protections. At the global level, the *UN International Conference on the Human Environment* in Stockholm in 1972 played a substantial role. Thus, for example, the German *Grundgesetz* (Constitutional Basic Law) of 1949 did not yet enshrine a constitutional right to environmental protection, whereas the Czechoslovak (now Czech) *Charter of Fundamental Rights and Freedoms* of 1991 already states: “Everyone has the right to a favourable environment.”⁶ Thus formulated, however, the right lacks immediate enforceability, since there is no clearly determined obligatory subject appointed to fulfil the corresponding obligations: “Therefore, it cannot have the nature

⁵ “Typically, the right to a favourable environment, the so-called ‘rights of solidarity’, the right to peace, the right to information in cyberspace, the right to development and to the common heritage of mankind, the right to death, the right to the free use of drugs, the rights of smokers and non-smokers, the rights of certain sexual minorities, the human rights of animals, the right to cleanliness in ecospace (the right to telecommunication, silence, darkness, etc.), the right to sport, the right to determine the sex of your future child, the right of unborn human beings, the right not to be followed or eavesdropped upon, the right to security (personal safety), etc.” [Zoubek 2010, 93].

⁶ Listina základních práv a svobod [Charter of Fundamental Rights and Freedoms], Constitutional Act No. 23/1991 Coll., promulgated as part of the constitutional order of the independent Czech Republic under No. 2/1993 Coll., Article 35, para. 1.

of a public, subjective, directly enforceable right. From the point of view of its nature, it cannot be classified among fundamental (human) rights.” [Wagnerová, Šimíček, Langášek, et al. 2023, 711].

The teaching authority of the Church must – unlike national legislators – conceive its environmental law in accordance with the principles of the its social doctrine. This is the task that Pope Francis set himself in his 2015 encyclical *Laudato si'*.⁷ The Pope follows John XXIII who said that the Church's documents describing its vision of social order do not only address the faithful in the Church: “More than fifty years ago, with the world teetering on the brink of nuclear crisis, Pope Saint John XXIII wrote an Encyclical which not only rejected war but offered a proposal for peace. He addressed his message *Pacem in Terris* to the entire “Catholic world” and indeed “to all men and women of good will”. [...] In this Encyclical, I would like to enter into dialogue with all people about our common home.” (LS 3). Here, however, the eschatological expectation of a future supernatural home seems to disappear in favour of the Church's “settling down” in this world. A purely Christian perspective as regards the issue of “home”, which rejects the absolutization of the visible world, was already set out in the New Testament e.g. in the Epistle to the Hebrews: “For here we have no lasting city, but we seek the city which is to come.” (Hebrews 13:14).⁸

The Pope's environmental appeals may play a special role in fostering ecumenical relations, for example with Orthodoxy: “Outside the Catholic Church, other Churches and Christian communities – and other religions as well – have expressed deep concern and offered valuable reflections on issues which all of us find disturbing. To give just one striking example, I would mention the statements made by the beloved Ecumenical Patriarch Bartholomew, with whom we share the hope of full ecclesial communion.” (LS 7). As early as 1993, the Ecumenical Directory⁹ instructed the Catholic Church to cultivate dialogue with non-Catholic churches and denominations

⁷ Franciscus PP., Litterae encyclicae *Laudato si'* de communi domo colenda (24.05.2015), AAS 107 (2015), p. 847-945 [hereinafter: LS].

⁸ All the biblical quotations are based on the *Revised Standard Version Catholic Edition*, Compact Edition, Oxford University Pres. 2008.

⁹ Pontificium Consilium ad Unitatem Christianorum Fovenda, *Directorium oecumenicum noviter compositum* pour l'application des principes et des normes sur l'œcuménisme (25.03.1993), AAS 85 (1993), p. 1039-119 [hereinafter: DE].

not only on theological matters, but also in relation to addressing issues of the common life of humanity on the planet: “Other topics for such study and action could include, for example, certain forms of uncontrolled rapid industrialization and technology that cause pollution of the natural environment with serious consequences to the ecological balance, such as destruction of forests, nuclear testing and the irrational use or misuse of both renewable and unrenewable natural resources.” (DE 215). However, finding common themes in the field of ecology can also be seen as a substitute for neglecting real ecclesiological themes that need be discussed in the context of ecumenical relations between different churches. Theological emptiness is thus gradually being replaced by “secular ecumenism” that raises almost exclusively intra-secular issues.¹⁰ It is therefore logical that the usual social themes have been supplemented in recent decades by an ecological agenda.

More specified and also completely new in the social teaching of the Catholic Church is the right of all people to drinking water, enshrined in the encyclical *Laudato si'*: “Yet access to safe drinkable water is a basic and universal human right, since it is essential to human survival and, as such, is a condition for the exercise of other human rights. Our world has a grave social debt towards the poor who lack access to drinking water, because they are denied the right to a life consistent with their inalienable dignity.” (LS 30). Thus formulated, the demand has the character of a moral appeal rather than an enforceable right, since the obliged entity to guarantee access to water is an undefined “world”. In this form, the right of every person to drinking water is not a standard right, whose guarantors tend to be individual states or specific employers, but it is rather a vaguer third-generation right, which tends to have the form of an appeal to humanity as a whole, to the international community or to global economic actors. Concrete social rights, however, have the character of relative subjective rights of a public law nature and imply legally enforceable obligations: “From the outset, they necessarily correspond to obligations to give (*dare*) or to do (*facere*) something; otherwise, a subjective social right cannot be enforced.” [Boguszak, Čapek, and Gerloch 2004, 235].

¹⁰ “But these important ministries, rather social in character, are not sufficiently tied to Christ’s salvific mission. Many of the social tasks indicated could be performed by any humanistically and altruistically oriented person.” [Černý 2006, 110].

In the encyclical, the Pope invokes the need for legally protecting the environment on the planet, but he does not determine precisely what should be setting the standards or, more importantly, who will enforce such regulations: “The establishment of a legal framework which can set clear boundaries and ensure the protection of ecosystems has become indispensable; otherwise, the new power structures based on the techno-economic paradigm may overwhelm not only our politics but also freedom and justice. It is inevitable to create a normative system that contains inviolable limits and ensures the protection of ecosystems before new forms of power based on the techno-economic paradigm destroy not only politics but also freedom and justice.” (LS 53). However, the Pope’s view on how the law to date has actually functioned is rather sceptical: “Laws may be well framed yet remain a dead letter. Can we hope, then, that in such cases, legislation and regulations dealing with the environment will really prove effective? We know, for example, that countries which have clear legislation about the protection of forests continue to keep silent as they watch laws repeatedly being broken.” (LS 142).

3. Obedience of the Faithful to the Magisterium of the Church

The current CIC/83 recalls the duty of the faithful towards the authentic teaching ministry of the Church. This has been made manifest in the social encyclicals of the Pope: “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, 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.” (Canon 752). In the case of the encyclical *Laudato si’*, however, a fundamental issue is at stake: the fact that the Pope clearly subscribes to the theory of human-induced global warming, or to a particular hypothesis that, while finding a suspiciously spectacular scientific consensus in recent years, its elevation to part of proclaiming the Magisterium may raise numerous legitimate questions. The Pope gives this theory the character of an unmistakably valid scientific hypothesis: “It is true that there are other factors (such as volcanic activity, variations in the earth’s orbit

and axis, the solar cycle), yet a number of scientific studies indicate that most global warming in recent decades is due to the great concentration of greenhouse gases (carbon dioxide, methane, nitrogen oxides and others) released mainly as a result of human activity.” (LS 23). In the remaining parts of the encyclical, this hypothesis is elevated to a pre-requisite of the truth of numerous other similar statements: “The warming caused by huge consumption on the part of some rich countries has repercussions on the poorest areas of the world, especially Africa, where a rise in temperature, together with drought, has proved devastating for farming.” (LS 51).

It was, of course, the Second Vatican Council’s constitution *Gaudium et Spes* which sought to draw lessons from the much-discussed case of Galileo Galilei (*caso Galilei*).¹¹ The Council took the position that the Catholic Church was abandoning its efforts to intervene in questions concerning strictly scientific hypotheses and no longer intended to present such hypotheses to the faithful as if they were definitive truths. The conciliar constitution speaks of the “legitimate autonomy of earthly affairs” and apologizes for the Church’s former authoritative interventions against free scientific inquiry: “If by the autonomy of earthly affairs we mean that created things and societies themselves enjoy their own laws and values which must be gradually deciphered, put to use, and regulated by men, then it is entirely right to demand that autonomy. Such is not merely required by modern man, but harmonizes also with the will of the Creator. For by the very circumstance of their having been created, all things are endowed with their own stability, truth, goodness, proper laws and order. Man must respect these as he isolates them by the appropriate methods of the individual sciences or arts. [...] Let us therefore be permitted to deplore some of the attitudes which have sometimes arisen among Christians from a lack of understanding of the legitimate autonomy of science. They have given rise to strife and controversy and have led many to believe that science and faith are in conflict.” (GS 26).

¹¹ “In an earlier version of the text, the Council expressed its regret over Galileo’s case much more strongly. The later softening can be explained by the fact that many of the Council Fathers were still raised in the mentality that held that the Church and her institutions should not apologize but only silently correct any given mistakes. [...] Even this mitigation, however, does not change the fact that this post is an official rehabilitation of Galileo. More importantly, it makes it more complicated for the teaching office of the Church to intervene in an area beyond its competence in the future.” [Skalický 1968, 252-53].

In regards to this position of the Council, the encyclical *Laudato si'* stands at the halfway point. In many places, the Pope writes of global warming caused by human activity as the unquestionable and decisive cause of current climate change. In fact, he goes as far as claiming this: "These situations have caused sister earth, along with all the abandoned of our world, to cry out, pleading that we take another course. Never have we so hurt and mistreated our common home as we have in the last two hundred years. Yet we are called to be instruments of God our Father, so that our planet might be what he desired when he created it and correspond with his plan for peace, beauty and fullness." (LS 53). On the other hand, the Pope also themetises the diversity of scientific opinion: "On many concrete questions, the Church has no reason to offer a definitive opinion; she knows that honest debate must be encouraged among experts, while respecting divergent views." (LS 61). However, it seems as if the "divergent views" referred to in this extract can only be found within the unquestioned hypothesis of human-induced global warming.

Nevertheless, this contradicts the methodology of science, according to which a hypothesis can never be elevated to the level of dogma. While the truth of faith (*dogma*) is given once and for all, and its understanding can only be deepened, illuminated and made more accessible (Canon 747 § 1), all scientific hypotheses are, on the contrary, questionable, subject to so-called falsification. In this issue, we can refer mainly to some of the suggestions put forward by the theorist of scientific knowledge, K.R. Popper.¹² To this day, the faithful who have experienced atheist propaganda of totalitarian state-machine run by the Communist Party tend to be particularly sensitive to the dogmatization of facts other than those of purely religious relevance. The official doctrine of Marxism-Leninism itself was qualified as a "scientific world outlook," and this worldview was imposed as the only ideological alternative within the society. Thus, for example, the Constitution of the Czechoslovak Socialist Republic (*Ústava Československé socialistické republiky*, 1960) states the following: "All education and schooling shall be based

¹² "If a theory *can* be true, it *can* also be false. The theorist thus examines it rigorously on the basis of his ability and imagination, so that it undergoes all possible moments of scrutiny. Using this method of elimination, we may arrive at the true theory. However, this method can never *establish* if the theory remains true, because the number of theories that *can* be true is infinite even after the most thorough process of verification." [Reale and Antiseri 1991, 749].

on the scientific world outlook and on close ties between school and the life and work of the people.”¹³

Thus, it remains an open question whether a Catholic believer is obliged to accept a scientific hypothesis on the grounds that it is stated in an authoritative Church document. However, the Pope chastises Catholic Christians especially for not accepting the hypothesis of human-induced global warming. Rather, he accuses them of not being truly fixed on Christ if they are not sufficiently ecologically conscious: “It must be said that some committed and prayerful Christians, with the excuse of realism and pragmatism, tend to ridicule expressions of concern for the environment. Others are passive; they choose not to change their habits and thus become inconsistent. So what they all need is an *‘ecological conversion’*, whereby the effects of their encounter with Jesus Christ become evident in their relationship with the world around them. Living our vocation to be protectors of God’s handiwork is essential to a life of virtue; it is not an optional or a secondary aspect of our Christian experience.” (LS 217).

However, it can legitimately be argued that in its inclination towards ecological awareness among the faithful, the Church today is unfortunately not receiving a correspondingly welcoming counter-movement, namely, Christian-inspired awareness on the part of the various ecological initiatives and their leaders. Yet, the encyclical *Laudato si’* is based on the concept that all ecologically oriented thought and corresponding activities should be based on the faith in God the Creator. However, this is practically ignored by contemporary ecological activism for which the religious inspiration comes more from the myth of the goddess Earth (*Gaia*). Christianity is usually completely rejected in the current environmentalist milieu, for example because of God’s biblical call to the first humans, which makes man the “master of creation”: “Be fruitful and multiply, and fill the earth and subdue it; and have dominion over the fish of the sea and over the birds of the air and over every living thing that moves upon the earth.” (Genesis 1:28). Also, the encyclical lacks the necessary rebuke to various ecological initiatives since, in their one-sided ideology, they often regard the consequences of human “procreation and multiplication” as purportedly harmful to the planet.

¹³ Constitutional Act No. 100/1960 Coll., Article 24 (3).

Therefore the whole doctrine of the teaching ministry of the Church needs to be seen in its appropriate complementary unity. This makes us turn our attention back to John Paul II's 1995 encyclical *Evangelium vitae* on life, which is an inviolable good.¹⁴ The Pope himself placed this encyclical in the category of the social teaching of the Church, a teaching that does not just focus on the personal moral life of individual Catholic Christians, but concerns all people: "Today, however, this fundamental right to life is denied to many weak and defenceless people, especially to children yet unborn. If, at the end of the last (i.e., nineteenth) century, the Church could not remain silent about the injustices that were rampant then, how much more so today, when the social injustices of the last century – still sadly unremedied – are joined in so many places in the world by even graver injustices and oppressions, which are even mistaken for signs of a new world order to be established." (EV 5).

4. The Universality of Human Rights

In his encyclical *Fratelli tutti* on fraternity and social friendship,¹⁵ the Pope raises the question of the universality of human rights. He considers that the *de facto* social inequality of individuals and peoples also leads to unequal benefits from fundamental human rights: "It frequently becomes clear that, in practice, human rights are not equal for all. Respect for those rights "is the preliminary condition for a country's social and economic development. When the dignity of the human person is respected, and his or her rights recognized and guaranteed, creativity and interdependence thrive, and the creativity of the human personality is released through actions that further the common good". Yet, "by closely observing our contemporary societies, we see numerous contradictions that lead us to wonder whether the equal dignity of all human beings, solemnly proclaimed seventy years ago, is truly recognized, respected, protected and promoted in every situation. In today's world, many forms of injustice persist, fed by reductive anthropological visions and by a profit-based economic model that does

¹⁴ Ioannes Paulus PP. II, Litterae encyclicae de vitae humanae inviolabili bono *Evangelium vitae* (25.03.1995), AAS 87 (1995), s. 401-522 [hereinafter: EV].

¹⁵ Francesco, Lettera Enciclica *Fratelli Tutti* sulla fraternità e l'amicizia sociale (05.10.2020), Libreria Editrice Vaticana, Città del Vaticano 2020 [hereinafter: FT].

not hesitate to exploit, discard and even kill human beings. While one part of humanity lives in opulence, another part sees its own dignity denied, scorned or trampled upon, and its fundamental rights discarded or violated.”¹⁶

In its blanket rejection, or even demonization, of profit as a legitimate goal in the context of market economy, the encyclical’s reasoning comes close to the notion of Marxist political economy as the official doctrine of the former Eastern Bloc states. According to the ideological premises of the time, capitalist production was intended only for profit, however, in the socialist state, a different situation arose. This principle was enshrined in the Soviet Constitution of 1977 even in the form of a general normative proclamation: “The supreme goal of social production under socialism is the fullest possible satisfaction of the people’s growing material, and cultural and intellectual requirements.”¹⁷

According to Marxist-Leninist theory, the “bourgeois” conception of human rights suffered from formalism as a result of property inequalities between people. Thus, socialist jurisprudence reversed the order of importance of fundamental rights. The constitutions of the former Eastern bloc states enshrined social rights first, with the right to work (conceived rather as obligation) and the right to remuneration for it as the first to be mentioned. Only then did political rights and freedoms follow, albeit in an ideologically distorted form.¹⁸ Without knowledge of the actual functioning of the communist regime, however, the proclamations of the time sounded seductively idealistic: “In a society of the working people in which exploitation of man by man has been abolished, the advancement and interests of each member are in accord with the advancement and interests of the whole community. The rights, freedoms and duties of citizens shall therefore serve both the free and complete expression of the personality of the

¹⁶ FT 22, using a quotation from the Pope’s message to Participants in the International Conference “Human rights in the Contemporary World: Achievements, Omissions, Negations”, 10 December 2018, *L’Osservatore Romano*. 10-11 December 2018, p. 8.

¹⁷ Article 15 of the Constitution (Basic Law) of the Union of Soviet Socialist Republics, adopted by the Supreme Soviet of the USSR on 7 October 1977 [Svobodová 1984, 10].

¹⁸ “It is significant that freedom of conscience has been dropped out from the catalogue of fundamental rights. Where the individual and his rights is to be identified with the whole of society, there can be no place for such a personal and intimate phenomenon as conscience” [Wagnerová 2009, 356-57].

individual and the strengthening and growth of socialist society; they shall be broadened and deepened with its development.”¹⁹

Pope Francis has had no personal experience with Eastern European “real socialism” and its ubiquitous state power. He sees the liberal *laissez-faire*, non-interventionist policy of the state as the most pernicious social order: “Some people are born into economically stable families, receive a fine education, grow up well nourished, or naturally possess great talent. They will certainly not need a proactive state; they need only claim their freedom. Yet the same rule clearly does not apply to a disabled person, to someone born in dire poverty, to those lacking a good education and with little access to adequate health care. If a society is governed primarily by the criteria of market freedom and efficiency, there is no place for such persons, and fraternity will remain just another vague ideal.” (FT 109).

According to the Pope’s conception, wealth and affluence seem to be primarily the manifestation of personally unearned happiness, not the result of constant laborious efforts of individuals and generations. Therefore, it is the task of the fortunate to selflessly share their unearned privilege of well-being, even across countries, regardless of their borders: “No one, then, can remain excluded because of his or her place of birth, much less because of privileges enjoyed by others who were born in lands of greater opportunity. The limits and borders of individual states cannot stand in the way of this. As it is unacceptable that some have fewer rights by virtue of being women, it is likewise unacceptable that the mere place of one’s birth or residence should result in his or her possessing fewer opportunities for a developed and dignified life. [...] Seen from the standpoint not only of the legitimacy of private property and the rights of its citizens, but also of the first principle of the common destination of goods, we can then say that each country also belongs to the foreigner, inasmuch as a territory’s goods must not be denied to a needy person coming from elsewhere.” (FT 121, 124).

However, even the *Catechism of the Catholic Church* issued by John Paul II does not formulate the right to enjoy better opportunities in a foreign country in such an unregulated way. On the one hand, it recognizes the right of asylum, though not unrestrictedly: “The more prosperous nations are obliged, to the extent they are able, to welcome the foreigner in search

¹⁹ Constitutional Act No. 100/1960 Coll., Article 19 (1).

of the security and the means of livelihood which he cannot find in his country of origin. Public authorities should see to it that the natural right is respected that places a guest under the protection of those who receive him.”²⁰ At the same time, however, the Catechism also emphasizes the obligations of immigrants, which are regrettably omitted in the encyclical *Fratelli tutti*: “Immigrants are obliged to respect with gratitude the material and spiritual heritage of the country that receives them, to obey its laws and to assist in carrying civic burdens.” (CCE 2241). Also, from the viewpoint of Christian-rooted morality, one cannot pass the “order of charity” (*ordo amoris*), in which helping one’s neighbours is to be properly carried out. This is already suggested in Paul’s epistle to the Galatians: “So then, as we have opportunity, let us do good to all men, and especially to those who are of the household of faith.” (Galatians 6:10). From this perspective, the preferential admission of Christian refugees over those of other religions, for example, does not constitute discrimination.²¹ According to Pope Francis, the key global player in the promotion of human rights and order in the world today is the United Nations: “The seventy-five years since the establishment of the United Nations and the experience of the first twenty years of this millennium have shown that the full application of international norms proves truly effective, and that failure to comply with them is detrimental. The Charter of the United Nations, when observed and applied with transparency and sincerity, is an obligatory reference point of justice and a channel of peace.” (FT 257). In terms of the international law of war (*ius ad bellum*), the Pope rightfully rejects the concept of the so-called “preventive war,”²² promoted primarily by the American neo-conservative movement in the context of the conflict against

²⁰ *Catechismus Catholicae Ecclesiae*, Libreria Editrice Vaticana, Città del Vaticano 1997 [hereinafter: CCE], no. 2241.

²¹ “We cannot forget St. Augustine’s doctrine of the *ordo amoris*, or the ontological order: the Christian is to love his neighbour. Certainly, he is to love all men in prayer and in intention, but on the material plane he cannot do so equally towards all because resources – time, money, space, energy – are limited.” [Conci 2022, 203].

²² “The mere fear of remote and hypothetical dangers caused by the emergence of power imbalances can never be considered as a threat of real aggression that would justify the use of military force in the interest of self-defence. A ‘foreseeable’ or even ‘imaginable’ future threat cannot justify the use of military force, since the standard theory of just war requires that the threat be ‘imminent’, practically ‘inevitable.’” [Velek 2014, 103].

radical Islamism and international terrorism. However, this concept failed to secure a favourable response even from Pope John Paul II: “In this way, some would also wrongly justify even ‘preventive’ attacks or acts of war that can hardly avoid entailing evils and disorders ‘graver than the evil to be eliminated.’” (FT 258).

Conclusion

Since the publication of the encyclical of John XXIII *Pacem in terris*, human rights have become a topic of interest in the social doctrine of the Church. Pope Francis has enriched the existing topic with rights related to the environment. His position on the impact of ecological conditions on human life was reflected in a very specific formulation of the human right to safe drinking water. In the field of international law, Francis has particularly defended the rights of migrants to be granted asylum and appealed to the willingness of rich countries to receive them generously. In contrast to the magisterium of John Paul II, however, Francis has not set conditions that would motivate migrants to respect the cultures of the countries to which they come as guests. However, he agrees with John Paul II in rejecting the concept of preventive war, the conduct of which can have unpredictable consequences.

REFERENCES

- Boguszak, Jiří, Jiří Čapek, and Aleš Gerloch. 2004. *Teorie práva*. Praha: ASPI.
- Černý, Pavel. 2006. *Kristovo dílo spásy jako základ a imperativ misie. Aktivity Světové rady církví*. Brno: L. Marek.
- Conci, Andrea. 2022. *Codice Ratzinger*. Milano: Byoblu Edizioni.
- Reale, Giovanni, and Dario Antiseri. 1991. *Il pensiero occidentale dalle origini ad oggi. 3 – Dal romanticismo ai giorni nostri*. Brescia: Editrice La scuola.
- Seidl-Hohenveldern, Ignaz. 2001. *Mezinárodní právo veřejné*. Praha: ASPI Wolters Kluwer.
- Skalický, Karel. 1968. *Radost a naděje*. Řím: Křesťanská akademie.
- Svobodová, Sofia. 1984. *Ústavy evropských socialistických států*. Praha: Státní pedagogické nakladatelství.
- Velek, Josef. 2014. *Kapitoly z teorie spravedlivé války*. Praha: Filosofia.

- Wagnerová, Eliška, Vojtěch Šimíček, Tomáš Langášek, et al. 2023. *Listina základních práv a svobod*. Komentář. Praha: Wolters Kluwer.
- Wagnerová, Eliška. 2009. „Základní práva.” In *Komunistické právo v Československu. Kapitoly z dějin bezpráví*, edited by Michal Bobek, Pavel Molek, and Vojtěch Šimíček, 330-63. Brno: Masarykova univerzita, Mezinárodní politologický ústav.
- Zoubek, Vladimír. 2010. *Právověda a státověda. Úvod do právního a státovědního myšlení*. Plzeň: Aleš Čeněk.