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 THE CONCISE GUIDE SERIES

a concise guide to
**Your Rights
in the
Catholic
Church**

Kevin E. McKenna

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*To Rev. Francis Morrissey, O.M.I.,
in recognition and appreciation of
his tireless efforts to make the rights
of God's people a reality and lived
experience in the Church today.*

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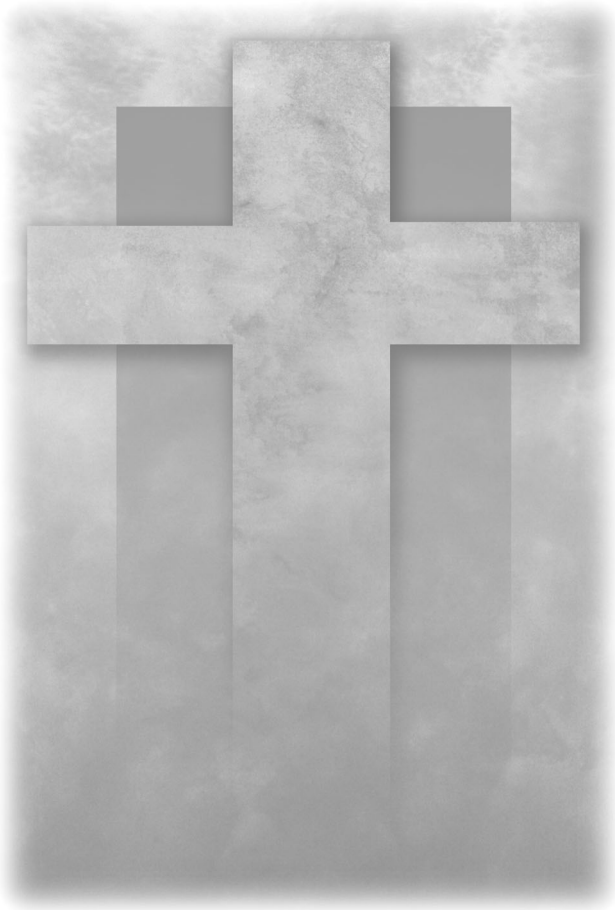
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INTRODUCTION

This book responds to a question that is being asked by many Catholics today, both clergy and laity: “Do I have rights in the Catholic Church?” And if I do, another question comes immediately to mind: “What are my rights?” These questions have been fueled, to a large extent, by the exploding sexual abuse scandal that has raged throughout the Church in the United States. The report of the John Jay College of Criminal Justice in New York, commissioned by the United States Conference of Catholic Bishops in response to the sexual abuse scandal, revealed that approximately 4,392 clergy allegedly abused 11,000 minors between 1950 and 2002.

In the midst of this crisis, some lay people, fearing they had no rights or that their rights were woefully ignored, turned to civil authorities to prosecute allegations of sexual misconduct against clerics. Some believed that no recourse was available to them when the Church seemed to turn a deaf ear to their complaints. Commentators both within and outside the Church have expressed alarm or shock by the manner in which allegations have been received and often not prosecuted.

Many accused clerics, feeling powerless when they were removed from ministry or even the priesthood after allegations had been made, wondered about their own rights in the Church—especially the right of self-defense. Some maintain that they have been exposed to “double jeopardy” and “retried” for the same crime after they had been previously sanctioned. Others have maintained that they were never afforded due process in which to prove their innocence.

Participants of the Second Vatican Council (1962–1965) thought it opportune to present a series of rights based on the Council’s formal teaching. These rights, understood as the protection to be afforded certain types of action on the basis of common humanity, had been articulated in earlier papal teaching. Popes like Leo XIII with *Rerum Novarum* and John XXIII with *Pacem in Terris* did much to promote the dignity of the human person and advocate for human rights in all spheres of society. Some years later, in 1983, some of these rights were to be formally adopted and legislated with the publication of a new *Code of Canon Law*. In addition to the “canonization” of some human rights in its legislation, the new Code also revised and updated its penal procedures, a development that has relevance to the recent sexual abuse investigations by Church authorities.

This book distills in a practical format the rights of Catholics now recognized in the Roman Catholic Church. Its purpose is really twofold: to familiarize Catholics with the rights and obligations written into Church law for all its members and to outline and demystify the procedures that are in place for the vindication of these rights. It is aimed at the interested Catholic in the pew, the lay ecclesial minister, and members of the clergy who have much at stake in the eventual resolution of the abuse crisis, but it has broader application as well. Many Catholics will be surprised to learn of their rights, not only as they relate to this crisis, but also in a variety of contexts and situations, including the right to choose a state of life and an appropriate “spirituality.” Clergy will perhaps be surprised to see the small number of rights that are legislated in the Code particularly for them. But they may well be heartened to see the procedural protections that offer due process when allegations have been made against them. These are especially apparent in the new norms prepared by the United States Conference of

Catholic Bishops and approved by the Holy See for the prosecution of the crime of sexual abuse by a cleric. This book also elucidates various means at the disposal of all the Christian faithful in vindicating their rights.

The first part of the book will examine the various rights and obligations that are enumerated in the 1983 *Code of Canon Law*, under three categories: “the Christian faithful,” “the laity,” and “the clergy.” *Christian faithful* is the term used to describe **all** those incorporated into Christ through baptism in the Church. Thus, all the rights that are identified in this section of the code would apply to all members of the Church, be they lay or cleric. The *laity*, as distinct from the *clergy*, make up most of the Church and are commissioned by virtue of their baptism to proclaim the gospel in their various walks of life. The ordained ministers are deacons, priests, and bishops who have been designated as such by the laying on of hands and prayer, for ministerial service to the community of the Church. Following the teachings of the Second Vatican Council, all members of the Christian faithful are equal in dignity and are called to work actively together for the building up of the Body of Christ.

Following each right listed in this first section is a description of the right, usually taken from the appropriate constitution or decree of the Second Vatican Council from which the right is derived. As will be seen, the Council documents provided the basis for much of the 1983 *Code of Canon Law*. In other words, the code legislated or defined as law the insights and teachings of the Council on the dignity of the human person and the fundamental rights of all. Both Pope Paul VI and Pope John Paul II carried this vision forward.

In each of these sections, the *obligations* of each group—Christian faithful, laity, and clergy—are also listed. Each baptized member of the Church is called to live in

communio, “in communion,” within the Church and with fellow members. Initiation into this community not only imparts rights but also various obligations that help protect and preserve the rights that are afforded to all for the sake of the common good.

When Pope John Paul II promulgated a new *Code of Canon Law* for the Church in 1983, it was promulgated for the Latin Rite. However, the Roman Catholic Church consists of twenty-two distinct churches: the Latin church and twenty-one Eastern Catholic churches, each with its own hierarchy, in communion with Rome. The canons of the Latin code affect members of the Latin church. In 1990, Pope John Paul II issued the *Code of Canons of the Eastern Churches* that affects members of the Eastern churches, unless otherwise specified. References in this text to canons about rights and obligations include both the Latin (CIC) and Eastern (CCEO) codes. The rights and obligations in both are almost identical.

Chapter 5 presents several flash points or hot spots in the church of today where questions about rights are being discussed. Examples, including admittance to the sacraments, the closing of parishes, and the allegation of sexual abuse against a cleric, attempt to address which rights come into play. Many times there are several rights and points of law that must be carefully considered.

One purpose for knowing rights is to give members of the Church a real possibility of vindicating those rights. There is a clear preference by the Church for due process in resolving issues of rights. The Church encourages use of a mediator or an arbitrator to resolve matters before utilizing other means of redress, although other means are provided. Included in chapter 6 is a sample process for resolving rights using a “due process” model presently used in the Archdiocese of Milwaukee (Wisconsin). It is important to note that bishops

are empowered to establish and organize such processes for their own dioceses for the proper protection of rights and assurances of just proceedings in their jurisdiction.

The code also outlines a process for vindication of rights when attempts at due process, for one reason or another, fail or are inconclusive. A procedure called *hierarchical recourse* is outlined in Chapter 6. This is initiated when a member of the Christian faithful believes that he or she has been injured because of a decision given by a Church authority. Recourse is normally lodged against a bishop and involves an effort to remedy the situation locally before appealing to the appropriate Roman office. This appeal must be made within strictly prescribed time limits.

The appendices for this book include a full listing of the rights of the Christian faithful, the laity, and clerics as enumerated in the 1983 *Code of Canon Law*; a diagram containing the timeline and process for administrative recourse; and an outline of the procedures of the penal trial. This last process is used in cases such as the permanent removal of a priest from the clerical state.

This work is not, in any sense, a “do-it-yourself” guide to prosecuting individual rights when a member of the Church believes that his or her canonical rights have been violated. After attempts to resolve a dispute locally fail, a member of the Christian faithful may wish to consider a canonical process of recourse. In these cases it is important to secure the assistance of a qualified canon lawyer who is conversant with the norms of the procedures. A person would hire an attorney to help in civil proceedings; it only makes sense to take advantage of the expertise of canon lawyers when attempting formal recourse in Church matters. Normally, the names of competent canonists can be obtained from the local tribunal. Those filing complaints are advised in most

cases to obtain an advocate (canon lawyer) from outside their own jurisdiction to ensure non-partiality.

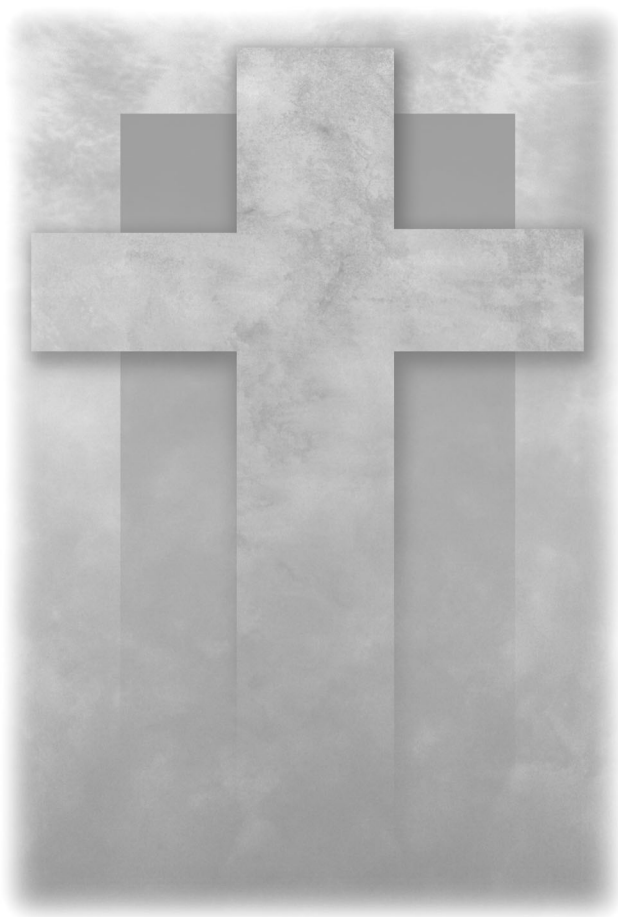
It is hoped that as more members of the Christian faithful come to know their rights and more uniform efforts are made to observe and vindicate these rights, a more just Church will emerge. Only then can we be an appropriate reflection for society of what the Church teaches and preaches concerning the dignity of each human person.

I am most grateful for the guidance of several colleagues who reviewed the text and made many helpful suggestions and corrections: Rev. Thomas T. Brundage, Msgr. Frederick C. Easton, Rev. Patrick R. Lagges, Msgr. Roch Page, Dr. Michael Ritty, and Miss Linda Weigel. I wish to express gratitude for their expertise and the donation of precious time from their extremely busy canonical schedules.

ABBREVIATIONS

AA	Decree on the Apostolate of the Laity, <i>Apostolicam Actuositatem</i>
AG	Decree on the Church's Missionary Activity, <i>Ad Gentes</i>
CCEO	Code of Canons of the Eastern Churches, <i>Codex Canonum Ecclesiarum Orientalium</i>
CD	Decree on the Bishops' Pastoral Office in the Church, <i>Christus Dominus</i>
CIC	Code of Canon Law, <i>Codex Iuris Canonici</i>
DH	Declaration on Religious Freedom, <i>Dignitatis Humanae</i>
DV	Dogmatic Constitution on Divine Revelation, <i>Dei Verbum</i>
GE	Declaration on Christian Education, <i>Gravissimum Educationis</i>
GS	Pastoral Constitution on the Church in the Modern World, <i>Gaudium et Spes</i>
IM	Decree on the Instruments of Social Communication, <i>Inter Mirifica</i>
LG	Dogmatic Constitution on the Church, <i>Lumen Gentium</i>
NA	Declaration on the Relationship of the Church to Non-Christian Religions, <i>Nostra Aetate</i>
OE	Decree on Eastern Catholic Churches, <i>Orientalium Ecclesiarum</i>
OT	Decree on Priestly Formation, <i>Optatam Totius</i>

PB	Apostolic Constitution on the Roman Curia, <i>Pastor Bonus</i>
PC	Decree on the Appropriate Renewal of the Religious Life, <i>Perfectae Caritatis</i>
PJ	Promoter of Justice
PO	Decree on the Ministry and Life of Priests, <i>Presbyterorum Ordinis</i>
SC	Dogmatic Constitution on the Sacred Liturgy, <i>Sacrosanctum Concilium</i>
UR	Decree on Ecumenism, <i>Unitatis Reintegratio</i>



The Development of Human Rights in the Church

The Roman Catholic Church has attempted, in view of its particular theological perspective of the human person, to provide a distinctive shape and context to the idea of human rights. Its Christian anthropological view of the human person helps differentiate a Catholic approach to rights from others that have their source in other religious and intellectual traditions.

The dignity of the human person has been the basis for the Catholic Church's teaching concerning human rights, especially as has been articulated in papal teaching during the last century. This teaching is grounded in the biblical account of the human person's creation in the image of God (Gn 1:28). The nature of this image has been interpreted in various ways in the Church's tradition. What appears fundamental are two central doctrines of Christianity: the Incarnation and the Redemption, by which the Christian tradition expresses its belief in the reality that God so loved the world that he became human. A specifically Christian warrant seeks to ground human rights in the dignity of the person, made in God's image and likeness.

The continuing attempt by the Church to express and clearly specify the claims of human dignity in every age has given rise to the development of the Roman Catholic human rights tradition. The last one hundred years have seen the promulgation of many papal encyclicals that attempt to articulate the centrality of human dignity and protection of the rights that flow from such concern. The teaching of the various popes about human rights has had an inevitable impact upon the Church's legal system or canon law. The legal apparatus seeks to recognize, guarantee, and foster the fundamental rights of the People of God as set forth in the Church's teaching on human rights.

Building on such encyclicals as *Rerum Novarum* (Leo XIII), which in 1891 addressed the rights of workers, Pope John XXIII promulgated the document *Pacem in Terris* in 1963. That encyclical effectively developed a human rights doctrine for the Catholic Church. It defends the dignity of the human person, reiterating and expanding the thought of previous encyclicals about social justice. Much of the argumentation of the document relies on reason and natural law, since it addresses rights that are the heritage of all people, and because this encyclical was addressed to "all people of good will." It affirms a wide variety of rights, including the right to life; the rights to clothing, food, and shelter; rest and medical care, culture, and education. It also addresses the right to freedom of expression, association, and the free exercise of religion. It speaks of the right to work, to organize, and to form labor unions. The rights to private property and to the juridical protection of one's rights are also mentioned.

The rights and obligations presented by John XXIII in *Pacem in Terris* are not unique in themselves, nor constitutive of a major departure from traditional Catholic thought. However, an effort was made in that encyclical to gather and list the rights in an explicit manner. The listing provided a

basis for a critique of societies and their implementation of human rights. John XXIII saw the mutual acknowledgment of rights and obligations in a society as a kind of *preparatio evangelica*—a preparation for the gospel. It can bring the wider world to an awareness of fundamental values such as truth, justice, charity, and freedom that in turn can lead to knowledge of the true God—both personal and transcendent. *Pacem in Terris* demonstrated the concern of the Catholic human rights tradition to set specific rights within a moral context. To every human right there corresponds a duty that this right be respected by the subject of the right, by other individuals, and by the greater society. The protection and coordination of human rights is a responsibility that requires organized action by the entire society.

John XXIII's positioning of human rights within a natural law framework provided linkage with a central Catholic theological tradition. It also provided a parallel with the Western tradition that saw human rights as a development of positive law by moving the discussion to a "higher law" that affirmed natural and God-given rights. The freedom, dignity, rights, and responsibilities of each human person are sacred. The dignity of the person derives from his or her universal, inviolable, and inalienable rights. The human person has these rights because God the Creator has endowed each individual with intelligence and free will.

Pope John's theory of human rights contributed a natural law foundation to the discussion within the Roman Catholic tradition. This gave the Church the opportunity to dialogue with other cultures and states in an area of mutual concern. For the first time within its tradition, the Church provided an extended enumeration of human rights within a papal encyclical.

The Second Vatican Council underscored the Church's concern for human rights as developed in such encyclicals as

Pacem in Terris. For example, *Gaudium et Spes* (“The Church in the Modern World”), begins with a discussion of the human person’s transcendental value, “[the human person] considered whole and entire, with body and soul, heart and conscience, mind and will” (GS, 3). Such an approach and anthropology lead to a Christian humanism focused on protecting individual rights and duties.

One of the major influences toward the incorporation of rights and their protection in the *Code of Canon Law* was the development of the *Principles for Revision* approved after the Council but before promulgation of the code. The 1967 Synod of Bishops approved these principles to provide a guide for the ongoing process of revising the code.

In April 1967, a central commission of consultors for the revision of the code, under the direction of Cardinal Pericle Felici, president of the commission, set out to develop several fundamental principles to aid in the task of revision. The resulting principles were reviewed and approved by the 1967 Synod. An important principle that emerged was the assurance of consistency between the revised law and the teachings of the Second Vatican Council. The principles thus tried to ensure that the new code emphasized the fundamental equality of all the faithful, and that appropriate judicial and administrative measures were created to protect the rights of persons against arbitrary uses of authority. The principles also affirmed that one of the essential objects of canon law is the determination and safeguarding of the rights and obligations of each person. One of the principles established that the revised code should acknowledge, define, and articulate the rights that the Christian faithful possess by law. Also mentioned was the need for implementing structures that would safeguard these rights.

In order to remove the dangers of arbitrariness in the exercise of authority, the principles called for a revised system of

appeal for decisions and actions considered to be in violation of rights. They further state that in the pursuit of justice it would be necessary that such procedures be as open as possible and that the individual's rights be clearly identified and protected. The person against whom any accusations are made must be informed of all the charges made against him or her.

Toward the close of the Second Vatican Council, Pope Paul VI had suggested to the commission working on the revision of the code that they consider some type of "fundamental law of the Church." This "*Lex Ecclesiae Fundamentalis*" (LEF) would contain the essential theological and juridical bases of the Church and would be a kind of "constitution" upon which the rest of the new code could be structured. A sub-committee was assigned to this task and began working on a draft that among other things included a list of rights and duties that pertain to all the Christian faithful. Many of the rights were taken directly from the Council documents. An editorial decision was later made that eliminated rights and obligations as a separate part of the code. Instead, the rights and obligations would be incorporated within the respective sections of the Christian faithful, laity, and clergy.

The rights now included in the *Code of Canon Law* had their basis in a "constitutional statement," the *Lex Ecclesiae Fundamentalis*, and were uniquely mandated by "Principles for the Revision of the Code" of the 1967 Synod of Bishops. It is clear that these rights have a certain priority in the revised law of the Roman Catholic Church.