

Carlo FANTAPPIÈ, *Il diritto canonico nella società post-moderna. Lezioni universitarie*, G. Giappichelli, Torino, 2020, 399 pp., ISBN: 978-88-921371-7-2

Why study Canon Law? This is the question posed by the author at the beginning of these 400 pages. Professor Carlo Fantappiè is certainly one of the best specialists in the history of canon law in modern times and has a long experience of teaching canon law in the Italian Faculties of Law of secular Universities to students who are not all, and perhaps not even predominantly, Catholic. If, in France, canon law is not part of the regular course of law students, this situation arises from the history of the Third Republic and from the separation established then between the State Universities and the private Institutes which we do not dwell on. It is not the same in most European countries and especially in Italy: canon law on the one hand, church law on the other, both are the subject of courses, sometimes mandatory and sometimes optional, offered to all students at law from all Faculties.

The book is not a simple manual of canon law nor a specific study on a particular question of canon law. It is intended as a kind of introduction to canon law for those who devote themselves to the study of law in order to show how current legal questions can be compared with canon law, often adopting a doctrinal perspective, historical or not. Professor Fantappiè considers it necessary to take note of the profound changes in the systems of thought and in the post-modern society that we know, which is no longer “Christian”, but “post-Christian”.

Canon law is not, however, an outdated legal system that would only interest historians. It should not be confined to a different sphere from other legal orders. It should be approached in a spirit of interdisciplinarity, without isolating it from other laws, because it adopts the same methods. Nor should it be isolated from theology from which it draws its material and ultimately from all studies on man and society.

Teaching canon law in a lay university constitutes a real cultural challenge because it imposes, in strict respect for the law of the Church, going beyond the purely denominational perspective to show the cultural value of this particular teaching. The author highlights the *sapientia canonica*, both doctrine and wisdom, which is one of the essential features of this legal system, specific no doubt, but which no barrier should isolate from state rights.

In this spirit of dialogue, or at least of comparison between legal systems, Carlo Fantappiè divides his remarks into three parts, the last being the longest.

In the first part, he begins by presenting the historical, legal, and theological context in which canon law takes place. With a magnificent height of view, it combines the historical perspective essential to any study relating to the Church, to the pluralism of rights, to the globalization of the world and to the challenges of new technologies. We will particularly admire the pages relating to the exit from the sacred, an exit itself accompanied by the return of religions, or else to the metamorphosis of the sacred in our secularized societies. As a jurist but also as a philosopher, he wonders about the possibility of combining democracy and dogma, or profane rationality and religious truth.

The second part is devoted to the specific characteristics of the canonical order. The sources are not all studied for themselves, but it is the particular characteristics of these sources, at each period, which hold the attention. A magnificent synthesis of 40 pages leads the reader from the Bible to “the Church-people of God”, passing through the Tridentine model and the *societas perfecta*. Divine law and human law coexist in the *corpus* of sources of Church law over the centuries. With good reason, the author insists in particular on the flexibility of canon law (pp. 185-220). With perfect nuances, he reviews the multiple mechanisms of canon law allowing for this flexibility. Many of them are inherited from history, from the time of the *plenitudo potestatis* of Innocent III and his successors in the see of Peter, or from the increasing centralization of the government of the Church, thanks to the Tridentine law and in a continuous movement until the middle of the XXth century. If state laws sometimes bring into play

exceptional circumstances, cases of force majeure, privileges, etc., canon law more often resorts to mechanisms of this kind and offers a much better range of them: canonical equity, dispensation, necessity ..., and many other notions, often legitimize exceptions which are not infringements of the law but legitimate derogations. The organization of canon law is subordinated to the spiritual good of the faithful, which implies not automatically applying all the rigor of the law. The Church can thus suspend the application of a norm, while remaining in perfect conformity with the legal order. If, as Carlo Fantappiè indicates, this specificity of Church law is linked to the very nature of this law and to its fundamental purpose, perhaps we can also see here the historical heritage, more marked in the canon law than in state law, the codifications of which have brought about more profound upheavals than that achieved by the Code of 1917.

The third part of the volume, the longest, is entitled “the Church, the faithful, the government”. The Church presented is that of Vatican II, Church-people of God according to the conciliar constitution *Lumen Gentium* and no longer Church-hierarchy as presented by Vatican I, in the line followed since the Council of Trent. These developments are particularly interesting in 2022, when some question the opportunity of rethinking the constitution of the Church and its hierarchical structure. Following with Carlo Fantappiè the path traveled between 1870 and the 1960s opens up very useful ways for those who want to reflect on the current situation of the Church and the Churches. Equally important are the developments on the tension between hierarchy and synodality (p. 237), two realities that Pope Francis knows how to combine. *Sanctificare, insegnare, governare*, are examined in turn, as are the various rights and duties of clerics and laity.

Chapter 10 is devoted to the disciplinary and penal system (pp. 317-350). These pages were written before the promulgation of the new Book VI of the Code (Apostolic Constitution *Pascite Gregem Dei* of May 23, 2021) and provide great keys to understanding this reform. With good reason, Carlo Fantappiè inscribes the evolution of the penal law of the Church in history. It evokes fraternal correction, the penitential practice which was established in the High Middle Ages, penitentials and the

progressive application of penal law in the classical law of the Church during the XIIth century. Canonical doctrine struggles to conceive sin and crime separately. Nor does it succeed in accepting the prosecution of facts (crimes or sins) when these facts have not been a source of scandal and have therefore not disturbed the apparent order of the Church. It shows how a secular penal order was gradually built separately from the Church from the XVth century.

About the government of the Church, Carlo Fantappiè begins with the study of the primacy of the bishop of Rome, to move on to the primacy of the college of bishops. This is followed by fine developments on the government of the dioceses and the chapter ends on co-responsibility, synodality and unity. Here again, the professor of history of canon law leads his readers to the most recent news.

In this journey through the centuries and the subjects, Professor Fantappiè brings out the main changes of our time with which canon law must confront itself. However, this postmodernity should not make us forget the value of man, his dignity and the humanist ideal offered by Christianity and the historical religions, in respect of traditions that should be adapted without rejecting them.

In ending this beautiful book of canon law, but still more reflection on canon law in post-modern society, let us make a sort of connection between two works of which the issue LXI of *L'Année Canonique* reports here: Carlo Fantappiè's book and Juan Ignacio Arrieta's book on the law of the Vatican City State. Juan Ignacio Arrieta exposes a state law inspired by a legal tradition with a spiritual purpose and Carlo Fantappiè analyzes the law of the Church for an audience of jurists mainly studying state law. The dialogue between the two spheres of which Pope Gelasius spoke is not about to end and it continues to enrich both legal systems which do not necessarily have to be confused.

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