

Editorial

SIGNS OF THE TIMES AND RECENT CANONICAL REFORMS

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Aware of the changes that had been happening in the world, Vatican II stated 50 years ago that the “Church has always had the duty of scrutinizing the signs of the times and of interpreting them in the light of the Gospel” (GS 4). “We must therefore recognize and understand the world in which we live, its explanations, its longings, and its often dramatic characteristics” (GS 4).

Vatican II sensed that as a result of “profound and rapid changes” spreading around the world, “we can already speak of a true cultural and social transformation, one which has repercussions on man’s religious life as well.” It acknowledged that “political, social, economic, racial and ideological disputes still continue bitterly” throughout the world (GS 4) and that “technology transforms the face of the earth” (GS 5). It also considered the effective role that new social communication media plays in “contributing to the knowledge of events” (GS 6). As a consequence of “this very circumstance, the traditional local communities such as families... experience more thorough changes every day” (GS 6). It continues to state how “a change in attitudes and in human structures frequently calls accepted values into question” (GS 7). Finally, “these new conditions have their impact on religion... growing numbers of people are abandoning religion in practice. Unlike former days, the denial of God or of religion, or the abandonment of them, are no longer unusual and individual occurrences” (GS 7). If Vatican II was, then, already aware of the fact that “this development coming so rapidly and often in a disorderly fashion ... beget or intensify contradictions and imbalances” (GS 8), one can imagine how much more it is in today’s technologically and scientifically advanced world and time.

The Christian faithful are aware of the changes in the world and in the Church and raise many existential questions. "Pope Francis has relaxed the Church marriage laws. Why can't the bishops or those responsible in the dioceses/eparchies and parishes, admit us, the divorced or separated and cohabiting/remarried outside the Church, to remarriage in the Church and permit us to receive holy communion?" This was one of the questions encountered recently by the author of this editorial. In this case, the marriage took place several years ago. After some years they separated, divorced civilly, and the man began cohabiting with another woman from whom he has children and similarly the woman also. Now, after twenty years of marriage, the real wife dies and this man argues that his wife is no more and hence wants to be permitted to receive communion and to get remarried in the Church. "What do you say Father?" This was the query and interest of a rather educated layman who for many years has abstained from Holy Communion due to the separation from his wife and cohabitation with another woman. He came with this request referring to the reform introduced by Pope Francis.

The number of married couples going through separation, divorce, and/or cohabitation has increased in the recent past. Some of the victims of separation or divorce are innocent as they are prevented from receiving communion for no fault of theirs. Though this seems to be a general phenomenon, especially in European and other Western countries, such cases are treated differently in various dioceses and even in different parishes of the same diocese. This is especially true regarding the reception of communion by divorced and/or separated persons who are cohabiting with someone else or have remarried civilly. Hence, the extraordinary Synod on the Family was held in 2014 and new documents based on it have come out to handle the new situation.

The Church wants to keep pace with the changes taking place in the secular world and accommodate them as much as possible without compromising the essentials of ecclesiastical doctrine and discipline. The present issue of *Iustitia* treats some of the current reforms introduced by Pope Francis in the field, especially, of matrimonial law in the Church and the use of other disciplines and sciences in the evaluation of certain matrimonial cases in the tribunals.

In the ecclesiastical tribunals experts have a greater role and relevance in arriving at proper judicial sentences of matrimonial

cases. Bobby S. Tharakunnel, in his article, "Forensic Psychiatry and the Role of Experts in Canon Law," claims that experts in forensic psychiatry can contribute much to a tribunal's decision-making process in ecclesiastical matrimonial cases, especially those related to psychic nature. The author says that "Forensic science, typically referred to as *forensics*, is the practical application of numerous sciences to solve questions related to civil or criminal legal actions" (p. 148). When a judge needs to handle cases that necessitate expertise pertaining to a particular field and he himself is unqualified for the same, then experts "competent in clinical psychology, forensic psychiatry, or other related sciences," are needed "to help him arrive at an objectively precise and legally just decision" (p. 152).

The sacrament of Marriage, the institution that establishes the family, the basis of any society and "domestic church," the principal unit of the Church, has ever been a point of concern for the legislator. "The zeal for the salvation of souls," the "ecclesial duty of safeguarding the unity of the faith and teaching regarding marriage, the source and center of the Christian family," and the demand of charity and mercy "that the Church, like a good mother, be near her children who feel themselves estranged from her" have prompted Pope Francis to effect "a reform of the processes regarding the nullity of marriage, ... with due regard for the need to protect the principle of the indissolubility of the marital bond." The provisions in the reform "favor not the nullity of marriages, but the speed of processes as well as the simplicity due them..." (MIDJ)

Leszek Adamowicz's article, "The Circumstances of Persons and Things That Can Allow for a Case of Nullity of Marriage," evaluates the necessary conditions required to implement the "shortened process" found in the reformed procedural norms for declaring the nullity of marriage. The author critically analyses art. 14 §1 of "The way of proceeding in cases regarding the declaration of the nullity of a marriage" and comments that the pre-judicial inquiry directed toward understanding the situation of the parties in a matrimonial case and gathering useful material for the eventual judicial process is "part of a regular work, and not an additional, supplementary or extraordinary action" (p. 167).

The article, "The Sacrament of Penance: Pastoral and Inter-ritual Difficulties Regarding Sins and *latae sententiae* Censures" is based on

a research made by Vinson Joseph to identify the canonical nuances of “reserved sins,” which are found, in a strict sense, only in the CCEO. This is compared with the parallel system, the *latae sententiae* censures, especially non-declared excommunication and interdict, in the CIC. The author makes “an attempt to compare these two systems of reservations theoretically and pastorally in the field of the sacrament of penance and to examine its merits and demerits” (p. 180). He claims that these two systems are theoretically and legally unequal, and that the existence of these two types of reservations concerning the sacrament of penance creates injustices, legal confusions, and illegal practices. As reserved sin and *latae sententiae* censures are, respectively, sacramental and penal principles, it “raises the problem of how these two sacramental and penal principles are seen equally and treated in the pastoral field without their theoretical differences being considered” (p. 190). The author opines that “today, with the large-scale globalization and the rapid migration of people, the existence of two systems can even produce certain illegal practices and pastoral discomforts for both the penitent and confessor, causing injustice” (p. 199). This article is divided into two parts. The second part will appear in the next issue of *Iustitia*.

Twenty-five years have passed since Pope John Paul II promulgated the Code of Canons of the Eastern Churches, on October 18, 1990 that came into effect on October 1, 1991. At this juncture in the life of the code of the Eastern “Churches all over the world, Sebastian Payyappilly, in his article “Reception of CCEO by the Catholic Churches in India,” attempts “to present how far CCEO has been succeeded in its purpose, especially in the context of the Church in India” (p. 202). The author “deliberate[s] specifically how CCEO has influenced the Syro-Malabar and Syro-Malankara Churches in their existence and collective functioning in India” (p. 203). In doing so, he assesses how the following have resulted from the positive reception of CCEO by the Eastern Catholic Churches in India: (1) the juridical configuration of the Syro-Malabar Church into one of the four categories of Churches *sui iuris* provided in the Code; (2) the recognition of the Syro-Malankara and Syro-Malabar Churches as *sui iuris* and their elevation to Major-Archiepiscopal ecclesial status; (3) their synodal structure of government; (4) the formulation of their particular laws; and (5) their various administrative structures. He also discusses how the Latin Church in India has accepted the CCEO and how Eastern and Latin Churches collaborate: “Unlike other canon

law societies, the CLSI is unique in its very composition. It represents the Catholic Church in India which consists of three Churches *sui iuris*, the Latin, the Syro-Malabar, and the Syro-Malankara. Thus it is inter-eclesial and the agenda of every annual conference of the society is blended with topics that reflect this inter-eclesial reality" (p. 218). The author critically observes that as far as Vatican II and its teachings, which find resonance in the Eastern as well as the Latin codes, are concerned, one serious point that is yet to be implemented is the issue of jurisdiction: "... in India, the jurisdiction of the Eastern Churches, of their major archbishops and synods of bishops, has been restricted to their proper territories" (p. 219).

Eucharist, as far as the faithful are concerned, is the spiritual food and nutrition for their soul. The participation in the celebration of the Eucharist becomes complete, in fact, with the reception of the body and blood of Jesus Christ. How important and significant the reception of this sacrament, Holy Communion, in the life of the faithful can be seen from the provision the Eastern code has made for extraordinary situations. CCEO c. 671 §2 (CIC c. 844) stipulates: "If, however, necessity requires it or genuine spiritual advantage suggests it and provided that the danger of error or indifferentism is avoided, it is licit for the Catholic Christian faithful, for whom it is physically or morally impossible to approach a Catholic minister, to receive ... the Eucharist ... from non-Catholic ministers, in whose churches these sacraments are valid."

The article of Matthew D. Orzolek considers select ecumenical dimensions of admitting divorced and civilly remarried Catholics to Holy Communion. The author, having contextualized the theme by presenting necessary fundamental concepts in canon law and moral theology, examines the restrictive doctrinal developments in the apostolic exhortation *Familiaris consortio* and Cardinal Kasper's critical assessment of this teaching in *The Gospel of the Family*. According to the author, "Kasper noted that common ground between *oikonomia* in the East and *epikeia* and prudential judgment in the West might allow the Catholic Church to faithfully reconcile the two" (p. 222). Comparing the principles behind dispensation and *oikonomia*, Matthew states, "the Orthodox principle of *oikonomia*, now well-known by name, parallels the Catholic concept of dispensation in its substance. ... Like dispensation, *oikonomia* entails a relaxation of the law's rigor or a mitigation of its harshness in a particular case" (p. 226). Pope John Paul II declared: "With regard to the whole

question of the ecumenical movement, which has been set in motion by the Holy Spirit for the realization of the perfect unity of the entire Church of Christ, the new Code is not at all an obstacle, but rather a great help" (Ap. Const. *Sacri Canonēs*). From an ecumenical point of view Matthew, however, observes, "the Orthodox Church does not generally consider first or second remarriages adulterous, but permits them as "tolerated" unions. However, Catholic canon law considers these myriad Orthodox marriages irregular and objectively adulterous. If reunion occurred today, these Orthodox would be barred from Holy Communion. This discrepancy poses a significant obstacle to ecclesial reunion" (p. 222).

The reforms being introduced by Pope Francis affirm the dictum that as the Church is an *ecclesia semper reformanda*, its laws too must always be reformed.