

Editorial

**THE ERRED SHEEP BACK TO THE SHEEP FOLD:
A CANONICAL REFLECTION**

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The opening canon of the Title XXVII of CCEO on *Penal Sanctions in the Church* underlines the fact that Church is not a perfect community, consisting of only perfect human beings or saints, but she is one called to strive for perfection (Mt. 5:48). As such there are saints and sinners, erring sheep and those who persist in manifestly grave offences. It also highlights the kind of attitude with which she approaches such fragile human beings. Even among Jesus' closest circle of 12 He had people from among tax collectors, power crazy and position craving, a doubting Thomas, Judas the traitor and the like. Most of whom, however, he won by love, compassion and reproving while one who stubbornly persisted in his evil ways perished.

Pope Francis reiterates how the clerics and religious offend God and harm the people by sex related abuses: "The crimes of sexual abuse offend Our Lord, cause physical, psychological and spiritual damage to the victims and harm the community of the faithful" (*Vos estis lux mundi*, intro.). Church does not, however, want to keep the delicts, away from or outside her fold, instead wants to celebrate their return with repentance. In view of this goal with norms, regulations and disciplines Church always tries to protect every member following the example, as canon says, of God who "employs every means to bring back the erring sheep," and of the great Pastor and Judge, Jesus whose mission was not to lose anyone of those whom His Father had given him but to save (Jn. 6:37).

With a view to this, the legislator contemplates even of punishments, sanctions and penalties. Church resorts, however, to penal sanctions only as a last resort when all other possible means to reconcile and win the erring sheep turn out to be futile. This is evident when CCEO stipulates that though law provides for burdening him who commits a delict with a penalty, this "cannot be imposed unless the offender has been warned at least once beforehand to desist from the delict and has been given a suitable time for repentance" (CCEO c. 1407 §1).

Oriental canon law has been upholding the medicinal nature of penal laws. They are applied, as a medicine, which would “heal the wounds caused by the delict” (c. 1401). It is worth recalling here the fact that the oriental code does not envisage automatic punishments (*latae sententiae*) but imposes punishment on the accused only after proper trial and judgment giving the accused time, and means for self-defence (for example, c. 552 §2, 2° regarding dismissal of a religious states that he should be given “full opportunity of self-defence” before dismissing him) or repentance (*ferendae sententiae*). CCEO c. 1468 §1 states, “Whenever the hierarch has knowledge, which at least seems true, of a delict, he is carefully to inquire personally or through another suitable person about the facts, circumstances, and imputability...” and §2 clearly cautions that “care must be taken so that the good name of anyone is not endangered from this investigation.” The ultimate goal of all the laws in the Church is to save souls as is very evident in the last canon of the Latin Code: “*salus animarum suprema lex est*” (CIC c. 1752). Thus, we can easily infer that the purpose of law is not to condemn anyone, but to reform the delinquents and gain them for God.

Hence, the legislator empowers those who have been authorised by Christ, with the “powers to bind and loose” to, first of all, try all the possible reconciliatory measures by “reproving, imploring and rebuking them with the greatest patience and teaching” (c. 1401) following the example of St. Paul’s advice to Timothy (2 Tim. 4:2) which is one of the sources of this canon. The same spirit is better reflected in the articulation of CCEO c. 1403 §1: If “the offender, not yet brought to trial and moved by sincere repentance, has confessed his delict to the hierarch in the external forum and has appropriately provided for the reparation of the scandal and harm,” the hierarch, “even when it is a question of delicts that carry an obligatory penalty by law,” can, observing the legal requirements, “abstain from a penal process and even abstain totally from imposing penalties.” Canon 1407 §2 makes it clearer: “An offender who has sincerely repented of the delict and has also made suitable reparation for the scandal and damage, or at least has seriously promised to do so, must be considered to have desisted from the delict.” It is interesting to note how the Church embraces the one who shows signs of his return. Even before the materialization of his return, Church is open and ready to unconditionally accept him with love and patience on the guarantee of a promise.

Church has always held and continues to hold dear and close to her heart all who have become members of the Church through baptism. It is neither because she was/is always perfect nor because all her members ever remain/ed faithful and spotless. Nor does it mean that Church compromises the gospel values, or sacrifices the precepts of Jesus and His teachings to accommodate them. It does not intend either to give the impression that anything and everything, without any check and control, is permissible and possible in the Church.

Church does not ignore or neglect the delinquents and let them continue to harm themselves and the Church by causing scandal to the faithful. In order to check, limit or eliminate all kinds of deviant behaviours and criminal actions, Church has developed an effective legal system and employs it, especially penal laws as a means to heal and not to condemn. Therefore the competent authority is entitled to apply it, first as a medicine to cure the wounds caused by delicts, and then, provided it does not work, as a last resort she can move to punitive measures. For example CCEO states: "A cleric who lives in concubinage or otherwise persists in an external sin against chastity causing scandal is to be punished with a suspension. If he persists in the delict, other penalties can gradually be added, including deposition" (CCEO c. 1453).

The legislator is, thus, having the responsibility of balancing dual considerations in this regard. He attempts prudently, i) to save the person who commits delict and at the same time ii) to protect and safeguard the Church that is, the community of the faithful from being victims of scandal. It is obvious that the criminal action of a faithful affects not only him, but also the entire Church, starting with his or her family members, the domestic Church, his or her parish and native community, his or her eparchy and in the ascending order even the universal Church will have to pay the price for it, especially in the modern secular and ecclesial scenario.

If an eparchial or diocesan clergy, for example, commits a delict, quite naturally, the portion of the people of God entrusted to his pastoral care, his family members, the whole diocesan presbyterate, and the whole Church will be scandalized. Similarly, if a religious engages in such unbecoming actions and is accused, it fetches damage not only to his or her religious institute, but also to the entire Church. Hence, the Church has to somehow prevent or overcome it.

It is an undeniable fact that the Catholic Church is subject to different types of direct and indirect accusation and allegations especially by

media. Purely secular ideologies, religious fundamentalism/fanaticism and political standpoints and their vested interests also have been playing a major role in causing troubles to the Church including physical persecutions in the recent past. Most often it is the enemies of the Church from outside, who, with the help of a few wounded members of the Church, along with dynamic media that trigger allegations and accusations against the Church for their advantage. However, it is to be acknowledged that instances of the consecrated themselves – priests and religious, both men and women from within – causing harm to the Church are on the increase, especially in the past two decades.

A closer reading of the canons on penal law as well as related canons, in other sections of the code, demonstrate that the legislator tries to prevent such events or facilitates the return of an erring member of the people of God, be it a lay faithful or a consecrated person, by enacting sufficient norms and regulations, and enough precautionary measures like provisions of warning and vigilance (CCEO cc. 500, 552 §2; 2-3; 1129 §2) threatening of penalty (CCEO c. 500 §2, 2; c. 1406 §2; 1407) and application of medicinal punishments (CCEO c. 1401) etc. so that neither individuals nor Church suffer harm.

In the light of the accusations and allegations against the Church, especially against the ever continuing cases of sexual and child abuses and of financial scams and manipulations by the consecrated, the supreme legislator takes special care to update and reform the norms regularly to curb such scandalous deeds. *Vos estis lux mundi*¹ is the best and most recent example for such reforms.

The code is very clear and strong about it that, for example, the patriarch has the right and duty to be vigilant (CCEO c. 89 §1) over all clerics and to intervene whenever necessary in addition to the proper local hierarchs' watchfulness (CCEO c. 1022 §1) over their clerics. Oriental code stipulates, "It is the right and obligation of the patriarch to exercise vigilance according to the norm of law over all clerics; if it appears that one of them merits punishment, he is to warn the hierarch to whom the cleric is immediately subject and, if the warning is in vain, he himself is to take action against the cleric according to the norm of law" (CCEO c. 89 §1). Thus the code offers a provision for

¹Francis, Apostolic letter issued motu proprio, *Vos estis lux mundi*, 7 May 2019, cf. http://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html.

double vigilance to ensure that such kinds of abuses do not occur or if at all eventually anything happens, to nip it in the bud.

The dictum 'justice delayed is justice denied' is familiar to all. Analogously it may be said, 'actions delayed harm individuals and the Church.' In the present context certain questions arise: Is there any drawback or failure in the system of rules and regulations meant for the good of the individuals and the community? Do those "who have received from Him the power to bind and loose" (Mt. 16:19; CCEO c. 1401) - the hierarchs and competent superiors - fail in exercising this mandate properly or are they afraid of taking proper decisions and actions at the right time, even when they are aware of scandalous situations and persons involved in them, or is there attempt from the part of the hierarchs to cover up abuses? Do they fail in accompanying their priests? Some of the recent events in the Indian Church as well as many cases of that sort reported elsewhere in the universal Church give one the impression that the competent authorities fail to make timely interventions in discerning and handling imminent issues and consequently the media which await for cases against the Church celebrate them injuring the persons involved and damaging the reputation of the Church. Or is it that the consecrated - priests and religious - lack transparency, responsibility and faithfulness to their commitment?

Deeply worried about the recurrence of such scandalous and painful aberrations in the Church, but without losing hope, Pope Francis on his own interest has brought out a reform with his apostolic letter, *Vos estis lux mundi* (VELM) for encountering particularly the sex abuse cases by clergy and religious. Notwithstanding the damages these abuses have caused, Pope's reform aimed at cleansing the entire system is encouraging and motivating: "Even if so much has already been accomplished, we must continue to learn from the bitter lessons of the past, looking with hope towards the future" (*Vos estis lux mundi*, intro.). The letter shows how much interest the supreme legislator takes to combat and curb this evil, which weakens the credibility of the Church and her mission. Pope Francis invites and exhorts everyone to join this battle by enhancing "personal sanctity" and "moral commitment" which would bring about positive changes:

The crimes of sexual abuse offend Our Lord, cause physical, psychological and spiritual damage to the victims and harm the community of the faithful. In order that these phenomena, in all their forms, never happen again, a continuous and profound conversion of hearts is needed, attested by concrete and effective

actions that involve everyone in the Church, so that personal sanctity and moral commitment can contribute to promoting the full credibility of the Gospel message and the effectiveness of the Church's mission (VELM, intro.).

This document manifests that the Pontiff does not want such abuses to take place again, and if at all any instance occurs he wants to see that it is managed justly and transparently with proper reporting system in place. That is why the document holds the hierarchs and religious superiors accountable for their actions. The legislator wants that all the Churches *sui iuris* including Latin Church, through their higher authorities like Episcopal Conferences, Synod of Bishops or Council of Hierarchs etc., either "individually or together, must establish ..., one or more public, stable and easily accessible systems for submission of reports, even through the institution of a specific ecclesiastical office." (VELM, art. 2 §1). He also demands, that "... procedures be universally adopted to prevent and combat these crimes that betray the trust of the faithful" (Intr.).

Given the seriousness of the matter, the Pontiff does not, however, want to confine the responsibility of handling the issue to the hierarchs and superiors alone, but he calls for a combined effort of all the faithful, especially the clerics and religious: Thus art. 3 of the apostolic letter establishes that "... whenever a cleric or a member of an Institute of Consecrated Life or of a Society of Apostolic Life has notice of, or well-founded motives to believe that, one of the facts referred to in article 1 has been committed, that person is obliged to report promptly the fact to the local Ordinary where the events are said to have occurred..." (VELM, art. 3.). The hierarchs are, therefore, bound to establish a suitable office, any system or arrangement feasible for the locality and culture etc., of the place, that is accessible to all who want to and are obliged to report cases of abuse they may come to know. One of the articles in this issue is dealing exactly with the new reform *Vos estis lux mundi* of Pope Francis.

On the basis of the experience of past three decades and more since the promulgation of CCEO and CIC and in the light of the studies and researches during the period Fr. Koluthara, being himself an expert on CCEO Title XII on religious, in his article "Possible Future Changes Needed on "Religious" in CCEO and Other Sections in CIC and CCEO" points out some areas on 'religious life' where revision is required. For example regarding the evangelization apostolates of the Societies of Apostolic Life, the code is silent. Hence the author says "Often it is said that it is left to the discretion of the Particular Law of a

Church *sui iuris* to enact further norms on it. It is not a correct methodology. It is because a typology with its full-fledged details can provide a model or a referral point in CCEO to make particular laws applicable to the *ethos* of each Oriental Catholic Churches. This is lacking in CCEO. Therefore, it is a lacuna. If this lacuna is not corrected in the common Code, each Churches *sui iuris* may lack the detailed reference point in CCEO to make the particular law on the Societies of Apostolic Life" (see below p. 174). He also encourages canonists to review other sections of both the Codes Canon Law and propose needed changes.

Dealing with the "Pastoral Care of Couples in Irregular Marriage: A Reflection on *Amoris Laetitia*," Payyappilly encourages the pastors "to act with mercy and compassion when administering the sacraments of penance and the Holy Eucharist" especially to those in irregular marriage (Summary). Hence he says, "the sacrament shall not be denied arbitrarily to someone just because he/she is in an irregular or difficult situation of marital life" (see, below p. 199) without approaching and analyzing each case in the context with its "objective state of sin." At the same time the author reminds that the faithful should not forget that "The canonical prohibition of Holy Communion, mandated for those "who obstinately persist in manifest grave sin", is based on the reasonable presumption that a public sinner is not completely ignorant of the Catholic faith and is sufficiently aware that his behavior violates the Church's discipline" (see, below p. 207).

Though called to lead a community life, as a perpetually professed member of a religious institute, sometimes, certain members might encounter different types of issues which might render his personal as well as the religious institute's common life harmful. Sr. Rosmin's article "Canonical Aspects of Exclaustration: A Comparison of CIC cc. 668-687 and CCEO cc. 489-491 & 548," discusses the canonical provision of exclaustration, a temporary separation of a member from the religious institute, envisaged by the legislator as a feasible means to effectively handle such difficult and extraordinary situations. Having analysed in detail both voluntary and imposed exclaustration, the author says that the latter "carries with it a hope and possibility of the renewal of an erring religious" and hence "this canonical provision can be made use of, wherever it is possible, with the hope that it would have some positive outcome, since everything is possible for God" (see, below p. 236).

It is through the profession of the three vows that a religious consecrates himself or herself to God. Can we use the terms “consecration” and “profession” interchangeably to denote the reality of religious commitment? Are they same or is there difference between them, and if the latter the case, as to what, especially in the context of various typologies used in CCEO to refer to the institutes of consecrated life? Maria Tresa’s well-researched article, “The Notion of Consecration and Profession in Monastic Profession and Profession in Orders and Congregations according to CCEO” answers to these, hitherto unanswered or debated questions. The author concludes that “The fundamental notion of all religious profession is a self-offering through the profession of the public vows of obedience, chastity and poverty. The difference between profession in monasteries and in orders and congregations lies in the mode of making the vows, which is implicit in monasteries and explicit in orders and congregations” (see, below p. 252).

In line with Vatican Council II’s teachings, the Church has to, while conserving the precepts and doctrines of the Church, read the signs of the times, update and reform her norms and regulations so that she can be true witness of Christ shining like “the light of the world” (Mt. 5:13) responding to the changes and challenges the modern and secular world offers. The most recent apostolic letter *Vos estis lux mundi*, as Domy Thomas says, “is one of the best examples of it” (see, below p. 282) as it tries to respond to the troubling issue of sexual and child abuses by the clergy and religious. Domy’s article is an attempt to comment on the document. The author sticks on to “a strict interpretation of the document, considering the nature of the matter. He says that the document “demands a system to be established at the local level with the necessary protection of safety, integrity and confidentiality. Pastoral desire of the Church too is given importance by making it easier for the victims to approach the ecclesial authority for justice and make it obligatory for the authority to care for the persons with all the possible helps including spiritual and medical assistance” (see, below p. 282).