

JUSTICE IN THE CHURCH: OUR CATHOLIC CRISIS

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My thesis today focuses on the word “crisis.” It claims that the church is at a kind of crossroads: one road leads to a continuation of the current *modus operandi*, even a more emphatic and tenacious application of current methods; the other recognizes that there are serious systemic dysfunctional practices which must be remedied if the church is to have a future. Of course, I believe that the church **is** to have a future and so I am convinced that our present crisis will be resolved.

In order to make my case I will attempt to:

1. Suggest just why, after 2000 years of preaching the gospel, the church should find herself still in need of structural, or legal reform;
2. Point to some of the major areas in current canon law which fall short of the ideal of Christian justice;
3. Explain why these defects amount to a “critical” state of affairs; and
4. Outline some of the canonical reforms which will resolve, or at least, alleviate the crisis.

For most of its history the church functioned without a codified system of law. Councils and synods throughout history formulated obligatory norms for the governance of the community. Popes issued decrees, decretal letters, bulls and instructions, and these were gathered into collections which served the purpose of law books. By the 1100s a veritable forest of these laws existed. At the university of Bologna, a law professor named Gratian gathered all these together in work he called “The Harmony of Discordant Canons” (*Concordia Discordantium Canonum*). We refer to it as the *Decretum Gratiani*. From around 1140 to the 20<sup>th</sup> century, Gratian’s *Decretum* was the most important reference for church law.

As you can imagine, the same process which created the jungle of “discordant canons” continued—councils, papal instructions, synodal law—with the result that by the 20<sup>th</sup> century the need was felt for a codified body of law, much like the formal law of modern nations. This need was not really at the level of a “crisis.” It was just another step on the ladder of papal centralism (papal centralism would be a good thing if the pope were divine!) and served to make the law of the church more manageable by men who were not intellectually equipped to deal with Gratian and the decretal collections. The Code of Canon Law was promulgated in 1917 and went into effect the next year. It lasted until St. John XXIII called the Second Vatican Council and at the same time announced a revision of the Code of Canon Law. The revision process took over 20 years. The Revised Code of Canon Law was promulgated by Pope John Paul II in 1983. Many people in the church are happy enough with that code but these are people whose sensitivity to injustice needs some tweaking. They are like the slaveholders of our own history who felt that the slaves should be thankful for their blessings. Notions of “justice” or “injustice” never entered their minds. Even the scriptures assumed the legitimacy of slavery. Paul tells Titus (2:9), “Bid slaves to be submissive to their masters and to give satisfaction in every respect.” Using Dorothy Day’s term, “the stink of the world’s injustice” had not yet penetrated the nostrils of most pious Christians until the last century.

The Revised Code of Canon Law retains substantial areas of systemic injustice. Unfortunately not all of these were mere oversights during the revision process. Some have become apparent as the teachings of the Second Vatican Council have germinated during the past several decades of theological and canonical discussion in the church. Before pointing out some specific legal structures that need redressing, I would like to make the case that it was precisely our growing understanding of the implications of Vatican II that has given “critical mass” status to the question of injustice within the church.

Just about the time the Second Vatican Council began, the scientist Thomas Kuhn published his book, *The Structure of Scientific Revolutions*, in which he used the term “paradigm shift” to refer to those major reconfigurations of overall scientific theory which become necessary when the former scientific worldview will not accommodate new discoveries. Thus, the physical worldview of Ptolemy gave way to the Copernican worldview which gave way to the Newtonian, which gave way to the Einsteinian. Kuhn says that the “transfer of allegiance from paradigm to paradigm is a conversion experience that cannot be forced” (p. 151). A few Catholic theologians and church historians have found Kuhn’s “paradigm shifts” useful in understanding our Catholic experience and I want to use the notion to make the case that we are at a critical juncture vis-à-vis the matter of justice and rights in the church.

Twenty years ago Karl Rahner delivered an address entitled “Toward a Fundamental Theological Interpretation of Vatican II.” In the paper he outlines three major epochs in the church’s history. The first was Jewish Christianity, the first several decades of the church’s life, before the major turn to the Gentiles. The mission to the nations (gentiles) marked the second epoch, characterized by European Christianity and the conversion of native peoples of far off lands to European, Western, Christianity. Vatican II, Rahner says, marked the beginning of the third epoch in which the church has become, for the first time in its history, a World Church. The Western, Latin, European, has given way to the movement to enculturate the gospel in other lands without Europeanizing them. Vatican II was the first council in the church’s history which had several hundred bishops from Asia and Africa who were themselves Asians and Africans. The First Vatican Council in 1869 had bishops from other lands as well, but these were European missionary bishops. Rahner sites other evidence like the turn to vernacular languages in the liturgy, the positive valuation of the world religions, and the ecclesiology of the local church as evidence that a revolution has occurred in the official church’s self-understanding. While Rahner does not use the term “paradigm shift” it is a perfectly apt expression for what has occurred.

The theologian Bernard Lonergan, at a symposium sponsored by the Canon Law Society of America in 1966, described the modern turn in theology as a shift from a “classicist” to a “historicist” worldview. Under the classicist worldview essences were fixed and stable, laws and society were seen to derive from nature itself, and human action was to conform to pre-established ideal patterns. The historicist worldview sees human activity, human experience, human history, as true causes, as creative of human social and personal reality. Theology gives a positive valuation to the world that human hands have produced. I’m not aware that Lonergan ever used the Kuhnian notion of

“paradigm shift” but there can be no doubt that what Lonergan described certainly is revolutionary and comprehensive in its implications. To some extent, like Rahner’s “World Church,” Lonergan’s “historicist” worldview also marks a turn to the “world” because it calls into question the validity of opposing the secular and the religious. The “world” is not opposed to the “religious” not only because it is the arena of human religious activity but also because it is the product and goal of that activity. The Second Vatican Council marks a turn to the world not just in the geographical and cultural sense but a turn to the world as the very kingdom of God abuilding. We remember that in calling the council, St. John XXIII based its necessity on the need to respond to “the signs of the times.” We remember that he was a historian and took his history seriously.

Like all paradigm shifts, that marked by the Second Vatican Council’s revolutionary positive valuation of history, of human activity in and for the world, is still very far from full realization. According to Kuhn, “a new theory...is seldom or never just an increment to what is already known. Its assimilation requires the reconstruction of prior theory and the re-evaluation of prior fact, an intrinsically revolutionary process that is seldom completed by a single person and never overnight.” It’s almost as if he foresaw the aftermath of Vatican II! What we have actually seen in the past two decades is the regular use of the language of Vatican II to support further centralization of authority in the Vatican Curia. We have been surprised to learn, for example, that the curia is itself the embodiment of collegiality, and that Vatican II’s notion of the churches as a “communion” was anticipated by Innocent III when he told the bishops of France that he was sending his legate to take care of things in their dioceses! [cf. “Pastor Bonus” JPII on Curia Romana]. The problem with paradigm shifts is that the institutions which embodied the former vision have a hold on the power which that former paradigm legitimated. The intellectual and spiritual grasp of the new vision may respond with alacrity—as we saw during and immediately after the council. But the social and political structures have an inertia—perhaps even a reluctance or antipathy—toward their own restructuring.

I don’t think there is much doubt that when Pope Paul VI was elected those who chose him believed he would be the ideal person to carry on the work of the council, give it implementation in the Vatican, especially. The fathers of the council had vivid memories of how the Vatican curia opposed the calling of the council, hoped it would never happen, and when it did happen, they tried to control its agenda and its deliberations. But the bishops of the world rejected that attempt. They were, after all, responsible to their churches and to the Holy Spirit to bring renewal and reform to the church. History is not in doubt that they did a credible job—no, rather and **incredible** job—in four sessions. The immediate aftermath of the council looked promising for the church, especially with Paul VI’s implementation of the council’s teaching on collegiality. In 1965 he established the Synod of Bishops as a permanent structure for the governance of the church. But within several years even the Synod of Bishops was taken over by the Vatican Curia and, at least on the Vatican level, the reform of the church has been halted. Recently, the Synod for Asia has shown some willingness to stand up to Vatican control, but for the most part the bishops of the world seem content to let the Vatican take responsibility for their dioceses. For the moment, the vision of St. John XXIII has been smothered and, along with it, the hopes of millions of Catholics and other Christians.

This outlines the answer to the question of why the church after 2000 years still needs structural, legal reform. A major paradigm shift has occurred in our own time. It is not merely an ecclesiastical paradigm shift but it is related to the vast cultural, scientific, and technological shift of the past century. The globalization of culture is marked by a globalization of the church—the “world church” which Rahner said began with Vatican II. A whole new world of spirituality has opened up for Christians in the wake of this century’s discoveries in the natural sciences. A whole new world of spirituality has opened in the wake of this century’s studies of the sacred scriptures. A whole new world of spirituality has opened up in the wake of this century’s discoveries in the social and behavioral sciences. The list could go on. The point is that a major paradigm shift has occurred and unless the institutional church responds to it, there will be defections, disintegration, demoralization. Worse still will be the infidelity to the gospel mandate of ministry to the world.

It is perhaps necessary at this point to suggest some of the major areas in which present canonical structures of the church have become anachronistic and therefore incapable of rendering justice to the church’s members. We have to make it clear that it is not so much with the general church teachings on justice and rights. No institution in the world has a better set of official documents on questions of social justice and human rights—*Rerum Novarum*, *Quadragesimo Anno*, *Octogesima Adveniens*, *Centesimus Annus*, etc. (In 20 years we’ll have *Centesimo Vigesimo Anno*! But, will anything have changed?) Not least among the teachers of social justice is the National Conference of Catholic Bishops. Its pastoral letter, “Economic Justice for All” is a daring and comprehensive analysis of that area of justice. A search for the term “justice” on the NCCB web page yields 1060 hits. Invariably, however, the teaching on justice is not concerned with justice **in** the church but with social and economic justice **outside** the church. One beautiful exception to that came from the 1971 World Synod of Catholic Bishops in its document “Justice in the World.” Here we read the statement, self-evident one would think, that “while the Church is bound to give witness to justice, she recognizes that anyone who ventures to speak to people about justice must first be just in their eyes. Hence we must undertake an examination of the modes of acting and of the possessions and life style found within the Church herself” (#40). This sounds so good that we cannot resist reading more:

41. “Within the Church rights must be preserved. No one should be deprived of his ordinary rights because he is associated with the Church in one way or another. Those who serve the church by their labor, including priests and religious, should receive a sufficient livelihood and enjoy that social security which is customary in their region. Lay people should be given fair wages and a system for promotion. We reiterate the recommendations that lay people should exercise more important functions with regard to Church property and should share in its administration.”
42. “We also urge that women should have their own share of responsibility and participation in the community life of society and likewise of the Church.”

43. “We propose that this matter be subjected to a serious study employing adequate means: for instance, a mixed commission of men and women, religious and lay people, of differing situations and competence.”
44. “The Church recognizes everyone’s right to suitable freedom of expression and thought. This includes the right of everyone to be heard in a spirit of dialogue which preserves a legitimate diversity within the Church.”
45. “The form of judicial procedure should give the accused the right to know his accusers and also the right to a proper defense. To be complete, justice should include speed in its procedure. This is especially necessary in marriage cases.”
46. “Finally, the members of the Church should have some share in the drawing up of decisions, in accordance with the rules given by the Second Vatican Ecumenical Council and the Holy See, for instance with regard to the setting up of councils at all levels.”

We must remember that this was the product of an official hierarchical body, established specifically in the interest of making the ordering of the church more collegial. What happened to their recommendations? Only a few hints of these recommendations made it into the 1983 Code, and, as is so often the case, they are subject to qualifications and legal contexts which all but negate their import. Even the beautiful list of human rights outlined by St. John XXIII in his encyclical *Pacem in Terris*, when they do find an echo in the Code, lack his generous and open-handed tone.

The revised Code does mark some progress in the area of justice and rights. These are the canons which reflect that. They are found in Book II, Title 1: The Obligations and Rights of all the Christian Faithful. [In English we normally speak of “rights and duties.” I don’t believe it is accidental that “obligations” are listed here before “rights”!]

208. In virtue of their rebirth in Christ there exists among all the Christian faithful a true equality with regard to dignity and the activity whereby all cooperate in the building up of the body of Christ in accord with each one’s own condition and function.
- 212, §. 2. The Christian faithful are free to make known their needs, especially spiritual ones, and their desires to the pastors of the Church.
- 212, §. 3. In accord with the knowledge, competence and preeminence which they possess, they have the right and even at times a duty to manifest to the sacred pastors their opinion on matters which pertain to the good of the Church, and they have a right to make their opinion known to the other Christian faithful, with due regard for the integrity of faith and morals and reverence toward their pastors, and with consideration for the common good and the dignity of persons.

213. The Christian faithful have the right to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the word of God and the sacraments.
214. The Christian faithful have the right to worship God according to the prescriptions of their own rite approved by the legitimate pastors of the Church, and to follow their own form of spiritual life consonant with the teaching of the Church.
215. The Christian faithful are at liberty freely to found and to govern associations for charitable and religious purposes or for the promotion of the Christian vocation in the world; they are free to hold meetings to pursue these purposes in common.
216. All the Christian faithful, since they participate in the mission of the Church, have the right to promote or to sustain apostolic action by their own undertakings in accord with each one's state and condition; however, no undertaking shall assume the name Catholic unless the consent of competent ecclesiastical authority is given.
217. The Christian faithful since they are called by baptism to lead a life in conformity with the teaching of the gospel, have the right to a Christian education by which they will be properly instructed so as to develop the maturity of a human person and at the same time come to know and live the mystery of salvation.
218. Those who are engaged in the sacred disciplines enjoy a lawful freedom of inquiry and of prudently expressing their opinions on matters in which they have expertise, while observing a due respect for the magisterium of the Church.
219. All the Christian faithful have the right to be free from any kind of coercion in choosing a state in life.
220. No one is permitted to damage unlawfully the good reputation which another person enjoys nor to violate the right of another person to protect his or her own privacy.
221. §1. The Christian faithful can legitimately vindicate and defend the rights which they enjoy in the Church before a competent ecclesiastical court in accord with the norm of law.  
 §2. The Christian faithful also have the right, if they are summoned to judgment by competent authority, that they be judged in accord with the prescriptions of the law to be applied with equity.  
 §3. The Christian faithful have the right not to be punished with canonical penalties except in accord with the norm of law.

I should add one other canon, Canon 330. It states: "Just as, by the Lord's decision, Saint Peter and the other apostles constitute one college, so in a similar way the Roman Pontiff, successor of Peter, and the bishops, successors of the Apostles, are joined

together." This canon is the first in the chapter entitled "The Roman Pontiff and the College of Bishops." Even though there is no specific mention of rights in this canon, there is an implicit title to rights by reason of the defined relationship between pope and bishops. The earlier code knew nothing of a "college" of bishops; the Second Vatican Council officially introduced the notion into church government.

Now with such a lovely list of specific rights spelled out in a way no canon law had ever done before, how can anyone assert that there exists a state of crisis in the church with regard to justice? Are we Catholics becoming a bunch of whiners? Who could ask for a better set of rights? Where's the beef?

As we have shown, the **language** of rights and justice has all of the elements which would make for a just society IF it were consistent, and IF structures reflected it and embodied it. I hope to outline inconsistencies so fundamental that, I believe, a true crisis is in the making and, to some extent, already is showing its effects in alienation from the church and, more commonly, in disenchantment and disappointment.

Let us take that beautiful Canon 208: "In virtue of their rebirth in Christ there exists among all the Christian faithful a true equality with regard to dignity and the activity whereby all cooperate in the building up of the Body of Christ in accord with each one's condition and function." The last words "in accord with each one's condition and function" open the door to all the **inequality** which the non-scriptural "clergy-laity" distinction perpetuates. The revised Code of Canon Law, according to one of the world's foremost canonists, Ladislav Orsy, S.J., underlines the clergy-laity dichotomy. "Few people," he said, "are aware that, in some ways, the distinction between laity and clergy in the Roman Catholic church today is much sharper than it has ever been in the course of Christian history. Before quite recently—the turning point was the 1983 publication of the new *Code of Canon Law*—the laity could participate in a number of ways in the decision-making processes of the internal life of the church." The most lay people can now do is express their opinions and give advice but only a cleric can decide whether or not he will heed that advice or even accept their cooperation. I believe it is not far from the mark to assert that the chief obstacle to justice in the church today is clericalism. We belong to a church with a de facto caste system. It is based upon an anachronistic theology which separates the "secular" realm from the "spiritual" realm. The former "temporal order" is the proper sphere of lay activity, the latter "spiritual order" pertains to the clergy. This dualism is theologically untenable as is the canon law which institutionalizes it. Even the recent, fairly progressive, Synod for Asia uses some of this dualistic, caste-type language when it speaks of "a renewal that is the project of two poles, of the clergy plus lay men and lay women creatively working together—from above and from below...." You and I know who it is on the "below" side!

Akin to the downgrading of the laity is the downgrading of the non-Vatican bishops. One of the most encouraging teachings of the Second Vatican Council was its development of the theology of collegiality. The term "college of bishops" does not occur in the canon law until after Vatican II. The theology of collegiality was so strong in the Second Vatican Council that Paul VI instituted the Synod of Bishops as a permanent governmental structure in the church. You can well imagine that the Vatican

bureaucracy was not at all happy with that. And within a few years they were able to turn that institution into an emasculated propaganda machine for their own agenda. Today nobody expects anything at all from an episcopal synod. The Asian bishops tried their best but nobody remembers it even happened.

The Synod of Bishops and the canon law on the national conferences of bishops reflected Vatican II's theology of the "college of bishops" in union with the bishop of Rome as the symbolic unifying structure of the church. Implicit in this theology was the theology of subsidiarity, namely the principle that a larger, more universal body, should not take on the functions of a smaller, more particular and local body. This principle was first officially enunciated by Pope Pius XI in his encyclical *Quadragesimo Anno* and then officially applied to the church by Pius XII. Today we think of it as self-evident. Subsidiarity is a principle of justice. Why justice? Because justice requires that we render to each person, group of persons, what is due to them. Justice demands that so-called higher or larger groups do not co-opt functions and decisions which smaller, more local groups—who are, after all, closer to the matter about which the decision is concerned—are better able to handle themselves. [Anybody who has been in the U.S. military service knows what this is all about!] Unfortunately, the Code of Canon Law tends to arrogate to the papacy [read "the Vatican Curia"] almost all decisions which concern the local church. We all know that the curia even knows best how to translate liturgical books into Japanese and other Asian languages. The Asian bishops in their recent synod found it difficult to swallow that someone in Italy knows better than they how their liturgical texts should be translated. But then, the bishops of all the English-speaking lands have already knuckled under to the superior knowledge of English which Vatican functionaries possess!

Let us repeat. Subsidiarity is about justice. To take from a person or group the competence and participation properly belonging to that person or group is a violation of justice. My point is that the Roman curia is in violation of justice on a massive scale in its arrogation to itself of functions which belong to others. The problem is that we all know it and are scandalized by it.

In a sense, subsidiarity is related to collegiality. The Vatican curia has redefined collegiality to mean that they themselves are the veritable embodiment of collegiality. They see themselves as accessible to the bishops and therefore collegiality is operative. But the point is that accessibility isn't the question. The curia has arrogated unto itself functions which belong to the bishops at home. Once a bishop approaches the curia for the resolution of a problem he is already in denial of collegiality. Walter Burghardt, the great Jesuit theologian, when asked about what aspect of Vatican II remains underdeveloped said, "collegiality in practice." Of course, collegiality IS a practice. It's not only a word. Not even merely an attitude. It's a practice and it is simply, for the most part, absent in the church of John Paul II. Failed collegiality is unquestionably an injustice. And therefore a scandal.

The canon lawyer who wrote that beautiful short canonical opinion in *Commonweal* four years ago this month, Fr. James Coriden, gave an excellent seminar paper at the annual meeting of the Canon Law Society of America in 1983, entitled "Laws and Non-

Laws.” In this paper he shows how canon law is not really “law” in the strict sense of the term. It is law only by analogy. He was taking seriously Pope Paul VI’s instruction to canonists that a “novus habitus mentis,” a “new mindset” must be brought to canon law after the Second Vatican Council. Fr. Coriden and other canonists have shown that the church’s essentially mystical reality, its orientation to the work of the Holy Spirit, require a different mindset than is proper to civil law. Even the term “law” when applied to the church is misleading, as are the terms “jurisdiction,” “decree,” “legislative authority,” etc. In a certain sense, the notion of “justice” is itself problematic for a church whose only law should be the law of love. “Justice” refers to a minimum, it is oriented toward that and that alone which is due. We do not think of our relationship with the Lord Jesus as a relationship of justice. Our “justice” he said, must exceed that of the scribes and pharisees. While we say that God is just, we know that we would all be in trouble if that said it all!

These reflections on justice and legal terminology, on the mindset of the lawyer, lead to the second area which reveals our current crisis. Fr. Coriden has called attention in the same paper to what he called the “juridicization of the teaching function” in the church. This means the imposition of truth by command. Now we know that such imposition is directly contrary to Vatican II’s teaching that “the truth cannot impose itself except by virtue of its own truth, as it makes its entrance into the mind at once quietly and with power.” Almost sounds like something that Jesus would say! More and more we find at the highest levels in the church the attempt to impose truth on the basis of authority, rather than permit evidence, investigation, dialogue and reason to come to their fruition in truth. This policy, besides being futile, is abusive of human dignity and contrary to human rights. We associate such policy with the communist “party line.” It is also found in corporations, in government administration and in the military. In these societies it does not usually masquerade as “truth” but often is respectful enough of truth to call it simply “policy.” But when the church talks about truth it is talking about God. The attempt to impose God’s truth upon people by juridical means is not only totally opposed to human dignity, it is blasphemous in its demeaning of the nature of divine truth.

I do not wish to cite the many canons in the Code of Canon Law which attempt to control the teaching function. We are all aware of the requirements of the Vatican document “Ex Corde Ecclesiae” repeating canon 812 which requires a “mandate” for all teachers in the theological disciplines in higher education. It has created a great deal of concern among Catholic professors. It does nothing to enhance higher education nor promote good teaching or research but is, simply speaking, juridical control of the teaching function. It is unjust because it is contrary to human dignity and encumbers the search for truth rather than enhances it. It contributes to the present crisis in justice in the church. Educated and thoughtful people are scandalized by it and by all other attempts to legislate truth. When the pope in the Holy Land recently begged pardon for the church’s use of violence in the service of truth he wasn’t thinking of the kind of institutionalized violence represented by the Code of Canon Law and its present interpretation by the Vatican Curia. But the juridicization of teaching is certainly a kind of violence, a forceful approach to what is an inherently delicate and discriminating process.

Finally I would like to turn our attention to that beautiful Canon 221: “The Christian faithful can legitimately vindicate and defend the rights which they enjoy in the Church before a competent ecclesiastical court in accord with the norm of law.” I’m sure you won’t laugh to learn that there are no “competent” ecclesiastical courts except the Supreme Tribunal of the Apostolic Signatura. No diocesan tribunal is competent to hear the case of a lay person who claims to have been unjustly treated by a bishop or pastor. When the Code of Canon Law was undergoing revision after the Second Vatican Council canonists and bishops realized that the church needed administrative tribunals, much like those found in European civil society, for hearing matters of alleged administrative dispute or malfeasance. The canons establishing such tribunals were all prepared, went through several revisions, but at the last minute were relegated to the scrap heap by the church’s highest authority.

So, what do you do if you believe your rights were violated by the pastor? You have the option of going to the bishop with your complaint. If the bishop’s decision does not resolve the matter, you can take your petition to Rome. But there is no local tribunal which you may petition to hear your case. Nor is there a national tribunal for that purpose. Both of these options are permitted by the code but such tribunals have not been established by the American bishops. With the cooperation of the Canon Law Society of America, the National Council of Catholic Bishops have established a set of guidelines for “due process” resolution of grievances. Some dioceses have established due process structures on the local level. According to some reports these have achieved some success. The problem for the church in America is that there is no uniform expectation or procedure for the resolution of administrative cases. Both the Association for the Rights of Catholics in the Church and the Justice for Priests and Deacons organization have had enough experience to know that all across the country there are cases crying to heaven for just resolution. Msgr. Higgins of Justice for Priests and Deacons reports that he had 122 cases since he began his ministry last year. Of all the cases brought to ARCC and JFPD many, perhaps most, find no just resolution. The petitioners either give up, some leave the church, some don’t even bother to press on when they learn that there is no workable legal process for such cases. We believe the matter is critical. It is a serious failure for a church which preaches justice and rights.

As the 1971 Synod of Bishops said, “anyone who ventures to speak to people about justice must first be just in their eyes.” There is a scandalous discrepancy between the church’s beautiful teaching on social justice and the structures and policies which should reflect that teaching. I want to emphasize that justice in the church is a pressing **spiritual** need. It pertains to the very essence of the church. Justice is an attribute of God. The matter is of crisis proportions mostly because Catholics, especially in the western world, live in societies which are more juridically advanced than their church. They live in a world which takes due process as a given right. When they see major deficiencies in the area of rights vindication in their church, deficiencies that are not mere oversight but which are there by papal decree and are every day underlined by Vatican curial practice, they are understandably distressed. When they see a canon law that is totalitarian, that ignores the presumption of innocence, that discriminates against women and married men, how could they not be distressed. More than distressed. We are talking about

massive scandal, therefore, alienation of many Catholics, even the young. Our situation would be even worse if every priest followed the letter of the law.

Although the revised Code of Canon Law has 662 fewer canons than its predecessor it does not adequately reflect the teachings of the Second Vatican Council. Pope Paul VI suggested in 1965 that the church should have a constitution, a “Lex Fundamental<sup>is</sup> Ecclesiae.” For several years the Lex Fundamental<sup>is</sup> was bruited about, discussed and revised. It ran into opposition from such theological heavies as Karl Rahner who argued that the role of the Holy Spirit and a constitution are mutually incompatible, and Walter Kasper who feared that a constitution would be a restoration of the pre-Vatican II church. But the idea of a constitution is not dead. Many Americans and Europeans believe that it is only by means of a constitution that rights in the church can be guaranteed. Such an instrument could provide for terms of office for bishops and pastors, a voice in the selection of bishops and pastors, an adequate tribunal system for the redress of grievances, broad based participation in the general governance of the church, and a clear statement of the rights of the church’s members. A constitution could be the instrument which guarantees accountability from office holders. It could also provide structures for the continued updating and revision of church norms. And for those who say—we hear it so often—“the church is not a democracy” we answer: “No it is not. But it once was a democracy.” Read the Acts of the Apostles and early church history. We are now at one of the lowest points of democracy in the history of the church. After all, it was Catholic theology which laid the basis for democracy in human society, with its teaching about individual responsibility, human rights, and equality. How ironic that we’ve failed our Catholic ancestors in abandoning the great value of democracy they bequeathed to us.

These are a few reflections on the current state of affairs. Regrettably the account sounds almost unrelievedly negative. But the very fact that we are aware and concerned about these matters is cause for optimism. Furthermore, we realize all of this could change in the twinkling of an eye. It happened once before in our own lifetime. And in any case, our sole motivation is the honor of God and the well-being of God’s people. We continue to pray, “Thy kingdom come.”