

JUSTICE IN THE CHURCH

By EDWARD J. STOKES

JUSTICE IN THE WORLD! That is the cry that is heard almost everywhere in our time. It is a demand to which christian and non-christian can relate. For our own world is rent by injustice: Unjust wars, politically-motivated torture of men and women, corruption in governments, oppression of workers and especially of minority groups, and a multitude of public and private crimes that militate against justice and the God-given dignity and rights of mankind. But Justice in the Church? Or injustice in the Church? In *our* Church? Those questions give us pause. Most of us have heard stories of alleged injustices committed by bishops or religious superiors towards those under their jurisdiction, by priests towards their superiors, or conflicts that have arisen between parish priest and parishioners. But relatively few outcries of 'injustice' were heard openly. The People of God rarely, if ever, took to the streets to demand that 'justice be done in the Church'.

In the past, the People of God were rather reluctant to speak out about any injustices or contemptuous treatment that they encountered in the Church; they had been raised in an atmosphere of love for holy Mother Church, of reverence for due ecclesiastical authority, and a habit of passive acceptance. There was, perhaps, an unconscious reluctance to admit that institutions or persons in the Church, especially those in authority, might be guilty of unjust actions or contempt in dealing with the People of God. The Council Fathers, in response to such pleas as that of bishop Stephen Laszlo of Eisenstadt in Austria, that 'we should not be silent about sin in the holy Church of God and even in its hierarchy, and we should speak about the need for constant reform',¹ stated that 'the Church, embracing sinners in her bosom, is at the same time holy and always in need of being purified, and incessantly pursues the path of penance and renewal'.² This statement puts to rest the thought that sins, even

¹ Laszlo, Bishop Stephen: 'Sin in the Holy Church of God', in *Council Speeches of Vatican II* (ed. Kung, Hans; Congar, Yves; O'Hanlon, Daniel: New Jersey, 1964), p 47.

² *Lumen Gentium*, 8. The English translation is taken from *The Documents of Vatican II*, ed. Abbott, Walter (New York, 1966); all citations refer to this edition.

sins of injustice, cannot occur in the Church; they can and, unfortunately, at times they do.

Today the scene is sharply changed. Our daily newspapers, our diocesan weeklies, publications such as the *National Catholic Reporter*, all speak to us of conflicts of bishops with their priests, allegations of unjust treatment by people against their parish priests or diocesan administrative boards, demands of minority groups in the Church for adequate and humane treatment by those in authority, due process boards, etc. Protesting groups can now be found invading chancery offices, disrupting Masses, carrying picket signs in front of the episcopal residence. What has caused the change in attitude from one of passivity to one of action, sometimes radical action? The full answer is beyond the limits of this article. Suffice it to say that Vatican II considers the reasons for the change in the Pastoral Constitution on the Church in the Modern World.³ Cardinal Suenens adds a point that is often overlooked. In his work, *Co-responsibility in the Church*, he notes that, as the world has been slowly changing over the past thirty years, so during the same period of time there has been a theological maturing that escaped many of the People of God, and consequently left them puzzled, if not angry, at the work of Vatican II. Some explanation for the change in attitude, it seems, can be found in the People of God themselves.⁴

All of us in the Church are influenced to some degree by the culture in which we live and work. Now modern man prides himself – or herself – on honesty in dealing with his fellow-man, and a spirit of frankness in speaking out, expressing himself. He asks: Do you *really* mean this? He reads about justice, for example, in *Pacem in Terris*, in Vatican II, in the allocutions of the roman pontiffs, in the 1971 Synod of Bishops, and asks: ‘Is this for real? Does the Church really mean all these things that these pronouncements imply? Or are these statements in fact some kind of disembodied moralism?’ He asks: ‘If the Church is at once a sign and safeguard of the transcendence of the human person,⁵ as the Vatican Council teaches, should this not be shown in her life-style, in her reverence for the dignity of the human person, in the protection of his rights? The Bishops at the 1971 Synod agreed:

While the Church is bound to give witness to justice, she recognizes that anyone who ventures to speak to the people about justice must

³ *Gaudium et Spes*, Introductory Statement.

⁴ Suenens, Cardinal Leon-Joseph: *Co-responsibility in the Church* (New York, 1968), p 14.

⁵ *Gaudium et Spes*, 76.

first be just in their eyes. Hence, we must undertake an examination of the modes of action and of the life-style within the Church herself . . . Within the Church rights must be preserved.⁶

Modern man in the Church will no longer be quiet. He intends to speak out. And he finds a basis for his actions in Vatican II itself. Treating of the Laity in the Dogmatic Constitution on the Church, the Council Fathers say:

An individual layman, by reason of the knowledge, competence, or outstanding ability which he may enjoy, is permitted and sometimes even obliged to express his opinions on things which concern the good of the Church. When occasions arise, let this be done through the agencies set up by the Church for this purpose. Let it always be done in truth, in courage, and in prudence, with reverence and charity toward those who by reason of their sacred office represent the person of Christ.⁷

Priests and religious conclude that in similar circumstances the same applies to them also.

The popes, too, have spoken out against injustices, more recently John XXIII in *Pacem in Terris*, and Paul VI in *Populorum Progressio*. The Fathers of Vatican II, however, did not hesitate to address the problem in many of their documents. They said that, 'with respect to the fundamental rights of the person, every type of discrimination, whether social or cultural, whether based on sex, race, colour, social condition, language or religion, is to be overcome and eradicated as contrary to God's intent'.⁸ There must be, they teach, a mutual respect for the full spiritual dignity of the person. Recognizing that a sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man, the Fathers say:

The demand is made increasingly that men should act on their own judgment, enjoying and making use of responsible freedom, not driven by coercion but motivated by a sense of duty. The demand is also made that constitutional limits be set to the powers of government, in order that there be no encroachment on the rightful freedom of persons and associations.⁹

⁶ *Synod of Bishops*, 'The Ministerial Priesthood-Justice in the Church', ed. National Conference of Catholic Bishops USA (Washington, 1972), p 44.

⁷ *Lumen Gentium*, 37.

⁸ *Gaudium et Spes*, 29.

⁹ *Dignitatis Humanae*, I.

Some of the documents of Vatican II refer, of course, to civil society, but the point made by the Synod of 1971 applies. 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. But the bishops of this 1971 Synod went further than just enunciate general principles. They 'got down to cases'. It is for this reason that Fr Philip J. Land has written: 'there is here no angelism, no disembodied moralism, but an effort, explicit effort, to incarnate the Word of God in today's concrete historical context'.¹⁰ It might be well to draw up a list of the recommendations of the *Synod of Bishops*, pp 44-45:

1. 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.
2. Those who serve the Church by their labour, including priests and religious, should receive a sufficient livelihood and enjoy that social security which is customary in their region.
3. Lay people should be given fair wages and a system for promotion.
4. We reiterate the recommendation that lay people should exercise more important functions with regard to Church property and should share in its administration.
5. 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.
6. 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.
7. 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.
8. The form of juridical procedure should give the accused the right to know his accusers and also the right to a proper defence.
9. To be complete, justice should also include expedition in its procedure; this is especially true in marriage cases.
10. 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 Council and the holy See, for instance with regard to the setting up of councils at all levels.

¹⁰ Land, Philip: *An Overview: Justice in the World-Synod of Bishops* (Vatican City, 1972). This excellent brochure comes from the Pontifical Commission for Justice and Peace, of which Fr Land is a member.

11. Regarding temporal possessions, whatever be their use, it must never happen that the evangelical witness which the Church is required to give becomes ambiguous; an examination of the life-style of all bishops, priests, religious and lay people is here required.

In spite of the allocutions of the Popes, Vatican II, and the 1971 Synod, renewal in the forum of justice in the Church will take time. We may have 'instant breakfast', but there is no instant renewal in the Church or, for that matter, in any large organization, whether political or economic in character. Meanwhile, there are complaints of injustices; whether these be true or false would have to depend on the actual facts of the individual case; but such charges are often made in our day. Many of the charges of injustice or contemptuous treatment are made against those in positions of authority. Now authority is said to be a major problem in the Church in our times. Yet a recent report of the Psychological Committee for the 'Study on Priestly Life and Ministry in the United States' has this among its conclusions: 'There is acceptance, among practically all priests, of the bishop as principal leader and decision-maker'.¹² The problem is rather in the *manner* in which authority is used. Speaking to the members of the Canon Law Society of America at one of its annual meetings, auxiliary bishop Thomas J. Gumbleton of Detroit discussed the question of authority and the complaints heard against superiors. He noted that John Cardinal Dearden had said: 'We must recognize the challenge to authority for what it is. Most often it is not authority itself which is questioned but the way in which authority is exercised. And it is one of the basic realities of our times that in the Church, as in other institutions, if authority is to retain its credibility, it must function in a manner different from that in the past'.¹³

The vast majority of those in positions of authority have indeed imbibed the spirit of Vatican II and the recommendations of the 1971 Synod of Bishops, and act in a manner consonant with these documents. But if one were to judge from the cases of alleged injustice on the part of superiors, there are some who have, so it seems, failed to change their manner of acting from a pre-Vatican II attitude. However, even here a word of caution is in order. In a report

¹² 'Study in Priestly Life and Ministry: Report of Sub-Committee on Psychology to the National Conference of Bishops USA' (Washington, 1971), p 64. (The study, however, does show authority and loneliness as two principal problems of priests.)

¹³ Gumbleton, Bishop Thomas J.: 'Due Process in the Church', in *Proceedings of Thirty-First Annual Convention of Canon Law Society of America* (Cleveland, 1969), p 2.

of the Secretariat of the Synod of Bishops for the 1971 meeting, included in the draft to be discussed were these words: 'Men tend to want society to be just with them but without worrying too much about their correlative obligations'.¹⁴ Often there is much to be said on the side of those in authority who are alleged to have treated individuals or groups in an unjust manner, and this should be kept in mind. We might put it another way, adapting a saying from Canon Law: 'Those in authority are to be presumed to have acted in a just and humane manner, and consequently must be proven to have acted unjustly or contemptuously in a given situation'.

There are cases in which persons or groups in the Church have been treated unjustly or in a manner not befitting their dignity as persons. People maligned from the pulpit; the parents of a child summarily dismissed from school by the administrator, who refused to talk to the parents or discuss in any manner the justice of the action; a parish priest moved from his parish without being given an opportunity to discuss the reasons for the move and defend himself against charges of incompetence; a religious brother refused final profession for reasons which later were found to be highly exaggerated, if not false; a religious sister transferred from a school where she was quite successful, with the superior refusing to give any reason, thereby leaving the rest of the community and the parish to believe the worst (the real reason was that the superior had to make a place in that convent for a troublesome sister); priests suspended 'in strict accord with Canon Law' but done in a manner ill-befitting a christian; spanish-speaking and black minority groups made to feel in a thousand ways that they were 'second-class' citizens in the Church;¹⁵ troubled people with 'bad marriages' being handled by gruff priests who ought to have been for them 'another Christ'. The list might go on for pages;¹⁶ but there is one group that might be considered separately, since they make up roughly half of the world: women.

There is a statement in Vatican II that appears to the present writer to be frequently overlooked; it states: 'Women claim for

¹⁴ *Catholic Mind*, Vol. LXIX (Sept. 1971), p 40.

¹⁵ Davis, Joseph M.: 'Reflections on a Central Office for Black Catholicism', in *The Homiletic and Pastoral Review*, Vol LXIX (July, 1969), pp 771-783. The writer discusses at some length the indignities to which black catholics are often subjected in the Church.

¹⁶ Cf Goedert, R.: 'Due Process in the Church', in *The Homiletic and Pastoral Review*, Vol LXIX (July, 1969), pp 764-770. The writer describes several concrete cases and shows the inadequacy of the present Code of Canon Law in the matter of the adequate protection of rights in the Church.

themselves an equity with men before the law and in fact'.¹⁷ Now the past ten years have seen a dramatic rise in the concern for the rights of women. In the United States, at least, the Women's Lib Movement has had its impact on the life of many women – and men. Presently there is a proposed amendment to the Constitution of the United States that is being discussed by the several States and has been passed by many of them; it concerns the guaranteeing to women of equal rights under the law. It is no wonder, then, that women in the Church are asking some thoughtful questions about the rightful place of women in the Church today. In an article in *The Tablet* we see some of the discussions that were held by the Bishops at the 1971 Synod. Cardinal Flahiff, for example, asked: 'Are new and changing ministries to be limited to men?' Fr Arrupe, S.J., superior general of the jesuits, noted: 'The more trust was placed in women and the more integrated they were in general pastoral planning, the greater would be their contribution'. Archbishop Byrne of the United States said that lip-service was paid too frequently to the principle of equality, and that women in fact very often occupy an inferior position and are subject to exploitation. But Archbishop Alberto had much more to say to the assembled bishops. Cautioning the bishops that the Church first had to set its own house in order before speaking of justice to others, he added:

1. Episcopal conferences should undertake serious studies of their own national culture and of Church law and practice, in order to eliminate any infringement on the rights of women in civil and ecclesiastical life.
2. No argument should be used to exclude women from any service in the Church if it stems from male prejudice, blind adherence to merely human traditions that may have been rooted in the social position of women in other times, or in questionable interpretation of the scriptures.
3. The Church should take care that in its expression of attitudes toward sex, marriage, family planning, etc., it recognises the dignity of woman and her christian understanding of herself.
4. The Church universal, national, and local should seek out ways to give women representation and greater and more meaningful participation in the liturgy and in the Church's activities and organization.¹⁸

¹⁷ *Gaudium et Spes*, 9.

¹⁸ *The Tablet* (London), 13 November, 1971, p 1107. This is a report of various discussions on the position of Women in the Church by Sister Ethne Kennedy and Suzanne Van Der Mersch.

We cannot read the documents of Vatican II and the discussion and the recommendations of the 1971 Synod of Bishops without slowly realizing that the treatment of women in the Church must improve to a great degree. Consequently, we would look for an increasing number of cases in which women will complain of unjust or contemptuous treatment at the hands of men in authority in the Church. The days of the 'good little sister' who will be treated in a demeaning manner are fading fast, if they are not already gone. Our religious women are dedicated, competent women of the Church, and they will expect to be treated as such in the days to come.¹⁹

In the past, when a person had been treated unjustly or with contempt (or felt that he or she had been so handled), what options were open? What could one do about it? One could 'bear the Cross' in silence – and many persons did; or one could try to discuss the matter with the individual or the superior, if the latter was willing to dialogue – and capable of it; or a person could appeal to a higher authority, even to Rome (but few would have known how to make such an appeal to Rome); or one could become a bitter priest, religious, lay-person – and many solved the question in this manner; a person could leave his or her vocation or even depart from the Church. In the past, only a few did just this; but, in the judgement of this writer, the number has increased since Vatican II. Perhaps the pitiable cases are the bitter persons, constantly re-living and re-telling the unjust treatment or contemptuous handling that they feel they have received in the past. Filled with anger, often unforgiving, sometimes revengeful, they know little of christian joy in their lives, and do not accomplish very much for the Kingdom of God. Yet, all of these persons are hurting; and the question is: what can be done to alleviate the situation?

If we search Canon Law, we find Canon 1667, which states that there is a judicial remedy for the protection of every right. Shall we tell these persons that they are now protected, and that they should take their cases to the diocesan tribunals? If we do, we shall surely disappoint them! Most of the tribunals spend about ninety-nine per cent of their time on marriage cases. Moreover, some few tribunals exist in name only, or process only a few cases a year at the most; which is not very helpful. Consequently, the catholic bishops of the

¹⁹ Cf McGrath, Sister Albertus Magnus, O.P.: 'Women as the Niggers in the Church', in *The Critic*, Vol XXX (Sept.-Oct., 1971), pp 25-33. The article has been developed into a full book by Sister McGrath, who sees women and black catholics as being put in an inferior position in the Church.

United States asked the Canon Law Society of America to research the problem and to propose some solution which might help to solve these conflicts. A special committee was formed, which devised a programme entitled 'Due Process', presented it to the bishops at their annual meeting in 1969, and gained their endorsement of it. In 1971 the holy See approved the plan with a few emendations, and authorized its use 'on an experimental basis'.

The Due Process Report, some thirty-five pages in length, cannot be adequately treated here;²⁰ but some comments are in order. The committee, after valuing a survey of the documents of Vatican II and the encyclical *Pacem in Terris*, drew up a list of rights of christians²¹ in the Church. The report notes that rights are protected indirectly by education, growth of moral consciousness and development of character, and that directly they are protected by law. Due Process, notes the committee, takes on a real meaning when one asks

whether certain specific substantive and procedural protections are due, in given sets of circumstances, in order that the rights of persons involved be adequately safeguarded; most of the current discussion and writing about 'due process' in the Church is conditioned by anglo-american common law tradition, which requires substantively that no fundamental right or freedom shall be denied without adequate justification; and procedurally, that every individual be accorded certain specific protections in administrative and judicial procedures.²²

The report notes that among the procedural protections are the following: the right to be informed of proposed actions which might prejudicially affect one's rights; the right to be heard in defence of one's rights; the right, in the face of accusations which could result in the imposition of a penalty, to confront one's accusers and also those who testify in support of the accusation; the right not to be judged by one's accusers. We can readily see from a consideration of these points that many cases could have been settled and much bitterness avoided, had some or even all of the above procedural protections been employed.

The report, after examining the ecclesiological implications of due process, and showing that it is not in conflict with the hierarchical

²⁰ Cf 'Report of the Ad Hoc Committee on Due Process to the Canon Law Society of America' (Cleveland, 1969). Hereafter this will be referred to as *Due Process Report*.

²¹ *Ibid.*, Preamble. Cf also Lombardia, Pedro: 'The Fundamental Rights of the Faithful' in *Concilium* (USA Series), vol 48 (New York, 1969), pp 81-89.

²² *Due Process Report*, p 2.

authority in the Church, turns its attention to the role of administrative authority in the Church, noting that 'it is in this area that present-day conflicts are most numerous, and it is in this area that grievances most often are based on the denial of fundamental christian rights.'²³ The emphasis on the area of administrative authority is due to the fact that it is here that an increase in the number of persons entitled to exercise such authority is perceived. New administrative boards and agencies of the diocese; an increase in personnel boards, liturgy commissions, parish councils, all mean the possibility of more conflicts than heretofore.

In civil courts, litigation is a last resort; negotiated settlements are the rule. Canon Law itself discourages litigation as a method of resolving any disputes that may arise,²⁴ and urges, in its stead, a process of conciliation and arbitration. The report, recognizing that as christians we are bound to try to reconcile ourselves one with another, does the same. 'The members of the [Canon Law] Society believe that in the Church, which should study not only the secular example but also provide an example for the world, the primary process for the resolution of disputes should not be a process for the assertion of legal rights, but a process for the conciliation of human persons'.²⁵ If a conciliation is to take place between persons or groups of persons, certain elements are necessary: face-to-face dialogue in an honest discussion of the problem; the presence of a conciliator to avoid unmediated dialogue; a conviction that imperatives of conscience making only one course possible or mandatory in a given case are very few indeed; a recognition that very few rights of authority can be asserted in one specific manner only; there should be no delay or concealment of relevant information, in order that wounds can be healed quickly and people not left in suspense about their status for long periods of time; there is an obligation on those in authority or those guided by authority to show that he or she belongs to a religion whose essence is love of God and the neighbour in truth.²⁶

The report proposes a model plan for conciliation, then goes on to state the known fact that sometimes, even with the best of intentions on both sides, conciliation fails. In that case a plan for arbitra-

²³ *Ibid.*, p 8.

²⁴ Cf *Code of Canon Law*, Canons 1925-1932.

²⁵ *Due Process Report*, p 9.

²⁶ *Ibid.*, p 9.

tion is given: that is, the reference of a dispute, by voluntary agreement of the parties, to an impartial person or persons for a determination on the basis of evidence and arguments presented by the parties, who agree in advance to accept the decision of the arbitrator or arbitrators as binding. Hopefully, very few cases will progress to the state of arbitration.

It frequently happens that conflicts arise in the area of administrative authority because administration-discretion is haphazard and unstructured. No one is quite sure who has what authority; or what, for example, the policy of an administrative board really is; or who, in the final analysis, made the decision that caused the conflict. To counteract all this, the report indicates that there should be a clear delineation of the competency of an individual or agency; otherwise there can arise the claim that a certain act is the cause of injustice, and that this act was really outside the authority of the person or agency. Again, the criteria by which the person or agency will operate, for example, in hiring and firing, recommending promotion to sacred orders or religious profession, etc., should be set down in writing so that claims of arbitrary actions can be met and handled. Moreover, policies should be known and judged or criticized sufficiently before being put into operation. Decisions which affect a person's rights should show findings of fact, with reasons set down in writing. All this would do much to eliminate complaints of unjust actions, since one could, if necessary, respond to such facts and reasons.²⁷

Many archdioceses and dioceses in the United States of America have taken the Due Process Report, perhaps modified it somewhat, and employed it in the solution of grievances. The Due Process Board of Conciliation and Arbitration of the Archdiocese of Chicago has an executive board of eleven members to direct the programme, with thirty-five conciliators and thirty arbitrators to call upon; the executive board, whose chairman is a layman and whose vice-chairman (chairwoman) is a lay-person, is composed of four of the laity, two diocesan priests, two men religious, two women religious, and a diocesan priest who is appointed by the Cardinal. The other members are elected by various groups in the archdiocese: that is, laity by the laity, diocesan priests by diocesan priests, men religious by men religious, women religious by women religious. From July 1971 to June 1972, the board processed thirty-five cases to comple-

²⁷ *Ibid.*, pp 26-27.

tion. It is a small beginning, but at least it is a start to help those who are suffering in the Church.²⁸

Major Superiors of Men,²⁹ and the Leadership Conference of Religious Women in the U.S.A.,³⁰ have entrusted committees with the work of adopting the Due Process Report for use by religious institutes. Consequently, many religious institutes now have their own mediation board, board of reconciliation, appeals board, etc. to aid in cases that come up within the institute. As a matter of fact, very few cases have come before any board of religious, but the superior and administrator, as well as the individual religious or group of religious, know that it is available, should it be required; and this is a psychological plus on both sides.

People in other parts of the world have also shown an interest in some sort of due process, such as Germany,³¹ England³² and Rome itself, where a special commission is working to set up an administrative tribunal system to handle grievances against administrative authority in the Church; it is hoped that the system will be in operation in all parts of the world sometime in 1974.³³

When we look back, we see how far we have come. We need only look back ten years to see what progress has been made in the question of rights in the Church and the adequate protection of those rights. Much more needs to be done, especially in the field of education regarding rights in the Church and the protection of those rights. We must do all in our power to see to it that men and women, whoever they be and wherever they abide, are treated with justice. For, as the bishops of the 1971 Synod state: 'The Church indeed is not alone responsible for justice in the world; however, she has a proper and specific responsibility which is identified with her mission of giving witness before the world of the need for love and justice contained in the gospel message, a witness to be carried out in Church institutions themselves and in the lives of Christians'.³⁴

²⁸ Cf *Due Process: Office of Conciliation and Arbitration of the Archdiocese of Chicago* (Chicago, 1970).

²⁹ Cf 'Ad Hoc Committee Report on Due Process to the Major Superiors of Men USA' (Washington, 1971).

³⁰ Cf *Board of Reconciliation and Procedures for Due Process in the Religious Communities of Women* (Washington, 1972).

³¹ Straub, Heinrich: 'De Quodam Tribunali Administrativo in Germania Erigendo', in *Periodica*, Vol 60 (Rome, 1971), pp 591-597.

³² *The Tablet* (London), 16 December, 1972, pp 1213-1215.

³³ Cf *Communications*, Vol IV, N 1, 1972, pp 35-38.

³⁴ *Synod of Bishops*, p 42.