

Equity and Charity in the Administration of Religious Institutes in the Catholic Church

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Introduction

Equity means the administration of justice in the governance of the Church with grace and mercy. It is the way to administer justice by those who hold the power of governance in the Church after the model of the Good Shepherd. The Codes of Canon Law, both CIC (of the Latin Church), and CCEO (of the Eastern Churches), repeatedly make use of the expression 'equity and charity' in different contexts of the administration of the Church. The author brings out the richness and depth of the concept of equity from philosophical and theological perspectives and applies them in the different contexts of religious institutes as given in the Codes of Canon Law and tries to understand them in the milieu of administering justice in the Catholic Church. Thus, the origin, development, and the present status of the religious institutes is presented first and then the author introduces the concept of equity and charity in the context of the administration of religious institutes in the Catholic Church.

Religious Life in the Eastern Churches

Religious life as an institution of the Church has had its origin in the Christian East¹. From the East it spread to the West. Monasticism in the East mainly was of two types: the eremitical² life of hermits or anchorites and coenobitic³ life of monks. The model of eremitical life⁴ was Antony of Egypt (d.356). When eremitical life was flourishing in the East another form of monastic life - cenobitic- was introduced by St. Pachomius (292-348). For Pachomius obedience was the very foundation of cenobitic life. However, it was in Asia-Minor under the leadership of St. Basil (329-379) that monasticism took a new turn⁵. As a result of his contributions to the monastic theology and structure of the coenobitic life, St. Basil is commonly hailed as the father of monasticism in the East. The Cappadocian fathers- Basil, Gregory Nazianzen and Gregory of Nyssa- furnished monasticism

¹ "In Oriente quoque inveniuntur divitiae illarum traditionum spiritualium, quas praesertim monachismus expressit. Ibi enim inde a gloriosis Sanctorum Patrum temporibus floruit spiritualitas illa monastica, quae dein ad occidentales partes manavit et ex qua religiosum latinorum institutum tamquam e suo fonte originem duxit ac deinceps novum vigorem identidem accepit." Cf., UR., 15.

² The word 'eremitic' comes from the Greek word 'eremos' meaning solitary, desolate, lonely. It also denotes a person who retires from society and lives in solitude. Cf., Haris & Allen, *Webster's New International Dictionary*, London, 1957, 1009.

³ The word 'coenobitical' derives from a combination of two Greek terms, namely, *koinos* (common) and *bios* (life), conveying the meaning common life Cf., Haris & Allen, *Webster's New International Dictionary*, 355.

⁴ Two important sources of information on eremitical life are *The Life of St Antony* written by St. Athanasius in 357 and *Apophthegmata Patrum* or sayings of illustrious hermits. Cf., L. Bouyer, *A History of Christian Spirituality*, vol. I, Kent, 1986, 305-317.

⁵ J. Aumann, *Christian Spirituality in the Catholic Tradition*, London, 1985, 42.

with a well-worked-out theory coupled with the organizational set up of Pachomian coenobitism. They managed to combine asceticism with obedience to the ecclesiastical authority and it resulted in a stable and balanced coenobitism⁶. According to Louis Bouyer this trend of 'erudite monasticism' of the East reached its highest point of development with pseudo-Dionysius, Evagrius and Macarius in the fifth century⁷.

With the Christological crisis, the monks of the East adopted extremist positions not hesitating to withdraw from the jurisdiction of their bishops, often at the invitation of a neighbouring bishop⁸. Therefore, the Council of Chalcedon (451) issued canons to put the monks under the authority of the bishops⁹. Later, in 692 the Council of Trullo¹⁰ enacted monastic legislation with the following canons: 40 (on the need of probation to admit to monastic life), 41 (on enclosure), 42 (on habit), 43 (on each faithful's right to enter monastic life), 44 (against fornication), 45 (norm for admitting women to monastic life), 46 (stability of monastic life), 47 (prohibition of monks having contact with women), 48 (wife of the bishop entering monastic life), 49 (monasteries shall not become secular houses), etc.
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The most remarkable event during the tenth to eleventh centuries in Oriental monasticism was the appearance of a mystical revival with Symeon the new Theologian (d.1022). In contrast to the ancient anchorites the Hesychasts of the school of Symeon lived and worked in communities but championed a demanding conception of union with God. In the thirteenth century, the period of the conquest of Constantinople by the Crusaders, was a time of ruin and decline for Oriental monasticism. In the fourteenth century the Hesychast tradition found its greatest Doctor in Gregory Palamas. In the twentieth century hesychast method attracted the attention of psychology. Though Eastern monasticism retained its primitive simpler form of the beginning in centres like Holy Mount Athos of northern Greece, Egypt, Ethiopia, Sinai and Palestine, Syria, Armenia, Georgia, Balken Countries, Russia and Ukraine¹², it is almost extinct in these monastic centres with the exception of Mt. Athos where it is still surviving and Rumenia where it is flourishing today.¹³

Monasticism in the West

⁶ Gribomont, "Monasticism," *NCE* 9(New York 1967)1036.

⁷ L. Bouyer, *A History*, 422.

⁸ Gribomont, "Monasticism," 1041.

⁹ ". . . But since there are some who don the monastic habit and meddle with the churches and civil matters, and circulate indiscriminately in the cities and even are involved in founding monasteries for themselves, it has been decided that no one is to build or found a monastery or oratory anywhere against the will of the local bishop; and that monks of each city and region are to be subject to the bishop, are to foster peace and quiet, and attend solely to fasting and prayer, staying set apart in their places. They are not to abandon their own monasteries and interfere, or take part in ecclesiastical or secular business, unless they are perhaps assigned to do so by the local bishop because of some urgent necessity. . . . We have decreed that anyone who transgresses this decision of ours is to be excommunicated, lest God's name be blasphemed. However, it is for the local bishop to exercise the care and attention that the monasteries need" (*Council of Chalcedon* (451), *canon 4: Cf.*, N. P. Tanner (ed.), *Decrees of the Ecumenical Councils*, vol.1, London,1990, 89; J.D. Mansi, *Sacrorum Conciliorum*, Graz, 1960-61, 7, 359).

¹⁰ Council of Trullo is not counted as one of the Ecumenical Councils by the West. But for the East especially for the Greek Church it is of great importance. We cite here only the canons that pertain to the organization of monasteries in the East. *Cf.*, H. R. Percival (ed.), *The Seven Ecumenical Councils*, Edinburg, 1991, 383-388; D. Salachas, *Oriente Cristiano* 31 (1991) 82-89.

¹¹ Varghese Koluthara, *Rightful Autonomy of Religious Institutes: A Comparative Study based on the Code of the Oriental Churches and the Code of Canon Law*, Dharmaram Canonical Studies 3, Bangalore, 2014, 8.

¹² T. Spidlik, "Monasticism", *NCE* 9, 1043-1048.

¹³ Varghese Koluthara, *Rightful Autonomy of Religious Institutes*, 10.

There is little documentary evidence on the beginnings of monasticism in the West before the middle of the fourth century. It developed more slowly than its counterpart in the East, but continues to flourish even today. The first centres of monasticism in the West were formed, as a result of the exile of Athanasius, in Rome, Treves, northern Italy and Aquileia. His *Life of St. Antony* which had such a great role in the popularization of the monastic life, was quickly translated into Latin for Christians in the West¹⁴. The social structure of the Christian communities differed considerably from that of Egypt, since in the West, those who opted for monastic life were mainly from the upper strata of the society. One of the distinguishing elements of Western monastic life of the first few centuries was that they preferred a life in community than a solitary life separated from the world. Another typical trait of Western monasticism was its penetration into the clergy in the service of the local Church.¹⁵

Jerome, Rufinus and others had translated the Oriental monastic texts into Latin at an early date. At the beginning of the fifth century in John Cassian we have the greatest exponent of monastic life and the most influential figure prior to St. Benedict. Unlike John Cassian, St. Augustine (354-430) did not promote an Eastern type of monasticism; rather he combined contemplative life with active life. According to J. Aumann, St. Augustine's concept of monastic life was firmly rooted in the description of the "*vita apostolica*" found in Acts 4, 32-35.¹⁶

St. Benedict (480-547) is known as the father and legislator of Western monasticism. He retired to solitude in Subiaco (ca. 500) forty miles from Rome. There he attracted many disciples and started monasteries similar to the *lauras* of St. Pachomius of the East. Taking inspiration from the rules of St. Pachomius, St. Basil, St. Cassian and St. Augustine and other sources he gave shape to the Benedictine monastic rules. In Benedict's conception 'the monastic life was centred around the abbot, who was to be the spiritual father of the entire monastery, the careful administrator of all the temporalities of the community and he was to be elected for life.'¹⁷ The self-contained world of the monastery was to be animated by charity and directed to the glory of God, especially by the prayer of the Divine Office. This Benedictine ideal became 'the standard for a life consecrated by vow and so appealing to the age that by the eighth century no other form of religious life was thought of.'¹⁸ The ninth century witnessed the decline of Benedictine monasticism. As a revival of Benedictine monasticism in the tenth century three branches sprang up such as Cluny (910), Camaldolese (1010), and Cistercians (1098).¹⁹

Development of Other Religious Institutes

The medieval period, did not limit itself to Benedictinism and its offshoots. The eleventh and twelfth centuries brought to the Church new forms of consecrated life. The other religious institutes that sprouted during this period, the first of which was the Canons Regular, clericalized religious after the model of St. Eusebius and St. Augustine. By the middle of the twelfth century Canons living in accordance with the norms of the Lateran councils were generally called Canons Regular. Later as they came to adopt the Rule of St. Augustine and they were called Augustinian canons²⁰. It was their example of combining priestly activities with religious life that led to the development of

¹⁴ J. Aumann, *Christian Spirituality*, 57.

¹⁵ Varghese Koluthara, *Rightful Autonomy of Religious Institutes*, 11.

¹⁶ J. Aumann, *Christian Spirituality*, 67.

¹⁷ R. F. Smith, "Religious Life," *NCE* 12, 290.

¹⁸ C. Gallagher, "The Church and Institutes of Consecrated Life," *The Way Supplement* 50 (1984) 3.

¹⁹ Varghese Koluthara, *Rightful Autonomy of Religious Institutes*, 13.

²⁰ R. F. Smith, "Religious Life," 291.

Premonstratensians, Military and Hospital Orders in the Middle Ages. The profusion of religious orders led to a certain amount of confusion in the Church of the twelfth and thirteenth centuries, so much so that the fourth Lateran Council in 1215 attempted to restore order by issuing the following constitution (13):

Lest too great a variety of religious orders leads to a grave confusion in God's church, we strictly forbid anyone henceforth to found a new religious order. Whoever wants to become a religious should enter one of the already approved orders. Likewise, whoever wishes to found a new religious house should take the rule and institutes from already approved religious orders.²¹

One such legislation did not altogether prevent the development of different forms of religious life, though it presented a considerable obstacle to the free inspiration of the Spirit. One such medieval development was Mendicant Orders which began in the early part of thirteenth century with the Franciscans and the Dominicans. Their financial support came either from begging (hence "mendicants") or from their work. From the second half of the Middle Ages to the time of Reformation there was a general decline of religious life in the Church. But with the Council of Trent (1545- 1563) the decline was checked. The Council of Trent dealt with almost all the aspects of religious life with many provisions and laws that lasted for a long time. Old Religious groups revitalized themselves and the Church also produced a new type of religious life that of Clerics Regular, so called on account of their priestly nature and apostolic end: Barnabites (1530) Jesuits (1540) Camilians (1582), etc. The Jesuits introduced the practice of simple vows for some of their members, thus breaking away from the tradition of solemn vows as the only vows of religious life²². Thus, from the end of the 16th century there began the multiplication of religious institutes with only simple vows, namely, Congregations with public vows and Secular Institutes - with no public vows. During the time of the French Revolution in the 18th century religious life underwent a crisis, and the revival in the 19th century witnessed the emergence of strict and uniform regulations with little room available for the expression of each one's charism²³.

The Changes brought by First and Second Vatican Councils

The first Vatican Council (1871-72) did not produce special laws concerning the consecrated life, but during the post-Council period many pontifical documents such as "*Conditae a Christo*"²⁴, "*Provida Mater Ecclesia*"²⁵, etc. were issued. The *Codex Iuris Canonici*²⁶ (CIC 1917), the first Code of Canon Law of the Catholic Church which was strongly juridical, caused a great uniformity in religious life consequently consecrated life lost much of its charismatic, prophetic nature and became an institution more juridical than charismatic.²⁷

²¹ "*Ne nimia religionum diversitas gravem in ecclesia Dei confusionem inducat, firmiter prohibemus, ne quis de caetero novam religionem inveniatur: sed quicumque voluerit ad religionem converti, unam de approbatis assumat. Similiter qui voluerit religiosam domum fundare de novo, regulam et institutionem accipiat de religionibus approbatis.*" Cf., N. P. Tanner (ed.), *Decrees I*, 242; J. D. Mansi, *Sacrorum Conciliorum*, 1002, n. 13.

²² R. F. Smith, "Religious Life," 292.

²³ G. Batelli, *Religious Life in the Light of the New Canon Law*, Nairobi, 1990, 53-54.

²⁴ Leo XIII, *Conditae a Christo*: ASS 33 (1900-1901) 341-347.

²⁵ Pius XII, *Provida Mater Ecclesia*: AAS 39 (1947) 114-124.

²⁶ AAS 9 (1917) 3-456.

²⁷ J. Creusen, *De Juridica Status Religiosi Evolutione*, Rome, 1963, 7.

The Second Vatican Council (1962-65) stressed the necessity for all religious institutes to return to their original inspiration. It recognised the charismatic, prophetic nature of consecrated life and assumed the attitude of the first bishops in approving and regulating the various forms of consecrated life, favouring the different charisms. The Council Constitution *Lumen Gentium*²⁸ and the specific document on religious life *Perfectae Caritatis*²⁹ repeated the charismatic nature of religious life. The way to carry out the *aggiornamento* was shown in the post-conciliar documents such as *Ecclesiae Sanctae*,³⁰ *Renovationis Causam*,³¹ *Evangelica Testificatio*,³² *Mutuae Relationes*,³³ *Optiones Evangelicae*³⁴, *Elementi Essentia*³⁵, *Redemptionis Donum*³⁶, *Redemptionis donum* (25 March 1984), *Potissimum institutioni* (2 February 1990),³⁷ *Fraternal Life in Community* (2 February 1994),³⁸ *Vita consecrata* (25 March 1996),³⁹ “Inter-institute collaboration for formation,” (8 December 1998),⁴⁰ *Starting Afresh from Christ* (19 May 2002),⁴¹ *The Service of Authority and Obedience* (11 May 2008),⁴² “Rejoice” (2 February, 2014),⁴³ “*Communis vita*” (26 March 2019)⁴⁴, *The Gift of Fidelity: the Joy of Perseverance* (2 February 2020),⁴⁵ and *Competentia Quasdam Decernere* (11 February 2022),⁴⁶ *Modifying the term of recourse of dismissed member from an Institute of Consecrated life* (3 April 2023)⁴⁷ etc. The *Codex Iuris Canonici*⁴⁸ (CIC 1983) for the Latin Church and

²⁸ AAS 57 (1965) 5-71.

²⁹ AAS 58 (1966) 702-712.

³⁰ AAS 58 (1966) 757-787.

³¹ AAS 61 (1969) 103-120.

³² AAS 63 (1971) 497-526.

³³ AAS 70 (1978) 473-506.

³⁴ EV 7 (1980-1981) 410-469.

³⁵ EV 9 (1983-1985) 180-259.

³⁶ AAS 76 (1984) 513-546.

³⁷ www.vatican.va/roman_curia/congregations/ccsrlife/documents/rc_con_ccsrlife_doc_02021990_directives-on-formation_en.html, accessed on 18th June 2024.

³⁸ www.vatican.va/roman_curia/congregations/ccsrlife/documents/rc_con_ccsrlife_doc_02021994_fraternal-life-in-community_en.html, accessed on 18th June 2024.

³⁹ https://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_25031996_vita-consecrata.html, accessed on 18th June 2024.

⁴⁰ www.vatican.va/roman_curia/congregations/ccsrlife/documents/rc_con_ccsrlife_doc_08121998_inter-formation_en.html, accessed on 18th June 2024.

⁴¹ www.vatican.va/roman_curia/congregations/ccsrlife/documents/rc_con_ccsrlife_doc_20020614_ripartire-da-cristo_en.html, accessed on 18th June 2024.

⁴² www.vatican.va/roman_curia/congregations/ccsrlife/documents/rc_con_ccsrlife_doc_20080511_autorita-obbedienza_en.html, accessed on 18th June 2024.

⁴³ www.vatican.va/roman_curia/congregations/ccsrlife/documents/rc_con_ccsrlife_doc_20140202_rallegratevi-lettera-consacrati_en.html, accessed on 18th June 2024.

⁴⁴ https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190319_communis-vita.html, accessed on 18th June 2024.

⁴⁵ https://www.vitaconsacrata.va/content/dam/vitaconsacrata/LibriPPDF/Inglese/dono-della-fedelta_ING_testo_stampa-1.pdf, accessed on 18th June 2024.

⁴⁶ https://www.vatican.va/content/francesco/en/motu_proprio/documents/20220211-motu-proprio-assegnare-alcune-competenze.html, accessed on 18th June 2024.

⁴⁷ <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2023/04/03/230403e.html>, accessed on 18th June 2024.

⁴⁸ AAS 75 (1983) Pars II, 1-317.

Codex Canonum Ecclesiarum Orientalium (1990)⁴⁹ blend together juridical, theological, pastoral, ecclesial, spiritual and charismatic aspects of religious life.

The Oriental religious institutes, organized in the beginning of the century as orders, congregations or societies without public vows, conform in their structure and in other details to the norms of the 1917 CIC⁵⁰. With the publication of MP *Postquam Apostolicis Litteris*⁵¹ on 9 February 1952 a common law for the religious of Oriental Churches emerged. The *Codex Canonum Ecclesiarum Orientalium*,⁵² promulgated by the Roman Pontiff John Paul II with the Apostolic Constitution "*Sacri Canones*" on 18 October 1990, entered into force on 1 October 1991. It dedicates to the religious institutes and other institutes of consecrated life in the twelfth of its thirty Titles, which completely replaces the earlier codified law of religious, the MP *Postquam Apostolicis Litteris*. Title XII, comprising canons 410-571 (162 canons in all, out of CCEO's total of 1546) gives increased prominence to the properly monastic life in order to preserve the most precious "goods of the Church" that had been created and developed especially in the Christian East.⁵³

The Usage of the Concept of Equity in the Codes of Canon Law Especially on Religious Institutes

In the Codes of Canon Law, the word 'equity' is repeatedly made use with different dimensions of the concept. Altogether 23 times the word 'equity' is used in CCEO and 17 times CIC in different contexts in the Codes of Canon Law, but the contexts are almost the same in both Codes. The concept and equity and its evolution from a philosophical background and the understanding of the Orthodox Church on *oikonomia* in various life situations is an interesting area of study.

Canonical Equity

Canonical equity is a certain humane understanding of Canon Law. It is in accordance with canonical equity that we say "Ecclesiastical Law does not oblige with great inconvenience."⁵⁴ For example, the causes that excuse one from the obligation of Sunday Mass are many, such as distance, one's own necessity etc... The Legislator would always keep it before our eyes (CIC cc 19; 1752) two notions:(1) seeing that the ideal of justice is actually realized in a fair result. (2) Justice tempered with mercy, the softening of rigour of justice under the influence of charity. Equity takes the form of mercy and pastoral charity and seeks not a rigid application of the law,

⁴⁹ AAS 82 (1990)1033-1363.

⁵⁰ V. J. Pospishil, *The Code of Oriental Canon Law Law: The Law on Persons*, Philadelphia, 1960, 235.

⁵¹ AAS 44 (1952) 65-150.

⁵² AAS 82 (1990) 1033-1363.

⁵³ Varghese Koluthara, *Rightful Autonomy of Religious Institutes*, 16.

⁵⁴ The expression "under sin" does not carry the real gospel message today. Most of these devotional and penitential practices such as observance of the Sunday as the Lord's Day, the Lenten fast, Friday abstinence, and others, were created by the community as signs of its dedication and generosity. But eventually, the law entered the scene and made the voluntary observances into binding precepts and thus into occasions of sin. After the Vatican II, there was a trend to return to our ancient traditions and lift them out of the realm of the law, and consequently out of the realm of sin (see, e. g., the Apo. Const. *Paenitemini*; CLD, 675-678). For many, unfortunately, such a "new" initiative is hard to understand and they continue to ask what is now the precise obligation "under sin." The precise meaning of "under sin" today is that the Church would like to operate on the field of generosity where sin has no place at all. cf., Ladislav Örsy, *Theology and Canon Law*, Collegeville, Minnesota: The Liturgical Press, 1992, 62.

but the true welfare of the faithful. Let us try to understand the origin, development, and usage of equity in the Codes of Canon Law.⁵⁵

The Philosophical Background of the Virtue of Equity: The Balancing Role of *Epieikeia*⁵⁶

A systematic study of the science and art of interpretation of laws would be incomplete and structurally unbalanced without giving its due place to Aristotle's *epieikeia*⁵⁷. Aristotle introduces the idea of *epieikeia* in his work *Nicomachean Ethics* in book V, in chapter 10. A couple of translators of his work interchange it with equity. Aristotle writes: "For on examination equity and justice appear to be neither absolutely the same nor generically different;When the law speaks universally, then, and a case arises on it which is not covered by the universal statement, then it is right, where the legislator fails us and has erred by over-simplicity, to correct the omission- to say what the legislator himself would have said had he been present, and would have put into his law if he had known. ...And this is the nature of the equitable, a correction of law where it is defective owing to its universality. In fact, this is the reason why all things are not determined by law, that about some things it is impossible to lay down a law, so that a decree is needed."⁵⁸

This exception to the general rule of the strict Common Law constitutes the Aristotelean "Equity" which is but a "rectification of the strict Common Law, particularly wherever the latter proves itself defective because of its generality. ...Thus, humanitarian ideals not only promote, in the last analysis, the perfection of the administration of Justice, but may also, in certain instances, even supersede Law and Justice."⁵⁹

Traditionally, Canon Law acknowledged the right to use *epieikeia* even if the explanations of it varied greatly. To conceive it again in its original simplicity may enhance its scope. To confine it to extreme cases only-such as filling the gap in the case of a *lacuna legis* (there is no law and there should be one)-would be to restrict it too much, virtually making it useless.⁶⁰

In Aristoteles's mind *epieikeia* is an integral and indispensable component of every legal system, no matter what system may be. He sees that life is more complex than any set of rules which the human mind can conceive. Hence an *ad hoc* corrective is necessary. It must originate in the same source as the laws, that is, in the virtue of justice.⁶¹ Justice for all can be achieved only through

⁵⁵ Varghese Koluthara, "Equity and Charity in the Administration of the Church," in Jesus Manmbre- Benedict N. Eje-Fernado Puig(eds.), *Studi sul diritto del governo e dell'organizzazione della Chiesa in onore di Mons. Juan Ignacio Arrieta*, Venetiis: Marcianum Press, 2021, 913.

⁵⁶ Varghese Koluthara, "Equity and Charity in the Administration of the Church," 913-915.

⁵⁷ Ladislav Örsy, "Book I: General Norms-Canons and Commentary," in James Coriden and Others (eds.), *The Code of Canon Law: A Text and Commentary*, London: Geoffrey Chapman (Reprinted in Bangalore, 2001), 42.

⁵⁸ *The Nichomachean Ethics of Aristotle*, Translated and introduced by Sir David Ross, London: Oxford University Press(reprint), 1961, 132-33.

⁵⁹ Anton-Hermann Chroust, "Aristotle's Conception of Equity (*Epieikeia*)," *Notre Dame Law Review* (vol.18/2, 1942) 123, accessed on 26 Jan. 2021: <http://scholarship.law.nd.edu/ndlr/vol18/iss2/3>.

⁶⁰ Ladislav Örsy, "Book I: General Norms-Canons and Commentary," 42.

⁶¹ Ladislav Örsy, *Theology and Canon Law*, Collegetown, Minnesota: The Liturgical Press, 1992, 44.

the subtle and judicious dialectics of imposing the law in most cases and letting *epieikeia* prevail in some cases.⁶²

There have been periods in the history of Canon Law when *epieikeia* has been forgotten, in the sense that it played no serious role. As the application of the *epieikeia* receded, legalism raised its ugly head. Legalism is a sickness in the system. It looks for the letter of the law rather than the spirit of the law. To prevent such trends, we need to invoke vigorously Aristotle's *epieikeia* in particular.⁶³

Authentic Equity⁶⁴

Ladislas Örsy presents the historical evolution of the usage of the concept of Equity: "Equity has been used, and at times abused, in the city of Rome ever since the magistrates and the lawyers began to invoke it on a larger scale in the third century B.C. It has more than proved its value by bringing both new life into an aging system of law and flexibility into rigid structures. There is no doubt that equity brought powerful transformations into both Roman and English systems of laws. The fruit of its influence has been excellent; therefore, in these systems one must be able to find an authentic expression of it."⁶⁵

Equity is not same as *epieikeia*. The latter is the part of justice. With its attention to particular cases, it balances out generality of legal norms; *nomos* (law) and *epieikeia* belong to the same category. Not so with law and equity.⁶⁶

The origins of Roman Law are in the norms of the Twelve Tables, composed in the 5th century B.C. They gave the birth and development to a strict system of laws interpreted with literal exactness. Eventually, the shortcomings of such structures began to work to the disadvantage of the citizens whom they were supposed to help and protect. Moreover, the system proved insufficient to handle the needs of many non-citizens who either came to Rome or over whom the power of Rome was extended.⁶⁷

To provide for the needs of the strangers and aliens, in 242 B. C. a special magistrate was appointed, the *praetor peregrinus*. Since he did not administer justice for the citizens he was not bound by their laws. Gradually, the *praetores*, succeeding each other, developed a new system of laws which did not depend on the Twelve Tables any more, but rather on the ethical ideas of the Roman people. There we find equity at work. The *praetor peregrinus* found the existing legal system all too narrow to accommodate the demands of life. Hence, he went out of the field of law, entered into the field of ethical principles, and with their help construed new legal norms. Equity in Rome meant to invoke higher principles than the law could provide, and with the help

⁶² Ladislas Örsy, "Book I: General Norms-Canons and Commentary," 42.

⁶³ Ladislas Örsy, "Book I: General Norms-Canons and Commentary," 42.

⁶⁴ Varghese Koluthara, "Equity and Charity in the Administration of the Church," 915-916.

⁶⁵ Ladislas Örsy, *Theology and Canon Law*, 60-61.

⁶⁶ Ladislas Örsy, *Theology and Canon Law*, 61.

⁶⁷ Ladislas Örsy, *Theology and Canon Law*, Collegeville, 61.

of those principles to give a balanced solution to legal problems. Thus, harmony between moral and legal values was re-established.⁶⁸

The history of the entry of equity into the legal system of England was not all that different from Rome. In England the chancellors who were always bishops were the keepers of the conscience of the kings. They distributed justice according to the principles of Christian morality. In the case of Roman law and Common law in England, the shortcomings of the legal system were recognized, and through the agency of an official person, a correction was brought into the law out of the field of morality, based on the needs of human nature or on the dictates of Christian conscience.⁶⁹

Authentic equity, comes into play when the law is insufficient to uphold a value important for the community. No legal system is perfect, not even Canon Law. Ecclesiastical laws are human creations; consequently, they too prove themselves deficient to protect a certain value in the Christian community or to provide a remedy for an injustice suffered. In that case, in Canon Law too, there must be recourse to authentic equity. Thus, there is no magic in equity. The life of human communities is regulated by various norms, legal, philosophical, and religious. Each group of norms has its own built-in limits. When, in concrete life, a case arises which cannot be rightly resolved by law, it is right that the community should turn to philosophy or religion and let them prevail over the positive law. When this happens, there is authentic equity.⁷⁰

The Concept of *Oikonomia* of Orthodox Theology⁷¹

In recent times theologians and canonists of the Latin Church have expressed an increased interest in *Oikonomia* of the Orthodox Church.⁷² Two of the Roman Pontiffs recently referred to the Orthodox practices as they answered questions regarding possibility of reception of the sacraments by divorced and remarried members of the faithful. During a meeting with the diocesan clergy of Aosta, Italy, in 2005, Pope Benedict XVI observed that, within Catholic circle, the Orthodox practice is often presented as a model for a possible pastoral solution. Similarly, on his return flight to Rome from Brasil in 2013, Pope Francis focused on the theme of mercy and one particular point opened the following parenthesis: The Orthodox have a different practice. They follow the theology of what they call *Oikonomia*, and they give a second chance, they allow it. A few months later Pope Francis convoked two stage of Synod of Bishops with the intention of discussing the pastoral challenges of the family in today's world.⁷³

According to the Canon Law of the Orthodox Churches *Oikonomia* is leniency in the application of ecclesiastical law. It may be a suspension by the competent authorities of the

⁶⁸ Ladislav Örsy, *Theology and Canon Law*, Collegeville, 61-62.

⁶⁹ Ladislav Örsy, *Theology and Canon Law*, 62-63.

⁷⁰ Ladislav Örsy, *Theology and Canon Law*, 63.

⁷¹ Varghese Koluthara, "Equity and Charity in the Administration of the Church," 916-18.

⁷² Theodoros Yiangou, "Report of the Fifth International Congress of the Society for the Law of the Eastern Churches held at Thessaloniki, Greece," in *Kanon: Jahrbuch der Gesellschaft für das Recht der Ostkirchen* 6(1983) 7-11; The different meanings of *Oikonomia* were discussed at the Congress of the Society for the Law of the Eastern Churches held at Thessaloniki, Greece, 22-27 Sept. 1981, 15-83.

⁷³ Kevin Schembri, *Oikonomia, Divorce and Remarriage in the Eastern Orthodox Tradition*, Kanonika 23, Roma: PIO, 2017, 6.

exact observance of the canons and ecclesiastical laws in specific cases as a result of utmost *epieikeia*. As it is evident from the writings of the Fathers, the Orthodox Churches always applied *Oikonomia*, with the final aim being the salvation of the souls of the faithful. *Oikonomia* was applied in Orthodox Churches whenever the conditions of the times did not allow the exact observance of ecclesiastical order. Thus, no restriction existed or exists in the application of *Oikonomia*, with the necessary presupposition, however, that dogma is not harmed.⁷⁴

It seems to belong to the science of jurisprudence; it can solve seemingly insoluble issues. Yet it appears also to be a device that is invoked from somewhere other than the realm of law, since it is more powerful than the law can ever be.⁷⁵

Oikonomia is a Greek word literally meaning ‘household management’ in the NT and in patristic literature it refers principally to God’s plan of salvation for humankind.

In the Orthodox Churches “one of the Holy sacraments is the Holy Confession, in which the confessor is using both the *Oikonomia* (clemency) and *akribeia* (strictness of canonical law) for the salvation of the penitent ... According to the definition given by Nicholas, the mystic, Patriarch of Constantinople, *Oikonomia* is redeeming condescension, which frees the sinner and it is the helping hand hoped for...Moreover, *Oikonomia* is the imitation of God’s love for men.”⁷⁶

Very few Orthodox Churches have clear norms providing for the nullity of marriage; instead, the majority of these Churches have a discipline that dissolves the matrimonial bond through *Oikonomia*. Even though the Orthodox discipline is alien to the Catholic tradition, canons 780-781 of the *Code of Canons of the Oriental Churches* and articles 2 and 4 of the instruction, *Dignitas Connubii* state that a marriage between a Catholic and an Orthodox is governed not only by Divine Law and Canon Law but also by the proper matrimonial law of the Church to which the Orthodox party belongs. These norms also declare that whenever an ecclesiastical judge is to decide about the nullity of a marriage between baptized non-Catholics, wherein at least one party is Orthodox, he or she also must consider the law by which the parties were bound at the time of celebration of marriage and whether that marriage was celebrated with a Sacred rite.⁷⁷

On the 20th October 2006, the Supreme Tribunal of the Apostolic Signatura issued a *Declaratio* that gave more indications in this regard, and on 20th October 2012, the Pontifical Council for Legislative Texts, presented further guidelines through the *nota explicativa quoad pondus canonicum divortii orthodoxi*. In 2015, Pope Francis also made an explicit reference to the Eastern principle of *Oikonomia* in *Mitis et Misericors Iesus*, the Apostolic Letter issued *Motu Proprio* on the reform of the canonical procedure for the nullity of marriage in CCEO.⁷⁸

⁷⁴ Panteleimon Rodopoulos, “Introduction to the Topics of the Fifth International Congress of the Society for the Law of the Oriental Churches,” in *Kanon: Jahrbuch der Gesellschaft für das Recht der Ostkirchen* 6 (1983) 15.

⁷⁵ Ladislav Örsy, “Book I: General Norms-Canons and Commentary,” 43.

⁷⁶ Cătălina Mititelu, “The *Oikonomia* and Its Application in the See of Confession,” in *Analecta Cracoviensia* 51 (2019) 313-316.

⁷⁷ Kevin Schembri, *Oikonomia, Divorce and Remarriage in the Eastern Orthodox Tradition*, 3.

⁷⁸ Kevin Schembri, *Oikonomia*, 3.

Application of the Principles of Equity and Charity in the Separation of Religious from their Communities.

Let me make a survey of the application of the principles of equity and charity in the juridical acts of separation of Religious from their Communities. It is done through a study in the context of religious institutes from both Codes of Canon Law. Religious institutes in the Catholic Church are the following:

- a) Monks and monasteries, b) Religious Orders, and c) Religious Congregations.

All these three typologies are having three common characteristic notes, and they are their identical marks too.

1. Public profession of three vows
2. Community life and,
3. Separation from the world

Community life is a *sine qua non* condition for these three typologies of religious life. Exclaustration and dismissal are two ways by which an individual religious is separated from their communities. The Codes of Canon Law instruct that this separation should be done according to the principles of equity and charity.

Voluntary Exclaustration of Religious

Enclosure and its rules in a religious institute are envisaged in both Codes of Canon Law for respecting the sacredness of the religious communities and allowing them to enjoy the serenity of silence and their right to privacy in religious communities. “The indult of exclaustration, taken literally, could make us think about permission to live outside of the cloister. Actually, the indult of exclaustration is the authorization granted by the competent superior through which the religious may live outside the houses of the institute and is exempted from obligation inconsistent with his living situation while also being deprived of some rights.”⁷⁹

Exclaustration can be voluntary or imposed. Exclaustration is a privilege of the finally professed religious. If there is a crisis in their vocation or a mission to be carried out in their own families which becomes a duty of a religious, a finally professed religious can ask for a voluntary exclaustration.⁸⁰ In such voluntary exclaustration it can be granted by the superior general for a period of five years in a religious institute according to CIC⁸¹. On the other hand, according to CCEO, based on the request of the individual and the recommendation of then superior general, the competent authority to which the religious institute is subjected, can grant it for a period of

⁷⁹ Francisco J. Ramos, “Art. 2: Departure from the Institute,” in Angel Marzoa, Jorge Miras & Rafael Rodrigues-Ocana (eds.) *Exegetical Commentary of the Code of Canon Law: Vol. II/2*, Montreal & Chicago: Wilson Lafleur & Midwest Theological Forum, 2004, 1840.

⁸⁰ Varghese Koluthara, “Equity and Charity in the Administration of the Church,” 923-924.

⁸¹ Apo. Letter issued “Motu Proprio,” of Pope Francis, *Competentias quasdam discernere* (introduced changes to some norms of the Code of Canon Law and the Code of Canons of the Eastern Churches), Vatican, 11 February, 2022, art. 5, https://www.vatican.va/content/francesco/en/motu_proprio/documents/20220211-motu-proprio-assegnare-alcune-competenze.html, accessed on 02.06.2024

five years.⁸² Therefore, for voluntary exclaustation, both Codes of Canon Law envisage granting them the financial assistance and excluding them from active and passive voices.⁸³

The Imposition of Exclaustation on Religious: Exclaustation can be imposed by the authority to which the monastery is subject, at the request of the superior of the monastery *sui iuris* with the consent of the council, for grave reasons and with observance of equity and charity (CCEO cc. 490, 548 §2; CIC c. 686 §3).

In the case of an imposed exclaustation, both CIC and CCEO, do not consider as an act of separation by the finally professed religious that comes out of the voluntariness. It is a way of separating or dismissing a finally professed religious from the institute for members who prove themselves as incorrigible in their religious communities. This is a legal possibility for the religious institute to separate their incorrigible members from the religious community. The act of imposed exclaustation is carried out by the competent authorities as we found in the voluntary exclaustation. However, in placing an imposed exclaustation of a finally professed member of a religious institute, by the internal superior as in CIC and by an external superior as in CCEO, have to be carried out always respecting the principles of equity and charity.⁸⁴

The religious who is getting separated through the action of imposed exclaustation should not be denied of his right to be settled in his life and that is the responsibility of the religious institute to see that the imposed exclaustated member gets a compassionate approach from their authority at their time of exit from their own religious institute.

Imposed exclaustation ‘was intended to respond to especially grave situations where a religious’ personality and behavior made life in the institute very difficult but, on the other hand, still did not constitute facts making possible a dismissal process. Imposed exclaustation, then, is intended to protect the interests of the community in the face of difficult individuals whose personalities are a constant source of tension in the community. Likewise, it seeks to safeguard canonical equity and charity toward the individuals who are frequently victims of their own defects.

The canon states that exclaustation may be imposed for “grave causes” without specifying more. Expulsion, however, is always for grave causes, external, imputable, juridically provable, expressly enumerated (c.696), and, in the cases of expulsion by proper law and automatic expulsion, the causes are restrictively enumerated (cc. 694 and 695). They are acts or omissions that make the individual’s presence in the community gravely harmful to the institute.

The superior general can request exclaustation only for grave causes “and equity and charity are to be observed.” The seriousness of the consequences of imposed exclaustation demand that “the measure be taken only for the common good and only after the causes are proved, the incorrigibility is continuous, and the individual is given a chance to defend himself”⁸⁵

Gradually, the Dicastery for the Institutes of Consecrated Life and the Societies of Apostolic Life (formerly SCRSI) began to require more strictly that supreme moderators follow a procedure

⁸² Apo. Letter issued “Motu Proprio,” of Pope Francis, *Competentias quasdam decernere*, art.5.

⁸³ Varghese Koluthara, “Equity and Charity in the Administration of the Church,” 924-25.

⁸⁴ Varghese Koluthara, “Equity and Charity in the Administration of the Church,” 924.

⁸⁵ Francisco J. Ramos, “Art. 2: Departure from the Institute,” 1842.

similar to dismissal before asking the dicastery to impose exclaustation on an individual. This has consistently been the practice up to the present.

The major superior (or superior general), after having heard his council, will consider if commencing the process to impose exclaustation is necessary, weighing the causes and all persuasive and corrective measures taken to solve the problem. It is not a judicial procedure but an administrative one, in which the rights of both parties—institute and individual—are sought to be protected.

The acts or omissions causing the grave damage that the presence of the individual in the community implies for the institute may be proven through declarations of the interested parties, documents, witnesses, experts, direct examination of the facts, and presumptions.

The second step is to present the religious with the acts or omissions of which he is accused, and inform him of the measures being contemplated to be taken against him. The purpose of this step is to give the individual a chance to mend his way in view of the gravity of the matter and to give him a chance to defend himself. The admonition will explain the nature of the measure to the religious, if necessary, and will specifically point out that unless the changes are made, exclaustation will be imposed.⁸⁶

If the individual responds orally, the defense will be taken down in writing and should be signed by him and by either a notary or two witnesses.

If the established time limit passes without the problem having been corrected, the supreme moderator, with the consent of his council, will decide whether to request the Holy See to impose exclaustation on the individual in question.

The superior general will send the formal petition to imposed exclaustation together with all the documents and acts of the case to the competent authority to impose the exclaustation. The following are the documents to be included⁸⁷:

- a) A brief history of the individual;
- b) The allegations against him and the proof of acts;
- c) The efforts made by the superior to resolve the problem;
- d) A certification that the religious has been duly informed of the proceeding;
- e) Proof that the individual was given the opportunity to defend himself along with the defenses and the value that the superior and the councils gives them;
- f) The report of the council that considered the case.

According to CIC, in the case of a member of an institute of pontifical right, the Holy See is the competent authority and of an institute of diocesan right it is the diocesan bishop, that can impose exclaustation. To properly carry out an imposed exclaustation, the religious must have been notified by transmitting the writing decree of imposed exclaustation.

⁸⁶ Francisco J. Ramos, “Art. 2: Departure from the Institute,” 1843.

⁸⁷ Francisco J. Ramos, “Art. 2: Departure from the Institute,” 1844.

Imposed exclaustation does not have a time limit. In a solicited exclaustation and in an imposed exclaustation, ‘the member remains dependent on and under the care of their religious superiors, and, particularly in the case of a cleric, of the local ordinary.’⁸⁸

The principal responsibility for the care of the exclaustated one lies with the religious superiors. The exclaustated one continues to be a member of his institute, although his obligations and rights are partially diminished, and if he is a cleric he continues incardinated in the religious institute. The religious superior will watch out for the material situation of the exclaustated religious, seeing to it that he has the basic necessities. Regarding the wearing of the habit the *Code of Canon Law* of the Latin Church, states that, may wear the religious habit or not” is at his discretion. It sometimes may be the case that religious can, because of some necessity, petition for exclaustation not to distance himself from the institute. ‘In those cases, for the spiritual comfort of the religious and the good of the ecclesial community in which he lives, he may wear the religious habit. The same is possible in imposed exclaustation cases, though it might be better in this case if he did not wear the habit. Therefore, the canon states “unless the indult states otherwise.”

Exclaustation implies a certain separation from the institute, materially and in regard to his obligations, and accordingly, it is natural and appropriate that the CIC expressly states that the exclaustated member will “lack active and passive voice” during exclaustation. Once reincorporated into the life of the institute, the proper law may require of the member a certain waiting period or some other proof before restoring to him an active and passive voice.’⁸⁹

In general, the CIC and the CCEO maintain different approaches on the question of solicited exclaustation which is also applicable to the diocesan/eparchial religious institutes (CIC c. 686, §1; CCEO c. 548, §1). But in the case of imposed exclaustation both CIC and the CCEO keep up the same procedure (CIC c. 686, §3; CCEO c. 548, §1), i.e., imposition of exclaustation is made by the diocesan/ eparchial bishop on a perpetually professed member for a period of five years at the petition of the concerned supreme moderator / superior general with the consent of the council. It is done for grave causes, taking into account equity and charity.⁹⁰

The Departure or Dismissal from an Institute of Consecrated Life

The monastery, however, shall extend equitable and evangelical charity toward a member who is being separated from it (CCEO c. 503 §2, 553, 562 §3; CIC c. 702 §2). Religious institutes are vibrant expressions of the Holy Spirit who is brooding over the Church. A religious both, temporarily professed and finally professed, can be separated definitively from the religious institutes when it is a necessity for them. In the Codes of Canon Law, there is provision for, *ipso iure* dismissal according to CCEO (CCEO cc. 497 & 551) and *ipso facto* dismissal according to CIC (CIC c. 694).

Automatic Dismissal: At present, both Codes of Canon Law make provision for automatic dismissal of a religious from their communities. The following are the provisions:

⁸⁸ Francisco J. Ramos, “Art. 2: Departure from the Institute,” 1844-1845.

⁸⁹ Francisco J. Ramos, “Art. 2: Departure from the Institute,” 1846.

⁹⁰Varghese Koluthara, *Rightful Autonomy of Religious Institutes*, 201.

(1) A member shall be held dismissed from a religious institute *by the law itself* (CCEO), who: has publicly rejected the Catholic faith and a member must be held *ipso facto* dismissed from an institute who has defected from Catholic faith.

(2) A member shall be held dismissed from a religious institute *by the law itself* (CCEO), who has celebrated or attempted marriage even only a civil one and a member must be held *ipso facto* dismissed from an institute (CIC), who has contracted marriage or attempted it.

(3) A member who has been illegitimately absent from the religious house, pursuant to can. 665 § 2, for twelve consecutive months, taking into account that the location of the religious himself or herself is unknown.⁹¹

In such cases, the Major Superior, with his or her council and without hesitation, having gathered the evidence, must issue the statement of the case so that the dismissal may be established juridically. In the case envisaged by § 1 n. 3, in order to be juridically constituted, this statement must be confirmed by the Holy See; for institutes of diocesan right the confirmation rests with the bishop of the principal seat.

The religious who is unlawfully absent (CIC c. 665 § 2) with the intention of evading the authority of the Superiors is to be carefully sought out and helped to return and to persevere in his or her vocation.⁹² If this action on the part of the Superiors has no effect, disciplinary measures could be adopted, not excluding, if necessary, dismissal. In fact, the unlawful absence which extends for a period of six months can be a cause of dismissal (c. 696 1); if it extends for twelve continuous months, the religious whose location is unknown can be dismissed *ipso facto* (c. 694 § 1, n. 3). It is a novelty introduced by Pope Francis in *Motu Proprio Communis Vita*. This new provision (CIC c. 694§ 1, n.3) does not apply to cases prior to 10 April 2019, in other words it cannot be said to be retroactive and it also not applicable to the members of secular institutes.⁹³

Obligatory or Mandatory Dismissal: CIC c. 695 speaks of obligatory or mandatory dismissals of a religious who has committed very serious violations of law such as a religious cleric living in concubinage or a religious cleric who continues in some other external sin against sixth commandment of the decalogue (CIC c. 1395), a religious who commits homicide, kidnapping, abduction, mutilation and gravely wounding a person (CIC c. 1397) and a religious who actually procures an abortion (CIC c. 1398). This mandatory or obligatory dismissal expression is not used in CCEO.

Discretionary Dismissal: a discretionary dismissal procedure is one that is decided by the competent superior of a religious institute for reasons stipulated in the Codes of Canon Law and the constitutions of the religious institutes. It is called discretionary because the final

⁹¹ Apo. Letter issued *Motu Proprio*, Pope Francis, *Communis Vita* (It provides for the modification of several norms of the Code of Canon Law), Vatican, 19 March 2019, https://www.vatican.va/content/Francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190319_communis-vita.html, accessed on 02.06.2024.

⁹² Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, *The Gift of Fidelity: The Joy of Perseverance-Guidelines*, Vatican, 2020, 144.

⁹³ Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, *The Gift of Fidelity: The Joy of Perseverance-Guidelines*, 146.

decision depends on the one made by the competent superior regarding the violation of law or the behaviour of the religious and the seriousness of such violations. Moreover, “the same superior has to discern whether the dismissal is wanted or the offender could be corrected or brought back to the normal life of the community through other means.”⁹⁴ In all these dismissal procedures which are painful and definitive, step towards the individual religious, should be carried out by the authorities with a compassionate note of the Good Shepherd. In all these instances of separations, the application of the principle of equity is to be carried out.

Support Given to the Dismissed or Dispensed Member (CIC c 702)

The dispensed or dismissed member cannot claim any right from an Institute of religious life or religious life and Societies of Apostolic Life of which he or she was a member (CIC c.702). They don't have any right to receive compensation. Indeed, members have pledged to offer their work as a gratuitous expression of love and charity towards their brothers and sisters, both within the institute or Society, and externally.⁹⁵

The Institute of Consecrated life or the Societies of Apostolic Life, on the other hand, are *to show equity and evangelical charity* towards the member who separates from it either by leaving or by dismissal. Equity is commensurate with the personal situation and circumstances as well the real possibilities of the Institute; charity is commensurate with the actual needs of the member, at least for a period immediately after leaving or after dismissal, until he she can provide for himself or herself in another way, as well as to possibilities of the Institute.⁹⁶

Conclusion

Equity is a way of ‘tempering’ the rigorousness of justice with the touch of mercy. It is a virtue difficult to be practiced but bound to be imbibed by the administrators in the Church. It may sound as ‘redeeming condescension’ or ‘leniency in the application of ecclesiastical law’ by those who are entitled to administer justice in the various contexts of ecclesial administration. It is a way of re-mirroring the image of the Good Shepherd in the Church. Canonical equity is the fruit of kindness and charity.

The Gospel should become the mirror of the canonical interpretations. Jesus shows the way and He is the way. There are a number of instances in the Gospels that Jesus shows the way of a just Judge who is moved by equity and charity. The woman caught in adultery and brought before him and the significance of Jesus's writing in the ground (Jn 8:1-11); Jesus the Good Shepherd running after the lost one leaving behind the ninety-nine in the fold (Mt 18: 12-14; Lk 15: 1-10; Jn 10: 1-11). All these and such other instances bring to light Jesus's special concern for sinners and those who stray. In fact, Jesus came “to seek and save the lost” (Lk 19: 10) and “not to call the righteous but the sinners” (Mt 9:13). Jesus asks whose image is

⁹⁴ Joseph Koonamparampil, *Religious Life Today: Challenges and Prospective: A Guide to Eastern and Western Codes of Canon Law*, Dharmaram Canonical Studies 24, (Bangalore: Dharmaram Publications, 2019) 84.

⁹⁵ Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, *The Gift of Fidelity: The Joy of Perseverance-Guidelines*, 164-165.

⁹⁶ Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, *The Gift of Fidelity: The Joy of Perseverance-Guidelines*, 165.

this? ... and then Jesus told them, “Give to Caesar what is Caesar's, and to God what is God's (12: 16; Mt 22: 19-21; Lk20:24-25). Moreover, Isaiah’s prophecy gets fulfilled in Jesus: “The bruised reed he will not crush, nor snuff out the smoldering wick.” (Mt 12: 20). Jesus instructs, “The *Sabbath* was made for *man*, not *man* for the *Sabbath*. So, the Son of Man is Lord even of the *Sabbath*” (Mark 2:27–28). Hence, Jesus goes beyond the letter of the law and embraces it and shows the spirit of the law.

The supreme law of the Church as expressed in the Codes of Canon Law is *salus animarum*. Hence, the mother Church follows her individual members with caring love involving in each stage of a human being such as, if there is no legal provision for any context (in *lacunae legis*), equity should play a creative role. The Christian faithful have the fundamental right guaranteed in the Church to be judged according to the prescripts of the law, applied with equity. In issuing extra-judicial decrees in the administration of the Church, equity is to be applied. In the recalling of a cleric from another eparchy or in his return by the hosting bishop, the principle of equity are to be followed. Moreover, in the transfer a pastor, equity is to be followed.

Equity and charity are to be exercised by the authorities in the Church, in various instances such as in the imposition of excommunication on a finally professed religious, regarding the departure or dismissal from an institute of consecrated life. The principles of equity and charity are to be understood and applied as lubricant agents which could mitigate the rigidity and rigorousness in applying justice to the religious who are affected by imposed excommunication and who are dismissed from a religious institute. It may be to the religious who is affected by imposed excommunication by awarding him the right to defend himself and the right to be heard. And to the dismissed religious who may become abandoned and poor when he is out of the religious community by applying the principles of equity and charity. Those dismissed religious are to be settled in their life struggle through financial assistance, educational opportunities, and job placements. It is the way by which we should administer justice to others in the Church with the grace and mercy after Jesus the Good Shepherd.