

**THE DENIAL OF HOLY COMMUNION DUE TO  
OBSTINATE PERSEVERANCE IN MANIFEST GRAVE SIN :  
THE APPLICATION OF C. 915 IN THE AMERICAN CONTEXT**

by  
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## ABSTRACT

The pastoral interpretation and application of the clause of c. 915 which says those *who are obstinately persevering in manifest grave sin are not to be admitted to Holy Communion*, as applied to persons in irregular marriages and politicians that espouse “pro-choice” platforms, is the focus of this study. A tremendous amount of confusion and alienation on the part of the faithful occurs in relation to the application of the pertinent clause in parishes and dioceses throughout the United States, due to the words used in the norm and an inconsistent application of them. The approaches within the Church are disparate. Some are told by their pastors that they simply must face the consequences of the choices they have made and not present themselves for Communion until their situation is corrected. Others are never approached about the issue. Few, though, are provided with an explanation of the law and an opportunity to discuss their personal circumstances in relation to it, in any meaningful way; that is, with an opportunity to make informed decisions about how to proceed in their lives. Most people to whom the law of c. 915 is applicable were not sufficiently catechized to know they could be denied Holy Communion if they divorced and civilly remarried or ran on a particular political party platform. As this study will show, there are historical reasons, some of which have been acknowledged by the Church, for why this is often not substantially the fault of those presenting for Communion.

To some of the faithful it seems that the law or the manner by which it is applied is judgmental and evidences a lack of charity. Others, though, propound a theory that it is charity which prompts them to support denial of Communion. The disunity which the current application prompts, demonstrates the demand for a new approach to the

application of c. 915; one that focuses on catechesis and reconciliation, and more evidences the charity and mercy required of the followers of Christ.

A portion of the study that offers reflections on the theological underpinnings of c. 915 also provides perspectives for addressing its application in consideration of notions of conscience and moral law that should be factored into any application of the clause. Additionally, the study proposes an original program which employs restorative justice principles in a neutral setting and may profitably be used to avert the pastoral and canonical problems that have arisen in the application of c. 915. It is titled “Dialogue of Charity: *kairos* of Mercy” and includes three participants to a Dialogue meeting: (1) the *Communicant*, namely, the person who has been, or may be, denied Communion under the pertinent clause of c. 915; (2) the *Canonist* or, if not a degreed canonist, a cleric from the diocese knowledgeable in the pertinent canon law and Church doctrine; and (3) a *Facilitator* who is trained to prompt and address issues which arise during the Dialogue. The meeting is intended to provide a venue in which Communicants are encouraged to share details about themselves and be guided in understanding how their situation is viewed in terms of Church teaching and law, so they may discern a future course of action. Participation in the Dialogue can be invaluable in the event that the Communicant wishes to participate in a relevant legal process, to wit, taking recourse against a decision denying them Communion, petitioning, re-petitioning for a declaration of nullity of their marriage, or responding to a petition.

During this *time of mercy*, in consideration of charity, and based on the findings of this study, the Church must approach the topic from the perspective of the obvious: that the matter of the application of the “*obstinate perseverance in manifest grave sin*” clause must be reviewed and that a remedy must be put into place for assisting those to whom the pertinent clause may be applied.

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## ABBREVIATIONS

AAS	<i>Acta Apostolicae Sedis</i>
c.	Canon
CARA	The Center for Applied Research in the Apostolate
CCC	<i>Catechism of the Catholic Church</i>
CCEO	<i>Codex canonum Ecclesiarum orientalium</i>
CCLA	CAPARROS, E. et al. (eds.), <i>Code of Canon Law Annotated</i>
CCLS	Canadian Canon Law Society
CDF	Congregation for the Doctrine of the Faith
CIC/17	<i>Codex iuris canonici</i> (1917)
CLD	BOUSCAREN, T. et al. (eds.), <i>Canon Law Digest</i> , 14 vols.
CLSA	Canon Law Society of America
CLSA Comm1	CORIDEN, J., T.J. GREEN and D.E. HEINTSCHEL (eds.), <i>The Code of Canon Law: A Text and Commentary</i>
CLSA Comm2	BEAL, J.P., J.A. CORIDEN, T.J. GREEN (eds.), <i>New Commentary on the Code of Canon Law</i>
CLSGB&I	Canon Law Society of Great Britain and Ireland
CT	JOHN PAUL II, apostolic exhortation <i>Catechesi tradendae</i>
CV	BENEDICT XVI, encyclical letter <i>Caritas in veritate</i>
DH	SECOND VATICAN COUNCIL, declaration <i>Dignitatis humanae</i>
EE	JOHN PAUL II, encyclical letter <i>Ecclesia de Eucharistia</i>
EG	FRANCIS, apostolic exhortation <i>Evangelii gaudium</i>
<i>Exegetical Comm</i>	MARZOA, A., J. MIRAS, R.RODRÍGUEZ-OCAÑA (eds.) and E. CAPARROS (gen. ed. of English translation), <i>Exegetical Commentary</i>

<i>FC</i>	JOHN PAUL II, apostolic exhortation <i>Familiaris consortio</i>
<i>FD</i>	JOHN PAUL II, apostolic constitution <i>Fidei depositum</i>
FLANNERY1	FLANNERY, A. (gen. ed.), <i>Vatican Council II</i> , vol. 1
<i>GS</i>	SECOND VATICAN COUNCIL, pastoral constitution on the Church <i>Gaudium et spes</i>
<i>HV</i>	PAUL VI, encyclical letter <i>Humanae vitae</i>
<i>LG</i>	SECOND VATICAN COUNCIL, dogmatic constitution on the Church <i>Lumen gentium</i>
<i>ORE</i>	<i>Osservatore Romano</i> English edition
PCLT	Pontifical Council for Legislative Texts
<i>RH</i>	JOHN PAUL II, encyclical letter <i>Redemptor hominis</i>
<i>RP</i>	JOHN PAUL II, post-Synodal apostolic exhortation <i>Reconciliatio et paenitentia</i>
<i>RS</i>	CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, instruction <i>Redemptionis Sacramentum</i>
SCDF	Sacred Congregation for the Doctrine of the Faith
USCCB	United States Conference of Catholic Bishops
<i>VS</i>	JOHN PAUL II, encyclical letter <i>Veritatis splendor</i>

## GENERAL INTRODUCTION

Christ invites each person to intimate union with Him through the gift of the Eucharist. Immersed there, in the grace of that paschal mystery, wrought by His profound love and free acceptance of death, Christians engage with the Trinity and with one another in the communion of saints. We partake of His sacrifice even as we progress toward sharing perfect eternal life with Him.<sup>1</sup> In one antiphon at evening prayer, we acknowledge that “[o]ur compassionate Lord has left us a memorial of his wonderful work.”<sup>2</sup> His compassion is most perfectly experienced in the Eucharistic celebration when we receive Holy Communion.<sup>3</sup> As the source and summit of Christian life, the “sacrament of charity” causes and effects our faith.<sup>4</sup> It “creates communion and fosters communion.”<sup>5</sup> It organically binds each of us to Christ.<sup>6</sup> It perpetually unites us one to the other as a communion of believers

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<sup>1</sup> JOHN PAUL II, apostolic exhortation on the mystery and worship of the Eucharist *Domenicae cenae*, 24 February 1980, in AAS, 72 (1980), pp. 119-121, no. 9; and IDEM, encyclical letter on the Eucharist in its relationship to the Church *Ecclesia de Eucharistia*, 17 April 2003, in AAS, 95 (2003), pp. 433-475, no. 18 (= *EE*).

<sup>2</sup> *Christian Prayer: The Liturgy of the Hours*, Boston, Daughters of St. Paul, 1976, Sunday Week III, Evening Prayer II, p. 799.

<sup>3</sup> VATICAN II, Constitution on the Sacred Liturgy *Sacrosanctum concilium*, 4 December 1963, in AAS, 56 (1964), pp. 97-134, no. 40; English translation in FLANNERY I, p. 14.

<sup>4</sup> *Catechismus Ecclesiae Catholicae*, Vatican City, Libreria editrice Vaticana, 1997, no. 1324; English translation *Catechism of the Catholic Church: With Modifications from the Editio Typica*, New York, Doubleday, 1997, pp. 368-369 (= *CCC*).

<sup>5</sup> *EE*, no. 40.

<sup>6</sup> JOHN PAUL II, apostolic letter *Mane nobiscum Domine*, 7 October 2004, in AAS, 95 (2004), pp. 307-316, no. 25; English translation in *Origins*, 34 (2004), p. 303. Cf. also UNITED STATES CATHOLIC CONFERENCE OF BISHOPS, *Happy Are Those Who Are Called to His Supper: On Preparing to Receive Christ Worthily in the Eucharist*, Washington, D.C., USCCB, 2006, pp. 3-4 (= USCCB, *Happy Are Those*).

in Him.<sup>7</sup> Indeed, “the most holy Eucharist contains the Church’s entire spiritual wealth” and is the “sacrament of sacraments.”<sup>8</sup> The Eucharist is a glimpse of heaven on earth, uniting heaven to earth.<sup>9</sup> We are impelled, therefore, to zealously honor and protect this sacred species and to promote ecclesial communion. Divine law provides the foundation for these obligations.<sup>10</sup> On this basis, positive ecclesiastical laws have evolved to ensure that the Eucharist is safeguarded from abuses. Among such ecclesiastical laws is canon (c.) 915 of the 1983 *Code of Canon Law*.

The focus of this thesis is the correct interpretation and effective application in pastoral practice of that part of c. 915 which says those *who are obstinately persevering in manifest grave sin are not to be admitted to Holy Communion*. In dioceses and parishes of the United States of America, the canon is applied nearly exclusively to two categories of persons alleged to be “obstinately persevering in manifest grave sin”: those in irregular marriages and politicians who espouse a “pro-choice” platform. Pro-choice politicians are those who support societal legislation permitting elective abortion. Persons in irregular marriages are, for the most part, those who have divorced and civilly remarried without benefit of an ecclesiastical declaration of nullity or a dissolution of their previous marriage, as well as those who, although not previously married themselves, have entered a merely civil marriage with someone who is bound by the bond of a previous marriage. Also

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<sup>7</sup> USCCB, *Happy Are Those*, p. 5.

<sup>8</sup> *EE*, no. 1; *CCC*, no. 1211; and THOMAS AQUINAS, *Summa Theologica*, III, q. 65, 3, English translation in FATHERS OF THE DOMINICAN ENGLISH PROVINCE (ed.), *Summa Theologica: First Complete American Edition in Three Volumes*, New York, Benzinger Brothers, 1947.

<sup>9</sup> *EE*, no. 19.

<sup>10</sup> 1 Cor 11:27-29.

included in the term “irregular marriage” are those who, though not previously married, are bound to the law of the canonical form (cc. 1108, 1117) but had only married civilly; more broadly, it includes those living in concubinage. These latter, however, are not typically barred from Holy Communion because, if they want to receive the sacrament, they may readily resolve their irregular situation simply by observing the canonical form.<sup>11</sup>

Ironically, application of the pertinent clause of c. 915 is more likely to occur when the faithful become more involved in their parish or more committed to tenets of the faith in public service. That is when their personal circumstances and choices become more public, more “manifest.” When this takes place, some have been told by their pastors that they simply must face the consequences of the choices they have made and not present themselves for Communion until their situation is corrected. Typically, there is no discussion about any overwhelming circumstances which drove these faithful to make the choices they did, or about how they form decisions today. Most people to whom the law of c. 915 may now be applied did not even know that they could be denied Holy Communion if they divorced and civilly remarried or ran on a particular party platform, because they were never instructed about Church teaching. By the time they are told that they must be denied Communion, there is often little direction provided to them for how to deal with the praxis of the diocesan tribunals and with the increasing probability that a declaration of invalidity may be denied and they may not ever be able to receive Communion again. In the case of politicians, there is little discussion about ways in which

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<sup>11</sup> If one party, perhaps non-Catholic, does not want to observe the canonical form, the other party, who wants to receive Communion, can petition for a *sanatio in radice* (c. 1161).

they might be able to modify their conduct without having to leave office. Addressing and responding to these problems comprise the very *raison d'être* of this thesis.

The first chapter of the thesis aims to attain an in-depth interpretation of c. 915 in order to understand the law's meaning in text and context. It also presents pertinent moral and theological teachings of the Church as they have been reaffirmed by the Apostolic See in recent decades. Canon 915 cannot be properly understood apart from this doctrinal basis.

The second chapter examines problems with the current application of the law in the practice of many dioceses and parishes. These problems have intensified in recent years following a seminal declaration on c. 915 by the Pontifical Council for Legislative Texts that was issued in 2000. In fact, there are so many problems when the law is applied that it appears to many faithful that the Church is more focused on being judgmental than on being pastoral and that it is lacking in charity. This situation demands a new approach to the application of c. 915, one that focuses on catechesis and reconciliation, and one that more clearly manifests the charity and mercy required of the followers of Christ.

The third chapter offers some reflections on the theological underpinnings of c. 915. It also explores the personalist basis of the philosophy and theology of Pope John Paul II and its potential for a correct understanding and application of c. 915. It furthermore develops some thoughts on the significance of the notions of conscience and moral imputability for a proper and just pastoral practice with respect to c. 915.

The fourth and final chapter presents an original program called the “Dialogue of Charity—*kairos* of Mercy,” which may be adopted in dioceses for handling cases of persons who have been denied Holy Communion by their pastor or other authority. Based on principles of restorative justice, the Dialogue process aims to bring affected persons to

greater knowledge of pertinent Church laws and teachings and to develop an action plan that permits the fullest participation in Church life as possible in the circumstances.

The critical reflections in the second chapter and elsewhere in the thesis are based in significant measure on this writer's direct professional experience in private canon law practice as a canonical consultant, advocate and procurator for persons who are petitioning, or responding to a petition, for a declaration of nullity of marriage, as well as her tribunal experience as a Defender of the Bond, Judge-Ponens, and Advocate. In these capacities, she has offered canonical counsel and advocacy to many people who have greatly suffered emotionally and spiritually as a result of being refused Holy Communion, or facing the possibility of being refused it, on the basis of c. 915. She has also witnessed the fact that there is often a problem with the proofs that are submitted to tribunals and disparate pastoral approaches to those persons who find themselves in the situations to which the law may be applied. Additionally, the inevitability of election cycles and presentations of party platforms and issues regarding Communion consistently arise in the public forum. The result is that many of the faithful who are impacted by the process feel confused, humiliated, angry, even dumbfounded, particularly in relation to the issue of denial of Communion. Most are unaware or may not grasp the canon law and Church teachings that are the basis for this refusal. The Appendix presents some case studies that serve to illustrate the issues addressed, as well as the judgments and conclusions reached, in this thesis.

Truly, the Eucharist is the “sacrament of charity.”<sup>12</sup> Yet truly, too, as Pope Francis has reminded us, “a Church that does not act in charity does not exist.”<sup>13</sup> This pope has chosen as his motto, *Miserando atque eligendo* (“by having mercy and by choosing”), which may serve as a fitting reminder to the Church’s pastors of the way they should choose to treat those faithful whose spiritual poverty has led to their being denied Holy Communion. The aim of this thesis is to shed fuller light on how to make that choice; one which, without compromising Church law or doctrine, offers a positive way forward that reflects the Gospel values of charity and mercy.

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<sup>12</sup> BENEDICT XVI, post-synodal apostolic exhortation on the Eucharist as the source and summit of the Church’s life and mission *Sacramentum caritatis*, in *AAS*, 99 (2007), pp. 105-180, no. 44. English translation published by the *Libreria editrice Vaticana*, 2007.

<sup>13</sup> FRANCIS, address to Caritas leadership, 13 May 2013; English translation accessed on 14 May 2013 at <http://www.zenit.org/en/articles/francis-to-caritas-the-world-needs-church-s-tenderness>.

**CHAPTER ONE**  
**INTERPRETATION OF CANON 915**

**Introduction**

The principal purpose of this chapter is to achieve an in-depth understanding of the relevant clause of c. 915 and, consequently, of the correct manner of its application in pastoral practice. This will be attempted in three phases corresponding to the three major parts of the chapter: (1) the law and tradition prior to the 1983 Code, (2) the current law and subsequent developments up to the year 2000, and (3) the Declaration on c. 915 of the Pontifical Council for Legislative texts in the year 2000 and developments thereafter.

**1.1 – The Canonical Tradition Before the 1983 Code**

History bears out that ecclesiastical authorities have regularly made determinations regarding personal worthiness to receive Communion. This tradition begins with a seminal passage from St. Paul's letter to the Corinthians, which will be treated in the first section of this first part of the chapter. Paul's influence can be seen directly on c. 855 of the 1917 Code, the immediate predecessor to c. 915, which is treated in the second section. There follows a review of the explanations of c. 855 by canonical authors and of the practice of the Roman Curia with respect to the canon. This first section concludes with an overview of the *iter* of the revision of c. 855 leading to c. 915 of the 1983 Code.

**1.1.1 – The Pauline Tradition**

St. Paul wrote to the Corinthians: "Therefore whoever eats the bread or drinks the cup of the Lord unworthily will have to answer for the body and blood of the Lord. A person should examine himself, and so eat the bread and drink the cup. For anyone who

eats and drinks without discerning the body, eats and drinks judgment on himself” (1 Cor 11:27-29 ).<sup>1</sup> M. Pennock describes the historical context for this statement of St. Paul.

An early name for the Eucharist was agape, which means “love feast.” Early Christians were trying to emphasize that when they broke bread together they were celebrating the presence of the risen Lord Jesus who created them in a community of Love.... Not all Christians in the early church, though, understood the true meaning of the “love feast”... Apparently some Corinthians came to the meal but refused to share the food they brought with the poor. Others hurried to get done, and still others glutted themselves on food or drink. Paul admonished very strongly those who failed to recognize Jesus’ presence in the breaking of the bread and the sharing of the cup or in their fellow Christians who had come to celebrate fellowship with them. With that, Saint Paul stated “whoever eats the bread or drinks the cup of the Lord unworthily sins against the body and blood of the Lord.”<sup>2</sup>

It will be seen below that the Pauline admonition, given this historical context, may logically and directly be seen to apply to the norm of c. 916 in which the onus for discerning worthiness to receive Communion primarily lies with the recipient. It does not, however, logically and directly apply to the norm of c. 915 which is an admonition to the minister, not the recipient, of Communion. This is particularly true in light of recent documents that have emanated from Church hierarchy.

Paul’s concern with worthy reception of Communion and avoiding sins against the ecclesial community was an ongoing concern in the ancient Church. David Bohr notes that “[s]ins directly affecting the community, whether internally or externally, were the primary concern of the New Testament Churches.”<sup>3</sup> The Churches had the goal of reconciling

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<sup>1</sup> Unless otherwise noted, all biblical citations are taken from *New American Bible Translated from the original languages with critical use of all the ancient sources*, North Carolina: Saint Benedict Press, 2011.

<sup>2</sup> M. PENNOCK, *A Catholic Catechism for Adults This is Our Faith*, Ave Maria Press, Notre Dame Indiana, 1989, p. 167.

<sup>3</sup> D. BOHR, *Catholic Moral Tradition in Christ, a New Creation*, Huntington, IN, Our Sunday Visitor, 1990, p. 213 (=BOHR, *Catholic Moral Tradition*).

members back to the fold, he says, while at the same time maintaining the holiness of the Church derived from Christ's dying and rising (Eph 5:25) and being a temple of the Spirit (2 Cor 6:16).<sup>4</sup> Bohr adds that "[a] rediscovery of the covenantal and communal nature of sin from biblical times underlines the important truth that there is really no such thing as private sin. Every individual sin, even the most secret, harms the covenanted community's relationship to God."<sup>5</sup>

Over time, the Church gradually enacted specific proscriptions in relation to being admitted to Communion.<sup>6</sup> The ecclesiastical legislation which emerged in the medieval period was grounded in the two moral obligations. The first was derived from Paul's first letter to the Corinthians — the obligation to be personally disposed to receive the Body and Blood of Christ worthily, which was directed to the one approaching the Sacrament. The second — the obligation to give Holy Communion with discretion, that is, with attention to those who, in a public way, had made themselves unworthy to receive — was directed to the minister of the Sacrament. Throughout the subsequent centuries, this twofold moral obligation has remained foundational to the Church's discipline regarding the reception of Holy Communion, and it was enshrined in the first *Code of Canon Law* of 1917.

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<sup>4</sup> Ibid.

<sup>5</sup> Ibid., p. 217.

<sup>6</sup> For a detailed overview of the historical development of the canonical discipline, see R.L. BURKE, "Canon 915: The Discipline regarding the Denial of Holy Communion to Those Obstinate Persevering in Manifest Grave Sin," in *Periodica*, 96 (2007), pp. 3-58 (= BURKE, "Canon 915").

### 1.1.2 – Canon 855 of the Pio-Benedictine Code

Canon 915 is a revision of c. 855 of the 1917 Pio-Benedictine Code. That canon addressed the proscription regarding protection of the Eucharist by use of the terms *publice indigni* (publicly unworthy) and *manifestoque infames* (manifestly infamous). One thrust of the canon was to avert scandal to the faithful of the community due to the public character of the sin. However, it further sought to avert scandal to the community because of the conduct of the minister for refusing Communion.<sup>7</sup> Canon 855 of the 1917 Code stated:

§1. All those publicly unworthy are to be barred from the Eucharist, such as excommunicates, those interdicted, and those manifestly infamous, unless their penitence and emendation are shown and they have satisfied beforehand the public scandal [they caused].

§2. But occult sinners, if they ask secretly and the minister knows they are unrepentant, should be refused; but not, however, if they ask publicly and they cannot be passed over without scandal.<sup>8</sup>

The canon codified the Church's existing teaching, discipline, and pastoral practice.

In 1925, the liturgical laws of the *Rituale Romanum* were revised to bring them into conformity with the Code. The 1614 *Rituale Romanum*, although not imposed throughout the Church, had by the twentieth century become almost universally in use by priests. The

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<sup>7</sup> Here it should be noted that there are two distinct meanings of the term “scandal” in Church discipline. One is a theological meaning of which refers to behavior that leads others into sin. The second meaning refers to behavior that causes wonderment (*admiratio*) in others. For a detailed overview on the meaning of scandal in the current ecclesiastical milieu, see P. CONNOLLY, “The Meaning of Scandal: Theological and Canonical Reflections in a Changed Pastoral Context,” conference presentation at 2014 CLSGB&I Conference, 12-16 May 2014, Harrogate, England.

<sup>8</sup> §1. Arcendi sunt ab Eucharistia publice indigni, quales sunt excommunicati, interdicti manifestoque infames, nisi de eorum poenitentia et emendatione constet et publico scandalo prius satisfecerint. §2. Occultos vero peccatores, si occulte petant eos nos emendatos agnoverit, minister repellat; non autem, si publice petant et sine scandalo ipsos praetirire nequeat. All English translations of the 1917 *Codex iuris canonici* are taken from E.N. PETERS (ed.), *The 1917 Pio-Benedictine Code of Canon Law*, San Francisco, Ignatius Press, 2001.

revised norm of the Ritual stated: “All the faithful must be admitted to receive Holy Communion, except those excluded for a valid reason. Prohibited in particular are those who are known publicly to be unworthy, such as the excommunicate, those under interdict, and the notoriously infamous, unless there be evidence of their repentance and amendment, yet not until they have first made satisfaction for scandal publicly given.”<sup>9</sup> Thus, the liturgical law was substantially the same as c. 855 of the Code.

### 1.1.3 – Selected Commentators on Canon 855

To understand better the import of c. 855 and its interpretation in the decades following promulgation of the 1917 Code, it will be helpful to survey the writings of a selection of canonical authors and the limited *praxis Curiae* with respect to the canon. Commentaries on c. 855 analyzed the issue of the public conduct which triggers the law of denying Communion generally, and they similarly addressed the question of the non-admission to Communion of those in irregular unions.

Felice Cappello explains a chief purpose of c. 855, one that is rooted in sacramental theology. He says the publicly unworthy, as baptized persons, are capable subjects of the sacrament, but they are not able to receive its effect, namely, the grace of the sacrament, because they are in the state of mortal sin and lack the intention of reform.<sup>10</sup>

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<sup>9</sup> “Fideles omnes ad sacram communionem admittendi sunt, exceptis iis, qui iusta ratione prohibentur. Arcendi autem sunt publice indigni, quales sunt excommunicati, interdicti, manifestoque infames, nisi de eorum poenitentia et emendatione constet, et publico scandalo prius satisfecerint.” *Rituale Romanum*, 10 June 1925, *De Sanctissima Eucharistia*, no. 8; translation in P.T. WELLER (ed.), *The Roman Ritual: In Latin and English with Rubrics and Planechant Notation*, vol. 1, *The Sacraments and Processions*, Milwaukee, The Bruce Publishing Co., 1950, p. 253. This 1925 text was a revision of the 1614 *Rituale* in which the same norm gave examples of the manifestly infamous, namely, “prostitutes, those cohabiting, usurers, sorcerers, fortune tellers, blasphemers, and other sinners of the public kind.”

<sup>10</sup> “... iis nempe qui sunt equidem subiectum capax sacramenti, sed nequeunt eiusdem effectum percipere, cum in statu peccati mortalis versentur sine voluntate sese emendandi.” F.M. CAPPELLO, *Tractatus canonico-moralis de Sacramentis*, vol. 1, 7<sup>th</sup> ed., Turin, 1962, p. 48, no. 58.

The commentary of Abbo-Hannan is a good example of the approach to c. 855 that would have been known to English-speaking priests and canonists. Regarding the exclusion from Holy Communion of those publicly unworthy, this commentary says that the obligation imposed by the canon is a grave one. Nevertheless, “if there is doubt about the notoriety of the sin, the communicant is to be favored in public.” The commentary continues:

The minister shall likewise refuse to admit secret sinners if they privately request Holy Communion and he knows they have not repented; but he shall not do so if they publicly request Holy Communion and he is unable to pass them by without scandal. A sin remains secret even if it is known to a few persons, provided they are such that it will not be widely publicized. Even when publicly known, the moral responsibility of the sinner must be publicly known if the sin is to be regarded as public and the sinner as a public sinner. In short, all sinners are secret sinners whose sinfulness before God is not generally known to the public. And they may be secret sinners in one place though public sinners in another; in the place in which their sinfulness is not publicly known, they are to be treated as in canon 855, § 2. Moreover, in applying this provision a confessor cannot employ knowledge that he has derived from the confessional, even to refuse a communicant who requests Holy Communion privately.<sup>11</sup>

This commentary emphasizes the clear requirement that a person who is to be denied Holy Communion must be engaged in sinful conduct which has gained notoriety. Indeed, if there is a doubt about the notoriety of the sin, the person presenting for Communion must be publicly favored. Further, those who publicly present for Communion, whom the minister knows have privately requested it and who he knows have not repented, are not to be refused if the refusal would cause scandal. Additionally, the commentary asserts that a sin is considered to be secret even if it is known to a few persons as long as it will not be widely publicized. Moreover, even in the event that it is publicly known, the moral responsibility

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<sup>11</sup> J. ABBO and J. HANNAN, *The Sacred Canons, A Concise Presentation of the Current Disciplinary Norms of the Church*, rev. ed., St. Louis, MO, B. Herder, 1957, pp. 885-856.

of the sinner also has to be publicly known if the sin is to be regarded as public and the sinner as a public sinner. Finally, the commentary reminds the reader that all sinners are secret sinners before God and that persons may be public sinners in one place and not in another. If they are, they are to be accorded the rules regarding refusal of Communion according to the application of paragraph 2 of the canon.

The Woywod-Smith commentary on this canon, though very brief, is significant because it was widely used by priests in pastoral ministry. The commentary makes clear that the law should be applied in a way that seeks to avert public scandal between the priest and a communicant who is an occult sinner. It further acknowledges the difficulty in judging whether a person is a public sinner. It also admits of the fact that there really cannot logically be a general rule covering all cases, and that distinguishing a public sinner from an occult one is not easily discernable. It provides: “[N]o general rule covering all cases can be given for distinguishing a public sinner from an occult one, and the circumstances of every individual case must be considered.”<sup>12</sup> Further, the commentary realistically indicates that the circumstances of every individual case must be considered. It then addresses the issue of those in irregular marriages.

In the case of blasphemers, the mere fact that they have gone to confession may be sufficient to repair the scandal. This is not true, however, in the case of persons living in concubinage, even though under the protection of a civil marriage, or in the case of other sins which imply a similar habitual mode of conduct or the continuation of the proximate occasion of sin.... The promise to repair the scandal seems to suffice for the private administration of Holy Communion to one who has been absolved.<sup>13</sup>

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<sup>12</sup> S. WOYWOD and C. SMITH, *A Practical Commentary on the Code of Canon Law*, Wagner, New York, 1952, pp. 856-857.

<sup>13</sup> *Ibid.*

John Heneghan, in a 1945 article in *The Jurist*, treated the subject at greater length than could be done in the standard commentaries. The article provides an understanding of the concept of the person who commits a grave sin that is manifest. The language of the article supports a construction of public notoriety. It clarifies the degree of publicity of sinfulness, that is, manifest awareness in the community by the faithful of the sinner's actions.

The common opinion among pre-Code canonists ... was that "public and manifest sinners" included all those who died publicly impenitent, and those who lived in a state of *notorious* sin, for example, those who lived in a state of notorious concubinage or prostitution, those whose work or duty could not be performed without their committing sin, and members of condemned societies. Furthermore, notoriety was an essential element to be verified before one might be designated a public sinner.... [T]he notion of public sinner requires as essential elements that there be a *grave sin which is publicly known* and still perdures, at least by reason of the scandal which it effected.<sup>14</sup>

Heneghan goes on to provide what he has determined to be the opinion of the majority of canonists regarding what is meant by the words "public sinner." He says that "the opinion of the vast majority of canonists does not restrict the notion of *public sinner* to one who is guilty of a public delict but includes also the person who has committed a public sin as such." He also cites a decree issued by the Sacred Congregation of the Council in 1852 which described the *public sinner* as one whose *mortally sinful condition* not only could be, but necessarily had to be, concluded from some public and external act.<sup>15</sup>

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<sup>14</sup> J. HENEGHAN, "The Marriages of Unworthy Catholics: Canons 1065 and 1066," in *The Jurist*, 5 (1945), pp. 389-437.

<sup>15</sup> *Ibid.*, p. 408.

Heneghan makes it clear that the notion of being considered a “public sinner” requires that the person be guilty of a grave sin that is as widely known in the community as if he had committed a delict.

To be designated a public sinner, it suffices that the sin have attained the *publicity* which is predicated of a public delict, that is, that it be divulged and commonly known, or at least practically certain to become so. Since every delict is a sin, no greater publicity is required for the designation of a public *sinner* than for that of a public *delinquent*. Accordingly, a public sinner is one who is guilty of a grave sin that is either public or notorious. This opinion is substantiated by the explanation of the notion of public sinner which is given by most canonists.<sup>16</sup>

As examples of this view, Heneghan cites works by Cappello and Vlaming which describe a public sinner as one whose unworthiness, practically regarded, has become *commonly known*. These authors apply the notion of *public sinner* to the notion of publicity used for a public delict in the 1917 Code, which provided that a delict is public “if it is already known or is in such circumstances that it can be and must be prudently judged that it will easily become known.”<sup>17</sup>

From this brief review of selected authors, unanimity exists on two points. The first is that the minister of Communion is obliged to refuse Holy Communion to those who are publicly unworthy, that is, those who are publicly and commonly known to be living in a state of serious sin. The second is that the minister is equally obliged to avoid public scandal by refusing in a public setting to give Holy Communion to a person who he knows to be in a state of grave sin, but this is not commonly known in the community at large.

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<sup>16</sup> Ibid., p. 409.

<sup>17</sup> CIC/17, c. 2197, 1°.

### 1.1.4 – The *praxis Curiae Romanae* on Canon 855

Evidence of the *praxis Curiae* with respect to c. 855 is limited to three documents, only the first of which appears to be directly related to c. 855. The volumes of the *Canon Law Digest* that cover the 1917 Code have only one entry on c. 855. This was a private reply in 1922 of the Sacred Congregation for the Council. The facts of the case involved a woman who was living in open concubinage. She went to confession to a missionary who then admitted her to Holy Communion. The pastor of her parish found this objectionable and referred the matter to the local ordinary. The latter forbade her admission to Communion until she separated from the man with whom she was living. The missionary priest took recourse against the decree to the Sacred Congregation of the Council. The Congregation ruled that the decree of the local ordinary is to be observed.<sup>18</sup> No reason was given, but one could infer that this was an application of c. 855. Or, it may have simply been an affirmation of the discretionary authority of the local ordinary to decide the matter.

In 1949, a reply from the Holy Office may be pertinent to the matter at hand, albeit not directly addressing c. 855. It has much greater juridical significance than the 1922 private reply because it was issued as a general decree, was approved by the pope, and was published in the *Acta Apostolicae Sedis*. In the *Canon Law Digest*, it appears under c. 2314 which establishes the penalty of excommunication for the crimes of apostasy, heresy, and schism.<sup>19</sup> The Congregation was asked four questions about Catholic participation in the

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<sup>18</sup> SACRED CONGREGATION OF THE COUNCIL, reply, 18 November 1922, in *CLD*, vol. 1, pp. 408-409.

<sup>19</sup> *CLD*, vol. 3, pp. 658-659. The reason for its placement among the canons on penal law is because part of the decree replied in the affirmative to the *dubium*: “Whether the faithful who profess the materialistic and anti-Christian doctrine of Communists, and especially those who defend or propagate it, incur *ipso facto* as apostates from the Catholic faith the excommunication specially reserved to the Holy See.” It should be noted that this statement addresses a different

Communist party, one of which was whether persons may be admitted to the sacraments if, knowingly and freely, they join the Communist Party or foster it, or they publish, propagate, read or write books, periodicals, newspapers, or pamphlets that support the doctrine or action of Communists. The reply was: “In the *negative*, according to the ordinary principles governing the refusal of the sacraments to those who are not properly disposed.”<sup>20</sup>

Strictly speaking, the Holy Office’s decree reaffirmed the Church’s longstanding teaching and discipline that the faithful must be properly disposed to receive the sacraments (cf. *CIC/83* c. 843 § 1). If joining or promoting the Communist Party entailed a person’s accepting its atheistic and anti-religious philosophy, such a person would not be suitably disposed to receive the sacraments. If, however, the person supported the party for some other reason, such as to obtain a just wage for workers, and if such person remained faithful to his religion, a minister could not simply conclude from his party membership that he lacked the proper disposition to receive sacraments.

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question than the preceding one on the reception of sacraments. Here, the person actually professes the atheistic teaching of Communism; it is not simply a matter of just joining the Communist Party for some other reason.

<sup>20</sup> “Utrum christifideles, qui actus de quibus in nn. 1 et 2 scienter et libere posuerint, ad Sacramenta admitti nosint.... *Negative*, secundum ordinaria principia de Sacramentis denegandis iis qui non sunt dispositi.” S.C.Holy Office, decree , 1 July 1949, in *AAS*, 41 (1949), p. 334. This was the third of four questions asked of the Holy Office. The other three questions were: ( 1) utrum licitum sit partibus communistarum nomen dare vel eisdem favorem praestare; (2). utrum licitum sit edere, propagare vel legere libros, periodica, diaria vel folia, quae doctrinae vel actioni communistarum patrocinantur, vel in eis scribere; (4) utrum christifideles, qui communistarum doctrinam materialistica et antichristianam profitentur, et in primis qui eam defendunt vel propagant, ipso facto, tamquam apostatae a fide catholica, incurrant in excommunicationem speciali modo Sedi Apostolicae reservatam.” The first three questions were answered in the negative, the fourth in the affirmative.

This Holy Office decree was abrogated on 27 November 1983 (cf. c. 6, nn. 3, 4). Nevertheless, it would be used two decades later to justify the denial of Holy Communion to politicians who support access to elective abortions.<sup>21</sup> Such an argument, however, is arguably only valid *on the basis of this 1949 decree* insofar as the minister is able to determine that an individual politician lacks the proper disposition to receive the Eucharist, as the decree did not deal with the public unworthiness of c. 855.<sup>22</sup>

On 26 November 1983, the final day that the 1917 Code was in effect before its abrogation by the 1983 Code, the Sacred Congregation for the Doctrine of the Faith issued a declaration regarding Masonic associations. It stated that the principles of Masonic associations “have always been considered irreconcilable with the Church’s teaching and, consequently, membership in them remains prohibited by the Church. Members of the faithful who enroll in Masonic associations are involved in serious sin and may not approach Holy Communion.”<sup>23</sup> The declaration did not mention c. 855 as its justification. Rather, the evident basis for the declaration was c. 2335 of the 1917 Code: “Those giving their name to masonic sects or other associations of this sort that machinate against the Church or legitimate civil powers contract by that fact excommunication simply reserved

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<sup>21</sup> See R. BURKE, “Canon 915,” who writes: “The discipline, in particular, indicates that among the categories of persons who are to be denied Holy Communion are they who publicly espouse political doctrines which are hostile to the Faith and to the Church. In a similar way, those who publicly support political platforms or legislative agenda which are gravely contrary to the natural moral law show that they are not rightly disposed to receive Holy Communion.”

<sup>22</sup> To Archbishop Burke, the matter of scandal in relation to the moral law and the inviolable protection of human life prompted the broadened application; cf. fn. 7 above.

<sup>23</sup> SCDF, declaration *Quaesitum est* on Masonic associations, 26 November 1983, in AAS, 76 (1984), p. 300, translation in *CLD*, vol. 10, p. 285. The quoted text reads: “Perstat igitur immutata sententia negativa Ecclesiae circa associationes massonicas, quia earum principia semper inconciabilia habita sunt cum Ecclesiae doctrina ideoque eisdem adscriptio ab Ecclesia prohibita remanet. Christifideles qui associationibus massonicis nomen dant in peccato gravi versantur et ad sacram communionem accedere non possunt.”

to the Apostolic See.”<sup>24</sup> Exclusion of Masons from the Eucharist was based on the excommunication that was incurred in virtue of c. 2335, but that penal law was abrogated the very day after the declaration was dated! If Masons were still to be excluded from Holy Communion, a new justification would have to be found. Consequently, one cannot reliably use this declaration as a basis for denying Holy Communion to Masons (or to Communists or politicians). Under the law of the 1983 Code, that may only be done if the terms of c. 915 are met. It is to that canon that we now turn, first by sketching its *iter* in the Code revision process.

### **1.1.5 – The *iter* of Canon 915 in the Revision of the 1917 Code**

The first mention of c. 855 in the Code revision process occurred in 1972 in a report in *Communicationes* on the work of the *Coetus de Sacramentis*. It was reported that the *Coetus* had agreed on replacing c. 855 with the general rule that they “may not be admitted to the celebration of the Most Holy Eucharist and to Holy Communion who have gravely sinned (*graviter deliquerunt*) and persevere in contumacy.”<sup>25</sup> The first draft canon, in the 1975 Schema on the sacraments, repeated this rule with some slight modifications in the wording and with one significant addition, namely, the word “manifest” was added to modify “contumacy.”<sup>26</sup> Unlike c. 855, which was limited to the reception of Communion,

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<sup>24</sup> Translation in PETERS (ed.), *The 1917 Pio-Benedictine Code*, p. 740. The declaration is given under c. 2335 in the *CLD*.

<sup>25</sup> “Ad celebrationem sanctissimae Eucharistiae et ad sacram communionem non possunt admitti qui graviter deliquerunt et in contumacia perseverant; haec regula proponitur generalis, loco praescripti Codicis can. 855.” In *Communicationes*, 4 (1972), p. 53.

<sup>26</sup> Draft c. 75 stated: “Ad Sanctissimae Eucharistiae celebrationem aut communionem ne admittantur qui graviter deliquerunt et in contumacia manifesto perseverant.” PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, *Schema documenti pontificii quo disciplina canonica de Sacramentis recognoscitur*, Typis Polyglottis Vaticanis, 1975, p. 35.

this draft canon included a ban on admission to the Eucharistic *celebration* as well as the reception of Communion. As for the translation of *graviter deliquerent* as “gravely sinned,” it should be noted that, in the promulgated Code, the word *delinquere* appears only in Book VI on delicts and penalties in reference to those who commit crimes.<sup>27</sup> Thus, *qui graviter deliquerunt* could be translated as “those who have committed a serious delict.”<sup>28</sup> However, as seen in the following paragraph, it seems more likely that the word *delinquere* in this context is better understood to mean not only the commission of canonical delicts but also refers to the commission of other grave sins that are publicly known and unrepented.<sup>29</sup>

The feedback from the consultation on the 1975 Schema resulted in two major changes to the draft canon. First, the word “celebration” was deleted. It was reasoned that such a ban on admission to the Eucharistic celebration would be a matter of penal law, not sacramental law. Additionally, the canon is in a section on *participation* in the Eucharist, not on its *celebration*. Besides suppressing the word “celebration,” the word “publicly” (*publice*) was added after “gravely” (*graviter*).<sup>30</sup> The newly worded canon appeared in the

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<sup>27</sup> X. OCHOA, *Index verborum ac locutionum Codicis iuris canonici*, 2<sup>nd</sup> ed., Rome, Libreria Editrice Lateranense, p. 135.

<sup>28</sup> An early translation of draft c. 75 from the 1975 Schema reads: “Those who have committed a serious delict and who persevere in evident contumacy are not to be admitted to celebrate the Eucharist or to receive Communion.” The translation, available in the library of Saint Paul University (BQV 237.24 A3E5 1975), is a duplicate of an unpublished typewritten text. The translator is not identified, but it is thought to have come from the canon law faculty of The Catholic University of America in Washington.

<sup>29</sup> L.F. STELTEN gives four meanings for *delinquere*: fail, sin, do wrong, offend. *Dictionary of Ecclesiastical Latin*, Peabody, MA, Hendricksons Publishers, 1995, p. 69.

<sup>30</sup> *Coetus de Sacramentis*, session held 29 May to 2 June 1978, in *Comm*, 13 (1981), pp. 412-413.

1980 Schema as c. 867: “They should not be admitted to Holy Communion who have gravely and publicly sinned and who persevere in manifest contumacy.”<sup>31</sup>

In a reply on proposed c. 867 in the 1981 *Relatio*, the commission for the revision of the Code decided that no changes were necessary to the draft canon. It then added a comment which left no doubt that the spokesman for the commission understood the canon as applicable to persons in irregular unions. After saying that the text had all the necessary requisites (the gravity of the act, the publicity of the act, and contumacy), it plainly affirmed: “Certainly the text applies also to the divorced and remarried.”<sup>32</sup>

Without explanation, the 1982 Schema introduced a thoroughly new text for what was now numbered c. 913. The draft canon has the exact wording which would become c. 915 of the promulgated Code that took effect on 27 November 1983. The new wording spoke of the non-admission to Holy Communion of those excommunicated or interdicted after the imposition or declaration of the penalty and others who obstinately persevere in manifest grave sin.<sup>33</sup> It is now the task of this thesis to investigate the meaning of this canon.

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<sup>31</sup> “Ad sacram communionem ne admittantur qui graviter et publice delinquerunt et in contumacia manifesto perserverant.”

<sup>32</sup> “Textus sufficit cum omnia requisita habeantur: actus gravitas, nempe, et publicitas actus necnon contumacia. Certo certius textus respicit etiam divortiatos et renuptiatos.” PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, *Relatio complectens syntheses animadversionum ab Em.mis atque Exc.mis Patribus commissionis ad novissimum Schema Codicis Iuris Canonici exhibitarum, cum responsionibus a secretaria et consultoribus datis*, Typis Polyglottis Vaticanis, 1981, p. 214.

<sup>33</sup> PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, *Codex Iuris Canonici: Schema novissimum iuxta placita Patrum Commissionis emandatum atque Summo Pontifici praesentatum*, Typis Polyglottis Vaticanis, 1982, c. 913.

## 1.2 – The Interpretation of the Current Law

The starting point for the interpretation of c. 915 must be the text and context of the canon itself. The fundamental rule of canonical interpretation is the necessity of seeking to understand the proper meaning of the words of a law in its text and context (c. 17). Hence, this second part of the chapter begins with an analysis of the key terms of c. 915 followed by a brief consideration of the canons that provide its immediate context. Thereafter, the parallel canon of the Eastern Code is examined and compared and contrasted with c. 915. There follows a consideration of four non-judicial texts of Holy See related to the topic of this thesis. The final section of this second part surveys the views of selected canonical authors on their interpretations of c. 915.

### 1.2.1 – Text and Context of Canon 915

A review of the definitions of the words of a law provides some understanding of the legislative intent regarding their application. However, defining words alone is insufficient; one must also understand their grammatical function in the text of the law. For example, some have misunderstood the grammatical function of the word *manifesto* as though it were an adverb describing the word *gravi* as opposed to being an adjective describing *peccato*. If that were the case, the pertinent clause of c. 915 would actually look like this: *manifeste gravi peccato*, meaning “manifestly grave sin,” that is, “the sin which is manifestly grave.” However, the words the Code actually uses are *manifesto gravi peccato*, which translates “manifest grave sin;” both adjectives describe sin rather than one describing another adjective.<sup>34</sup>

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<sup>34</sup> An example in English demonstrates how the understanding of the words used might become somewhat confusing without an analysis of the grammar used. The use of the phrase “light pink jacket” in which there are two adjectives, “light” and “pink” in the context of the phrase, describes either the shade of pink, or the bulk of the jacket. Each of the adjectives, light and pink,

The words of the first part of c. 915 cause no confusion. There is no ambiguity concerning the meaning of *excommunicati et interdicti post irrogationem vel declarationem poenae* (those excommunicated or interdicted after the imposition or declaration of the penalty). It is the final clause of the canon that requires careful analysis: *aliique in manifesto gravi peccato obstinate perseverantes* (and others obstinately persevering in manifest grave sin). The key words are *manifesto*, *gravi*, *peccato*, *obstinate*, and *perseverantes*.<sup>35</sup>

**Manifesto** is the ablative adjective of the second declension of the word *manifestus* in the nominative case. If it were an adverb it would be *manifeste* which translates to “manifestly” or “evidently.” The words *in manifesto gravi* modify the word *peccato* (sin). It is a grave sin which is manifest. It is a manifest sin which is grave. The meaning of the word intended by the legislator here is “open,” “visible,” “evident.”

**Gravi** is a third declension neuter singular ablative adjective meaning “heavy,” “grievous,” “serious,” “burdensome,” “severe,” “violent.” The word in the nominative case is *gravis*. Here it means “grave” or “serious.”

**Peccato** is the ablative singular of the neuter noun *peccatum* which means “sin.”

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modify the noun. The phrase can be analyzed in terms of what the writer means by use of the words, shade or bulk, but the object to which reference is being made remains the jacket. This is similar to the case of the use of the word “sin” in the pertinent clause. In the terms “manifest grave sin” or “grave sin which is manifest,” the object remains “sin.” It is merely the clarification regarding the adjectives “grave” and “manifest” which is called for; yet there is no mistaking that both of the words are adjectives. By rules of grammar, an adverb does not modify a noun but can describe a verb, an adjective or another adverb. An adjective can describe a noun or other adjective.

<sup>35</sup> The following definitions are taken from L. STELTEN, *Dictionary of Ecclesiastical Latin*.

*Obstinate* is an adverb which comes from the adjective *obstinatus* and is understood to mean “obstinate,” “stubborn,” “resolute,” or “determined.” As an adverb, it is best translated “obstinately.”

*Perseverantes* is the present active participle of *perseverare* and means to “persist,” “persevere,” “remain constant.” It is translated as “persevering” or “persisting.”

A literal and grammatically exact translation of the canon is: “To Holy Communion are not to be admitted the excommunicated or interdicted after the imposition or declaration of the penalty and others obstinately persisting in manifest grave sin.” In more elegant but less literal English, it may be translated: “Not to be admitted to Holy Communion are those upon whom the penalty of excommunication or interdict has been imposed or declared as well as others who obstinately persist in manifest grave sin.”

The context of c. 915 is a section of Book IV of the Code on “Participation in the Most Holy Eucharist” (cc. 912-923). The canons establish various regulations pertaining to the administration and reception of Holy Communion. The first of these canons declares the right of any baptized person, who is not prohibited by law, to be admitted to Holy Communion (c. 912). This follows from the fundamental right to the sacraments expressed in c. 213 (cf. also c. 843, §1). Thus, this entire section of canons must be understood within this context of the faithful’s right to the Eucharist. Because the baptized who are not prohibited by law have a right to receive the Eucharist, it follows that any limitations on this right are subject to strict interpretation (c. 18).

In establishing the context of c. 915, another important canon to consider is the one that follows it, c. 916.

A person who is conscious of grave sin is not to celebrate Mass or receive the body of the Lord without previous sacramental confession unless there

is a grave reason and there is no opportunity to confess; in this case the person is to remember the obligation to make an act of perfect contrition which includes the resolution of confessing as soon as possible.<sup>36</sup>

This canon is actually more closely grounded in the admonition by St. Paul to the Corinthians than is c. 915. Paul did not say that the minister of Communion must prohibit someone from unworthily receiving Holy Communion. He said that a person who receives unworthily “brings judgment on himself.” One’s own discernment of worthiness to receive is the subject of c. 916. A key difference between the two canons is that c. 916 pertains to anyone who is conscious of being in grave sin. Canon 915 pertains to the *publicly* unworthy, those whose state of grave sinfulness is known to the community of the faithful at the Eucharistic celebration.

This difference will be explored at greater length below when considering the canonical doctrine on c. 915 as presented in the commentaries, opinions, and studies of selected authors. Before surveying these authors’ views, however, it will be necessary to consider some key post-Code juridical and magisterial texts related to the subject matter of c. 915. These are c. 712 of the Eastern Code and four non-judicial texts of the Holy See.

### **1.2.2 – Canon 712 of the Eastern Code**

The *Code of Canons of the Eastern Churches* was promulgated in 1990, seven years after the Latin Code took effect. It contains a canon on the prohibition of the Eucharist to the publicly unworthy which is significantly different from c. 915 of the Latin Code. Canon 712 states: “Those who are publicly unworthy are to be barred from receiving the

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<sup>36</sup> “Qui conscius est peccati gravis, sine praemissa sacramentali confessione Missam ne celebret neve Corpori Domini communicet, nisi adsit gravis ratio et deficiat oportunitas confitendi; quo in casu meminerit se obligatione teneri ad eliciendum actum perfectae contritionis, qui includit propositum quam primum confitendi.”

Divine Eucharist.”<sup>37</sup> In using the terms *publice indigni* and *arcendi sunt*, the canon is reminiscent of c. 855 of the 1917 Code which used the same wording. The use of the traditional term *publice indigni*, in particular, presents an opportunity to ask whether it is synonymous with the “manifest grave sin” terminology used in c. 915, or whether the latter is broader or narrower in scope than the former.

The use of the wording of the 1917 Code in the 1990 Eastern Code suggests that the authors writing on c. 855 of the 1917 Code may profitably be consulted in interpreting *CCEO* c. 712. Nevertheless, new interpretations and applications are not excluded. Victor Pospishil offered some insight into this proscription of the Eastern Code in addressing whether the divorced and remarried should be considered publicly unworthy and barred from Communion.

Despite the negative attitude expressed ... in *Familiaris consortio* (83, 84) against the reception of communion by remarried divorced persons, canonists and theologians have advanced reasons why this exclusion may appear unjustified.... [T]he Church is for sinners. Jesus came to save the lost sheep. Sinners are members who are called to participate in the life of the Church and are recommended by Pope John Paul II to the pastoral care of the shepherds.<sup>38</sup>

In the commentary on the Eastern Code published by the Pontifical Oriental Institute, Dimitrios Salachas quotes c. 93 of St. Basil. The text is directed to priests and provides in pertinent part: “[B]e careful before whom you find yourself, how you celebrate, to whom you distribute Communion.... Do not hand the Son of God over to the

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<sup>37</sup> “Arcendi sunt a susceptione Divinae Eucharistiae publice indigni.” The translation is based on Peter’s translation of c. 855, given above. The CLSA translates *arcendi sunt* as “are forbidden,” which makes the canon a prohibition of the law directed to the recipients of Communion rather than a positive act on the part of an authority or a minister.

<sup>38</sup> V. POSPISHIL, *Eastern Catholic Church Law*, New York, St. Maron Publications, 1996, p. 400.

unworthy.”<sup>39</sup> This interpretation evidences a reliance on historical sources in interpretation of these problems; however, it fails to provide any suggestions for pastors about how to address the very real historical problem of the lack of catechesis experienced by many of the faithful during the past fifty years, who may today find themselves subject to being denied Communion because they are “unworthy.”

### 1.2.3 – Four Additional Texts of the Holy See

Before considering the interpretations of c. 915 by certain canonical authors writing prior to the PCLT Declaration of 2000, it is necessary to point out pertinent excerpts from four additional texts of the Holy See issued in the period just before the promulgation of the 1983 Code and prior to the year 2000. These are *Familiaris consortio* (published in 1982); the *Catechism of the Catholic Church* (1992, 1997); a CDF letter to the world’s bishops (1994); and recommendations for the pastoral care of the divorced and remarried issued by the Pontifical Council for the Family (1997).<sup>40</sup> The fact of the non-juridical status of each of these texts, in consideration of the objective moral law regarding the sanctity of marriage and of every human life, generates a tremendous degree of confusion in the application of the pertinent clause. Reception of the law regarding the denial of Communion, by application of the words “obstinate perseverance in manifest grave sin,”

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<sup>39</sup> D. SALACHAS, commentary on c. CCEO c. 712, in G. NEDUNGATT (ed.), *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches*, *Kanonika* 10, Rome, Pontificio Istituto Orientale, 2002, pp. 517-518.

<sup>40</sup> The first two texts are acts of the ordinary, universal magisterium; the third, while an official act of the CDF, is not an act of the Church’s magisterium. The CDF only participates in the universal, ordinary magisterium when a given document is expressly approved by the pope. See CDF, instruction *Donum veritatis* on the ecclesial vocation of the theologian, 24 May 1990, in AAS, 82 (1990), pp. 1550-1570, no. 18. The recommendations of the Pontifical Council for the Family, while having a juridical character, are non-binding guidelines intended to be a resource for particular law.

which inheres subjectivity on the part of both the Communicant and the minister, is complicated by the language used in these non-judicial, yet consistently cited texts. Moral law as set out in these texts cannot change; but the manner by which the faithful can be assisted in receiving it and integrating it into their lives must be assiduously addressed. This seems particularly compelling in view of the confused history of interpretation of the tenets of Church teaching in relation to the law by which certain faithful must be denied Communion.<sup>41</sup>

### 1.2.3.1 – *Familiaris consortio*

In 1980, the synod of bishops was celebrated on the theme of the family. The following year, Pope John Paul II issued a post-synodal apostolic exhortation on this theme, which is usually identified by its incipit, *Familiaris consortio*. It was published in the AAS in 1982. Section no. 84 of the exhortation considers the pastoral care of divorced Catholics who have attempted a remarriage.

Daily experience unfortunately shows that people who have obtained a divorce usually intend to enter into a new union, obviously not with a Catholic religious ceremony. Since this is an evil that, like the others, is affecting more and more Catholics as well, the problem must be faced with resolution and without delay. The Synod Fathers studied it expressly. The Church, which was set up to lead to salvation all people and especially the baptized, cannot abandon to their own devices those who have been previously bound by sacramental marriage and who have attempted a second marriage. The Church will therefore make untiring efforts to put at their disposal her means of salvation.<sup>42</sup>

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<sup>41</sup> cf. R. DODARO, “Synod Press Preparatory Document,” accessed on 21 January 2015 at [http://www.ignatius.com/promotions/synodresources/files/Resources/FatherDodaroSynodDoc\\_2014Oct.pdf](http://www.ignatius.com/promotions/synodresources/files/Resources/FatherDodaroSynodDoc_2014Oct.pdf); and E. MCNAMARA, “Communion for the Civilly Divorced and Remarried,” accessed on 21 January 2015 at <http://www.zenit.org/en/articles/communion-and-the-divorced-and-remarried>.

<sup>42</sup> JOHN PAUL II, apostolic exhortation *Familiaris consortio*, 22 November 1981, in AAS, 74 (1982), pp. 81-191; English translation *On the Family*, Washington, USCC, 1982.

The exhortation further recognizes a difference in situations that are experienced by the faithful.

Pastors must know that for the sake of truth they are obliged to exercise careful discernment of situations. There is, in fact, a difference between those who have sincerely tried to save their first marriage and have been unjustly abandoned and those who, through their own grave fault, have destroyed a canonically valid marriage.

Finally, there are those who have entered into a second union for the sake of the children's upbringing and who are sometimes subjectively certain in conscience that their previously and irreparably destroyed marriage had never been valid.<sup>43</sup>

Although the above-cited excerpts may create in the reader the expectation that the document will go on to apply the Church's discipline on the reception of Communion differently to account for varying situations, the solutions offered oftentimes engender confusion and frustration. The document notes that such persons have the obligation of separating, since they are not validly married. However, the pope adds, if they have serious reasons for not separating, such as their children's upbringing, and they "take on themselves the duty to live in complete continence, that is, by abstinence from the acts proper to married couples," they may be reconciled in the sacrament of penance.<sup>44</sup>

The concern of Pope John Paul II is grounded in the fact that, as to the civilly divorced and remarried, "their state and condition of life objectively contradict that union of love between Christ and the Church which is signified and effected by the Eucharist."<sup>45</sup> He is expressly concerned that if those in such situations are admitted to the Eucharist, it

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<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

would lead the faithful into error and confusion regarding Church teaching about the indissolubility of marriage. Thus, after exhorting pastors and the whole community of the faithful “to help the divorced and with solicitous care to make sure that they do not consider themselves as separated from the Church,” the pope reaffirms the traditional doctrine and pastoral practice. However, by use of the “serious reasons” language, it is clear that the pope directly recognized the primacy of families in consideration of the “primacy of moral values.”

Yet, problems exist with understanding and application of the exception. Though addressing the objective nature of irregular unions, the exception is riddled with subjectivity in terms of what might constitute “serious reasons.” How old do the children have to be? Does the state of the health of the spouse constitute a serious reason? Are financial considerations permissible under the “serious reasons” exception? Further, it fails to tackle the pre-eminent concerns about scandal of the faithful who see the couples presenting for Communion. Should general statements be made in the parish or the bulletin about the “serious reasons” rule so no one is scandalized?

### **1.2.3.2 – *Catechism of the Catholic Church***

In 1992, Pope John Paul II promulgated the *Catechism of the Catholic Church*.<sup>46</sup> In 1997, the *editio typica* of the Catechism was published, containing corrections of the prior text.<sup>47</sup> The Catechism succinctly states the traditional teaching on the worthy reception of Communion as enunciated by the same pope in *Familiaris consortio*.

In fidelity to the words of Jesus Christ — “Whoever divorces his wife and marries another, commits adultery against her; and if she divorces her

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<sup>46</sup> JOHN PAUL II, apostolic constitution *Fidei depositum*, 11 October 1992, in AAS, 86 (1994), pp. 113-118, English translation in *CLD*, vol. 13, pp. 444-449.

<sup>47</sup> *Catechismus Ecclesiae catholicae*, Vatican City, Libreria Editrice Vaticana, 1997.

husband and marries another, she commits adultery” — the Church maintains that new union cannot be recognized as valid, if the first marriage was. If the divorced are remarried civilly, they find themselves in a situation that objectively contravenes God’s law. Consequently, they cannot receive Eucharistic communion.<sup>48</sup>

The Catechism reaffirms the Church’s traditional teaching and discipline. It is not a complete treatment, however, as it does not mention the option of approaching Communion following absolution in the sacrament of penance once the parties to the invalid union resolve to live as brother and sister. In this way the Catechism neglects to offer the suggested pastoral exception recommended by Pope John Paul II in *Familiaris consortio*, namely, the exception to the rule pertaining to those in irregular unions who “for serious reasons” can live together in continence. As addressed above, in noting an exception, he had supported the primacy of families in consideration of the primacy of moral values. This pastoral orientation is not fully reflected in the Catechism.

### **1.2.3.3 – CDF Letter to Bishops**

In 1994, the International Year of the Family, the CDF wrote a letter to the bishops on the reception of Holy Communion by the divorced and remarried. It was a response to pastoral solutions offered by certain bishops, notably three influential bishops in Germany who had written that persons in irregular marriages who are in good conscience may receive Holy Communion without first agreeing to live as brother and sister.<sup>49</sup> In July

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<sup>48</sup> *Catechism of the Catholic Church with Modifications from the editio typica*, Washington, USCC, 1997, no. 1650.

<sup>49</sup> These were Bishop Karl Lehmann of Mainz, president of the German bishops’ conference; Archbishop Oskar Saier of Freiburg, conference vice-president; and Bishop Walter Kasper of Rottenburg-Stuttgart, a highly regarded theologian. For the details of their approach and the controversy it aroused with the CDF, see John M. HUELS, *More Disputed Questions in the Liturgy*, Chicago, Liturgy Training Publications, 1994, pp. 129-152.

1993, the three bishops published pastoral principles offering a “differentiated approach under which some Catholics might be allowed to receive Holy Communion despite the persistence of their irregular marital situation.”<sup>50</sup> Their method of addressing the divorced and remarried was grounded in the application of individual choice where the conscience has been fully informed in a meeting with the pastor. The goal of the recommended principles was engagement and healing.

Against such approaches, however, the CDF letter reaffirms the traditional teaching by directly quoting *Familiaris consortio*, no. 84. The letter then states that persons in irregular marriages may not receive Communion because they “live together as husband and wife with persons other than their legitimate spouses;” and it adds that pastors and confessors “have the serious duty to admonish them that such a judgment of conscience openly contradicts the teaching of the Church.”<sup>51</sup> The letter further provides:

It is certainly true that a judgment about one’s own dispositions for the reception of Holy Communion must be made by a properly formed moral conscience. But it is equally true that the consent that is the foundation of marriage is not simply a private decision since it creates a specifically ecclesial and social situation for the spouses, both individually and as a couple. Thus the judgment of conscience of one’s own marital situation does not regard only the immediate relationship between man and God, as if one could prescind from the Church’s mediation, that also includes canonical laws binding in conscience. Not to recognise this essential aspect would mean in fact to deny that marriage is a reality of the Church, that is to say, a sacrament.

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<sup>50</sup> The bishops’ document, “Respekt vor der Gewissensentscheidung,” was first published in *Herder Korrespondenz*, 47 (1993), pp. 460-467. An English translation appeared later in *Origins*, 23 (1994), pp. 670-676.

<sup>51</sup> CONGREGATION FOR THE DOCTRINE OF THE FAITH, letter *Annus internationalis* to the bishops of the Catholic Church on the reception of Eucharistic Communion by the faithful who have entered new marriages after divorce, 14 September 1994, in *AAS*, 86 (1994), pp. 974-979, no. 6; English translation in *CLD*, vol. 13, p. 523.

In inviting pastors to distinguish carefully the various situations of the divorced and remarried, the Exhortation *Familiaris Consortio* recalls the case of those who are subjectively certain in conscience that their previous marriage, irreparably broken, had never been valid. It must be discerned with certainty by means of the external forum established by the Church whether there is objectively such a nullity of marriage. The discipline of the Church, while it confirms the exclusive competence of ecclesiastical tribunals with respect to the examination of the validity of the marriage of Catholics, also offers new ways to demonstrate the nullity of a previous marriage, in order to exclude as far as possible every divergence between the truth verifiable in the judicial process and the objective truth known by a correct conscience.<sup>52</sup>

The issuance of the Congregation's letter did not, however, result in any uniform application of a solution or general proscription. In fact, notwithstanding the letter's emphasis on discernment with certainty by means of the external forum and nullity of marriage, as well as the ecclesial and social situation of married life, in the face of civilly divorced and remarried presenting for Communion, many faithful remained confused about the application of c. 915. The letter also neglected to address the real problem that full determinations in judicial processes often cannot be made because of the inferior quantity and quality of proofs that are submitted to tribunals. Determinations regarding the validity of marriage are often compromised by those proofs. This impacts the number of persons who might otherwise be able to present for Communion.

#### **1.2.3.4 – Pontifical Council for the Family Guidelines**

On 24 January 1997, Pope John Paul II addressed the plenary meeting of the Pontifical Council for the Family which was dealing with the issue of the pastoral care of divorced and remarried faithful. The pope said that pastors "are called to help them experience the charity of Christ and the maternal closeness of the Church, receiving them

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<sup>52</sup> Ibid., no. 9.

with love, exhorting them to trust in God's mercy and suggesting, with prudence and respect, concrete ways of conversion and participation in the life of the community of the Church."<sup>53</sup> This positive tone was echoed in the document that the Pontifical Council itself produced at this meeting, which makes recommendations for the pastoral care of the divorced and remarried. One of the pastoral guidelines that the document recommends is for priests to dialogue with the divorced and remarried, inviting them to:

—recognize their irregular situation which involves a state of sin, and ask God for the grace of true conversion;

—observe the elementary demands of justice towards their spouse in the sacrament and their children;

—become aware of their own responsibilities in these unions;

—immediately begin to walk towards Christ—who alone can put an end to this situation: through a dialogue of faith with the new partner in order to advance together towards the conversion required by baptism, and especially through prayer and participation in liturgical celebrations, while not forgetting however that, since they have divorced and remarried, they cannot receive the sacraments of penance or the Eucharist.<sup>54</sup>

#### **1.2.4 – Selected Authors on Canon 915**

The Declaration of the Pontifical Council of Legislative Texts, published in the year 2000 and treated below (section 1.8), marks a milestone for the interpretation of c.

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<sup>53</sup> JOHN PAUL II, address to the Pontifical Council for the Family, 24 January 1997, in *ORE*, 30 (5 February 1997), p. 4, no. 3, and in *Origins*, 26 (1996-1997), pp. 583-584.

<sup>54</sup> PONTIFICAL COUNCIL FOR THE FAMILY, recommendations *Teniamo ad esprimere* for the pastoral care of the divorced and remarried, 25 January 1997, in *L'Osservatore Romano*, 26 February 1997, p. 4, English translation in *CLD*, vol. 14, pp. 1055-1056.

915. Thus, the views of selected authors will be briefly presented who were writing on c. 915 before the PCLT Declaration or who, writing afterward, did not allude to it.<sup>55</sup>

#### 1.2.4.1 – Commentaries and Canonical Opinions

John Huels authored the sections on the Eucharist for both the first and the second of the two commentaries on the 1983 Code sponsored by the Canon Law Society of America. In the first, he writes as follows.

Canon 915, based on canon 855 of the 1917 Code, prohibits giving the Eucharist to anyone who obstinately perseveres in manifest, serious sin. A manifest sin is one which is publicly known, even if only by a few; obstinate persistence is indicated when a person persists in the sin or sinful situation and does not heed the warnings of church authorities or adhere to church teachings. Clearly ... the excommunicated or interdicted are regarded ... as grave and manifest sinners.... Other categories of manifest and grave sins are not so neatly discernible. The minister cannot assume, for example, that the sin of public concubinage arising from divorce and remarriage is always grave in the internal forum. Any prudent doubt about either the gravity or the public nature of the sin should be resolved by the minister in favor of the person who approaches the sacrament.<sup>56</sup>

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<sup>55</sup> Among authors who have contributed to the scholarly discussion surrounding the PCLT Declaration and whose articles have appeared in languages other than English, the following are viewed as especially relevant: J. HENDRICKS, “Ad sacram communionem ne admittantur: Adnotationes in Canon 915,” in *Periodica*, 79 (1990), pp. 163-176; S. CONSOLI, “Il problema della partecipazione ai Sacramenti dei fedeli separati o divorziati,” in *Monitor Ecclesiasticus*, 119 (1994), pp. 84-94; D. TETTAMANZI, “Fedeltà nella verità,” in *Notitiae*, 30 (1994), pp. 554-562; J. BONET ALCON, “Comentario a la declaración del Pontificio Consejo para la Interpretación auténtica de los Textos Legislativos sobre la comunión de los divorciados,” in *Anuario Argentino de Derecho Canónico*, 7 (2000), pp. 157-160; A. BELLIGER, “Die wiederverheirateten Geschiedenen: Versuch eines neuen kirchenrechtlichen Lösungsansatzes,” in *Intams*, 88 (2002), pp. 194-210; J. HERRANZ, “Los límites del derecho a recibir la comunión,” in *Ius Canonicum*, 44 (2005), pp. 69-86; R. SUBLON, “L’interprétation du canon 915 et la question du sujet,” in *Revue de Droit Canonique*, 53 (2003), pp. 267-284; R. CORONELLI, “Appartenenza alla Chiesa e abbandono: aspetti fondamentali e questioni terminologiche,” in *Quaderni di Diritto Ecclesiale*, 20 (2007), pp. 8-34; C. SENON-DUPLESSIS, “L’Église catholique et les fidèles divorcés remariés: les huit thèses du cardinal Ratzinger,” in *Revue de Droit Canonique*, 55 (2005), pp. 393-421; G. ZANNONI, “Eucaristia e comunio: pastorale dei « fedeli irregolari »” in *Ius Ecclesiae*, 18 (2006), pp. 629-665.

<sup>56</sup> J.M. HUELS, Commentary on c. 915 in *CLSA Comm1*, p. 653.

In the second CLSA commentary, Huels focuses on the potential for the kind of scandal which harkens back to c. 855 § 2 in the situations where persons are to be denied the Eucharist. He writes: “Since there is always some risk of injustice when this canon is applied apart from the evident cases of public excommunication or interdict, it is necessary that there be some urgent need that pertains to the common good, in particular, the need to preclude grave scandal on the part of the community that would arise from the public sinner’s reception of communion.”<sup>57</sup>

Other commentators also interpreted the law in a way that was sensitive to the complexities of individual situations. For example, John McAreevy, in the commentary sponsored by the Canon Law Society of Great Britain and Ireland, writes as follows.

Likewise excluded are those “who obstinately persist in manifest grave sin.” In this third case, unlike the first two, there has been no public imposition or declaration of the person’s state and so, before a minister can lawfully refuse the Eucharist, he must be certain that the person obstinately persists in a sinful situation or in sinful behavior that is manifest (i.e., public) and objectively grave.... Those who are divorced and remarried find themselves in this situation. *Apart from the fact that their state and condition of life objectively contradict that union of life between Christ and the Church which is signified by the Eucharist, there is also the consideration of possible error and confusion in the minds of the faithful about the Church’s teaching on the indissolubility of marriage*<sup>58</sup> [emphasis added].

Regarding the specific issue of civil divorce and remarriage, a catechetical commentary during the 1980’s included the following statements about c. 915.

Since divorced persons who are civilly remarried are living in objective contradiction to God’s order, Church practice does not admit them to communion as long as they live in full conjugal relations (FC 84).

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<sup>57</sup> J.M. HUELS, Commentary on c. 915, in *CLSA Comm2*, p. 1110.

<sup>58</sup> J. MCAREAVY, Commentary on c. 915, in G. SHEEHY et al. (eds.), *The Canon Law: Letter & Spirit, A Practical Guide to the Code of Canon Law*, prepared by the CLSGB&I in association with the CCLS, Collegeville, MN, The Liturgical Press, 1995, p. 503.

Difficult problems no doubt often result from this, not only for the Christians concerned but also for the pastors. It is not easy to reconcile faithfulness to the truth, to which the Church is obligated for the sake of love, with the tolerance and forbearance required by Christian love and mercy in a concrete difficult situation. *Canon law can establish only a generally valid order; it cannot settle every individual case, many of which are often very complex.* The paramount pastoral concern, of course, must always be that no error and confusion arise among the faithful with respect to the teaching and the practice of the Church on the indissolubility of marriage. Especially in our times, the Church must be an unambiguous sign in this question.<sup>59</sup> [emphasis added]

Ignatius Gramunt, writing in the *Exegetical Commentary*, notes that c. 915 is addressed to the minister who is “not to admit” to Communion those mentioned in the canon. “The minister (whether ordained or not) who must deny communion should do so based on some external and notorious facts affecting the person who seeks holy communion.” He equates those who obstinately persist in manifest grave sin with the “publicly unworthy” of the 1917 Code and the Eastern Code. He stresses that Communion should not be publicly denied to those who obstinately persist in grave sin unless their situation is notorious.

In 1991, the Canon Law Society of America published two canonical opinions that dealt in part with the interpretation of c. 915. The first was by John Huels, the second by Francis Morrissey. Both opinions reply to the question of whether an individual may be denied the sacraments without some kind of canonical process. Huels says that the Code allows the refusal of Communion and anointing of the sick by the minister without a process. “In effect,” he says, “the minister is judging here that the person lacks the proper

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<sup>59</sup> M. JORDAN and W. KASPER, *The Church's Confession of Faith, A Catholic Catechism for Adults*, English translation by S. Wentworth-Arndt, San Francisco, Ignatius Press, 1987; p. 323; cf. also GERMAN CATECHETICAL ASSOCIATION, *Credo: A Catholic Catechism*, English translation by B. Davies, Minneapolis, MN, Winston Press, 1984, pp. 186-187.

disposition because he or she is in a state of grave sin. Moreover, because the serious sin is manifest, the giving of the sacraments would likely cause scandal.”<sup>60</sup> He then distinguishes this situation from one in which the ecclesiastical authority were to ban all ministers in his jurisdiction from administering these sacraments to a certain person. Such a decision, he argues, is tantamount to the imposition of a penalty, which cannot be done without a penal process.

Morrisey briefly addresses two key terms in c. 915, the meaning of “obstinate” perseverance and of “manifest grave sin.” He says that a person “would not be considered to be ‘obstinately’ persisting in grave sin without having previously been admonished to cease the behavior.” Regarding the interpretation of grave sin, he distinguishes between objectively grave sin and the subjective state of mind of the sinner.

The question of “grave sin” could be considered in two ways: objectively, certain actions are considered to be gravely sinful in themselves; or, subjectively, the person who performed the action does not consider that it is sinful, let alone gravely sinful. Unless the element of public scandal enters into play, it would seem that the subjective evaluation of the situation would apply.<sup>61</sup>

Morrisey’s view, which requires that there be public scandal before denying Communion, resonates with c. 855 of the 1917 Code which prohibited the minister from publicly denying Communion to an occult sinner. Without the scandal due to public knowledge of the sin, the theory goes, the refusal of Communion could, in itself, be scandalous and cause wonderment.

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<sup>60</sup> J.M. HUELS, “Canon 843: Denial of a Sacrament without Due Process,” in P.J. COGAN (ed.), *CLSA Advisory Opinions 1984-1993*, Washington, CLSA, 1995, p. 237.

<sup>61</sup> F. MORRISEY, “Another Opinion,” in *Ibid.*, p. 239.

In another CLSA advisory opinion on this topic, Edward Peters agrees with other authors in insisting on a strict interpretation of the pertinent clause, namely, that each of the key terms of the law must be verified before Communion may be denied.<sup>62</sup> In order for the law to be triggered, Peters asserts that there must be a determination that each of the necessary terms of c. 915 is simultaneously occurring, that is, in reference to conduct that is (1) obstinate, (2) manifest, (3) grave, and (4) sinful. Peters further instructs that the minister of Communion must make this assessment at the moment of the refusal. In addressing the requirement of a grave sin's *manifestness* before c. 915 can be applied, he says that the grave sin must already be known publicly in the assembly before Communion is refused.

However sinful it might be, conduct that is not already widely known in the community is not manifest as canon law understands the term in this context. In something of a parallel to Canon 1340 § 2 (which prohibits imposing public penances for occult transgressions) and Canon 1330 (which prohibits any penalties in cases where no one has perceived the offense), the public withholding of the Eucharist for little-known sins, even though they might well be grave, is not permitted under canon law.<sup>63</sup>

Indeed, as noted earlier in this chapter, it is clear, in the event that the legislator had wanted to mean “manifestly grave sin,” the text would have to have read *manifeste gravi peccato*, or “the sin which is manifestly grave,” but the canon speaks instead of a sin that is both manifest and grave. The grave sin, therefore, must be publicly known in the community gathered for the Eucharist.

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<sup>62</sup> E. PETERS, “Withholding of Holy Communion by Extraordinary Minister,” in *Roman Replies and CLSA Advisory Opinions*, Washington, CLSA, 2008, pp. 80-83. Peters’ footnotes cite Huels and the Catechism; no mention is made of the PCLT Declaration.

<sup>63</sup> *Ibid.*, p. 82.

Thus, at the point in time at which the person approaches to receive the Eucharist, the minister of Communion must know that obstinate persistence in grave sin is taking place in a way that is manifest to the community of the faithful in attendance at Mass. It cannot be denied that, just as in a marriage case where moral certitude is the burden of proof to be met, this determination of “obstinate persistence in manifest grave sin” is a very high bar in terms of requisite proofs for the law to be triggered and Communion to be denied. In fact, it seems as though this problem would be precisely a matter to raise in an administrative process which has resulted in the denial of Communion.

This analysis seems at odds with the doctrine regarding irregular unions and of the respect for the dignity of every human life. In the face of probable contradiction on the part of the Church, however, the matter must be assiduously addressed in ways that work to prevent such problems: catechesis and dialogue.

#### **1.2.4.2 – Travers-Myers Debate**

Following the 1994 CDF letter to bishops, Patrick Travers wrote a thorough and informative article that addresses the canonical and pastoral issues surrounding the pertinent clause of c. 915 as well as the interpretation of the language of c. 916.<sup>64</sup> He sets out a legal argument which exhibits a respect for the strong foundational principles of the Church’s magisterium but is intended to address the problem canonically. Regarding the CDF letter, he argues that it cannot be understood apart from a correct interpretation of the canons.

As an authoritative pronouncement of a dicastery of the Holy See, the congregation’s letter is binding on Catholic pastors in their administration of the sacrament of the Holy Eucharist. It is not, however, the only exercise

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<sup>64</sup> P. TRAVERS, “Reception of the Holy Eucharist by Catholics Attempting Remarriage after Divorce and the 1983 Code of Canon Law,” in *The Jurist*, 55 (1995), pp. 187-217.

of the Church's supreme authority that governs this matter. In fact, the preeminent expression by the Holy See of the conditions for reception of the Holy Eucharist in the Latin Church is contained in canons 912-923 of the 1983 Code of Canon Law. Like other dicasterial pronouncements, the letter of the congregation must be interpreted and applied by pastors in a manner consistent with these canons, which differ considerably from the parallel provisions of the 1917 Code of Canon Law.<sup>65</sup>

Travers notes that the CDF letter had not been approved *in forma specifica* by the Holy Father, nor was it an authentic interpretation of canon law (which is the competence of the Pontifical Council for Legislative Texts). The letter thus remains, he says, "a dicasterial document that must be interpreted and applied in a manner consistent with the canons of the 1983 code."<sup>66</sup> Because of his perception that certain language of cc. 915 and 916 would be unclear in relation to language of the Congregation's letter of 14 September 1994, Travers believes pastoral application of the law would be extremely challenging in view of these circumstances and under the pertinent canonical methodology. He proffers the following conclusion.

Pastors face significant challenges in meeting their grave obligations to obey and apply both the congregation's letter and the canons of the 1983 code governing the admission to Holy Communion of Catholics who have attempted marriage after divorce. These difficulties arise from the fact that the letter of the congregation bases the exclusion of such persons from Holy Communion solely on the objective sinfulness of their behavior, while the applicable canons require also an evaluation of each such person's subjective spiritual state by the responsible sacred minister.... As experience is gained in applying the congregation's letter, this task may gradually become easier; but the underlying difficulties may ultimately require resolution by the Holy Father himself.<sup>67</sup>

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<sup>65</sup> Ibid., p. 189.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid., p. 217.

In what might be characterized as an academic exchange based upon each canonist's pastoral concern for the salvation of souls, John Myers, then Bishop of Peoria, authored a rebuttal of Travers' arguments. Heavily relying on extra-canonical sources, Myers draws a different and somewhat critical conclusion regarding the way in which the problems in applying the law of denying Communion must be addressed. Countering the methodology and general conclusions set out in Travers' article, Myers critiques Travers' singular legal focus. He writes: "The linchpin of Travers' thesis is that the 1983 code is self-contained with respect to the question of remarried Catholics receiving the Holy Eucharist."<sup>68</sup> Myers takes exception to what he perceives as a *solus Codex* analysis of the issue on the part of Travers.

Whatever the reader may judge about our critique of Travers' methodology, it will have become evident to anyone who has read his article that he takes a simplistic *solus Codex* approach to canons 915 and 916, somewhat like the fundamentalist *sola Scriptura* approach. He has not taken into account the canonico-doctrinal tradition, a study of which ... would have revealed the twentieth-century two-stage development of the institute of abstention from Holy Communion on the part of the unworthy ... and the three-stage development of the institute of the minister's obligation to refuse Holy Communion to the publicly unworthy.... Thus, he has failed to see that the latter institute has undergone a process of drastic simplification.<sup>69</sup>

Myers also takes exception to what he obviously perceives to be a myopic focus by Travers on the law apart from the magisterium. He posits that "the Magisterium has established a clear base-line for dealing with these cases," particularly as set out in *Familiaris consortio*.<sup>70</sup> Myers takes exception to any interpretation of c. 915 which touches on

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<sup>68</sup> J. MYERS, "Divorce, Remarriage, and Reception of the Holy Eucharist," in *The Jurist*, 57 (1997), p. 487.

<sup>69</sup> *Ibid.*, p. 496.

<sup>70</sup> *Ibid.*, p. 486.

questioning the possibility of ignorance about grave sin on the part of the communicant. Myers pointedly reminds the reader that “the concrete case considered *under canon 915* is a matter of the *external forum*.... The subject himself by appearing in the Communion procession forces his objective situation to be a matter of the external forum.”<sup>71</sup> It seems to Myers that, from the nature of the matter itself, Travers does not, nor cannot, demonstrate that subjective guilt is required for the application of c. 915.<sup>72</sup> Contrary to Travers and other authors before him (Huels, Morrisey, et al.), Myers takes an “objectivist” approach in the application of the law. Merely by “appearing in the Communion procession,” the divorced and remarried faithful objectively provoke the situation requiring their denial of the Sacrament.

In terms of the pertinent clause, however, what is significantly neglected in this analysis is the practical aspect of application. Thus, it seems that Myers’ position, while it pertains to the external forum, should actually depend more upon the faithful being catechized about their objectively problematic state and its impact on their presenting for Communion. Myers’ position also neglects to account for the very clearly stated exception that had been set out by the Church at that time, most particularly in *Familiaris consortio*, regarding cases of serious reasons. In these ways his analysis is incomplete.

In terms of his perspective on Travers’ analysis, Myers addresses the issue of the denial of Communion to those civilly divorced and remarried from a broader perspective than he does. Myers’ construction of how the Church can respond to the crisis regarding denial of Communion contemplates the integration of extra-canonical sources in any

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<sup>71</sup> Ibid., p. 507.

<sup>72</sup> Ibid., p. 508.

approach to the application of the law. In certain ways his analysis is analogous to Travers. Myers' addresses concerns about the law from a framework of fundamentals of Catholic teaching which, his analysis makes clear, directly respond to problems he and Travers agree can be encountered by pastors and other faithful in interpreting the law regarding denial of Communion. Yet, out of his obvious pastoral concerns, Myers takes a holistic approach and seeks to demonstrate that there is a solution that is grounded in law, theology and history. He primarily directs his attention to problem-solving in a way that is based on all of the available material within the Church on the issue of denying Communion to the civilly divorced and remarried. Although the range of his analysis is much broader than that of Travers, the writing of each canonist can be said to ultimately focus on the real pastoral and salvific risks inherent in the current state of the application of the law.<sup>73</sup>

To Travers, the Holy Father's address on 24 January 1997 settled the matter of how the law was to be applied.<sup>74</sup> The pastoral concerns which Travers had expressed in his 1995 article on the subject were now pointedly addressed by Pope John Paul II.

While the Holy Father affirms the continuation of the exclusion itself, he presents it in a pastoral context that is radically different from the one which prevailed in former times. No longer are Catholics who have attempted remarriage after divorce categorically labeled as "bigamists" condemned to "infamy," as under the 1917 code. No longer are they all, regardless of the circumstances that led to their situation, characterized as "dung heap" upon which the Lord's majesty would otherwise be cast, and as "swine" to whom the "pearls" of the Lord's holiness must not be thrown. The Holy Father, in fact, presents a vision of Christian practice by Catholics who have attempted remarriage after divorce which, while always directed toward an eventual change in their irregular situation, and always stopping short of full

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<sup>73</sup> Significantly, after the publication of Myers' article, Travers wrote a follow-up article which conceded some points to Myers but which substantially defended his own interpretive methodology. See P. TRAVERS, "Holy Communion and Catholics Who Have Attempted Remarriage after Divorce: A Revisitation," in *The Jurist*, 57 (1997), p. 517.

<sup>74</sup> *Ibid.*, p. 524.

sacramental reconciliation and Communion, is by no means an exclusion from the life of the Church pending the ultimate resolution of their marital status.<sup>75</sup>

In the wake of the pope's address, Travers explains additionally:

In effect, the Holy Father has made his own the interpretation adopted in the congregation's letter of *Familiaris consortio* no. 84 and of 1650 of the Catechism. As a result, it can no longer be argued that this interpretation has the authority only of a dicasterial document, for lack of the approval *in forma specifica* by the Holy Father that is the normal means by which he personally adopts a dicasterial action. In the case of the Pontifical Address, he has simply done this in an alternative, much more visible, way.<sup>76</sup>

In keeping with his acknowledgement of the Holy Father's decisively expressed understanding of the pertinent words of the c. 915 clause, and without modifying his methodology, Travers writes:

... *peccatum grave* in canon 915 must, in accordance with the Pontifical Address, be interpreted, not as a synonym for mortal sin, but rather as "gravely sinful matter," the external, objective element that is accessible to the minister of Holy Communion. In individual cases where this gravely sinful matter exists, as it does in the cases of all Catholics who attempted marriage after divorce, it may or may not be accompanied by the subjective knowledge and consent that are necessary to constitute a mortal sin. This would not, however, affect the duty of the minister to deny Holy Communion under canon 915, as interpreted by the Holy Father in the Pontifical Address, on the basis of the existence of the gravely sinful matter alone.<sup>77</sup>

Travers does, however, note that: "It is, of course, highly remarkable that the 1983 code uses a single term, *peccatum grave*, in immediately adjacent canons to express two realities

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<sup>75</sup> Ibid., p. 526.

<sup>76</sup> Ibid., p. 528.

<sup>77</sup> Ibid., p. 530.

which, while related, differ in critically important ways. This conclusion is, however, unavoidable in light of the Holy Father's teaching in the Pontifical Address.<sup>78</sup>

### 1.3 – The PCLT Declaration and Subsequent Developments

At the turn of the century in the year 2000, the Holy Year of the Jubilee of the Church, the Pontifical Council for Legislative Texts (PCLT) issued the Declaration concerning the Admission to Holy Communion of Faithful Who Are Divorced and Remarried (= PCLT Declaration).<sup>79</sup> The document, though not an authentic interpretation of c. 915, is a thorough explanation of the *mens Curiae*, not only of the PCLT, but also of the Congregation for the Doctrine of the Faith and the Congregation for Divine Worship and Discipline of the Sacraments which were consulted on and agreed with it. This Declaration truly marks a turning point in the post-1983 Code developments in the interpretation of c. 915 not only due to the authority and respect that this Pontifical Council commands, but also because it is the first official text of the Holy See to delve into the meaning of c. 915 in a significant way. It is the seminal interpretation for purposes of this study.

This final part of this chapter first outlines the contents of the PCLT Declaration. It then takes up three subsequent texts of the Holy See which touch on the worthy reception of Holy Communion. It concludes with the views of selected authors writing after the PCLT Declaration, in particular, the arguments offered by Raymond Burke, who up to now has been the most influential contributor to the canonical doctrine on the clause of c. 915.

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<sup>78</sup> Ibid., p. 530.

<sup>79</sup> PCLT, declaration *The Code*, 26 June 2000, in *Communicationes* 32 (2000), pp. 159-162. The text of the official version is in English.

### 1.3.1 – The PCLT Declaration

The purpose of the PCLT Declaration is to respond to failings in some interpretations of c. 915, as well as to explain the meaning and recommended application of the obstinate persistence in manifest grave sin. Further, and particularly vexatious to the PCLT, was a seeming disregard for published Church teachings in *Familias consortio*, the *Catechism of the Catholic Church*, and the 1994 letter of the CDF.

The Declaration states that the prohibition of c. 915 is “derived from the divine law and transcends the domain of positive ecclesiastical laws;” consequently, there can be no legislative changes that oppose the doctrine of the Church. The PCLT recalls that the ecclesial tradition behind c. 915 is rooted in Scripture, namely, in the Pauline text on unworthily eating the bread or drinking the cup of the Lord, which passage is directly quoted to support the view that c. 915 is derived from the divine law. While there can be no legislative changes that “oppose the doctrine of the Church,” the wording of this ecclesiastical law certainly has changed from the past law (*CIC/1917 c. 855*), and it could be changed again. The wording of c. 915 is also quite different from that of the parallel canon of the Eastern Code (c. 712), promulgated by the same supreme legislator just seven years after the promulgation of the 1983 Code. The language of the Declaration provides that “this text concerns in the first place the individual faithful and their moral conscience, a reality that is expressed as well by the Code in can. 916.” However, “the unworthiness that comes from being in a state of sin also poses a serious juridical problem in the Church” (no. 1). The “serious juridical problem” sought to be corrected by c. 915 relates to scandal of the community of the faithful; separate and apart from any consideration regarding the individual and discernment of worthiness to receive Communion.

The Declaration also cites *CCEO* c. 712 on the barring from the Divine Eucharist those who are “publicly unworthy.” It then explains what “publicly unworthy” means.

In effect, the reception of the Body of Christ when one is publicly unworthy constitutes an objective harm to the ecclesial communion: it is a behavior that affects the rights of the Church and of all the faithful to live in accord with the exigencies of that communion. In the concrete case of the admission to Holy Communion of faithful who are divorced and remarried, the scandal, understood as an action that prompts others towards wrongdoing, affects at the same time both the sacrament of the Eucharist and the indissolubility of marriage. That scandal exists even if such behavior, unfortunately, no longer arouses surprise: in fact it is precisely with respect to the deformation of the conscience that it becomes more necessary for pastors to act, with as much patience as firmness, as a protection to the sanctity of the Sacraments and a defense of Christian morality, and for the correct formation of the faithful (no. 1).

According to the Declaration, pastors are to act patiently yet firmly in cases where the law applies. They have to act because a loose application of the law could result in persons receiving Communion who are deemed publicly unworthy. This scenario, from the PCLT perspective, would result in “objective harm to the ecclesial communion” (no. 1), clearly resonating with the language used in the non-juridical texts of *Familiaris consortio*, the Catechism, and the CDF letter.

Specifically, a lack of stringent application of c. 915 could give rise to scandal, defined as “action which prompts others towards wrongdoing.” This scandal, objective in nature, is said to exist even if the behavior no longer arouses surprise in society. Lack of societal surprise, the Declaration suggests, is not an operative fact because that could be due to persons in the current society having malformed consciences. Indeed, the Declaration makes clear that “it is precisely with respect to the deformation of conscience that it becomes more necessary for pastors to act, with as much patience as firmness, as a

protection to the sanctity of the Sacraments and a defense of Christian morality, and for the correct formation of the faithful” (no. 1).

Three conditions must be met before the norm of c. 915 can be applied, explained in the Declaration as follows.

- a) grave sin, understood objectively, being that the minister of Communion would not be able to judge from subjective imputability;
- b) obstinate persistence, which means the existence of an objective situation of sin that endures in time and which the will of the individual member of the faithful does not bring to an end, no other requirements (attitude of defiance, prior warning, etc.) being necessary to establish the fundamental gravity of the situation in the Church;
- c) the manifest character of the situation of grave habitual sin (no. 2).

The PCLT adds that the obligation to refuse Communion in this situation is not dispensable by any ecclesiastical authority, and no directives contradicting it are permissible (no. 4).

The concern expressed in the Declaration is not the meaning of c. 915 in the abstract, but how it is specifically applied to the faithful who are in irregular marital situations. It also addresses couples who may remain together for “serious reasons” and, living in continence, can be admitted to the sacrament.

Those faithful who are divorced and remarried would not be considered to be within the situation of serious habitual sin who would not be able, for serious motives – such as, for example, the upbringing of the children – “to satisfy the obligation of separation, assuming the task of living in full continence, that is, abstaining from the acts proper to spouses” (*Familiaris consortio*, n. 84), and who on the basis of that intention have received the sacrament of Penance. Given that the fact that these faithful are not living *more uxorio* is per se occult, while their condition as persons who are divorced and remarried is per se manifest, they will be able to receive Eucharistic Communion only *remoto scandalo* (no. 2).

In keeping with the traditional practice, the PCLT says that Communion can be given to the divorced and remarried if they are not living *more uxorio*, that is, they do not have sexual relations. In that case, they may be admitted to Communion provided scandal is

removed. This implies a factual assessment to determine whether or not the parties are living *more uxorio* and whether their being admitted to Communion is accomplished *remoto scandalo*, but the Declaration gives the pastor no advice on how this is to be done.

Verification of the condition of manifestness in these cases can also be complex. Each case of this nature must be examined in a way that requires some assessment on the part of the priest to determine notoriety of sin, that is, the extent to which the situation is public. These may be very difficult facts to determine. No assessment can be perfunctorily accomplished. These obvious problems understandably open the application of the law to recourse precisely because of the words used in the clause and the potential for very awkward attempts at practical application.

On one point, the Declaration appears to validate an “objectivist” interpretation of c. 915 when it explains the meaning of “obstinate persistence” being “the existence of an objective situation of sin that endures in time and which the will of the individual member of the faithful does not bring to an end, *no other requirements (attitude of defiance, prior warning, etc.) being necessary* to establish the fundamental gravity of the situation in the Church” [emphasis added]. It does support the Church’s proscription against adultery. However, the intent of the language of the exception for “serious reasons” as set out in the Declaration may be off-putting to the very faithful it purportedly exists to protect if the objectivist standard is applied and the awareness and clarification of the exception is not publicly presented as an option.

The Declaration suggests that the divorced and remarried may be refused Communion simply by presenting themselves in the Communion procession. This is what Myers had argued. It applies irrespective of whether the persons even know themselves to

be in a state of grave sin. It applies whether the fact of their situation has been discussed with their pastor to afford them an opportunity not to feel ostracized while they try to correct their situation before they receive an admonishment. Later in the Declaration, however, this apparent triumph of the objectivist position is greatly mitigated when the Declaration exhorts pastors regarding the implementation of c. 915.

Naturally, *pastoral prudence* would strongly suggest the *avoidance of instances of public denial of Holy Communion*. Pastors *must strive to explain to the concerned faithful the true ecclesial sense of the norm*, in such a way that they would be able to understand it or at least respect it. In those situations, however, in which these precautionary measures have not had their effect or in which they were not possible, the minister of Communion must refuse to distribute it to those who are publicly unworthy. They are to do this with extreme charity, and are to look for the opportune moment to explain the reasons that required the refusal. They must, however, do this with firmness, conscious of the value that such signs of strength have for the good of the Church and of souls (no. 3) [emphasis added].

The Declaration continues by saying that the “priest who is responsible for the community” is obliged to discern the cases in which the faithful are to be excluded from Eucharistic Communion (no. 3). Thus, the pastor, chaplain, or other responsible priest is evidently required to have some kind of dialogue with the faithful to discern their situation and, if they are persisting in manifest grave sin, to explain why they will be refused Communion if this persistence remains. No period of time to correct the situation is provided. This “pastoral prudence” seems to contradict the Declaration’s earlier affirmation that “no other requirements (attitude of defiance, prior warning, etc)” are necessary to establish the “fundamental gravity of the situation in the Church.”

The language used generates confusion, and the apparent contradiction can then only seemingly be reconciled if one carefully distinguishes between objective gravity and subjective sinfulness. *Objectively*, the reception of Communion by the divorced and

remarried would create a fundamentally grave situation of scandal in the Church. *Subjectively*, however, unless the divorced and remarried faithful know that they are persisting in grave sin, it can be argued that they cannot possibly be doing so obstinately, which is a strict requirement of c. 915. This problem with the application of the words used shows that the stated intent to clarify the rule of law in these cases is missed. Clarity for application and understanding are undeniably lacking as a result of the choice of words used in the clause.

### **1.3.2 – Three Additional Documents**

Following the PCLT Declaration, three additional documents addressed the theme of the worthy reception of Holy Communion. The first of these is an act of the pontifical magisterium, John Paul II's encyclical *Ecclesia de Eucharistia* of 2003. The second is a juridical text, the 2004 instruction of the Congregation for Divine Worship and the Discipline of the Sacraments, *Redemptionis Sacramentum*. The third is a 2004 letter of Cardinal Joseph Ratzinger to the USCCB dealing with the denial of Communion to politicians who subscribe to permissive abortion and euthanasia laws.

#### **1.3.2.1 – *Ecclesia de Eucharistia***

In 2003, Pope John Paul II issued an encyclical letter, *Ecclesia de Eucharistia*, which addresses all the faithful generally on the relationship of the Eucharist and the Church and also pastoral responsibility in relation to this mystery.<sup>80</sup> Though the PCLT Declaration emphasizes particular situations of persons whose marriage is irregular, the subject of *Ecclesia de Eucharistia* is a broader-based application of the law seeking to

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<sup>80</sup> JOHN PAUL II, encyclical letter on the Eucharist in its relationship to the Church *Ecclesia de Eucharistia*, 17 April 2003, in AAS, 95 (2003), pp. 433-475, English translation in *Origins*, 32 (2003), pp. 753-768, no. 50.

protect the Eucharist. Similar to the PCLT's words in the Declaration, Pope John Paul II notes the relationship between the faithful and the Eucharist. He reminds the reader that "[t]he Eucharist, as Christ's saving presence in the community of the faithful and its spiritual food, is the most precious possession which the Church can have in her journey through history;" and so he enjoins the faithful to accept the responsibility of this gift (no. 9). He makes clear that the goal of safeguarding against abuses and promoting ecclesial communion is a task of each member of the faithful (no. 42).

John Paul II significantly emphasizes the role of priests in this relationship. They have the responsibility "to preside at the Eucharist *in persona Christi* and to provide a witness to and a service of communion, not only for the community directly taking part in the celebration, but also for the universal Church, which is a part of every Eucharist" (no. 29). Moreover, the encyclical expounds on the role of priests. "If the Eucharist is the centre and summit of the Church's life, it is likewise the centre and summit of priestly ministry" (no. 31). Additionally, the pope writes that the Eucharist "is the principal and central *raison d'être* of the sacrament of the priesthood, which effectively came into being at the moment of the institution of the Eucharist" (no. 31).

John Paul II particularly comments on "the responsibility of the Church's Pastors, each according to his rank and ecclesiastical office," in relation to the goal of safeguarding the Eucharist against abuses" (no. 42). In developing the notion of this responsibility and its link to ecclesial communion, he writes: "[f]or this reason the Church has drawn up norms aimed both at fostering the frequent and fruitful access of the faithful to the Eucharistic table and at determining the objective conditions under which communion may not be given" (no. 42). This is a reference to the law of c. 915.

Commitment to the Eucharistic mystery is indeed clearly shown to be relevant and lively for the modern Church (no. 9). Commitment to that mystery is subject in a particular way to the law of c. 915, as seen in the following passage.

The judgment of one's state of grace obviously belongs only to the person involved, since it is a question of examining one's conscience. However, in cases of outward conduct which is seriously, clearly and steadfastly contrary to the moral norm, the Church, in her pastoral concern for the good order of the community and out of respect for the sacrament, cannot fail to feel directly involved. The Code of Canon Law refers to this situation of a manifest lack of proper moral disposition when it states that those who "obstinately persist in manifest grave sin" are not to be admitted to Eucharistic communion (no. 37).

The first sentence of the paragraph relates to personal discernment of worthiness addressed in c. 916. The balance of the paragraph, however, addresses the prohibition of c. 915 on distribution of Communion to those who are manifestly in sin. This wording also obviously relates to worthiness. However, it is pastoral concern for "the good order of the community" and "respect for the Sacrament" which are emphasized (no. 37). This pastoral concern, the language suggests, prompts direct Church involvement in issues of outward conduct in relation to receiving Communion.

Pointedly, the manifest character of the grave sin triggers the application of c. 915. It is the obviousness of that conduct to the communion of faithful which theoretically gives rise to scandal if that person is admitted to Holy Communion. This analysis hearkens back to the PCLT Declaration, which addresses the Church's concern that scandal "prompts others towards wrongdoing" (no. 1).

### **1.3.2.2 – *Redemptionis Sacramentum***

In March 2004, the Congregation for Divine Worship and the Discipline of the Sacraments, in consultation with the Congregation for the Doctrine of the Faith, issued the

instruction *Redemptionis Sacramentum*, which is devoted to “certain matters to be observed or avoided pertaining to the discipline of the sacrament of the Eucharist.” Intended to be read in conjunction with *Ecclesia de Eucharistia*, it thoroughly addresses liturgical abuses related to the Eucharist.<sup>81</sup>

A consistent theme of *Redemptionis Sacramentum* is pastoral responsibility and instruction of the faithful in relation to the Eucharist. Corrections are deemed to be an important goal in the interest of stopping perceived liturgical abuses. Several times, the document exhorts that catechetical instruction is a serious responsibility. In response to various abuses, the document instructs that “[p]astors of souls should take care to ensure diligent catechetical instruction so that Christian doctrine is handed on to the Christian faithful in this matter” (no. 80).

Further, the instruction addresses situations where persons indiscriminately approach for Communion during Mass. The language of the document notes that the Church had drawn up norms with a goal toward having the faithful frequently and fruitfully receive Communion (no. 4). Reiterating themes from the PCLT Declaration and from Pope John Paul II’s *Ecclesia de Eucharistia*, the document notes that there are “objective conditions under which Communion may not be given” (no. 82). Then it adds:

It is certainly best that all who are participating in the celebration of holy Mass with the necessary dispositions should receive Communion. Nevertheless, it sometimes happens that Christ’s faithful approach the altar as a group indiscriminately. It pertains to the pastors prudently and firmly to correct such an abuse (no. 83).

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<sup>81</sup> CONGREGATION FOR DIVINE WORSHIP AND DISCIPLINE OF THE SACRAMENTS, instruction on certain matters to be observed or to be avoided regarding the Most Holy Eucharist *Redemptionis sacramentum*, 25 March 2004, in AAS 96 (2004), pp. 549-601; English translation in *Origins*, 33 (2004), pp. 802-822 (=RS).

An additional situation cited in the instruction requiring correction is said to occur when Mass is celebrated for a large assembly in a major city. In response to these types of situations, the document makes clear: “It is the duty of pastors at an opportune moment to inform those present of the authenticity and the discipline that are strictly to be observed” (no. 84).

*Redemptionis Sacramentum* can be said, then, greatly to emphasize specific pastoral responsibility for the Eucharist with the more general pastoral responsibility to teach about the sacraments. Indeed, a pastor has a positive duty under the law to safeguard against liturgical abuses and to teach people about the sacraments, most particularly the Most Holy Eucharist. Instructing the faithful is clearly a stated goal of the Church. The themes cited in the instruction support the position that catechesis is a solution to the problem of Communion being received by persons obstinately persevering in manifest grave sin. Educating the faithful in a structured format about c. 915 would address the types of situations posed in *Redemptionis Sacramentum*.

Choices regarding worthiness to receive Communion need to be properly discerned by the faithful themselves so as to avert indiscriminate reception (no. 84). This is the subject of c. 916. However, education about the law of c. 915 and the potential consequences of denial should avert many indiscriminate choices. Where indiscriminate choices have been made, education that explains a process for helping a person return to Communion, even some form of sacramental participation, can be imparted.

### **1.3.2.3 – Cardinal Ratzinger’s Letter to the USCCB**

Within several months of the release of *Redemptionis Sacramentum* in 2004, Joseph Ratzinger, then Cardinal Prefect of the Congregation for the Doctrine of the Faith, sent a

letter to Cardinal Theodore McCarrick, then President of the United States Conference of Catholic Bishops (USCCB), for use at a meeting of the USCCB dealing with Catholics in political life.<sup>82</sup> Although not an official act of the CDF and directed only to one conference of bishops, the letter is worthy of note not only because of its distinguished authorship but also due to its potential influence, especially for the Church of the USA.

The letter, entitled “Worthiness to Receive Holy Communion: General Principles,” reaffirms the broader principles found in the above-cited documents regarding the lack of proper disposition in presenting oneself for Holy Communion, that is, the PLCT Declaration concerning the Admission to Holy Communion of Faithful Who Are Divorced and Remarried, *Ecclesia de Eucharistia*, and *Redemptionis Sacramentum*. It then specifically notes situations, in addition to those found in these three documents, to which c. 915 applies. These include cases of Catholic politicians who are “consistently campaigning and voting for permissive abortion and euthanasia laws.”<sup>83</sup>

Significantly, Cardinal Ratzinger makes clear that “[n]ot all moral issues have the same moral weight as abortion and euthanasia.”<sup>84</sup> Further, his general principles include the fact that there may be a legitimate diversity of opinion even among Catholics about waging war and applying the death penalty. Campaigning and voting for permissive abortion and euthanasia laws, however, trigger the application of c. 915 and must result in

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<sup>82</sup> J. RATZINGER, letter to Cardinal Theodore McCarrick, “Worthiness to Receive Holy Communion: General Principles,” 12 July 2004, in *Origins*, 34 (2004), pp. 133-134, (=RATZINGER, *Worthiness to Receive*).

<sup>83</sup> *Ibid.*, p. 134.

<sup>84</sup> *Ibid.*, p. 133.

that politician being denied Communion. Ratzinger closes with procedural suggestions regarding denial of Communion:

Apart from an individual's judgment about his worthiness to present himself to receive the Holy Eucharist, the minister of Holy Communion may find himself in the situation where he must refuse to distribute Holy Communion to someone, such as in cases of an obstinate persistence in manifest grave sin (cf. c. 915). Regarding the grave sin of abortion or euthanasia, when a person's formal cooperation becomes manifest (understood in the case of a Catholic politician as his consistently campaigning and voting for permissive abortion and euthanasia laws), *his Pastor should meet with him, instructing him about the Church's teaching*, informing him that he is not to present himself for Holy Communion until he brings to an end the objective situation of sin, and warning him that he will otherwise be denied the eucharist [emphasis added]. When "these precautionary measures have not had their effect or in which they were not possible," and the person in question, *with obstinate persistence*, still presents himself to receive the Holy Eucharist, "the minister of Holy Communion must refuse to distribute it" (cf. Pontifical Council for Legislative Texts Declaration "Holy Communion and Divorced, Civilly Remarried Catholics" [2000], nos. 3-4). This decision, properly speaking, is not a sanction or a penalty. Nor is the minister of Holy Communion passing judgment on the person's subjective guilt, but rather is reacting to the person's public unworthiness to receive Holy Communion due to an objective situation of sin [emphasis added].<sup>85</sup>

With greater insistence than one finds in the PCLT Declaration, the Cardinal Prefect of the CDF clearly states that the pastor has the obligation of explaining to the concerned faithful the Church's teaching before publicly refusing to give them Holy Communion. Only after "obstinate persistence" in a state of grave sin has been verified may Communion be denied, and this cannot be done without some kind of dialogue with the person concerned.

### **1.3.3 — Authors After the PCLT Declaration**

In the wake of the PCLT Declaration and the subsequent documents related to c. 915 treated above, a spate of articles variously interpreting the canon was authored by both

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<sup>85</sup> Ibid.

canonists and non-canonists, including many within the hierarchy.<sup>86</sup> Indeed, many interpretations suggested there were heightened concerns about personal and pastoral discernment in relation to the law about reception of Holy Communion. After briefly treating the viewpoints of three of these authors, greater consideration will be given to an article by Archbishop Raymond Burke, later Cardinal Prefect of the Apostolic Signatura.

In the wake of the issuance of the PCLT Declaration, Ignatius Gramunt, in an article dedicated to the issue of non-admission to Holy Communion and the interpretation of the pertinent clause, acknowledges “the proliferation of divorce among Catholics in recent years,” which he perceives as having “provoked a controversy about the law.”<sup>87</sup> Setting out

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<sup>86</sup> See F. ARINZE, “Press Conference Statement on the Liturgy Abuses Instruction,” in *Origins*, 33 (2004), pp. 822-824; R. BAKER, J. DONOGHUE, and P. JUGIS, “A Manifest Lack of Proper Disposition for Holy Communion,” in *Origins*, 34 (2004), pp. 188-189; R. CARLSON, “A Well-Informed Faith Life,” in *Origins*, 34 (2004), pp. 190-192; H. FLYNN, “The Table of the Eucharist in an Election Year,” in *Origins*, 34 (2004), pp. 291-292; FORTY-EIGHT HOUSE MEMBERS, “On Denying Communion as a Sanction: Letter to a Cardinal,” in *Origins*, 34 (2004), pp. 35-36; V. GALEONE, “A Pro-Choice Catholic Politician?” in *Origins*, 34 (2004), pp. 199-200; F.J. GOSSMAN, “The State of the Soul of Those Presenting Themselves for Communion,” in *Origins*, 34 (2004), pp. 189-190; I. GRAMUNT, “Non-Admission to Holy Communion: The Interpretation of C. 915 (CIC),” in *Studia canonica*, 35 (2001), pp. 175-190; J. HUELS, “Canonical Observations on *Redemptionis Sacramentum*,” in *Worship*, 78 (2004), pp. 404-420; J. KINNEY, “Judging Someone Else’s Relationship with God,” in *Origins*, 34 (2004), pp. 192-193; T. MCCARRICK, “On Using Denial of the Eucharist as a Sanction,” in *Origins*, 34 (2004), pp. 18-19; T. McCarrick and J. RATZINGER, “Vatican, U.S. Bishops: On Catholics in Political Life,” in *Origins*, 34 (2004), pp. 133-134; R. MAHONY, “Catholic Politicians and Holy Communion,” in *Origins*, 34 (2004), p. 110; J. MYERS, “Catholic Voters, Political Leaders and Abortion,” in *Origins*, 34 (2004), pp. 2-5; A. PILLA, “The Debate about Public Morality and Public Policy,” in *Origins*, 34 (2004) pp. 126-128; T. RADCLIFFE, “Priests and the Crisis of Hope within the Church,” in *Origins*, 34 (2004), pp. 21-27; D. RICKEN, “Letter to Catholic Politicians and Public Officials,” in *Origins*, 34 (2004), pp. 193-199; D. SCHNURR, “Catholics and Political Life,” in *Origins*, 34 (2004), pp. 185-188; M. SHERIDAN, “The Duties of Catholic Politicians and Voters,” in *Origins*, 34 (2004), pp. 5-7; USCCB, “Catholics in Political Life,” in *Origins*, 34 (2004), pp. 98-99 and “Interim Reflections of the Task Force on Catholic Bishops and Catholic Politicians,” in *Origins*, 34 (2004), pp. 100-109; J. VLAZNY, “When Catholics Vote for Pro-Choice Candidates,” in *Origins*, 34 (2004), pp. 20-21; D. WUERL, “Faith, Personal Conviction and Political Life,” in *Origins*, 34 (2004), pp. 37-40.

<sup>87</sup> I. GRAMUNT, “Non-Admission to Holy Communion: The Interpretation of Canon 915 (CIC),” in *Studia canonica*, 35 (2001), p. 175.

the law, and then critically evaluating some of the methodological approaches to it, Gramunt emphasizes the fact that “exceptions cannot be carved out of divine-positive law.”

The cases mentioned by the canon are not as rare as one would desire. Any pastor of souls can testify to many situations in which poorly instructed Catholics, thoroughly ignorant about the meaning of the Eucharist, and obstinate in sinful lifestyles, approach Holy Communion to the consternation and scandal of the ecclesial community which is actually torn apart by that objective misuse or abuse (sacrilege) of the Sacrament of Church unity.<sup>88</sup>

Consistent with the words of John Paul II in his January, 1997 address to the Pontifical Council for the Family, Gramunt makes clear his position regarding the connection between ecclesial communion and strict attention to denial of the Eucharist to those who break with that communion. He does note, however, the strong need for proactive pastoral attention to the problems around the canon and the interpretation of it. Thus, he echoes the language of the 1997 address in referencing the import of those to whom the clause may be applied to listen to the word of God, practice charitable works, and pray. Yet, he also writes: “The canonist must be concerned with those pastoral problems, examine the questions raised and suggest remedies.”<sup>89</sup>

In a study published in 2009, John Foster addresses the topic of non-admission under the pertinent clause of c. 915, particularly emphasizing the confusion surrounding interpretations and applications of the words of the clause.<sup>90</sup> Foster raises a significant and irrefutable dilemma with the words used in relation to those civilly divorced and remarried

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<sup>88</sup> *Ibid.*, pp. 190, 183.

<sup>89</sup> *Ibid.*, p. 190.

<sup>90</sup> J. Foster, “Sacramental Law: Selected Developments in Twenty-Five Years of Praxis,” in *The Jurist*, 69 (2009), pp. 472-515.

and certain politicians, particularly regarding the requirement of obstinacy and the law's call for prior warning. It is a fact that the application of the words of the clause to each of the categories of persons is inconsistent. Civilly divorced and remarried persons to whom the law is being applied are denied Communion based on their objective state, with no consideration of defiance as the use of the word "obstinate" suggests. Regardless of whether there has been any prior warning given to the divorced and civilly remarried pertaining to the proscription and application of the law to them, some pastors refuse them Holy Communion.

In the case of certain politicians, though, Foster says that there is a variance from how the law is applied in the marriage cases, and he characterizes this as creating two different meanings. This conclusion is based upon the wording used by Cardinal Ratzinger in his capacity as Prefect for the Congregation for the Doctrine of the Faith in a letter to Cardinal McCarrick, and then by the Congregation for the Doctrine of the Faith in *Worthiness to Receive Communion*. Those documents suggest that some prior warning and a rejection of pastoral admonition are prerequisites for the application of the law denying Communion. Foster demonstrates that the variance between the two methods for determining the requisites for application of the law – prominently tied to the word "obstinate" – logically causes confusion for those who work with the law. He writes: "These two meanings of *obstinate* make it difficult for interpreters to discern when each meaning is to be applied to other specific cases."<sup>91</sup>

Weighing in on what may be called an obvious difficulty with respect to the application of the pertinent clause and politicians, John Beal addresses the inherent

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<sup>91</sup> Ibid., p. 502.

ambiguity in such cases.<sup>92</sup> In taking each of the words of the clause as well as Church teaching, Beal demonstrates how in the case of officeholders, there are many variables which could logically impact appropriate application of the law. He saliently notes the applicability of canons 18 and 916, as well as the objective external influence of the legalization of abortion in America, in his analysis about the c. 915 conundrum and politicians. In summing up the problem, Beal makes clear that the issue of presenting for Communion in such cases need not be politicized, and that the law provides assistance in this regard.

Raymond Burke authored an influential study entitled, “Canon 915: The Discipline regarding the Denial of Holy Communion to Those Obstinate Persevering in Manifest Grave Sin.”<sup>93</sup> The article, published in 2007, specifically addresses those situations in which some American bishops disparately apply the law regarding denial of Holy Communion to Catholic politicians. Moreover, Burke mentions other matters requiring the denial of Communion under c. 915 beyond those addressed in the documents of the Holy See up to now. In general, this would include a politician’s support for any “legislation contrary to the natural moral law.”<sup>94</sup>

Burke’s starting point is that “the Church cannot remain silent and indifferent to a public offense against the Body and Blood of Christ.”<sup>95</sup> However, just as was seen in the

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<sup>92</sup> J. BEAL, “Holy Communion and Unholy Politics,” in *America: The National Catholic Weekly*, 21-28 June 2004, p. 18.

<sup>93</sup> BURKE, “Canon 915,” cited above in fn. 6.

<sup>94</sup> *Ibid.*, p. 3.

<sup>95</sup> *Ibid.*, p. 8.

documents addressed above, there is a more specific, pastoral responsibility that is a pre-eminent theme of the article. Regarding c. 915, the author notes that “[a]lthough the text does not state so explicitly, it is clear that the Church’s responsibility is carried out by the minister of Holy Communion.”<sup>96</sup> Then, in reference to more specifics regarding the application of the law and of the responsibility of the pastor, Burke agrees with the consensus of authors. “Regarding those who obstinately persevere in manifest grave sin, it is necessary to know that indeed the person does obstinately persist, that is, that his pastor has informed him about the grave and public sinfulness of what he is doing and has cautioned him about not approaching to receive Holy Communion.”<sup>97</sup> Burke, like Ratzinger, makes it clear that Communion should not be denied to anyone on the basis of c. 915 without some kind of prior dialogue with the concerned faithful. It seems that the matter of the content for the dialogue is not designed to provide instruction. There is also no indication as to the proper venue for informing and cautioning the communicant. This has led to some of the faithful being told they are not to submit to Communion in the vestibule of their church on any given Sunday.

Like Travers and Myers, Burke evidences an obvious strong concern about the confusion surrounding application of the pertinent clause. Analogous to Myers, Burke places significant emphasis on the historical and doctrinal features of the law. He particularly cites scandal as a pre-eminent concern of the Church in support of his conclusion regarding the suggested pastoral application of the canon. All three writers are clear in their conclusion that the law is settled. However, in 2007, in the aftermath of the

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<sup>96</sup> Ibid., p. 46.

<sup>97</sup> Ibid.

United States election campaigns of 2004, Burke's article suggests the appropriateness of an extension of the application of the pertinent clause from situations involving the civilly divorced and remarried.

Catholic politicians who publicly, after admonition, continue to support legislation favoring procured abortion and other legislation contrary to the natural moral law, for example, legislation permitting the cloning of human life for the purpose of harvesting stem cells by the destruction of the artificially-generated human embryo, and legislation redefining marriage to include a relationship between persons of the same sex.<sup>98</sup>

He proffers the following regarding what he believes is a correct construction of the law and how it should have been applied during the period of the election campaigns.

The gravity of the sin of procured abortion and of the sins involved in the commission of other intrinsically-evil acts seemed to place the Catholic politicians among those who obstinately persevere in manifest grave sin, about whom can. 915 treats.<sup>99</sup>

In providing this analysis, Burke extends the application of the canonical discipline that was, to Travers, settled by the Holy Father's 1997 address, as well as to Myers' emphasis on a construction of the c. 915 application to those civilly divorced and remarried that was grounded in history and doctrine. The stretch in application of the norm is grounded in outward conduct. Burke cites to *Ecclesia de Eucharistia* and then notes the following regarding Paul John Paul II's intentions: "Pope John Paul II made it clear that the norm of can. 915 is required by the Church's teaching on the respect due to the Most Blessed Sacrament and her concern to avoid scandal in the community."<sup>100</sup>

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<sup>98</sup> Ibid., p. 3.

<sup>99</sup> Ibid.,

<sup>100</sup> Ibid., p. 11.

From that point, as previously addressed in this study, Burke sets out a complete historical analysis of the discipline regarding denial of Holy Communion in certain cases.

Then, he offers the following in his conclusion.

... the consistent canonical discipline permits the administering of the Sacrament of Holy Communion only to those who are properly disposed externally, and forbids it to those who are not so disposed, prescind from the question of their internal disposition which cannot be known with certainty.... The United States of America is a thoroughly secularized society which canonizes radical individualism, even before the natural moral law. The application, therefore, is more necessary than ever, lest the faithful, led astray by the strong cultural trends of relativism, be deceived concerning the supreme good of the Holy Eucharist and the gravity of supporting publicly the commission of intrinsically evil acts.<sup>101</sup>

The difficulty with this analysis lies in the obvious dichotomies that exist even within the political platforms to which many politicians subscribe. Certain of the principles are consonant with Catholic teaching; certain of them are not. It also denies the historical fact that the variance in emphasis placed on “pro-life” issues did not occur until the United States Supreme Court legalized abortion in 1973 in *Roe vs. Wade*, well after many to whom the clause may be applied were affiliated to a political party as candidates for office. Entire populations of the electorate were faced with the same change, which is what eventually led to the need for Cardinal Ratzinger to provide clarification about voting.

In most cases the doctrine supported by the more popular political platforms is mixed. The manners in which political parties address issues, such as immigration, abortion, euthanasia, health care, capital punishment, poverty, same-sex unions, care for the environment, and labor, show some theories to be consonant with Catholic teaching and others to be at variance with that teaching. The same can be said with respect to

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<sup>101</sup> Ibid., p. 58.

individual politicians. In this realistic context it seems that a solution might be addressed in terms of how the politician uses an affiliation with a political platform, not merely the fact that the politician *has* an affiliation with it. This perspective might also prevent confusion on the part of Catholic voters in a way that relates Cardinal Ratzinger's, "Worthiness to Receive," to today's tumultuous political climate. Structured solutions through dialogue and planning about how best to avert the situation of scandal can surely be put into place in a manner that promotes Catholic evangelization and works with politicians to do the same.

### **Conclusion**

The basis of the ecclesial tradition in which the application of the relevant clause of c. 915 is grounded is Saint Paul's admonition to the Corinthians: "whoever eats the bread or drinks the cup of the Lord unworthily sins against the body and blood of the Lord. A man should examine himself first; only then should he eat of the bread and drink of the cup. He who eats and drinks without recognizing the body eats and drinks a judgment on himself" (1 Cor 11:27-29). The correctness of using this passage to support the proscription under the relevant clause of c. 915 is questionable. The examination of self and recognition of the Body of Christ that are addressed by Saint Paul here require that one be catechized and make informed decisions. Some recent interpretations and applications of the clause of c. 915, however, do not account for these factors.

Additionally, while the norm relates to divine law regarding the sanctity of marriage and the inviolability of every human life, c. 915 is applied by the minister from the point of the existence of a "juridical problem" based upon concern for scandal (PCLT Declaration, no. 1). Thus, while the Pauline admonition may readily be seen to apply to the

norm of c. 916 in which the onus for discerning worthiness to receive Communion in consideration of divine law primarily lies with the recipient, it arguably does not directly apply to the norm of c. 915 which is directed to the minister, not the recipient, and is based upon the concern about scandalizing the community of the faithful. It follows that the requirement that the minister must refuse Communion to such a person is a matter of the ecclesiastical law intended primarily for the good of the community. As such, it is subject to the usual rules for the interpretation of ecclesiastical laws, including the rule of c. 18 regarding the strict interpretation of laws that restrict the free exercise of rights (cf. cc. 213, 912). Under this interpretation, before refusing to admit someone to Communion in virtue of c. 915, the minister must be certain that the person is in a state of *grave sin*, that this sin is *manifest* or publicly known to the community gathered for the Eucharist, and that the person is *obstinately persisting* in this manifest grave sin.

The traditional canonical doctrine on this discipline reveals unanimity on two points. (1) The minister of Communion is obliged to refuse Holy Communion to those who are publicly unworthy, that is, those who are publicly and commonly known to be living in a state of serious sin. (2) The minister is equally obliged to avoid making a private sin publicly known and thereby causing scandal, that is, scandal which would be caused by his refusing in a public setting to give Holy Communion to a person who he knows to be in a state of grave sin, but this fact is not commonly known in the community at large.

This second part of the canonical tradition has eroded in recent years. In fact, the PCLT Declaration of 2000 makes no mention of that aspect of the canonical tradition apart from noting that the grave sin must be manifest. In actuality, given the context in which the application occurs, the neglect of this part of the canonical tradition may lead to the

community's only discovering that a person is in a state of serious sin when a public denial of Communion to certain persons takes place during the Eucharistic liturgy. This situation is fraught with its own set of potential problems, not the least of which pertains to a real possibility that a communicant might have just been to confession, that there is a potential for recourse, that there are issues surrounding someone's good name, or that there should not be a neglect of the "serious reasons" solution that is set out in the Declaration itself. Application of the clause places great burdens on a pastor, on an individual communicant, and on an entire congregation. Evangelization can be easily compromised when the faithful are mired in such issues.

As for the divorced and remarried and others in irregular unions, the contemporary magisterium of the Church has consistently looked to no. 84 of *Familiaris consortio* to explain the Church's teaching and discipline. In this post-synodal apostolic exhortation, Pope John Paul II reaffirms the traditional doctrine of the Church and gives two reasons for it. (1) The state and condition of life of these persons objectively contradict the union of love between Christ and the Church which is signified and effected by the Eucharist. (2) Admission of such persons to Communion would lead the faithful into error and confusion regarding the Church's teaching about the indissolubility of marriage. The issue of the denial of Communion in such circumstances, though, can be addressed through better catechesis and more personal assistance with understanding the circumstances in which parties find themselves (e.g., helping direct them to obtaining a declaration regarding the validity of a marriage). Indeed, edifying people rather than shaming them would have a better effect.

Pope John Paul II recognized the value of family in consideration of the value of understanding moral teaching. A cautious approach to denying Communion on the part of the Church, like that affirmed over thirty years ago in *Familiaris consortio*, and then again in the PCLT Declaration, evidences a recognition of the reality that there are families which are greatly impacted by application of c. 915. The Church is impelled to discern whether the current highly inconsistent practice that results from applications of c. 915 comports with the thrust of the law as being *ius divinum*, or whether some change which encourages uniformity and charity is possible. Indeed, the Church at large, encouraged by Pope Francis, is currently struggling to find a solution to this serious pastoral problem.

As for Catholic politicians who espouse political views contrary to Church teachings, the evidence from the magisterium and *praxis Curiae* about application of the clause is by no means conclusive. Additionally and undeniably, the Catholic bishops themselves do not agree on how to handle this sensitive question. One influential text treating the issue is an unofficial memorandum written by Cardinal Ratzinger when he headed the CDF, which he sent to the President of the USCCB for use by American bishops. In it, Ratzinger says that politicians who consistently campaign and vote for permissive abortion and euthanasia laws should be denied Holy Communion, but only after their pastor has explained to them the Church's teaching so that they can change their views or absent themselves from the Communion procession. The value of catechesis and dialogue in the context of denying Communion in such cases would be inestimable. It will draw the faithful to the truth, to the living God.

Authors generally agree that, as an ecclesiastical law, c. 915 is subject to strict interpretation. The acknowledged difficulty, of course, lies with the fact that these cases

relate to a determination of a communicant's acting in derogation of the divine law. Yet, based on the rule of strict interpretation, there must be a determination that each of the terms of c. 915 is simultaneously occurring, namely, that there is grave sin that is manifest and there is obstinate perseverance in the manifest grave sin. At the point in time at which the person approaches to receive the Eucharist, the minister of Communion must know that obstinate persistence in grave sin is present in a way that is manifest to the community of the faithful in attendance at Mass. It cannot be denied that this is a very high bar in terms of proofs for the law to be triggered and for Communion to be denied. In fact, it seems as though this problem would be precisely a matter to raise in an administrative process of recourse against the denial of Communion. Moreover, it would seem that the facts, to defend against such recourse, would be very difficult to prove. At a very practical level, even before the issue of denial presents, many petitions for dissolution of marriage cases lack the requisite degree of proofs which might entitle the parties to a declaration of nullity and free them up to regularize their situation. As for politicians, tenets of political party platforms are often mixed in relation to compatibility with tenets of Church teaching. Wherein lies a solution?

The most important conclusions to emerge thus far are the necessity of verifying *obstinacy* before refusing Communion and the stark need for dialogue and catechesis in relation to Catholic teaching. This demands that the pastor or other responsible minister be in dialogue with the person whose conduct or status is said to objectively contradict Church teaching in a way that shows obstinacy. There must be education of the faithful about what the Church in fact teaches. Such knowledge and the subjective awareness of being in

objectively grave sin cannot realistically be presumed by the minister of Communion without an involved process of dialogue.

Moral law is immutable, and there are objective circumstances of sin. However, if the concerned faithful are ignorant that their status, conduct, or political position constitutes gravely sinful matter, or if they are confused about what the Church actually teaches, the solution should not rest with a perfunctory determination that they are *obstinately* persisting in manifest grave sin and must be denied Communion. There is a great role that can be played by evangelization in these cases. In fact, ignorance and confusion have been widespread; certainly since the time of the Second Vatican Council. This can be corrected and the teachings of Vatican II can be better imparted and received.

The next chapter will explore the reasons for this situation of confusion and ignorance, a situation which goes directly to the heart of any just and charitable application of c. 915. Ultimately, it will be argued that overcoming this confusion and ignorance by education and dialogue will be the best solution for averting the need to apply the canon as it is worded in the first place.

## CHAPTER TWO

### CRITICAL REFLECTIONS ON THE APPLICATION OF CANON 915

#### Introduction

This chapter offers some critical reflections on the interpretation and application of c. 915, especially as witnessed in pastoral practice since the PCLT Declaration of 2000. The chapter is divided into two major parts. The first examines the difficulty with applying c. 915, which demands *obstinate* perseverance in manifest grave sin, in the face of decades of confusion, ignorance, and error among the faithful at large concerning Church teachings. The second part offers some reflections on a variety of additional canonical and pastoral problems related to the application of c. 915 with the ultimate aim of pointing out the need for a new approach.

#### 2.1 – Confusion Regarding Church Teachings

In recent years, as seen in Chapter One, there has been an “objectivist” tendency in interpreting and applying c. 915. This interpretation, expressed by John Myers and seen also in the PCLT Declaration of 2000, implicitly holds that those who are ignorant or in error concerning their being in a state of manifest serious sin must, nevertheless, be denied Holy Communion. By merely “appearing in the Communion procession,” according to Myers, a divorced and remarried person provokes the situation whereby c. 915 must be applied and said person must be publicly refused Communion.<sup>1</sup> According to the PCLT, *obstinate perseverance* in manifest grave sin “means the existence of an objective situation of sin that endures in time and which the will of the individual member of the faithful does

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<sup>1</sup> J. MYERS, “Divorce, Remarriage, and Reception of the Holy Eucharist,” in *The Jurist*, 57 (1997), p. 507.

not bring to an end, no other requirements (attitude of defiance, prior warning, etc.) being necessary to establish the fundamental gravity of the situation in the Church” (no. 2 b).

This objectivist approach is contrary to the canonical authors who insist on a strict interpretation of c. 915, meaning that all the conditions of the law must be verified before the canon is applicable. This means, in particular, that the grave sin must be *manifest*, known widely in the community assembled for the Eucharist, and that the grave sinner must be *obstinately* persisting in this manifest grave sin. These clear requirements of the law cannot be neglected, even if one finds some basis for such neglect in the Declaration of the PCLT. Certainly, the existence of “obstinate perseverance” cannot be known with any certainty unless the pastor or other authority first encounters the person and explains to him or her the Church’s teaching on the issue in question and its discipline on who may receive Holy Communion. Only after such an encounter could he then deny Communion to the person who, unrepentant, would then “obstinately” appear in the Communion procession.

One can anticipate objections to this approach. How could the faithful not know the Church’s teaching on divorce and civil remarriage, which has been repeated so often? How could they not know the Church’s teaching, and the divine natural law, on such issues as elective abortion and euthanasia? Myers assumes that they have this knowledge: “... a Catholic who divorces and endeavors to remarry knows that this objectively places him or her in an objectively grave state. Rarely will a person in such circumstances be in good faith ignorance.”<sup>2</sup> It is the contention of this thesis that the opposite of what Myers holds is true. The divorced and remarried who appear in the Communion line are not the ones

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<sup>2</sup> Ibid., p. 513.

who know the Church's teaching; they are the ones who do not know it, or they have some confused or erroneous notion of it. They cannot be presumed to be *obstinately* persevering in manifest grave sin. That cannot be known without some prior dialogue with the person him or herself.

This first part of Chapter Two examines the fact of and bases for the confusion of the faithful concerning questions of Church teaching, especially regarding moral issues and personal conscience. The reflections on this situation begin with Vatican II and its aftermath, a time when the confusion began or greatly accelerated.

### **2.1.1 – Confusion Experienced in the Wake of Vatican II**

It is incontrovertible that the Church bears a responsibility to address manifestly unworthy conduct. Yet the Church must also recognize that it bears a responsibility to clarify the law here, which is confusing and appears patently unfair in its application to many faithful. To that end, the Church must acknowledge facts which impacted the formation of the faithful – particularly since the time of Vatican II – and have substantially contributed to the problems with respect to the application of c. 915.

One such fact stated by Pope Benedict XVI is that, during the Second Vatican Council, Church teaching was inaccurately reported by the media. Acknowledging that substantial problems occurred in the Church in the wake of Vatican II, Pope Benedict, subsequent to his announcement to retire in which he addressed an audience of clergy in Rome, related the primary cause for the problems. He explained that factually there were *two* Councils which had occurred: the actual Council and the one which arguably pertains to the issue of denying Communion to those determined to be “obstinately persisting in manifest grave sin.” This latter he called “the virtual Council.” The Pope said:

... there was the Council of the Fathers – the real Council – but there was also the Council of the media. It was almost a Council apart, and the world perceived the Council through the latter, through the media. Thus, the Council that reached the people with immediate effect was that of the media, not that of the Fathers. And while the Council of the Fathers was conducted within the faith – it was a Council of faith seeking *intellectus*, seeking to understand itself and seeking to understand the signs of God at that time, seeking to respond to the challenge of God at that time and to find in the word of God a word for today and tomorrow – while all the Council, as I said, moved within the faith, as *fides quaerens intellectum*, the Council of the journalists, naturally, was not conducted within the faith, but within the categories of today’s media, namely apart from faith, with a different hermeneutic. It was a political hermeneutic: for the media, the Council was a political struggle, a power struggle between different trends in the Church. It was obvious that the media would take the side of those who seemed to them more closely allied with their world.<sup>3</sup>

The existence of this virtual council greatly impacted the understanding of moral law and of sin on the part of many faithful. Further, as the Holy Father related, the situation of the two Councils had a drastic effect on the Church and the faithful.

We know that this Council of the media was accessible to everyone. Therefore, this was the dominant one, the more effective one, and it created so many disasters, so many problems, so much suffering: seminaries closed, convents closed, banal liturgy, ... and the real Council had difficulty establishing itself and taking shape; the virtual Council was stronger than the real Council.<sup>4</sup>

This acknowledgement on the part of the Pope explains why many faithful never received the correct teachings of the Church regarding conscience formation and moral law. Choices made by members of the faithful have been impacted by this fact for decades. The dissemination of information about the Second Vatican Council by the press generated confusion that exists to this day. In the seminal, five-volume work entitled “The History of

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<sup>3</sup> BENEDICT XVI, Meeting with the Parish Priests and Clergy of Rome, 14 February 2013, in *AAS*, 105 (2013), p. 283; English translation accessed on 28 May 2015 at [http://www.vatican.va/holy\\_father/benedictxvi/speeches/2013/february/documents/hfbenxvi-spe\\_20130214\\_clero-roma\\_en.html](http://www.vatican.va/holy_father/benedictxvi/speeches/2013/february/documents/hfbenxvi-spe_20130214_clero-roma_en.html).

<sup>4</sup> *Ibid.*

Vatican II,” noted scholar Giuseppe Alberigo, in referencing a lecture given at Louvain in 1989, writes:

The importance to the Council of the work of the press is underscored by the following remark of Jan Grooters in a lecture entitled: “Religious News at the Beginning of Vatican II.” A sociologist has been able to say that Vatican II unfolded on three different levels: those of the bishops, the theologians, and the religious reporters.... One reason in particular why news became a problem during the period before the Council was that the press was keeping a watchful eye on everything leading up to the Council. Journalists generally, but Catholic journalists especially, were tackling the problems raised by the Council. In numerous longer or shorter writings, whether in newspapers, periodicals, or booklets, they gave thorough comprehensive explanations, intelligible to people generally, of all questions that were of interest and importance in connection with the Council: in the process they also gave expression to wishes and expectations.<sup>5</sup>

Alberigo observes that, for most people, the Council meant what they learned about it from the press.<sup>6</sup> These statements support the assertion of this study and can be seen in a number of examples, set out below, from the time of the convening of the Council up to recent history.

It is undeniable that Pope John XXIII welcomed and appreciated the media. He assured reporters of their invaluable role in the process of disseminating information. Yet, so much of what happened around the time of the Council was unique for the Church, the Pope, and the media itself (which was expanding in the areas of live broadcasts at this time). The existence of a “virtual council” of the media occurred in a very innocuous way. The popularity of Pope John XXIII was enormous.<sup>7</sup> True to his personality, there was a

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<sup>5</sup> G. ALBERIGO, *History of Vatican II*, vol. 1, *Announcing and Preparing Vatican Council II toward a New Era in Catholicism*, Leuven, Peeters Press, 1997, pp. 462-463.

<sup>6</sup> *Ibid.*, p. 470.

<sup>7</sup> cf. “Pope John XXIII’s New Pentecost,” in *Time Magazine*, 4 January 1963, p. 50 (= *Time Magazine*).

distinctly different and positive tone in the way in which he is considered to have handled the entire matter of convoking the council and of making public statements pertaining to it.

One scholar notes: “Especially from the beginning of the nineteenth century up until John XXIII’s pontificate, the popes and the Holy See usually framed public statements in negative terms of warning or condemnation. Even when proposing a positive solution to some issue, they generally did so to provide antidotes to ‘the evils of the times.’ There was no hint of such negativity in John’s announcement.”<sup>8</sup> The entire process was a novel learning experience for both the Church and the media. Unfortunately, however, that novelty eventually contributed to doctrinal confusion on the part of many of the faithful.

An example of this can be seen in the 11 October 1962 opening statement made by Pope John XXIII.

The greatest concern of the Ecumenical Council is this: that the sacred deposit of Christian doctrine should be guarded and taught more efficaciously. That doctrine embraces the whole of man, composed as he is of body and soul. And, since he is a pilgrim on this earth, it commands him to tend always toward heaven.... In order, however, that this doctrine may influence the numerous fields of human activity, with reference to individuals, to families, and to social life, it is necessary first of all that the Church should never depart from the sacred patrimony of truth received from the Fathers. But at the same time she must ever look to the present, to the new conditions and new forms of life introduced into the modern world, which have opened new avenues to the Catholic apostolate.<sup>9</sup>

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<sup>8</sup> J.W. O’MALLEY, “Vatican II: Did Anything Happen?” in *Theological Studies*, 67 (2006), pp. 17-18.

<sup>9</sup> JOHN XXIII, address to the Second Vatican Ecumenical Council, 11 October 1962, in *AAS*, 54 (1962), p. 788, English translation accessed on 19 June 2013 at <http://www.ourladywarriors.org/teach/v2open.htm>.

In 1962, *Time Magazine* named Pope John its “Man of the Year” and had titled the publication article featuring the Holy Father as “Pope John XXIII’s New Pentecost.” This publication and its designation of “Man of the Year” was, and continues to be, of great significance and curiosity in North American culture. Yet the laudatory article in *Time* described the pope and the work of the Council in a way that modified what John XXIII and the Council had actually said and done in these ways:

- ... By launching a reform whose goal is to make the Catholic Church *sine macula et ruga* (without spot or wrinkle), John set out to adapt his church’s whole life and stance to the revolutionary changes in science, economics, morals and politics that have swept the modern world: to make it, in short, more Catholic and less Roman....<sup>10</sup>
- ... That event was the beginning of a revolution in Christianity, the ancient faith whose 900 million adherents make it the world’s largest religion. It began on Oct. 11 in Rome and was the work of the man of the year. Pope John XXIII, who, by convening the Ecumenical Council called Vatican II, set in motion ideas and forces that will affect not merely Roman Catholics, not only Christians, but the whole world’s ever expanding population long after Cuba is once again libre and India is free of attack....<sup>11</sup>
- It is the genius of Pope John XXIII that he sensed that the time was ripe for internal renewal in the church, and opened the way for it.<sup>12</sup>

Then, in 1965, John Cogley, a noted religious news reporter whose career spanned roles as editor of the *Catholic Worker*, *Commonweal*, and the *New York Times*, wrote an article in the latter entitled “The Church Changed.” Cogley observes:

Despite its spiritless closing ceremonies, when the Pope was carried past hundreds of stony-faced, disappointed, angry prelates, the third session was the most productive of those so far. The Constitution of the Church and the Decree on Ecumenism were both in their way revolutionary statements.

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<sup>10</sup> *Time Magazine*, p. 50.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*, p. 51.

With them, there can be no return to the juridical, nostalgic Catholicism that existed before Pope John XXIII. The preliminary discussions of such matters as birth control in a world bursting at the seams, the changing role of monks and nuns, the missionary in a post-colonial era, and the need for the contemporary updating of seminary training, carried on during that session, opened doors to modernity that can never again be closed.<sup>13</sup>

An article by Cogley was published in 1966 in *The New York Times* and reprinted in Toronto's *The Globe and Mail*. It was entitled, "Is It Too Late for Roman Catholics to Turn Back?" There, Cogley states that:

In keeping with the council's spirit there was a growing trend toward the decentralization of clerical power.... In this new atmosphere, some church leaders are simply lost. But many more are becoming convinced that it is too late to return to a pre-conciliar Catholicism and it is the duty of leaders to direct all the energies released by the council into positive channels.... Now, the need is for skillful skippers capable of bringing the Church safely through the treacherous waters of revolutionary zeal.<sup>14</sup>

With a steady stream of such information being printed, the faithful attempted to receive much of both the spirit and the teachings of Vatican II (which are also found in the Code of Canon Law promulgated in 1983). However, many were unclear about what was being taught precisely because of such news articles. Indeed, there is an entire genre of publications independent of official compilations of the Council with titles as varied as, "Vatican II: The Battle for Meaning,"<sup>15</sup> "What Went Wrong with Vatican II: The Catholic Crisis Explained,"<sup>16</sup> "What Happened at Vatican II?,"<sup>17</sup> "Still Interpreting Vatican II: Some

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<sup>13</sup> J. COGLEY, "The Church Changed," *New York Times*, 20 June 1965.

<sup>14</sup> J. COGLEY, "Is It Too Late for Roman Catholics to Turn Back?" in *The Globe and Mail*, 7 December 1966.

<sup>15</sup> M. FAGGIOLI, *Vatican II: The Battle for Meaning*, New York, Paulist Press, 2012.

<sup>16</sup> R. MCINERNEY, *What Went Wrong with Vatican II: The Catholic Crisis Explained*, Manchester, Sophia Institute Press, 1998.

<sup>17</sup> J. O'MALLEY, *What Happened at Vatican II*, Cambridge, Belknap Press, 2008.

Hermeneutical Principles,”<sup>18</sup> and “Receiving the Council: Theological and Canonical Insights and Debates.”<sup>19</sup> This is what the faithful read.

### **2.1.2 – Confusion Acknowledged by the Magisterium**

The attempt by the magisterium to clarify Church teaching and to prevent confusion on the part of the faithful has been consistent since the close of the Council. Likely the most famous attempt to clarify a Church teaching was that expressed in Pope Paul’s encyclical *Humanae vitae*, issued in 1968, which reaffirmed the doctrine of the immorality of using artificial means of birth control.

The question of human procreation, like every other question which touches human life, involves more than the limited aspects specific to such disciplines as biology, psychology, demography or sociology. It is the whole man and the whole mission to which he is called that must be considered: both its natural, earthly aspects and its supernatural, eternal aspects. And since in the attempt to justify artificial methods of birth control many appeal to the demands of married love or of responsible parenthood, these two important realities of married life must be accurately defined and analyzed. This is what We mean to do, with special reference to what the Second Vatican Council taught with the highest authority in its Pastoral Constitution on the Church in the World of Today.<sup>20</sup>

The papacy of John Paul II witnessed numerous affirmations of traditional doctrines in the face of their distortion by some, which resulted in confusion by the faithful. This is

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<sup>18</sup> O. RUSH, *Still Interpreting Vatican II: Some Hermeneutical Principles*, Mahwah, Paulist Press, 2004.

<sup>19</sup> L. ÖRSY, *Receiving the Council: Theological and canonical insights and debates*, Collegeville, Liturgical Press, 2009.

<sup>20</sup> PAUL VI, encyclical letter on the regulation of birth *Humanae vitae*, 25 July 1968, in *AAS*, 60 (1968), pp. 488-489, Introduction and art. 7, English translation accessed on 4 November 2013 at [http://www.vatican.va/holy\\_father/paul\\_vi/encyclicals/documents/hf\\_p-vienc25071968\\_humanae-vitae\\_en.html](http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vienc25071968_humanae-vitae_en.html). For printed source, see *On the regulation of birth, Humanae vitae: Encyclical letter [of] Pope Paul VI, July 25, 1968*, Washington: United States Catholic Conference.

evidenced, for example, in his 1981 post-synodal apostolic exhortation *Familiaris consortio*.

Not infrequently ideas and solutions, which are very appealing but which obscure in varying degrees the truth and the dignity of the human person, are offered to the men and women of today in their sincere and deep search for a response to the important daily problems that affect their married and family life. These views are often supported by the powerful and pervasive organization of the means of social communication, which subtly endanger freedom and the capacity for objective judgment.<sup>21</sup>

Additionally, John Paul II convened the Second Extraordinary Synod of Bishops with the theme, “Celebration, Verification, Promotion of Vatican II for the 20<sup>th</sup> Anniversary of the Council.” As the Synod approached the conclusion of its examination in 1983, the Pope made the following statement.

The Synod of Bishops sprang up in the fertile terrain of the Second Vatican Council ... [and] has contributed in a most noteworthy manner to the implementation of the teachings and the doctrinal and pastoral directives of the Second Vatican Council in the life of the universal church. The synodal key to reading the Council has become as it were a place for interpretation, application and development of the Second Vatican Council. The rich list of subjects treated in the various Synods alone reveals the importance of its meetings for the Church and for the implementation of the reforms intended by the Council.<sup>22</sup>

For their part, the Synod fathers recognized that confusion on the part of the faithful existed in the wake of the Council.

... although great fruits have been obtained from the council, we have at the same time recognized, with great sincerity, deficiencies and difficulties in the acceptance of the Council. In truth, there certainly have also been

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<sup>21</sup> JOHN PAUL II, apostolic exhortation *Familiaris consortio*, no. 4, in AAS, 74 (1982), p. 84; English translation accessed on 28 May 2015 at [http://w2.vatican.va/content/john-paul-ii/en/apost\\_exhortations/documents/hf\\_jp-ii\\_exh\\_19811122\\_familiaris-consortio.html](http://w2.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio.html).

*FC*, no. 4.

<sup>22</sup> JOHN PAUL II, Discourse on the theological basis for the Synod of Bishops, 30 April 1983, English translation accessed on 9 February 2013, [www.vatican.va/news\\_services/press/documentazione/documents/sinodo/sinodo\\_documentazione-generale\\_en.html#V](http://www.vatican.va/news_services/press/documentazione/documents/sinodo/sinodo_documentazione-generale_en.html#V).

shadows in the post-council period, in part due to an incomplete understanding and application of the Council, in part to other causes. However, in no way can it be affirmed that everything which took place after the Council was caused by the Council.<sup>23</sup>

Further, the Synod acknowledged that there were both internal and external causes for this state of affairs.

Among the internal causes, there must be noted a partial and selective reading of the Council, as well as a superficial interpretation of its doctrine in one sense or another. On the one hand, there have been disappointments because we have been too hesitant in the application of the true doctrine of the Council. On the other hand, because of a partial reading of the Council, a unilateral presentation of the Church as a purely institutional structure devoid of her Mystery has been made. We are probably not immune from all responsibility for the fact that especially the young critically consider the Church a pure institution. Have we not perhaps favored this opinion in them by speaking too much of the renewal of the Church's external structures and too little of God and of Christ? From time to time there has also been a lack of the discernment of spirits, with the failure to correctly distinguish between a legitimate openness of the Council to the world and the acceptance of a secularized world's mentality and order of values.<sup>24</sup>

In addition to the acknowledgement of the existence of confusion in the wake of the Council, the Synod noted that some of this confusion was caused by theologians.

With joy we recognize what has been done by theologians to elaborate the documents of Vatican Council II and to help towards their faithful interpretation and fruitful application in the post-conciliar period. But on the other hand, we regret that the theological discussions of our day have sometimes occasioned confusion among the faithful.<sup>25</sup>

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<sup>23</sup> SYNOD OF BISHOPS, Final Report, I, art. 3, accessed on 19 March 2015 at <https://www.ewtn.com/.../SYNFINAL>.

<sup>24</sup> *Ibid.*, I, art. 4.

<sup>25</sup> *Ibid.*, II B, art. 3.

The remedy recommended by the Synod was catechesis. Pastoral programs were to be put into place to explain the documents of Vatican II and to assist the faithful in understanding them. The Synod then provided more details of its recommendation.

It is suggested that a pastoral program be implemented in the particular Churches for the years to come, having as its objectives a new, more extensive and deeper knowledge and reception of the Council. This can be attained above all through a new diffusion of the documents themselves, through the publication of studies that explain the documents and bring them closer to the understanding of the faithful. The conciliar doctrine must be proposed in a suitable and continued way by means of conferences and courses in the permanent formation of priests and seminarians, in the formation of men and women religious, and also in the catechesis of adults.<sup>26</sup>

In the same year as the report of the 1985 Synod of Bishops, Joseph Ratzinger, while Prefect of the Congregation for the Doctrine of the Faith, offered the following statement in response to inquiries regarding history and reform.

I believe, rather, that the true time of Vatican II has not yet come, that its authentic reception has not yet begun: its documents were quickly buried under a pile of superficial or frankly inexact publications. The reading of the *letter* of the documents will enable us to discover their true *spirit*. If thus rediscovered in their truth, those great texts will make it possible for us to understand just what happened and to react with a new vigor.<sup>27</sup>

Ratzinger attributes the confusion concerning Vatican II's authentic teachings to be the result of their being "buried under a pile of superficial or frankly inexact publications." Such confusion continued to be addressed by the Church's magisterium. One finds a later example in the 1993 encyclical *Veritatis splendor* of Pope John Paul II.

Today, however, it seems *necessary to reflect on the whole of the Church's moral teaching*, with the precise goal of recalling certain fundamental truths of Catholic doctrine which, in the present circumstances, risk being

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<sup>26</sup> Ibid., I, art. 6.

<sup>27</sup> J. RATZINGER and V. MESSORI, *The Ratzinger Report: An Exclusive Interview on the State of the Church*, San Francisco, Ignatius Press, 1985, pp. 39-40.

distorted or denied. In fact, a new situation has come about *within the Christian community itself*, which has experienced the spread of numerous doubts and objections of a human and psychological, social and cultural, religious and even properly theological nature, with regard to the Church's moral teachings. It is no longer a matter of limited and occasional dissent, but of an overall and systematic calling into question of traditional moral doctrine, on the basis of certain anthropological and ethical presuppositions.<sup>28</sup>

Later still, Pope Benedict XVI, in his 2009 encyclical *Caritas in veritate*, noted the confusion about moral teaching of which he was aware, and he sought to clarify the truth.

I am aware of the ways in which charity has been and continues to be misconstrued and emptied of meaning, with the consequent risk of being misinterpreted, detached from ethical living and, in any event, undervalued. In the social, juridical, cultural, political and economic fields — the contexts, in other words, that are most exposed to this danger — it is easily dismissed as irrelevant for interpreting and giving direction to moral responsibility.... Truth needs to be sought, found and expressed within the “economy” of charity, but charity in its turn needs to be understood, confirmed and practiced in the light of truth. In this way, not only do we do a service to charity enlightened by truth, but we also help give credibility to truth, demonstrating its persuasive and authenticating power in the practical setting of social living. This is a matter of no small account today, in a social and cultural context which relativizes truth, often paying little heed to it and showing increasing reluctance to acknowledge its existence.<sup>29</sup>

Notwithstanding the dissemination of these documents offering instruction on formation of conscience and moral law, as well as those specifically pertaining to denial of Holy Communion in cases of “obstinate persistence in manifest grave sin,” confusion generally continues to exist among the faithful in terms of fundamental conscience

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<sup>28</sup> JOHN PAUL II, encyclical letter *Veritatis splendor*, 6 August 1993, in AAS, 85 (1993), pp. 1209-1211, art. 4, English translation accessed on 2 December 2013 at [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_06081993veritatisplendor\\_en](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_06081993veritatisplendor_en).

<sup>29</sup> BENEDICT XVI, encyclical letter *Caritas in veritate*, no. 2, 29 June 2009, in AAS, 101 (2009), pp. 641-709 (= CV); English translation accessed on May 28, 2015 at [http://w2.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf\\_ben-xvi\\_enc\\_20090629\\_caritas-in-veritate.html](http://w2.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate.html). For printed source, see POPE BENEDICT XVI, *Caritas in veritate Charity in Truth: encyclical letter*, Ignatius Press, 2009.

formation and expression, marriage and social doctrine, and about how, when and why the law denying Communion should be applied. Saint Paul's passage, which is consistently cited as the foundation for denying Communion, directs individuals to discern their worthiness. The context shows that Paul was prompted to make the pronouncement in the face of an evident lack of charity on the part of some in the nascent Church. The circumstances existing today, in relation to not admitting persons to Communion, are analogous.

### **2.1.3 – The Social-Historical Context for the Confusion**

Richard McBrien, who has assiduously studied the impact of the various changes on the Church in America in the wake of the Second Vatican Council, contrasts the post-conciliar Church in America with that of the pre-conciliar Church. Regarding the latter, he writes the following.

The Catholic Church before the Second Vatican Council was a readily distinguishable entity – identifiable in customs, in habit, in style of life, in organizational structure and operation.... The Catholic community of the 1940's and 1950's was a relatively peaceful one because, in my judgment, the various practices which constituted pre-Vatican II Catholicism were validated, each in its own way, by an underlying theory of Church. Catholics acted the way they acted, and thought the way they thought, because this was clearly the way they were supposed to act and to think, by the will of Christ himself – or so they were convinced.<sup>30</sup>

McBrien's study asserts that ecclesiological, liturgical and societal changes all affected the manner by which the post-Conciliar Church came to respond to the world. He theorizes that Catholics accepted the changes in the Church after Vatican II from the point of extrinsic validation that was given by the pope and the bishops. He concludes from his

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<sup>30</sup> R. MCBRIEN, *Report on the Church: Catholicism after Vatican II*, San Francisco, Harper, 1992, p. 23 (= MCBRIEN, *Report on the Church*).

research, however, that the intrinsic rationale for why changes occurred eluded the faithful. It created a real struggle for them. The content of Pope Benedict's speech about the "virtual council" provides some clarification here. However, as McBrien astutely observes, there occurred in the wake of the Council the reality that the Catholic laity were relegated to a kind of "schizophrenic isolation," "thinking one way, acting in another, and utterly alone in their confusion."<sup>31</sup>

There were profound changes in catechetics, liturgy, a liturgical understanding of community, ecclesiastical government, as well as the Christian unity movement and dialogue with non-Christian religions. At the same time that these changes were taking place, there were social changes afoot in the United States. There was a social awareness and activism during the post-Conciliar period, unlike any which had been previously seen. McBrien summarizes well the key events that contributed to this social context.

When the council opened in September 1962, John Kennedy was still in the White House and American universities, cities, and other institutions were slumbering in relative peace. By the time the council closed in December 1965, Kennedy had been assassinated, Lyndon Johnson had been elected president by one of the great landslides in American history, the military buildup in Vietnam had reached ominous proportions, universities were in a state of veritable siege, and summer was becoming the acceptable season for urban riots. Challenges were now being mounted against the several powerful institutions of modern society, and the Church would not remain immune.<sup>32</sup>

As will be shown in this study, the historical fault for these problems does not lie exclusively with the ecclesiastical authorities. Since the time of the Second Vatican Council, the Church's magisterium has consistently acknowledged that there was

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<sup>31</sup> Ibid., p. 42.

<sup>32</sup> Ibid., p. 40.

confusion about doctrine and has attempted to correct it. In statements issued by the Synod of Bishops in 1985 and in *Familiaris consortio*, there is a clear attempt to address doctrinal confusion.<sup>33</sup> Yet, culpability also cannot be said to predominantly lie with the many faithful, who made life choices based on what was touted as being Church teaching during critical years of their formation in the faith. In fact, the problem with an understanding of Church doctrine on the part of the faithful since the time of Vatican II was systemic and is taking decades to address.<sup>34</sup> Only now, half a century later, are the true fruits of the Second Vatican Council better understood. Yet, in the wake of those decades of confusion lie many casualties among the faithful who “are not to be admitted to Communion” in their Church for the balance of their lives.

It may be asserted that, notwithstanding any historical confusion, the language of *Gaudium et spes* makes clear the role of the God-given conscience within each person with respect to imputability regarding the moral law. Indeed, the Council instructs:

In the depths of his conscience, man detects a law which he does not impose upon himself, but which holds him to obedience. Always summoning him to love good and avoid evil, the voice of conscience when necessary speaks to his heart: do this, shun that. For man has in his heart a law written by God; to obey it is the very dignity of man; according to it he will be judged. Conscience is the most secret core and sanctuary of a man. There he is alone with God, Whose voice echoes in his depths.<sup>35</sup>

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<sup>33</sup> SECOND EXTRAORDINARY SYNOD, “The Church in the Word of God, Celebrates the Mysteries of Christ for the Salvation of the World,” Final Report of the 1985 Extraordinary Synod, no. 3; cf. also JOHN PAUL II, apostolic exhortation on the role of the Christian family in the modern world *Familiaris consortio*, 22 November 1981, in AAS, 74 (1982), no. 84 (=FC).

<sup>34</sup> BENEDICT XVI, *Address*

<sup>35</sup> VATICAN II, Pastoral Constitution on the Church in the modern world *Gaudium et spes*, 7 December 1965, in AAS, 58 (1966) pp. 1025-1115, no. 16 (=GS).

However, within that same paragraph of the Pastoral Constitution are found these words: “Conscience frequently errs from invincible ignorance without losing its dignity.”<sup>36</sup> Those who are in error or ignorance about being in a state of grave sin cannot be said to be *obstinately* persevering in such sin. The task is to educate the faithful so that their consciences are informed to make moral choices. Unfortunately, this did not occur to a wide extent in the decades following Vatican II, perhaps in part due to new emphases in the catechetical materials of the time.

#### **2.1.4 – A New Approach to Catechetics**

The moral law most pertinent to the faithful who fall under the norm of c. 915 was imparted to them through catechesis. Yet, how it was imparted dramatically changed in the wake of the Second Vatican Council. Commitment to a uniform catechism for instruction of the faithful has a protracted Church history, though for a significant period of time after Vatican II, one did not exist. Catechisms date back to the time of the Protestant Reformation. During the Council of Trent, it was decided that an official catechism should be prepared, and one was issued in 1566, twenty years after the Council’s decision. Catechetical material presented in the question and answer format, requiring rote memorization, became *de rigueur* from that time until the Second Vatican Council.

Such things as the question-and-answer format and memorization were part of the Catholic way of life; for four centuries after the Council of Trent they constituted the Church’s favored method for handing on her faith. It is not that no efforts were made to modify or update the 1566 Catechism of the Council of Trent or the many national, local, or particular catechisms that has stemmed from it; it was just that no alternative to a catechism was ever seriously considered – until the time of the Second Vatican Council.<sup>37</sup>

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<sup>36</sup> Ibid.

<sup>37</sup> M. WRENN, *Catechisms and Controversies: Religious Education in the Postconciliar Years*, San Francisco, Ignatius Press, 1991, p. 32 (=WRENN, *Catechisms and Controversies*).

Though it did not meet with success in every diocese in North America, the Baltimore Catechism was the mainstay in the catechetical realm in the majority of dioceses for several generations. The pedagogical method employed involved rote memorization of the Catechism together with Bible stories and stories about the lives of the saints. Saliiently, the Baltimore Catechism used the words “mortal sin” 113 times and “conscience” twenty-two times.<sup>38</sup> This Catechism makes it clear that the onus for determining whether one was in a state of “mortal sin” is on the individual’s conscience.

By 1962, there were calls to renew a movement for a universal catechism. Twenty-two requests for a single catechism for the entire Church came in during the preparatory phase of the Council. The Roman Curia recommended a text that would cover all Catholic doctrines, a kind of “codification” of the fundamental teachings. Yet, this recommendation, like others of the Roman Curia during the twenty-first general council, did not meet with success and was not adopted. What was adopted, instead, was the idea of formulating a directory for the teaching of the faith rather than creating a universal catechism.<sup>39</sup>

In its 1965 decree, *Christus Dominus*, the Council called for the compilation of special directories, among them a directory for catechetical instruction.

This sacred synod prescribes that in the revision of the code of canon law suitable laws be drawn up in keeping with the principles stated in this decree. Due consideration should also be given the observations made by the commissions of the council. This sacred synod also prescribes that general directories be prepared treating the care of souls for the use of both bishops and pastors. Thus they will be provided with certain methods which will help them to discharge their own pastoral office with greater ease and effectiveness.... Another directory should be composed concerning the catechetical instruction of the Christian people; this directory will consider

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<sup>38</sup> *Baltimore Catechism*, accessed on 27 June 27, 2013 at <http://sacred-texts.com/chr/balt/index.htm>.

<sup>39</sup> WRENN, *Catechisms and Controversies*, p. 34.

the fundamental principles of such instruction, its disposition and the composition of books on the subject. In preparing these directories, special attention should be given to the views which have been expressed both by the commissions and the council.<sup>40</sup>

Regarding the influence of *Christus Dominus* on the issuance of the *General Catechetical Directory*, M. Wrenn writes:

It was as a result of this conciliar decree, then, that the foundational General Catechetical Directory (GCD) came to be issued in 1971 by the Congregation for the Clergy in Rome, inaugurating a new era during which for the first time in many centuries there was no model or prototype Churchwide catechism issued by the Holy See on which other catechisms in use could be based, or to which, at any rate, they had to conform; there was no longer any “point of reference” in catechesis, to use the phrase that emerged later. The Council of Trent was finally over in reality.<sup>41</sup>

In 1971, the Sacred Congregation for the Clergy published *The General Catechetical Directory (GCD)*.<sup>42</sup> The directory was definitively approved by Pope Paul VI on 18 March 1971 and was promulgated on 11 April 1971. It remained the primary method by which catechists were directed to instruct the faith for approximately fifteen years. Yet, it was said to be novel to the point of oftentimes insufficiently offering direction. “This was a new kind of document, though, with which traditionally the Church had had little experience. Nobody quite knew for sure what the new *GCD* was supposed to do or how it was supposed to work in guiding the catechetical enterprise of the Catholic Church.”<sup>43</sup>

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<sup>40</sup> VATICAN II, decree concerning the pastoral office of bishops in the Church *Christus dominus*, 28 October 1965, in *AAS*, 58 (1966), pp. 673-696, no. 44; cf. also WRENN, *Catechisms and Controversies*, p. 35.

<sup>41</sup> WRENN, *Catechisms and Controversies*, p. 35.

<sup>42</sup> CONGREGATION FOR THE CLERGY, *Directorium catechisticum generale Ad normam decreti*, 11 April 1971, in *AAS*, 64 (1972), pp. 97-176, English translation *General Catechetical Directory*, Washington, United States Catholic Conference, 1971 (= *General Catechetical Directory*).

<sup>43</sup> Wrenn, *Catechisms and Controversies*, p. 36.

Unlike the Baltimore Catechism's frequent use of the term "mortal sin," the *GCD* does not use that term or even "grave sin," not even once. Also, in comparison to the twenty-two times that the word "conscience" is used in the Baltimore Catechism, it is used a mere seven times in the Directory. In addition to the fact that the words "mortal" or "grave" sin are never used in the document at all, and the uses of the word "conscience" are so disparate, the tone of the catechetical materials greatly varies from the distinct tone of the rote question and answer format. Though it must be acknowledged that the *GCD* was intended to serve as a guide and was clearly never intended to be in the same format as the Baltimore Catechism, the contrast highlights the different emphasis that was placed on personal responsibility and discernment. It is evident how the connection between "grave" or "mortal" sin and Communion could have become confused for those formed in the faith during the conciliar and post-conciliar times.

The following excerpts from the 1971 *General Catechetical Directory*<sup>44</sup>, compared with those of the Baltimore Catechism below, evidence how this occurred in part.

The Church is by no means unaware that freedom, even when assisted by divine grace, is liable to grave psychological difficulties and to the influence of external conditions in which each one lives, with the result that human responsibility is not rarely diminished, and indeed in some cases is barely preserved, and in some cases it is not preserved at all. The Church likewise takes note of the researches and modern progress in the anthropological sciences concerning the use and limits of human freedom. For this reason she is solicitous both to educate for and to foster genuine freedom, and also to bring about suitable conditions in the psychological, social, economic, political, and religious fields, so that freedom will be able to be truly and justly exercised. Christians, therefore, must work sedulously and sincerely in the temporal sphere, so that as far as possible the best conditions may be established for the right exercise of freedom.<sup>45</sup>

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<sup>44</sup> It is to be noted that the *General Catechetical Directory* is not and was never intended to be a proper catechism but rather was designed to provide assistance with catechesis.

<sup>45</sup> *General Catechetical Directory*, no. 61.

Within our present century, catechists have thoroughly investigated questions raised by the psychological, educational, and pedagogical sciences. Indeed, studies have been undertaken with regard to the method to be used in the catechism lesson; the role of activity methods in the teaching of catechesis has been pointed out; the act of catechesis has been investigated in all its parts according to the principles which govern the art of teaching (experience, imagination, memory, intelligence); and finally, a differential methodology has been worked out, that is, a methodology which varies according to the age, social conditions, and degree of psychological maturity....<sup>46</sup>

Therefore, catechesis should be concerned with making men attentive to their more significant experiences, both personal and social; it also has the duty of placing under the light of the Gospel the questions which arise from those experiences, so that there may be stimulated within men a right desire to transform their ways of life.<sup>47</sup>

This direction was startlingly different from the Baltimore Catechism, which had been the primary catechetical tool of North American Catholics for generations. This is how the Baltimore Catechism approached the issue.

Regarding conscience:

Q. What is the examination of conscience?

A. The examination of conscience is an earnest effort to recall to mind all the sins we have committed since our last worthy confession.

Q. How can we make a good examination of conscience?

A. We can make a good examination of conscience by calling to memory the commandments of God, the precepts of the Church, the seven capital sins, and the particular duties of our state in life, to find out the sins we have committed.

Regarding sin:

Q. Is original sin the only kind of sin?

A. Original sin is not the only kind of sin; there is another kind of sin, which we commit ourselves, called actual sin.

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<sup>46</sup> Ibid., no. 70.

<sup>47</sup> Ibid., no. 117.

Q. What is actual sin?

A. Actual sin is any willful thought, word, deed, or omission contrary to the law of God.

Q. How many kinds of actual sin are there?

A. There are two kinds of actual sin—mortal and venial.

Q. What is mortal sin?

A. Mortal sin is a grievous offense against the law of God.

Q. Why is this sin called mortal?

A. This sin is called mortal because it deprives us of spiritual life, which is sanctifying grace, and brings everlasting death and damnation on the soul.

Q. How many things are necessary to make a sin mortal?

A. To make a sin mortal three things are necessary: a grievous matter, sufficient reflection, and full consent of the will.

Q. What sin does he commit who receives the Sacraments of the living in mortal sin?

A. He who receives the Sacraments of the living in mortal sin commits a sacrilege, which is a great sin, because it is an abuse of a sacred thing.<sup>48</sup>

Studies have been advanced regarding the cause for the shifting catechetical models. Some claim that there was a move from a “kerygmatic” to “anthropocentric” model of instruction. Others focus on a perceived shift within the Church from personal salvation to social activism.<sup>49</sup> The Prefect for the Congregation for Clergy at the time that the Directory was issued, Cardinal John Wright, in relating information about it in a press conference in June of 1971, stated: “The basic purpose of the Directory is to provide an orientation for religious formation, rather than to establish binding rules.”<sup>50</sup> This abrupt

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<sup>48</sup> *Catechism of Christian Doctrine*, prepared and enjoined by order of the Third Plenary Council of Baltimore, Woodstock, MD, Woodstock College, 1891, no. 3, lesson 6.

<sup>49</sup> WRENN, *Catechisms and Controversies*, p. 96.

<sup>50</sup> *Ibid.*, p. 102.

shift naturally created confusion and disparate emphases pertaining to doctrine on the part of catechists.

Already by the close of Vatican II, an undercurrent of catechetical change had taken root. This undercurrent can be seen as having created confusion for the faithful during the period of the vast changes taking place in the Church. For example, one book, titled *Modern Catechetics: Message and Method in Religious Formation*, contained an “Initiation to the Sacraments” section. It included the following statement: “Before speaking of preparation for first confession we shall consider the *formation of conscience* of the child. Only then will the sacrament of penance be seen in its proper perspective.”<sup>51</sup> The author then goes on to write the following.

Too often in modern teaching ... Christianity is confused with simple morality. Even the very rhythms of the spiritual life, the regular frequentation of the sacraments, are presented exclusively as a kind of administrative and obligatory rule of procedure.<sup>52</sup>

We shall make sure that from now on confession and communion are not indissolubly linked in their minds.... Our method must first of all be *psychological*, that is to say, it must be based on the needs and capacities of the child at any given stage.... We shall cultivate the child’s powers and faculties and know and trust those drives in him which can become the basis for his Christian life and of which the latter is meant to be the fulfillment: his desire to develop and unfold, to accomplish and succeed, to be loved and appreciated and in turn to love and appreciate.<sup>53</sup>

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<sup>51</sup> E. FLEISCHNER, “The Religious Formation of Children in the Second, Third, and Fourth Grades,” in G. SLOYAN (ed.), *Modern Catechetics: Message and Method in Religious Formation*, New York, The Macmillan Company, 1963, p. 136.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*, pp. 141-142.

*Credo: A Catholic Catechism*, originally compiled by the German Catechetical Association and later translated into English and printed in the United States and Canada, offered the following instruction on grievous sin under the section titled, “Who is a sinner?”

In order to recognize what is, and what is not sin, *distinctions* are necessary. Where weaknesses, failures, mishaps and slips happened, where one unknowingly and unintentionally does something wrong, one cannot accurately talk of sin.... The concept of sin describes the guilt which comes between God and man. The more consciously one decides to do evil and the more important the matter, the more serious the sin is. A person who with clear insight, by a free decision, in an important matter, sets himself against God’s will, says “no” to God and breaks away from him, commits a grievous sin.<sup>54</sup>

This catechism also provides a definition of serious sin:

Serious sin defined. A person’s natural feelings tell him that in different sins the degree of guilt varies before God. According to this, the guilt before God, the sin, is considered “weighty” in differing degrees. Repeated attempts have been made to label serious sin and less serious sin. For example, people speak of “mortal” sin (i.e., actions leading not to life with God but to everlasting death) and of other sins less serious. People also speak of “venial” sin, meaning that the sin is not so serious that absolution in the sacrament of penance is essential for forgiveness. Such distinctions exist, but it is not good when an individual Christian wants to use them to decide “whether he must go to confession or not.” The appreciation of God’s boundless love, which precedes all human conversion, should put an end to such “calculations.”<sup>55</sup>

These excerpts are typical of the manner in which the faithful learned about sin. They did not read papal encyclicals or apostolic exhortations. There was no Vatican website and no great use of internet communications. They read books, magazines, and newspapers. In addition to these sources, they listened to the priest on Sundays.

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<sup>54</sup> GERMAN CATECHETICAL ASSOCIATION, *Credo: A Catholic Catechism*, English translation and adaptation by B. DAVIES, Winston Press, Inc., Primeau & Associates Ltd., 1984, pp. 186-187.

<sup>55</sup> *Ibid.*, p. 188.

To McBrien, “[s]tructuring is always the primary and fundamental act of interpretation.”<sup>56</sup> For example, the Baltimore Catechism was divided into the Creed, the Commandments, and the Sacraments. This structuring impacted the theological interpretation.

The placement of the sacraments at the end of the total schema is already an act of theological interpretation. The sacraments are thereby perceived as the tools to do the job whose essential dimensions (Creed and Commandments) have already been outlined fully. On the other hand, if the section on the sacraments had been placed first rather than third in the catechetical plan, it would have been necessary to rewire completely the catechism’s whole theological network.... The sacraments would have been portrayed as mysteries of God’s presence and as models of Christian community and action, rather than as means of grace and aids to salvation.<sup>57</sup>

Thus, when the Council taught that the Church is a sign of intimate union with God and of the unity of all mankind, it was compelled by the force of its own doctrinal logic to conclude that the Church is also an instrument for the achievement of such union and unity.<sup>58</sup> This shift was profound.

Notwithstanding the source or motivation for the change in foundational catechetical material, the reality is that most of those who were educated during those twenty years in Church history were not schooled about the “grave sin” which today causes them to be denied Communion. Books contained language to the effect that there were no real moral truths. For example, in a book on sin published in 1977, the author discounts the traditional approach to morality:

There is no “package” of detailed moral truths to be simply preserved and handed on intact to later generations. The Church’s function is to remain

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<sup>56</sup> MCBRIEN, *Report on the Church*, p. 42.

<sup>57</sup> *Ibid.*, pp. 42-43.

<sup>58</sup> *Ibid.*, pp. 43-44.

faithful to the Spirit of Christ, to preach in word and deed the good news of salvation and the liberation we have in Jesus, and try to live out his commandment of love. But how the commandment of love is to be understood and implemented will depend on man's understanding of himself and his world in each culture.<sup>59</sup>

In 1989, a study was published entitled *American Catholic Laity in a Changing Church*.<sup>60</sup> It was based on a survey prior to the Synod of Bishops in the fall of 1987 designed intended to analyze how American Catholics were continuing to respond to the social, political, and demographic changes of the 1960's, 1970's and 1980's. The period under study extended from the pre-Vatican II era of Pope Pius XII to the papacy of John Paul II. The following statement is found in the first chapter:

... "pray, pay, and obey" no longer characterizes most Roman Catholics in the United States, and this fact is a major reason for carrying out our study. As our data will show, an increasing number of Catholics believe that they should make their own decisions in moral matters based on empirical information, even when the latter may challenge traditional values and beliefs. Expanding education over the past thirty years has fostered growing dissent from many traditional teachings of the Vatican.<sup>61</sup>

Then, in a chapter titled "How Strong is the Church's Moral Authority," the study provides information that directly addresses the issue of formation of conscience:

Only with the experiences of the 1960's, including Vatican Council II and the *Humanae Vitae* controversy, was the emphasis on church teachings constrained and the importance of the well-formed conscience gradually explained and affirmed. Many seminaries and parishes articulated their teachings about moral decisions, giving more attention to the role of conscience. But not all did so, resulting in much unevenness in teachings from diocese to diocese and from parish to parish. The new emphasis has provoked endless discussion, even puzzlement, among lay Catholics about how things have changed in the moral teaching department. Many Catholics

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<sup>59</sup> S. FAGAN, *Has Sin Changed?*, Wilmington, DE, Michael Glazier, 1977, p. 185.

<sup>60</sup> W. D'ANTONIO et. al. (eds.), *American Catholic Laity in a Changing Church*, Kansas City, Sheed and Ward, 1989.

<sup>61</sup> *Ibid.*, p. 5.

born in the 1910's, 1920's, or 1930's personally experienced the new emphasis on individual conscience, and even today they are working through its implications. No wonder people feel confused! Numerous lay persons told us of their dismay and concluded that "it all depends on which priest you talk to."<sup>62</sup>

The *Catechism of the Catholic Church*, which integrated the fruits of the Second Vatican Council as a universal teaching tool, was not promulgated until decades after Vatican II ended. Its creation experienced a protracted history spanning decades and was not seriously addressed until the twentieth anniversary of the Council by the Synod of Bishops in 1985. It was finally promulgated by Pope John Paul II in 1992 with the Apostolic Constitution *Fidei depositum*.<sup>63</sup> This Catechism has become the chief resource for the creation of local catechisms, including national catechisms.<sup>64</sup> It is to be hoped that, with solid catechetical materials becoming increasingly available, also on the internet, the confusion experienced by the Catholic faithful in the decades after Vatican II will give way to a more solid formation in the faith.

The Church acknowledges that catechesis is a lifelong process.<sup>65</sup> In the interests of justice and mercy it should factor that maxim into the manner and method by which c. 915 is applied. It should do so in charity. With the express recognition of the need for catechesis in our times, Pope John Paul II acknowledged "the central problem of the catechesis of

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<sup>62</sup> Ibid., pp. 85-86.

<sup>63</sup> JOHN PAUL II, apostolic constitution on the publication of the Catechism of the Catholic Church *Fidei depositum*, 11 October 1992, in AAS, 86 (1994), pp. 113-118, English translation accessed on 15 May 2013 at [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/apost\\_constitutions/documents/hf\\_jp-ii\\_apc\\_19921011\\_fidei-depositum\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/apost_constitutions/documents/hf_jp-ii_apc_19921011_fidei-depositum_en.html).

<sup>64</sup> cf. *United States Catholic Catechism for Adults*, Liguori, MO, Liguori Publications, 2006.

<sup>65</sup> *Catechism of the Catholic Church*, no. 1784.

adults.”<sup>66</sup> The program proposed in Chapter Four of this study assiduously this concern and does so personally, that is, relating to one person at a time.

### 2.1.5 – A Renewed Understanding of Church

The confusion of the faithful regarding conscience formation may also be attributed in part to the change in emphasis in the Church’s understanding from that of being a hierarchically ordered perfect society (*societas perfecta*) to other models emphasizing the faithful themselves being the Church (People of God, Body of Christ, *communio*, priestly people, etc). The Council Fathers did not reject the perfect society model, which was fashioned after the civil political model.<sup>67</sup> However, this was no longer the emphasis. According to Avery Dulles, the model of the Church as the basic sacrament was predominant.<sup>68</sup> As such, the mission of Christ in the world came to have great significance at the same time that the priestly people were to bear witness together as a visible sign of a sacrament in the world. However, this vision of the Church was understood as being one which would take time to unfold.

The faithful’s understanding of their participation in the Eucharist and receiving Holy Communion cannot be isolated from the context of this ecclesiological renewal. Within that context, the communal experience of the Eucharist and how it relates to an understanding of sin is essential. The documents of the Council emphasize the relational

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<sup>66</sup> JOHN PAUL II, apostolic exhortation on catechesis in our time *Catechesi tradendae*, 16 October 1979, in *AAS*, 71 (1979) pp. 1277-340, English translation accessed on 8 September 2013 [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/apost\\_exhortations/documents/hf\\_jp-ii\\_exh\\_16101979catechesi-tradendae\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_16101979catechesi-tradendae_en.html).

<sup>67</sup> J.H. PROVOST, “The Christian Faithful (cc. 204-329),” in *CLSA Comm1*, pp. 125-126.

<sup>68</sup> A. DULLES, *Models of the Church*, New York, Doubleday, 1987, p. 64.

and social aspects of our nature. The Christian anthropology so pronounced in the Council's teaching stresses the dignity of the human person made in the image of God and His gift of grace.<sup>69</sup> In its Pastoral Constitution on the Church in the Modern World, the Council notes:

The good news of Christ continually renews the life and culture of fallen humanity; it combats and removes the error and evil which flow from the ever-present attraction of sin. It never ceases to purify and elevate the morality of peoples. It takes the spiritual qualities and endowments of every age and nation and enriches them with heavenly resources, causes them to bear fruit, as it were, from within; it fortifies, completes and restores them in Christ. In this way the church carries out its mission and in that very act it stimulates and advances human and civil culture, as well as contributing by its activity, including liturgical activity, to humanity's interior freedom.<sup>70</sup>

Essentially, the communitarian nature of man is derived from God and reflects the Trinity, but the application of the free will given to man by Him in the context of social interaction can be sinful. However, "this situation of sin and its influence must always be considered within the light of Jesus Christ and the preaching of the Gospel."<sup>71</sup> The interaction of the Church with the faithful, and the manner and method in which the truth are imparted to them, are essential to Her mission. The interaction and the manner and method are foundational for the formation of conscience and, hence, the adequate expression of free will.

The manner in which all this played out in the wake of Vatican II was very challenging for the faithful. Richard McCormick has addressed the change in his book

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<sup>69</sup> D. BOHR, *Catholic Moral Tradition in Christ, a New Creation*, Huntington, IN, Our Sunday Visitor, 1990, p. 215 (= BOHR, *Catholic Moral Tradition*).

<sup>70</sup> *GS*, no. 58.

<sup>71</sup> BOHR, *Catholic Moral Tradition*, p. 215.

titled *Corrective Vision*.<sup>72</sup> In the chapter called “How My Mind Has Changed,” he excerpts Eugene Kennedy who wrote an essay about the change from the immigrant, brick-and-mortar, top-down Catholicism, and how it changed in the wake of Vatican II.

The unlettered Catholic who came to the United States in the last century fashioned a way of life within the host Protestant culture that was tight, intellectually narrow, and wrapped in an invisible and largely impermeable membrane that resisted social osmosis with the rest of the country. It was also the most successful era of development in the history of the Roman Catholic Church. This Catholic structure defended itself proudly against doctrinal and moral compromise; it was, above all, obedient to the authority which was exercised for generations without any serious challenge by its bishops and clergy and other religious teachers. Immigrant Catholicism was, in fact, held together by the vigorous churchmen who retained their power over their flocks by exercising it regularly on an infinitely detailed category of behaviors, ranging from what the faithful could eat on Fridays to what they could think or do in the innermost chambers of their personal lives [Eugene Kennedy, “The End of the Immigrant Church,” *Illinois Issues*, August 1982, pp. 15-21].

McCormick comments that the moral theology he was taught reflected these observations, including the ecclesiology which, he relates, was focused on being “all too often one-sidedly confession oriented, magisterium dominated, canon law related, sin centered and seminary controlled.”<sup>73</sup> This was surely what the Second Vatican Council sought so assiduously to address in a way that reflected a communion ecclesiology.

### **2.1.6 – The Doctrine on Marriage**

Many of the persons who today must not be admitted to Communion received a Catholic education during the time that the teachings about marriage and social doctrine changed. The focus of marriage preparation went from a strict emphasis on accepting

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<sup>72</sup> R. MCCORMICK, *Corrective Vision: Explorations in Moral Theology*, Kansas City, Sheed & Ward, 1994.

<sup>73</sup> *Ibid.*

children and educating them in the faith to that of marriage as a community of life and love, an intimate partnership ordered to the good of one another, in addition to the procreative aspects of married life.<sup>74</sup> Many of the civilly divorced and remarried tried to live out marriage as had their parents and grandparents but now in a greatly changed social context; a no-fault divorce culture.

Before Vatican II, the emphasis of the Church in its teaching on marriage was largely based on the primary juridic ends of marriage as the procreation and education of children and, in particular, their education in the Catholic faith. This doctrine was enshrined in the 1917 Code, canon 1013, §1: “The primary end of marriage is the procreation and education of children; its secondary end is mutual help and the allaying of concupiscence.” Then, from the time of *Gaudium et spes*, Church teaching regarding marriage started to incorporate an understanding of it as a partnership ordered to the good of the other and as a community of life and love. The Council Fathers addressed the marital union as consisting in both procreative and personalist elements, the right to the *bonum prolis* and to the *bonum coniugum*.

Marriage to be sure is not instituted solely for procreation; rather, its very nature as an unbreakable compact between persons, and the welfare of the children, both demand that the mutual love of the spouses be embodied in a rightly ordered manner, that it grow and ripen. Therefore, marriage persists as a whole manner and communion of life, and maintains its value and indissolubility, even when despite the often intense desire of the couple, offspring are lacking.<sup>75</sup>

This post-Conciliar understanding of marriage is codified in the 1983 Code of Canon Law in canon 1055, §1. “The marriage covenant, by which a man and a woman establish

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<sup>74</sup> *GS*, no. 48.

<sup>75</sup> *GS*, no. 50.

themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and the procreation and upbringing of children, has, between the baptized, been raised by Christ the Lord to the dignity of a sacrament.”

The conciliar concepts have taken decades to evolve in the jurisprudence of the Church and in features of marriage preparation. It should be no surprise that it may take generations of the faithful to really integrate these notions into their married and family life.

### **2.1.7 – Catholic Social Doctrine**

It was noted above that a significant number of years elapsed from the time of the Second Vatican Council to the publication of the universal Catechism. It took even longer—not until 2004—before the publication of the *Compendium of the Social Doctrine of the Church*. The publication of the Compendium, four decades after Vatican II, references a great deal of conciliar teaching. During that time, the careers of many Catholic politicians had already been established and became rooted in political party platforms which did not always conform to the Church’s social and moral doctrines. The Pontifical Council for Justice and Peace explained the content of the new Compendium of social doctrine.

This document offers a complete overview of the fundamental framework of the doctrinal corpus of Catholic social teaching. This overview allows us to address appropriately the social issues of our day, which must be considered as a whole, since they are characterized by an ever greater interconnectedness, influencing one another mutually and becoming increasingly a matter of concern for the entire human family.... The document is presented as an instrument for the moral and pastoral discernment of the complex events that mark our time; as a guide to inspire, at the individual and collective levels, attitudes and choices that will permit all people to look to the future with greater trust and hope; as an aid for the faithful concerning the Church’s teaching in the area of social morality.<sup>76</sup>

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<sup>76</sup> PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *Compendium of the Social Doctrine of the Church*, Vatican City, Libreria Editrice Vaticana, 2004, nos. 9-10.

The Compendium sets out Catholic social doctrine and teaching in an organized format for purposes of reference and instruction. It specifically addresses issues of conscience and morality in Church social teachings. Interestingly, the Compendium, while suggesting a systematic approach for discerning, judging, and making decisions, recognizes that there may be changing circumstances which could prompt changes.

The exposition of the Church's social doctrine is meant to suggest a systematic approach for finding solutions to problems, so that discernment, judgment and decisions will correspond to reality, and so that solidarity and hope will have a greater impact on the complexities of current situations. These principles, in fact, are interrelated and shed light on one another mutually, insofar as they are an expression of Christian anthropology, fruits of the revelation of God's love for the human person. However, it must not be forgotten that the passing of time and the changing of social circumstances will require a constant updating of the reflections on the various issues raised here, in order to interpret the new signs of the times.<sup>77</sup>

The fruits of the Council were not, by and large, properly imparted to the faithful in the decades following it. Pope Benedict's acknowledgement about the "virtual council" helps to shed significant light on the confused understanding of Church teaching on the part of the faithful. This confusion was recognized by Church authority and even by the 1985 Synod of Bishops. Given the extent of this confusion, it is not possible to presume that everyone who is divorced and civilly remarried, or who supports a political party platform which is not consistent with all Church teachings, is *obstinately* persisting in manifest grave sin and must be refused Holy Communion. While it is a matter of the divine law that grave sinners may not worthily receive Communion, the requirement of c. 915 is merely ecclesiastical law that must be strictly interpreted. If the pastor or other minister is not certain that all the requisites of the canon are demonstrated, including obstinate

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<sup>77</sup> Ibid.

persistence in and the public knowledge of this grave sin, then he may not deny Holy Communion. Seeking proof of these conditions of the law demands a pastoral approach that is cognizant of the human reality.

## **2.2 – Pastoral Challenges in the Application of Canon 915**

The first part of this chapter offered a series of reflections centered on the confusion over Church doctrine, especially related to moral issues, in the wake of Vatican II, a confusion that was not dissipated by their catechetical formation. The additional reflections presented in this second part focus more directly on problematic aspects with c. 915 itself and its application in pastoral practice, especially in the years following the PCLT Declaration of 2000. These reflections consider four problem areas in particular: (1) the lack of charity in applying c. 915; (2) the lack of consideration of other canonical norms pertinent to the application of c. 915, especially foundational procedural norms such as the requirement of proofs before reaching an informed decision; (3) the uneven application of the canon in different dioceses and parishes; and (4) the lack of direction given to pastors and other responsible priests on how c. 915 should be applied in pastoral practice.

### **2.2.1 – Lack of Charity**

The foundational principle behind the pertinent clause of c. 915 is the protection of the sanctity of the Eucharist, the “Sacrament of Charity.”<sup>78</sup> However, the application of the pertinent clause of c. 915, at least in its objectivist interpretation, undermines that protection in many ways. The canon is grounded in the admonition of St. Paul to the Corinthians, cited at the beginning of Chapter One. The context of this passage supports

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<sup>78</sup> cf. BENEDICT XVI, post-synodal apostolic exhortation on the Eucharist as the source and summit of the Church’s life and mission *Sacramentum caritatis*, in AAS, 99 (2007), pp. 105-180, no. 44. English translation published by the Libreria editrice Vaticana, 2007.

the position that it was a call for the Church community to live in unity and charity and for the faithful to discern their worthiness to receive Communion and to maintain the communion which St. Paul was proclaiming. One's own discernment of worthiness to receive is the subject of c. 916 in which the onus for determining one's worthiness is on the communicant. It is c. 916 that more closely corresponds to the divine law expressed in St. Paul's letter to the Corinthians.

Archbishop Burke's article, discussed in the previous chapter, surveys the history of the discipline enshrined in c. 915. Burke emphasizes that this canon seeks to prevent persons from receiving Communion who cause scandal.<sup>79</sup> The article does not, however, address the fractionalization and evident lack of charity exhibited by the members of the nascent Church whom Saint Paul addressed. Interestingly, Burke also includes historical information which supports a more cautious application of the pertinent clause of c. 915 regarding denial of Communion.

Following the promulgation of the 1983 Code, as is evidenced in the commentaries discussed in the previous chapter, there was a sentiment toward approaching the issues pertaining to the question of who should be denied Communion on a more factually sensitive, case-by-case basis. Authors insisted that c. 915, as an ecclesiastical law, is subject to strict interpretation, meaning that each and every condition of the law must be verified before Communion can be denied. The pastoral practice based on these earlier commentaries incorporated an assessment of individual circumstances and did not predominantly focus on conduct that was an objective involvement in sin. The extent to which the person's sin was known to be public as well as the risk of scandal from the

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<sup>79</sup> BURKE, "Canon 915," p. 23.

distribution of Communion to certain persons was the significant focus. This practice was seen to have evolved from the time of the Pio-Benedictine Code.

This interpretation and pastoral practice was dominant until the PCLT Declaration of 2000. In the wake of the Declaration, interpretations de-emphasized a factually sensitive approach, and a new praxis aimed at objective determinations of “obstinate persistence in manifest grave sin” led to the refusal to admit persons to Communion regardless of the extent to which the conduct of the person was publicly known. Information that someone was in an objective state of sin and could be barred from Communion could emanate from many sources.

The first part of this chapter documented the confusion in the minds of the faithful regarding Church teachings, which was due, in substantial measure, to circumstances beyond their control. This confusion has not been abated by the PCLT Declaration. Praxis based on that Declaration, which oftentimes appears to lack charity and mercy, falls far short of what is demanded by c. 915, especially concerning the requirements of obstinacy and manifestness. Indeed, the current praxis seems to disregard what is intended by the Church’s universal magisterium.

Pope John Paul II emphasized the need for a pastoral approach in these situations in his post-synodal apostolic exhortation, *Reconciliatio et paenitentia*:

It is first of all urgently necessary to establish a *pastoral plan of preparation and of timely support* for couples at the moment of crisis. The proclamation of Christ’s gift and commandment on marriage is in question. Pastors, especially parish priests, must with an open heart guide and support these men and women, making them understand that even when they have broken the marriage bond, they must not despair of the grace of God, who watches over their way. The Church does not cease to invite her children who find

themselves in these painful situations to approach the divine mercy by other ways ... until such time as they have attained the required dispositions.<sup>80</sup>

Elsewhere, the same pope stresses the need for mercy and charity, saying: “The Lord, moved by mercy, reaches out to all the needy, with both the demand for truth and the oil of charity.”<sup>81</sup> Likewise, the Congregation for the Doctrine of the Faith exhorts pastors to help those in irregular marriages to “experience the charity of Christ and the maternal closeness of the Church, receiving them with love, exhorting them to trust in God’s mercy and suggesting, with prudence and respect, concrete ways of conversion and participation in the life of the community of the Church.”<sup>82</sup>

The focus and *praxis* currently in vogue fall short of John Paul II’s consistent call for pastoral care in these situations. The nearly singular focus of the application of c. 915 since the PCLT Declaration has been on the objective state of sin and the potential scandal. The Declaration is concerned with the deformation of conscience that leads the divorced and remarried to approach for Holy Communion. Because of this deformation of conscience, the PCLT says that “it becomes more necessary for Pastors to act, with as much patience as firmness, as a protection to the sanctity of the Sacraments and a defense of Christian morality, and for the correct formation of the faithful” (no. 1).

Pastors must strive to explain to the concerned faithful the true ecclesial sense of the norm, in such a way that they would be able to understand it or

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<sup>80</sup> JOHN PAUL II, post-synodal apostolic exhortation on reconciliation and penance in the mission and Church today *Reconciliatio et paenitentia*, 2 December 1984, in *AAS*, 77 (1985), pp. 185-135, English translation in *Origins*, 14 (1984), pp. 432-458, no. 34 (=RP).

<sup>81</sup> JOHN PAUL II, address to the Pontifical Council for the Family, 24 January 1997, in *ORE*, 30 (5 February 1997), p. 4, no. 3, English translation in *Origins*, 26 (1996-1997), pp. 583-584.

<sup>82</sup> CONGREGATION FOR THE DOCTRINE OF THE FAITH, letter *Annus internationalis* to the bishops of the Catholic Church on the reception of Eucharistic Communion by the faithful who have entered new marriages after divorce, 14 September 1994, in *AAS*, 86 (1994), p. 974, no. 6; English translation in *CLD*, vol. 13, p. 521.

at least respect it. In those situations, however, in which these precautionary measures have not had their effect or in which they were not possible, the minister of Communion must refuse to distribute it to those who are publicly unworthy. They are to do this with extreme charity, and are to look for the opportune moment to explain the reasons that required the refusal. They must, however, do this with firmness, conscious of the value that such signs of strength have for the good of the Church and of souls (no. 3).

With these minimal directives, persons are being told they are not to be admitted to Communion in their parish, and there is no indication of any clear pastoral plan for those faithful and the families who most often attend Mass with them. Pastors are to try to explain the “ecclesial sense of the norm in such a way that they would be able to understand it or at least respect it.” Clearly, this approach falls far short of the stated intent of the magisterium. Clearly, too, nothing of it provides direction for taking issue with the decision, or even for developing a plan of sacramental participation on the part of those who are refused Communion. They are left with no direction as to how they can proceed apart from an admonition to not present themselves for Communion.

The divine law substratum of c. 915 cannot be changed. Even with respect to ecclesiastical laws, ignorance and error of the law or a fact concerning oneself is no excuse (c. 15). Nevertheless, there should be consideration given to an approach towards the obstinately persevering manifest grave sinner that is charitable at the same time that it provides clarification about the law.

The principles of “charity in truth,” to which Pope Benedict devoted an encyclical letter, should be applied to those being denied Communion under the pertinent clause of c. 915. Therefore, the manner in which those persons should be addressed must encompass “attention to the spiritual life, a serious consideration of the experiences of trust in God, spiritual fellowship in Christ, reliance upon God’s providence and mercy, love and

forgiveness, self-denial, acceptance of others, justice and peace.”<sup>83</sup> The pope adds: “All this is essential if ‘hearts of stone’ are to be transformed into ‘hearts of flesh’ (Ezek 36:26), rendering life on earth ‘divine’ and thus more worthy of humanity.”<sup>84</sup> These words should assist anyone in comprehending the doctrine of gradualness.

Yet, the phrase, “charity in truth,” is most often used in relation to denial of Communion in a way that does not seem to contemplate the above-stated features. The faithful are often told that the charity being shown to them lies in the fact that they are not being permitted to further condemn themselves by unworthily receiving Communion because the truth is that they are publicly unworthy. They are often told nothing more!

Even apart from the words used, the message is often conveyed in a way that seems to the communicant – who is most often extremely vulnerable – to be lacking in charity because there is no further discussion about the matter. Communication that conveys what the Church seeks in promoting “charity in truth” in this context is essential. Yet, when it is conveyed to the faithful in these cases, it is often insufficient. There is a great need for dialogue and for forming an action plan for sacramental participation. This need is not currently being met.

It is argued that, since the Church cannot modify the moral law, there is little that can be done for those who must be denied Communion. Pope Francis, it seems, roundly disagrees with this assertion. In his Apostolic Exhortation, *Evangelii gaudium*, the pope writes:

. . . pastors and the lay faithful who accompany their brothers and sisters in faith or on a journey of openness to God must always remember what the Catechism of the Catholic Church teaches quite clearly: “Imputability and

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<sup>83</sup> CV, no. 79.

<sup>84</sup> Ibid.

responsibility for an action can be diminished or even nullified by ignorance, inadvertence, duress, fear, habit, inordinate attachments, and other psychological or social factors". Consequently, without detracting from the evangelical ideal, they need to accompany with mercy and patience the eventual stages of personal growth as these progressively occur. I want to remind priests that the confessional must not be a torture chamber but rather an encounter with the Lord's mercy which spurs us on to do our best. A small step, in the midst of great human limitations, can be more pleasing to God than a life which appears outwardly in order but moves through the day without confronting great difficulties. Everyone needs to be touched by the comfort and attraction of God's saving love, which is mysteriously at work in each person, above and beyond their faults and failings.<sup>85</sup>

### 2.2.2 – Inattention to Other Canonical Norms

Canon 915 is being applied in a way which disregards other canonical provisions that arguably relate to any decision to deny Communion. Among these other provisions are norms regarding procedures that are to be employed for placing a coercive singular administrative act (a decision or precept). The denial of Holy Communion is a singular administrative act that makes a decision. If given in writing, it is a decree (c. 48). Even if given orally, a person aggrieved by the decision can take hierarchical recourse against it. It follows that the applicable norms on singular administrative acts ought to be substantially observed, especially c. 50: "Before issuing a singular decree, an authority is to seek out the necessary information and proofs and, insofar as possible, to hear those whose rights can be injured." Also relevant are the canons that can be used in the event that a person wishes to take recourse or some other action against the decision (cc. 1713-1716, 1732-1739), as well as certain canons which address expectations, rights and responsibilities of the faithful (cc. 212, 213, 220-223, 227, 229, 774, 912, 916) and of pastors (cc. 217, 223, 773, 843, 1063, 1064).

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<sup>85</sup> FRANCIS, apostolic exhortation *Evangelii gaudium*, 24 November 2013, Libreria Editrice Vaticana, 2013, no. 44 (= EG).

Proofs are necessary in both administrative and judicial processes in order to make an informed and fair decision or judgement. The maxim, “what is not in the acts is not in the world,” sends the message that the quality of the proofs tendered affects the decision of the case. In cases where Communion is denied by reason of the pertinent clause of c. 915, there may often be a problem with proofs. The problems might relate to the proofs which led to the decision not to admit someone to Communion. Did they emanate from people within the parish who can be said to have engaged in calumny or detraction?<sup>86</sup> Is there an issue pertaining to the seal of confession?<sup>87</sup> Do not these areas of inquiry relate to scandal within a faith community? How can their reliability be corroborated? Proof problems might also present depending upon the extent of willingness of the parties to the process to share intimate details of their personal lives and choices, just as they would have to do in a formal judicial process. Indeed, even in the event that the words “obstinate persistence in manifest grave sin” are the standard, proofs regarding the application of the words to the facts would be required in an administrative process. There has to be a method for developing proofs.

Additionally, persons who receive proofs from parties need to be adequately trained to facilitate the relation of details about experiences. Outcomes in cases turn on the extent to which there are sufficient proofs. Oftentimes, well-intentioned parish staff simply do not have the time or training to be as incisive regarding facts that parties need to share to fully edify the tribunal about the truth. Proofs must be culled from the parties based upon what is shared with a person who is trained in navigating the issues and helping to present them

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<sup>86</sup> CCC, no. 2477.

<sup>87</sup> E. PETERS, “Is Reception of Communion Doctrinal or Disciplinary,” *In the Light of the Law*, 6 October 2014, accessed on 6 October 2014 at <https://canonlawblog.wordpress.com/2014>.

to the trier of fact. In fact, insufficient proofs can arguably be said to have contributed to the current crisis regarding denial of Communion.

Because the proofs are most often of a sensitive nature, it may take several meetings to build trust and for the communicant to be able to share personal information. The “Dialogue” process, set out in Chapter Four, provides those opportunities. It fills in many gaps. It can streamline or even avert an administrative process regarding denial of Communion by use of methods provided by the legislator (employing principles of mediation). It can do so at the same time that it can provide a venue for personalized catechetical instruction (employing principles of catechesis) and developing a plan for sacramental participation (employing principles of mediation).

### **2.2.3 – Uneven Application**

One purpose of law, especially procedural and penal law, is to provide a uniform system of justice whereby all subjects of the law are treated equally and fairly. This is not what occurs with the application of c. 915 in pastoral practice. What is touted in the interpretations of the law as being *objective* effectively calls for parties to be extremely *subjective*. Pastors simply do not have a sufficient amount of time to deal with the complexities of the law and the facts in the cases presented to them. As a result, some pastors are perfunctory in their approach towards people. No structured time for meeting and addressing all the attendant issues is provided.

There is such a great shortage of priests.<sup>88</sup> In fact, the priest shortage may be said to contribute to the lack of opportunity that these faithful have to even confess their sins

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<sup>88</sup> According to the Center for Applied Research on the Apostolate (CARA), there were 58,632 total priests in the territory of the United States at the close of the Second Vatican Council in 1965. In 2014, the number of priests in the same territory fell to 38,275. When one considers

and avert the problem of receiving Holy Communion in a state of grave sin. Moreover, there is seldom anywhere for the faithful to whom the law is being applied to turn to address their intense attendant emotions about any issues relevant to the law and their situations of being denied Communion.

The manner and method by which the clause of c. 915 is applied is problematic. Whether a person is obstinately persisting in manifest grave sin is assessed when the matter is brought to the pastor's attention. Thus, not every person to whom the pertinent clause of c. 915 may be applied is even known by the pastor. Further, someone's commission of grave sin necessarily involves an evaluative process. This makes the objectivist application seem inconsistent and unfair, as no process is said to be needed once the minister espies someone in the Communion procession who is objectively in a state of serious sin. Additionally, in some dioceses and parishes, c. 915 is not even applied at all. This inconsistent application of the law creates an appearance of arbitrariness and unfairness. Indeed, one might ask whether it is accurate to say that the current application of the pertinent clause of c. 915 in North America is subject to what Ladislav Örsy describes as either "canonical fundamentalism" or "canonical relativism."<sup>89</sup> Based on empirical evidence of the disparate perspectives of bishops in the United States about this matter, the answer is a resounding "yes."

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that the population of the United States was estimated at 194 million in 1965 and is now estimated at over 317 million, the impact of the decline of priests cannot be underestimated. See *Sacraments Today: Belief and Practice among U.S. Catholics*, accessed on 10 February 2014 at <http://cara.george town.edu/sacramentsreport.pdf>. (= CARA, *Sacraments Today*).

<sup>89</sup> L. ÖRSY, *Receiving the Council: Theological and Canonical Insights and Debates*, Collegeville, Liturgical Press, 2009, pp. 57-58.

As a result of these problems, there is a tremendous degree of unnecessary suffering on the part of the faithful. Some stop going to church. Others are leaving the Church to join ecclesial communities because receiving Holy Communion is extremely important to them, and most ecclesial communities do not make distinctions about worthiness to receive. The very communicants to whom the provision applies may lack a fundamental understanding about the Church's discipline, and yet they value going to Communion. In fact, when those who attend Mass at least a few times a year were surveyed by the Center for Applied Research in the Apostolate (CARA), 94% said feeling the presence of God was "somewhat or very important" for why they attended Mass. Ninety-three per cent said that they attended Mass for prayer and reflection; 92% for receiving Holy Communion. However, it is worth noting that when the responses were said to be "very important," feeling the presence of God retained first place with 76%, but receiving Holy Communion, with 74%, was greater in this category than prayer and reflection. As these numbers show, receiving Holy Communion is one of the most important aspects of the Mass for the faithful.<sup>90</sup>

In any venue, insufficient communication leads to problems. The Church is not an exception to this rule. As a result, when the pastor apprises people that they must be denied Holy Communion, they feel excluded and rejected by the Church, as if they are not worthy of being part of the unified Body of Christ. They feel reproached and are mystified that the law is assiduously applied to them while it is not applied to others. They feel that this is unjust. In the American context, this perceived lack of equality in application is particularly hurtful and breeds more confusion, indeed contempt, on the part of many. This undermines

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<sup>90</sup> CARA, *Sacraments Today*.

the Church's position on pastoral solicitude. It also harms the entire ecclesial body. As

Pope John Paul II writes:

At the heart of every *situation of sin* are always to be found sinful people. So true is this that even when such a situation can be changed in its structural and institutional aspects by the force of law, or – as unfortunately more often happens – by the law of force, the change in fact proves to be incomplete, or short duration, and ultimately vain and ineffective – not to say counterproductive – if the people directly or indirectly responsible for that situation are not converted.<sup>91</sup>

As the numbers of civilly divorced and remarried are increasing at the same time that the numbers of negative decisions are being rendered in marital nullity cases, and as political party platforms remain virulently attached in some measure to certain issues contravening the moral law, there is an urgent need for an institutional remedy as it relates to the issue of denying Communion. The pertinent provision of c. 915 and the documents interpreting the clause lack clarity regarding the manner and method by which this provision designed to protect the Sacrament of Charity should even be applied. There are no specific instructions about how the priest who is responsible for the community is to ascertain that the person to whom the law is being applied is engaging in “obstinate persistence in manifest grave sin.” There are few directives regarding the manner and method by which the member of the faithful who is being denied Communion is notified that this will occur. There is nothing that provides the means by which a person can clarify for the priest the facts upon which a decision to deny them Communion is based. There is no indication in the law about how to modify a decision once a situation has been corrected or take issue with a decision to deny Holy Communion. In fact, although c. 915 is aimed

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<sup>91</sup> *RP*, no. 16.

at the minister of Communion, the focus of any analysis about the law is on the member of the faithful to whom the provision may be applied.<sup>92</sup>

The application of c. 915 is inconsistent. The law is applied in some dioceses and parishes and not others, to some people and not others. Persons who campaign for national office are taken to task in some dioceses and not others.<sup>93</sup> Others have the bishops of their diocese proclaiming that they are Catholics in good standing when in another diocese they would not be admitted to Communion.<sup>94</sup>

A solution must be implemented to assist the individual faithful and the institutional Church that raises the consciousness of the parties about sin and the manner by which it should be addressed in particular circumstances. Short of such a comprehensive solution, the uneven application of c. 915 in pastoral practice will doubtless continue.

#### **2.2.4 – Lack of Direction to Pastors**

It was noted in the previous chapter that the focus of c. 916 is the individual communicant, whereas c. 915 is addressed to the minister of Communion who must decide whether someone is obstinately persevering in manifest grave sin. Yet, there is precious little in the canonical literature or in the PCLT Declaration on just how the pastor or other

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<sup>92</sup> A. MARZOA, commentary in *CCLA*, p. 709; cf. also E. PETERS, “Questions over Canon 915 Are Not Going Away,” *In the Light of the Law*, June 28, 2011, accessed 3 September 2013 at <http://canonlawblog.blogspot.com/2011/06/questions-over-canon-915-are-not-going.html>.

<sup>93</sup> cf. R. VASA, “Why No Communion for Pro-Abortion Politicians,” in *Catholic World Report*, interview, accessed 4 September 2013 at <http://www.courageouspriest.com/why-no-communication-for-pro-abortion-catholic-politicians>; cf. also R. KIRKWOOD, “Bishop to Biden: No Communion in Colorado Springs Diocese,” in *The New American*, accessed on 4 September 2013 at <http://www.thenewamerican.com/culture/faith-and-morals/item/13207-bishop-to-biden-no-communication-in-colorado-springs-diocese>.

<sup>94</sup> cf. for example G. KANDRA, “Biden Attends Cardinal Dolan’s Palm Sunday Mass at St. Patrick’s,” *Patheos.com*, March 25, 2013, accessed 26 March 2013 at <http://www.patheos.com/blogs/deaconsbench/2013/03/biden-attends-cardinal-dolans-palm-sunday-mass-at-stpatricks>.

responsible minister is to do this. The PCLT Declaration makes clear that the authority for denying someone Communion lies with the pastor or other responsible priest:

The discernment of cases in which the faithful who find themselves in the described condition are to be excluded from Eucharistic Communion is the responsibility of the Priest who is responsible for the community. They are to give precise instructions to the deacon or to any extraordinary minister regarding the mode of acting in concrete situations (no. 3).

But, it may well be asked, what are the instructions to be given to these responsible priests in the first place? Do all pastors or other responsible priests have the necessary knowledge and skills to handle these cases sensitively and justly?

Charity, we are taught, “rejoices in the truth.”<sup>95</sup> Moreover, “[t]o defend the truth, to articulate it with humility and conviction, and to bear witness to it in life are therefore exacting and indispensable forms of charity.”<sup>96</sup> However, the defense of the truth as well as the articulation about it and the witness to it are currently denigrated by the manner and method by which the pertinent clause of c. 915 is applied, substantially because there are no clear rules set out in the law for addressing the myriad issues confronting those deemed to be “obstinately persevering in manifest grave sin.”

Congar’s profound thinking in terms of reform offers insight as to how this might be accomplished in a way that contemplates what he sets out in a chapter titled “The Primacy of Charity and of Pastoral Concerns.” He writes: “. . . for the reformer who wants to remain in harmony with the Catholic communion, the church has to remain a given, not only intellectually but also existentially. The reformer can never step outside the church to judge it, but can only remain committed within its existing conditions, especially if there

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<sup>95</sup> 1 Cor. 13:6.

<sup>96</sup> *CV*, Introduction.

is need for some dimension of reform.”<sup>97</sup> For Congar, the truth is grasped only in communion with the whole Church.

The church, like any living thing, is marked by both continuity and progress – progress within continuity. The church is in continuity in every part of itself and in progress in every part as well. However, in the church, as in all living beings of a higher order, functions tend to be specialized in such a way that there are parts of the church which are more characteristically organs of development and other parts that are more organs of continuity. On the whole, initiatives or novelties come especially from the periphery of the church, from its frontiers.<sup>98</sup>

The “Dialogue of Charity” Program, presented in Chapter Four, seeks to address very real and relevant problems that have arisen in the Church because of the application of c. 915 and the lack of direction given to pastors. Employing the “Dialogue” will fill in the gap that currently exist between the obvious intent of the law and the ambiguous methodology that has resulted in so many persons being denied Communion. The Dialogue process is a uniform means by which certain faithful might continue to participate in the Eucharist in a way that is meaningful to them. It represents progress with continuity.

Pope Francis reminds us of some features of the Church and some manners by which it can address the needs of the faithful:

The Church is called to be the house of the Father, with doors always wide open. One concrete sign of such openness is that our church doors should always be open, so that if someone, moved by the Spirit, comes there looking for God, he or she will not find a closed door. There are other doors that should not be closed either. Everyone can share in some way in the life of the Church; everyone can be part of the community, nor should the doors of the sacraments be closed for simply any reason. This is especially true of the sacrament which is itself “the door”: baptism. The Eucharist, although

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<sup>97</sup> Y. CONGAR, *True and False Reform in the Church*, Collegeville, MN, Liturgical Press, 2011, p. 217; cf. also E. DE SMEDT, “Introduction to the Chapter of *De Oecumenismo* on ‘Religious Liberty’,” in R. BROWN (ed.), *Observer in Rome: A Protestant Report on the Vatican Council*, New York, Doubleday & Company, 1964, p. 261.

<sup>98</sup> *Ibid.*, p. 229.

it is the fullness of sacramental life, is not a prize for the perfect but a powerful medicine and nourishment for the weak. These convictions have pastoral consequences that we are called to consider with prudence and boldness. Frequently, we act as arbiters of grace rather than its facilitators. But the Church is not a tollhouse; it is the house of the Father, where there is a place for everyone, with all their problems.<sup>99</sup>

Based upon these sentiments, the Church as a whole must accept that there is a need to evaluate the current application of the pertinent clause of c. 915. It should address the myriad issues surrounding the application by assiduously implementing streamlined processes for certain marriage cases. It should pastorally address those cases where it may, or has already been determined, that Communion will be denied. The tribunal or other responsible diocesan office can be assisted by the use of the “Dialogue of Charity.” Such a process may also be used to catechize them about the relevant ecclesiastical and divine law.

The laws of the Church that are rooted in theology must not only possess the characteristic of being a juridical *ordinatio rationis* but also that of being an *ordinatio fidei* for fostering the *communio* of the Church. In the case of the “obstinate persistence in manifest grave sin” clause of c. 915, these characteristics of canon law are not made manifest. Many problems pertaining to the *communio* have evolved in regard to this norm since the time of its promulgation in 1983. In fact, the application of the pertinent clause has not furthered the life of the *communio* but has led to confusion and actual bitterness on the part of many faithful who are a part of it. Canonical equity, *epikeia*, and *oikonomia* are being discussed as methods for remedying the problem of denying Holy Communion to

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<sup>99</sup> *EG*, no. 47.

the divorced and remarried.<sup>100</sup> However, there are disparate opinions about the application of Orthodox principles to these situations.<sup>101</sup> If resorting to these principles should come to nought, pastors and other responsible priests can be given clear directions on how to apply c. 915 with fairness and charity, as will be demonstrated in Chapter Four.

This study does not suggest that the moral law can be changed; it cannot, because moral law is immutable.<sup>102</sup> However, in the interest of truth, the sole burden should not rest on the shoulders of those faithful to whom the pertinent provision of c. 915 may be deemed to apply to the point that they feel ostracized. Ecclesiastical authorities and the faithful can work together at correcting the fact that the “obstinate persistence in grave sin” clause is problematic. The work can be done in a unified way and, over the course of time, in a more streamlined approach. It can be employed by a specially trained priest or official in the diocese who would be chosen to offer the parties advice on the validity of their marriage or the formal marriage process. Then, with an institutional remedy of a “Dialogue” that includes personalized catechesis in a facilitated setting with a goal towards reconciliation, the process for assisting those with issues pertaining to their non-admission to Communion can be addressed. It will help bring the Church to the fullness of charity.

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<sup>100</sup> C. VASIL, “Separation, Divorce, Dissolution of the Bond, and Remarriage: Theological and Practical Approaches of the Orthodox Churches,” in R. DODARO (ed.), *Remaining in the Truth of Christ: Marriage and Communion in the Catholic Church*, Ignatius Press, San Francisco, 2014, pp. 93-128; P. MARCUZZI, “The Application of *aequitas et epikeia* to the Divorced and Remarried,” CatholicCulture.org, accessed 7 June 2014 at <http://www.catholicculture.org/culture/library/view.cfm?recnum=2664>; cf. also MÜLLER, “Testimony to the Power of Grace.”

<sup>101</sup> For a detailed discussion on the principle of *oikonomia*, see M. WIJLENS, “Salus animarum suprema lex: Mercy as a Legal Principle in the Application of Canon Law?” in *The Jurist*, 54 (1994), pp. 560-590.

<sup>102</sup> CCC, no. 1958.

The use of the suggested remedies will demonstrate Church commitment to the New Evangelization, to acknowledging historical influence, to embracing those faithful who are wounded, and to developing plans for meaningful sacramental participation in the Eucharist. They will not flout the moral law. They will not corrupt the integrity of the Holy Sacrifice of the Mass with division and will reduce strategizing on anyone's part to go to a church where they can receive Communion. They will bring the issues surrounding denial of Communion to the fore so the Church community can be enlightened and ultimately unified.

The "Dialogue" will address the issues pertaining to faith formation and help prepare persons for the annulment process, for the praxis of tribunals, or for what may be a negative result of the arduous task of petitioning for a declaration of nullity. It can help those in political life better understand the value of their participation in certain party endeavors in ways that bear witness to choices consonant with the law of the Church. It will return many to the practice of the faith. The program will demonstrate an acknowledgment of the eschatological nature of the pilgrim Church, and its use will work towards the restoration of all things.

## **Conclusion**

The manner and method by which c. 915 is often applied turns on a legal mechanism which is unclear, inconsistent in application, and causes certain faithful to feel misunderstood and even shunned by the Church. It further does not recognize the impact of recent history on the persons to whom the provision of c. 915 is being applied. It accomplishes denial of Communion to some persons whose conduct may prompt others to wrongdoing but denies the scandal that might be prompted by parishioners going to pastors

to share facts about the communicant that he or she has not shared with the pastor themselves. Moreover, it does not promote any remedy for sacramental participation of those who may be denied Communion. It creates division and disparate views about the faith on the part of the faithful, most particularly regarding the question of whether those formed during and in the wake of Vatican II have a defective understanding of the Church's theological principles and what to do about that problem. It provides for no legal redress. Because of the lack of clarity and direction, the focus of the faithful is actually diverted from the intrinsic quality of the gift of the Eucharist and the responsibility of the community in relation to that gift and toward one another.

While the elements of protection of the Sacrament have retained relative stability in the law throughout the centuries, the efficacy of the discipline with respect to the prevention of confusion and scandal among the faithful has been fragmented since the time of Vatican II. This is due to two factors. The first is what has been acknowledged as an incomplete understanding of the fruits of the Second Vatican Council. Secondly, the law of the Church has significantly changed in terms of the rights and responsibilities of the faithful, yet there has been no clear structure put into place to address these aspects of the application of the clause. As a result, the application of the relevant clause of c. 915 at the local level lacks uniformity.

Obviously, there is a conundrum in relation to the law in question which must be addressed in a way that is forthright yet doctrinally uncompromising. Christ is the truth revealed. He is revealed most perfectly in the Eucharist. It is our vocation to draw others to the truth of His plan. Therefore, we must fully address the truth of that plan which has been revealed to us. This includes, most assuredly, divine law. However, the truth in this

context must also include historical fact and application of positive ecclesiastical law in a way that makes sense to the faithful. We know that, “[i]n Christ, *charity in truth* becomes the Face of his Person, a vocation for us to love our brothers and sisters in the truth of his plan.”<sup>103</sup> This statement, however, must be reconciled with the actual treatment received by them and put into the context of history. Precisely because the magisterium of the Church has acknowledged the relationship between the Council and confusion on the part of the faithful, its pastors should work with those to whom c. 915 applies in a more personalized way. There must be a more charitable approach.

It must also be admitted that many pastors, including many bishops, simply make no attempt at all to enforce c. 915 due to the numerous problematic aspects of its application. This lack of reception of the law should prompt the Church to consider the remedies like those proposed in this thesis as developed in the fourth chapter.

Persons should not feel punished for making choices that they did not even know flouted the law. Most of them truly do not know why they cannot receive Holy Communion because they do not comprehend the gravity of their choices regarding marriage, divorce, and politics in relation to Holy Communion. Many feel that their circumstances are compelling and that, if those circumstances were known by the Church, they would be understood without being subjected to the pain of a tribunal process or a recusal from public office. Thus, when they are approached by the pastor or when a final determination is made by a tribunal which will result in denial of Communion, they are angry and disappointed. The Church declares that those denied Holy Communion must not be made to feel that they

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<sup>103</sup> CV, Introduction.

are not a part of the life of the Church.<sup>104</sup> Much work must be done to bring this stated goal to fruition.

Indeed, the Church should welcome a method for clarifying the manner by which the faithful might be helped to understand both the divine and positive ecclesiastical laws which apply to their life circumstances and those of future generations. Neither the current praxis of tribunals nor the current emphasis on catechesis resolve for the many faithful in need of attention the fundamental problems in the current application of the pertinent clause of c. 915. There is an urgent need for a change in the application of the law and for institutional remedies grounded in mercy, delivered in charity, and which focus on authentic development of humanity in a personalized setting.

Divorced and remarried parties who married or politicians who committed themselves to certain party platforms during an era of doctrinal confusion, and who are now deemed unworthy of admission to Holy Communion, should be accorded an opportunity for personalized catechesis and to develop an action plan with their pastors about their degree of sacramental participation. It is the goal of this thesis to provide a blueprint for such an action plan.

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<sup>104</sup> cf. BENEDICT XVI, address to the Seventh World Meeting of Families, 2 June 2012, accessed on 23 February 2015 at [http://w2.vatican.va/content/benedict-xvi/en/speeches/2012/june/documents/hf\\_ben-xvi\\_spe\\_20120602\\_festa-testimonianze.html](http://w2.vatican.va/content/benedict-xvi/en/speeches/2012/june/documents/hf_ben-xvi_spe_20120602_festa-testimonianze.html).

## CHAPTER THREE

### THEOLOGICAL REFLECTIONS

#### **Introduction**

The changes in the Church in the wake of Vatican II impact determinations of “obstinate persistence in manifest grave sin” today because they directly affected conscience formation. Of course, there was no change in the principles that “natural law is immutable” and that “a human being must always obey the certain judgment of his conscience.”<sup>1</sup> However, there developed a spectrum of understanding the manner by which “freedom may be experienced” and “conscience must be informed and moral judgment enlightened.”<sup>2</sup> This has impacted the manner by which doctrine has been received, understood, and expressed by the faithful; particularly regarding “grave sin.” It is of particular relevance here because, as a result, many of the faithful have never learned what constitutes “grave sin” or the manner by which the conscience should address such circumstances. Many are not even conscious of these things as they enter the latter part of their lives and are told they may not be admitted to Communion because they are grave sinners. The Body of Christ must be protected, and the moral law cannot be changed. However, there is a need assiduously to address the manner and method by which that protection should be put into place and by which many faithful can yet learn the moral law and engage in meaningful sacramental participation.

This chapter is divided into three sections. The first presents some reflections on the theological underpinnings of c. 915. The second section explores the personalist basis

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<sup>1</sup> CCC, nos. 1958, 1790.

<sup>2</sup> Ibid., no. 1783.

of the philosophy and theology of Pope John Paul II and its potential for a correct understanding and application of c. 915. Finally, the third section develops some thoughts on the significance of the notions of conscience and moral imputability for a proper and just pastoral practice with respect to c. 915.

### 3.1 – Theology as the Underpinning of Canon 915

The changes that occurred in the Church in the latter half of the twentieth century are matters of historical fact. Yet, another historical fact has remained a constant throughout history, namely, that Church authorities are vested with the responsibility to deny Communion in certain cases out of concern for public scandal and in order to protect the sacred species of the Most Holy Eucharist.<sup>3</sup> This does not mean, however, that the precise language of c. 915, or even the manner by which it is applied, must remain the same. Germain Grisez instructs:

Canon law studies the meaning and application of the regulations established by Church authorities to coordinate the common life of the Church's members. Having been made by the Church, these rules can be changed by the Church; moreover, they have moral force for the Christian conscience only insofar as one understands the duty to obey those who enact them.<sup>4</sup>

The Christian conscience is informed by theology. Lonergan provides us with instruction in this regard. He writes: "Etymologically, theology means a discourse about God." He says that, within a Christian context, theology "denotes a person's reflections on the revelation given in and by Jesus Christ."<sup>5</sup> He propounds that there is not just one manner

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<sup>3</sup> cf. BURKE, "Canon 915," p. 8; cf. also PCLT Declaration, no. 1.

<sup>4</sup> G. GRISEZ, *The Way to the Lord*, vol. 1, *Christian Moral Principles*, Chicago, Franciscan Herald Press, 1983, p. 22 (= GRISEZ, *The Way to the Lord*).

<sup>5</sup> B. LONERGAN, *Method in Theology*, Toronto, University of Toronto Press, 1994, p. 296.

or even a limited set of manners in which doctrines develop. Rather, the intelligibility proper to developing doctrines is the intelligibility immanent in historical process. One knows it, he says, “not by *a priori* theorizing, but by *a posteriori* research, interpretation, history, dialectic, and the decision of foundations.”<sup>6</sup> As the Council expressed in *Dignitatis humanae*:

The search for truth ... must be carried out in a manner that is appropriate to the dignity and social nature of the human person, that is, by free enquiry with the help of teaching or instruction, communication and dialogue. It is by these means that people share with each other the truth they have discovered, or think that they have discovered, in such a way that they help one another in the search for the truth. Moreover, it is by personal assent that they must adhere to the truth they have discovered.<sup>7</sup>

Though the objective nature of the conduct of the communicant in a way that is “manifest” is ultimately emphasized as being the primary focus of the analysis, the PCLT Declaration initially emphasizes the individual faithful and their moral conscience.

Regarding the Pauline text on worthy reception, the Declaration states:

*This text concerns in the first place the individual faithful and their moral conscience, a reality that is expressed as well by the Code in can. 916. But the unworthiness that comes from being in a state of sin also poses a serious juridical problem in the Church.... In effect, the reception of the Body of Christ when one is publicly unworthy constitutes an objective harm to the ecclesial communion: it is a behavior that affects the rights of the Church and of the all the faithful to live in accord with the exigencies of that communion (no. 1) [emphasis added].*

Further, the Declaration criticizes some interpretations of c. 915 which suggested that it would be necessary to establish the presence of all the conditions required for the existence of mortal sin, including those which are subjective, “necessitating a judgment of a type that

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<sup>6</sup> Ibid., p. 319.

<sup>7</sup> *DH*, no. 3.

a minister of Communion could not make *ab externo*” (Introduction). Because the words “grave” and “sin” are used in the canon, however, a moral theological component is logically introduced in any consideration of an application of the law. Indeed, how might it be said that grave sins committed by a person are to be objectively understood in the context of c. 915 without any consideration of subjective moral certitude or imputability? Why else would the legislator have used the words “grave sin”?

According to Grisez, theology “generally refers to reflection upon the sources in which the truth of faith is articulated.”<sup>8</sup> This is obviously relevant to the pertinent clause of c. 915. He adds that systematic theology is segmented into moral theology, which seeks to make clear how faith should shape Christian life. Logically, the clause of c. 915 is made more relevant to daily living in view of theological principles. Moreover, theological principles appertain because the law is grounded in the goal of protecting the Eucharist as set out in St. Paul, a source in which the truth of faith is articulated.

Canon law can be easily differentiated from moral theology in a way that might suggest that there is no need for interpreting the pertinent clause of c. 915 in consideration of that branch of theology. Canon law is different from moral theology, according to Della Rocca, in that the canons of the Code are regulative of the external activities of the faithful. Moral theology does not do this. It is concerned, he says, with human acts regarded from the viewpoint of ethics and conscience. Canon law, however, also “formulates laws capable of qualifying these acts as licit or otherwise, with direct and exclusive reference to conscience or the internal forum insofar as such acts have an immediate relation with the

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<sup>8</sup> GRISEZ, *The Way to the Lord*, p. 21.

interior sanctification of the members of the Church with their supernatural end.”<sup>9</sup> Thus, the two are easily integrated for interpretation and application.

Confusion regarding the application and reception of the pertinent clause of c. 915 stems, in substantial measure, from both official and unofficial interpretations by ecclesiastical authorities that fail to recognize the extent to which the words “grave sin” are grounded in moral theological principles relating to imputability. Admittedly, clear emphasis in the interpretations is placed on pastoral responsibility relating to the law. Saliently, though, nothing addresses the crux of the matter: that many to whom the law is being applied are not aware that they are committing grave sin and have no clear direction on how to proceed within the framework of the moral law in view of their circumstances. This problem controverts the conciliar emphasis on how persons are to attain to knowledge of the truth.

In his reflection upon the sources in which the truth of faith can be articulated, Henri de Lubac writes that the Church remains the “sacrament of Christ.” The Church leads to Christ and at the same time effectively contains him. He says that the Church, therefore, is for each individual not only a pedagogue leading to Christ, but “she remains always present to the dialogue of the soul with its Lord.” He adds that theology cannot be reducible to anthropology and that the mystery of the Church cannot be reduced to sociology.<sup>10</sup> Theology can, however, be considered as a foundation for canon law, which should employ theological and anthropological principles regarding expressions of free will and

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<sup>9</sup> F. DELLA ROCCA, *Manual of Canon Law*, translated by A. Thatcher, Milwaukee, The Bruce Publishing Company, p. 6 (= DELLA ROCCA, *Manual of Canon Law*).

<sup>10</sup> H. VON BALTHASAR, *The Theology of Henri de Lubac*, San Francisco, Ignatius Press, 1991, p. 109.

conscience. In fact, Ladislav Örsy speaks of a “Eucharistic theory of canon law in conjunction with the idea of faith seeking understanding.”<sup>11</sup> The contributions of many theologians in the wake of Vatican II show how theological principles directly relate to perspectives about denying Communion to certain faithful.

In addition to Örsy, others have addressed the relationship between canon law and theology. In an analysis regarding this point, Coughlin writes:

Calling for respect for fundamental rights in the church, Pedro Lambardia, a canonist at Navarra, stressed sacramental character, special mission of the church, and the role of ecclesiastical authority in the provision, interpretation, and application of canon law. The Gregorian University’s William Bertrams, S.J., observed that canonists study the external juridical realities of natural law and supernatural ends. More recently, Gianfranco Ghirlanda, S.J., also of the Gregorian University, has stressed that canon law reflects the mystery of *communio* in the church.<sup>12</sup>

Coughlin also references Corecco’s interpretation of Vatican II’s approach to the relation between theology and canon law. It is applicable here. According to that interpretation, Vatican II exhibited “a subtle antijudicial vein” on the one hand. On the other hand, Corecco had a view of Vatican II as bringing about a renewal of canon law that ultimately resulted in the promulgation of the *CIC* 1983 and the *CCEO*. In Corecco’s view, this tension needs to be resolved by the development of a “new science” of canon law. Coughlin asserts that, if a new methodology developed for canon law, a “critical component of the methodology would be theological anthropology.”<sup>13</sup> There is a theological-anthropological

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<sup>11</sup> See L. ÖRSY, *Theology and Canon Law: New Horizons for Legislation and Interpretation*, Collegeville, MD, Liturgical Press, 1992, pp. 158-173.

<sup>12</sup> J. COUGHLIN, *Law, Person, and Community: Philosophical, Theological, and Comparative Perspectives on Canon Law*, New York, Oxford University Press, 2012, p. 61 (= COUGHLIN, *Law, Person, and Community*).

<sup>13</sup> *Ibid.*, pp. 61-62.

component to the interpretation of the law as the faithful to whom the clause of c. 915 is being applied are, notwithstanding their particular circumstances in life, still responding to the Eucharist.

Additionally, the very choices, which seem to manifest the intention of the persons who are not to be admitted to Communion, are grounded in the way in which those persons perceive themselves in relation to their actions. The failure to address the complexity of the circumstances, which have prompted them to make certain choices, falls short of assisting them in further developing themselves and in relating to their faith community. Buttiglione, in analyzing Karol Wojtyła's *The Acting Person*, writes that "not only man's act but also what happens in man is reflected in consciousness. For these reasons the act of man cannot be analyzed only from the point of view of consciousness: it must be situated with the full human dynamism."<sup>14</sup> The very real problem which the faithful face with the clause of c. 915, however, is that, as Wojtyła addressed, knowledge of that dynamism "supposes not only the internal experience of man but also his external experience and his knowledge of the whole of reality."<sup>15</sup> Each person has the potential to act, but it is in the actualization of the act that an individual "builds his personality and to some extent creates himself, his own interiority and moral personality."<sup>16</sup> However, these principles must be understood in the context of recognizing that "both the knowledge which man has of the

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<sup>14</sup> R. BUTTIGLIONE, *Karol Wojtyła: The Thought of the Man Who Became Pope John Paul II*, translated by P. Guietti and F. Murphy, Grand Rapids, William B. Eerdmans Publishing Company, 1997, p. 134 (= BUTTIGLIONE, *Karol Wojtyła*).

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*, p. 135.

world and also his metaphysical understanding of being contribute to self-knowledge.”<sup>17</sup> The application of c. 915, as interpreted in the PCLT Declaration, does not provide for any remedy to assist the faithful with the complexities of understanding themselves in relation to choices they make and how they relate to the community of faith. It also ignores the principles of conversion and redemption.

The myriad of issues associated with the application of the pertinent clause of c. 915 can be approached with a more hopeful view toward the person being reconciled to the Church and participating in the Eucharist in a meaningful, not a punishing, way. That is the appropriate approach to the problem. It requires being open to working in a setting of mediated dialogue and catechesis.

The commission of grave sin in a way that is obstinately persistent and manifest requires that the person who engages in the conduct have full knowledge and consent to an object of sin that they realize is grave matter. It presumes proper formation of conscience and sufficient consciousness of what constitutes both sin and grave matter. The actions of many of the faithful simply do not meet this presumption. It is an unrealistic expectation that c. 915 can be applied in a way that makes sense to many of the faithful.

This is a glaring defect in the application of the law that must be addressed. Moreover, there can be no plan for meaningful sacramental participation without the contemplation of moral theology in the application of the law. Indeed, as Della Rocca notes, canon law is both a sacred science and a juridic science that has a systemic method proper to such a science; thus it cannot prescind from theological concepts.<sup>18</sup> Therefore,

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<sup>17</sup> Ibid., p. 137.

<sup>18</sup> DELLA ROCCA, *Manual of Canon Law*, p. 7.

the application of c. 915 in individual cases must be treated in both a theological and juridical manner. This is particularly true regarding the pertinent clause of c. 915 because the communicant has to be helped to understand fundamental Catholic teaching and how it relates to being denied Communion, most particularly regarding grave sin. Further, because addressing these circumstances is a very sensitive matter, there should be a structured venue and format in which the communication about the moral law and the ecclesiastical law takes place.

Grisez provides contextual information about the difficulty that existed in both the classical moral theology and the moral theology since the time of Vatican II. He says that in both there is a failure to appreciate the complex makeup of the Christian and the Christian life. To him, “[a]s the human and divine are distinct but inseparable in Jesus, dynamically integrated but not commingled, so the Christian has a human nature and an adoptive share in divinity, and is to lead a life fully human but also truly divine.”<sup>19</sup> In view of this, he believes that an adequate treatment of Christian moral principles, which meets the Council’s prescription for renewal, “must clarify what a Christian is and how Christian life can be at once intimately human and divine. It must emphasize how human goods determine Christian moral norms and show why a life in accord with Christian norms is the only life which is humanly good, while also showing how to live such a life.”<sup>20</sup>

Grisez believes that the remedy for introducing all of this into a sufficient treatment of moral principles is to orient it toward preaching, teaching, and counseling while providing an adequate basis for studies leading to the formation of confessors. Such a

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<sup>19</sup> GRISEZ, *The Way to the Lord*, p. 25.

<sup>20</sup> *Ibid.*, p. 22.

treatment must also explain the authority of the Church's teaching.<sup>21</sup> For many of those to whom c. 915 may be applied, such goals were never met. There is no structure for them to be imparted to the faithful under the current application of the law.

Further analysis of the relationship between moral theology and the pertinent clause of c. 915 can be assisted by Örsy's instruction that a norm that is presented to those whom it intends to bind must be simple and direct—even if it handles complicated matters. He adds that these qualities of being simple and direct are “prime hermeneutical factors in the interpretation of any law.” The interpreter must assume that the legislator intends to communicate a well-defined decision, he says. “It would be a fallacy to think that the longer and deeper an explanation of the law is, the closer the interpreter comes to its original sense. The opposite may be true: extensive explanations can destroy the directness of the legislator and obscure the action to be performed.”<sup>22</sup>

The PCLT Declaration emphasizes the objective determination of violations of moral law and does not provide excessive explanations (no. 2). Based on this, it does seem to be simple and direct in its application. However, the phrase is not clear and is dealing with sin, which always involves a level of subjectivity in the application of the will. Also, the use of the words “grave sin” introduces the issue of moral imputability, the determination of which is sometimes not simple and direct, and which sometimes does not lend itself to a clear decision.

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<sup>21</sup> Ibid.

<sup>22</sup> L. ÖRSY, “Moral Theology and Canon Law: The Quest for a Sound Relationship,” in *Theological Studies*, 50 (1989), p. 158.

Moreover, the words “obstinately,” “persist,” “manifest,” and “grave” serve as modifiers to sin in the context of when persons are not to be admitted to Communion under the law. Their relevance to the application of the norm is predicated on the determination that a party has committed sin. Then, a determination is made regarding the nature of the party’s sin, as well as whether Communion is to be given (obstinate, persistence, manifest). None of these determinations are simple and direct. Each can be said to pertain to moral theological principles regarding sin because they evidence a lack of understanding Church law about conscience and imputability. In keeping with Örsy’s reasoning, this would mean that, in the application of c. 915, the directness of the law is destroyed and the action to be performed is obscured. Both results have occurred with the application of this clause. This is a complex reality of just one problem with applying the law.

A significant problem for the pastor lies in how he is to ascertain, and then remedy, issues relating to theological principles. He must determine that the person who may be denied Communion is in a state of “obstinate persistence in manifest grave sin” without violating the seal of the confessional. According to the PCLT Declaration, he is then vested with the responsibility for meeting with the gravely sinful persons, instructing them in the law about “the true ecclesial sense of the norm in such a way that they would be able to understand it or at least respect it” (no. 3). Also, he must admonish them that, until they end their objective situation of grave sin, they should not approach for Communion or they will be denied it.<sup>23</sup>

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<sup>23</sup> See RATZINGER, *Worthiness to Receive*; see also CONGREGATION FOR THE DOCTRINE OF THE FAITH, doctrinal note on some questions regarding the participation of Catholics in political life, 24 November 2002, in *AAS*, 96 (2004), pp. 359-370, English translation in *Origins*, 32 (2003), pp. 537-543.

From a practical viewpoint, many of the faithful to whom the clause is being applied approach Communion with no thought that they are doing something wrong until they are addressed by the pastor and are told that what they are doing is against the law. Indeed, their lack of exposure to uniform moral teachings has simply become evident since the law has been more stringently enforced since the year 2000 when the PCLT Declaration was issued. Without a uniform, institutional remedy for addressing their problems in a meaningful way, it is lacking in charity to hold accountable only those who are in irregular marriage situations and politicians who, after decades, are steeped in party politics which address some tenets of Catholic social doctrine and not others. This is particularly true in view of the fact that the longstanding jurisprudence regarding the degree of discretion required for marriage notes that it is greater than that required for committing a mortal sin,<sup>24</sup> and that the Compendium of the Social Doctrine of the Catholic Church was not promulgated until March, 2005.<sup>25</sup>

As previously addressed, canon law has historically sought to prevent admittance of notoriously grave sinners to Communion. However, the language of the prior law did not specifically call for a determination of “grave sin” on the part of the person to be excluded from the Eucharist. The use of these words calls for a subjective assessment, on the part of the pastor, of someone’s state of mind. It is precisely this call for such an

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<sup>24</sup> S.R.R., *coram* Lamas, 21 October 1959, no. 3. “While for the commission of a mortal sin there suffices the discretion of a child who has completed his seventh year, in as much as a person ordinarily able to know the Divine Will and to comprehend, in accordance with his age, how disgraceful it is to offend the Divine Will, discretion of this kind nevertheless does not suffice for understanding the peculiar obligations inherent in marriage and the binding force exerted with respect to these obligations, even to the point of sacrifice, upon the parties for life.”

<sup>25</sup> PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *Compendium of the Social Doctrine of the Church*, Washington, USCCB, 2004.

assessment under the norm of c. 915 today which is so problematic. Many parties whose conduct is in question do not know that their actions constitute grave sin and do not really know how to address the issue. The process of determining they are grave sinners is touted as being an objective determination. How there can be a completely objective determination of grave sin with nothing in the norm seeking to address the consciousness of that sin on the part of the communicant? Indeed, application of the clause is a problem crying out for a pastoral remedy.

In fact, notwithstanding the stated emphasis on the objective interpretation of the norm, a determination of both moral and legal imputability must necessarily take place even before the circumstances at issue are fully known. This must occur if the norm were a penal provision (cf. c. 1321). Why should it not be required here? There is a danger of not admitting to Communion some who are morally inculpable, such as civilly divorced and remarried parties who have made the decision to live as brother and sister, or politicians who have just received absolution in the confessional and have committed themselves to a political viewpoint more focused on Church teachings. This is a risk inherent in the manner by which the current norm is applied. There is, once again, a confused approach in view of obvious probability that the parties might already be remedying their “grave sin” at the time they approach the altar.

The full truth must be explored in these cases for true charity to prevail.

Pope Benedict writes:

Truth needs to be sought, found and expressed within the “economy” of charity, but charity in its turn needs to be understood, confirmed and practiced in the light of truth. In this way, not only do we do a service to charity enlightened by truth, but we also help give credibility to truth, demonstrating its persuasive and authenticating power in the practical setting of social living. This is a matter of no small account today, in a social

and cultural context which relativizes truth, often paying little heed to it and showing increasing reluctance to acknowledge its existence.<sup>26</sup>

Though this language is most often used in the context of addressing relativism, it conceptually applies to the instant cases regarding denial of Communion. A generalized, inconsistent, and confused application of the pertinent norm, which fails to address the members of the faithful in their personal situations, does no service to the truth or to charity.

Currently, there is no manner and method of holistically approaching the situations at issue in these cases. The current manner and method used by authorities to address the potential scandal with the parties may actually seem more scandalous to some than is the action of publicly denying Communion, because they have been schooled to believe that, no matter the conduct, they are worthy and that “all are welcome.”<sup>27</sup> They are not schooled in the distinctions regarding the true meaning of scandal that is noted in the law.<sup>28</sup> To them, since Jesus Christ already died for their sins, the law is especially confusing. This is particularly relevant to the Church’s consideration of the law here, given the spate of Church scandals which have been so public because many faithful assess the application of the law to them as being a double standard.

Charles Curran has noted that, in the New Testament, sin is never viewed in a legalistic sense as the mere violation of some precept or impersonal, abstract norm. Fighting sin, which is presented as an essential component of the Christian life, “is never a

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<sup>26</sup> *CV*, no. 2.

<sup>27</sup> M. HAUGEN, “All Are Welcome,” song lyric, GIA Publications, 1994.

<sup>28</sup> *CCC*, no. 2284.

question of fleeing from a taboo, but of conforming oneself to the mystery of Christ.”<sup>29</sup> This, many of the faithful believe, they do in ways not related to what may seem, to them, to be mere legal rubrics for presenting for Communion. They are in need of the truth and charity from the Church in a way that offers guidance tailored to their circumstance in life. They need a “Dialogue of Charity.”

Particularly since the time of Pope John Paul II, pervasive subjective moral certitude has been criticized as being a byproduct of the confusion that spread after the Second Vatican Council. As will be addressed more fully below, his notions of moral philosophy, that is, personalism, directly impacted the view towards universal truths, sin, and the exercise of conscience in the community.<sup>30</sup> Ratzinger emphasizes the existence of universal truths.<sup>31</sup> Yet, the problem of subjective moral certitude is best addressed on a case-by-case basis in a more pastoral and educative setting. From that setting there will be a raising of consciousness towards the truth on the part of all participants. The authority of grace, which Ratzinger says is “a power of expiation that allows the guilt to vanish and makes the truth at last truly redemptive,” will transform the faithful, washing away their guilt and transforming their being from within beyond their own capability.<sup>32</sup>

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<sup>29</sup> C. CURRAN, *The Catholic Moral Tradition Today: a Synthesis*, Washington, D.C., Georgetown University Press, 1999, p. 212.

<sup>30</sup> See R. MODRAS, “The Moral Philosophy of John Paul II,” in *Theological Studies*, 41 (1980), pp. 683-697.

<sup>31</sup> J. RATZINGER, *On Conscience*, San Francisco, Ignatius Press, 2007, p. 22.

<sup>32</sup> *Ibid.*

The ultimate solution for the Church in addressing the matter of not admitting certain faithful to Communion pertains to what Ratzinger refers to as “the real innovation of Christianity in relation to conscience and truth.”<sup>33</sup>

The Logos, the truth in person, is also the atonement, the transforming forgiveness that is above and beyond our capability and incapability. Therein lies the real novelty on which the larger Christian memory is founded, and which indeed, at the same time, constitutes the deeper answer to what the anamnesis of the Creator expects of us. Where this center of the Christian message is not sufficiently expressed and appreciated, truth becomes a yoke that is too heavy for our shoulders, from which we must seek to free ourselves....Yet the yoke of truth in fact became “easy” (Matthew 11:30) when the Truth came, loved us, and consumed our guilt in the fire of his love. Only when we know and experience this from within will we be free to hear the message of conscience with joy and without fear.<sup>34</sup>

For reasons set out in this study, many to whom c. 915 is being applied do not possess the knowledge and deliberate consent regarding their actions to fall under the definition of grave sin. Many were not even exposed to a clear understanding of what, to the Church, constitutes “sin.” While it is a maxim of the Church that man has the truth written in his heart, there is more to the application of the conscience than this maxim. This has led to a lack of reception of the law as well as confusion regarding the manner and method by which it should be applied. The solution to this problem is to engage pastoral responsibility in a form of personalized catechesis in a mediated setting with each party to whom the law may apply for purposes of engaging an action plan for sacramental participation.

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<sup>33</sup> Ibid.

<sup>34</sup> Ibid., pp. 40-41.

### 3.2 – Pope John Paul II, Personalism, and the Application of the Law

In the pastoral constitution, *Gaudium et spes*, the Council Fathers instructed that “only in the mystery of the incarnate Word does the mystery of man take on light.”<sup>35</sup> Emphasis on this principle permeates the entirety of Christian anthropological understanding in a way that was unique to the latter part of the twentieth century and has continued into the twenty-first century. The influence of Pope John Paul II on this orientation is undeniable. His construct of Christian philosophical personalism sheds light on how c. 915 and interpretations of it were intended to promote a certain moral truth and draw mankind ever closer to an understanding of the truth who is God. In an analysis which supports this construction, Buttiglione speaks of what, in Karol Wojtyła’s *The Acting Person*, is considered to be the fundamental historical meaning of Vatican II.

Provoked by modern subjectivism, the Council elaborates a discourse on the person, on consciousness, and on freedom which had remained implicit in the traditional formulation of her doctrine. This novelty is, however, carefully incorporated in the traditional edifice of the philosophy of being. In this perspective the true fundamental content of the Council is the recognition of freedom of conscience, based on the eminent dignity of the person and on the respect for the path which is proper to the person on his or her way to the truth.<sup>36</sup>

Jaroslav Kupczak, in a presentation at the John Paul II Cultural Center devoted to the subject of “The Meaning of Theological Anthropology in the Teaching of John Paul II,” offers another affirmation of this view.

Following John Paul II we can point to several fundamental anthropological notions whose contemporary meaning we owe to the mystery of the

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<sup>35</sup> *GS*, no. 22.

<sup>36</sup> BUTTIGLIONE, *Karol Wojtyła*, p. 128.

Incarnation and Christianity. The notions include: the person, human dignity, marriage, freedom, conscience and truth.<sup>37</sup>

Each of these notions is addressed in the application of the pertinent clause of c. 915. Thus, it seems that much of the Christian anthropological analysis in these areas in the Church is tied to Pope John Paul II even from the time he was Karol Wojtyła. This is true particularly regarding his notion of man and sin. Sin, however, is tied to consciousness and truth, which was the focus of Wojtyła's *The Acting Person* and, arguably, many of the writings of his pontificate.<sup>38</sup>

Relating this to Vatican II, Buttiglione writes that one goal of the Council was unifying the cause of truth with the cause of freedom. For this to be achieved, he believes it will be necessary to correct all of the interpretations of the Council which see it as “submitting to the modern world and to philosophies of consciousness which contain an implicit moral relativism.”<sup>39</sup> In relating this point back to Wojtyła's development of anthropology, he asserts that this correction happens in *The Acting Person* by the positive development of the conciliar anthropology “in its precise balance – in its great novelty as well as in its stalwart maintenance of tradition.”<sup>40</sup> Wojtyła, in essence, uses phenomenology and infuses it with the contribution of the Augustinian tradition with respect to the philosophy of man. Augustine, Buttiglione finds, is at least as much present

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<sup>37</sup> J. KUPCZAK, “The Meaning of Theological Anthropology in the Teaching of John Paul II,” paper presented at John Paul II Cultural Center, Washington, D.C., 28 October 2012.

<sup>38</sup> These would include *Redemptor hominis*, *Veritatis splendor*, *Evangelium vitae*, and *Reconciliatio et poenitentia*.

<sup>39</sup> BUTTIGLIONE, *Karol Wojtyła*, p. 128.

<sup>40</sup> *Ibid.*, p. 129.

in Wojtyla's thought as is St. Thomas. There is also an influence of Aristotelian metaphysical analysis.

To Wojtyla, an understanding developed about the metaphysical conception of potency and act. Buttiglione explains that, from the metaphysical point of view, a specifically human act indicates a specific potency that corresponds to it, and the act realizes this potency. The potency is the core of the human being. Yet, in addition to this ontological aspect, there is also a psychological aspect in the classical understanding. Thus, it can be said that the human act is voluntary and conscious.<sup>41</sup>

Wojtyla takes these concepts and formulates an enhanced methodology which can actually be said to directly relate to the manner by which the interpretation of c. 915 in the PCLT Declaration was accomplished. Unlike the scholastic analysis of the human act which focused on potency and act with a departure point of a concept of being, Wojtyla enhances that understanding and focuses on man's ontological structure through action. How this relates to the application of the pertinent clause can be seen in Buttiglione's observation of Wojtyla's analysis.

Action is considered insofar as it is given immediately in experience and in conscience, and the person is seen not only as the subject of the action, which carries the responsibility for it, but as the conscious subject of the action who becomes actual and knows that he is doing it.<sup>42</sup>

Buttiglione notes other fundamental precepts in Wojtyla's thoughts which appertain. These include that there is a human obligation to bring the good into reality; that there is a connection between truth and freedom which enables one to found a normative order; and

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<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

that the foundation of all duties is that of the person toward himself and his own self-realization, from which all other duties towards others will follow. Further, Wojtyla's view is that it is with the full participation of his acts of conscience and of subjective interiority that man can be fully realized as a person.<sup>43</sup>

These core beliefs of Wojtyla carried over into his participation in Vatican II, in his book *Sources of Renewal*, and eventually into his pontificate. In *Sources of Renewal*, published in 1972, Wojtyla presents the teachings of the Council regarding its pastoral nature, introducing the work as follows.

In the present study, designed to help towards the realization of Vatican II, we shall concentrate on the consciousness of Christians and the attitudes they should acquire. These attitudes, springing from a well-formed conscience, can in a sense be regarded as true proof of the realization of the Council. This is the direction which should be followed by all pastoral action, the lay apostolate and the whole of the Church's activity.<sup>44</sup>

Then, in a Lenten retreat in 1976 preached to Paul VI and his staff, Wojtyla referenced the language from *Gaudium et spes* pertaining to conscience, including: "Often conscience errs through invincible ignorance without thereby losing its dignity. But this cannot be said of any man who makes little or no effort to seek what is true and good, or of a conscience that becomes almost blinded as a result of sin that is habitual."<sup>45</sup> He then addressed the retreatants: "The dignity of the human person has its foundation in the conscience, in that inner obedience to the objective principle which enables human 'praxis' to distinguish

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<sup>43</sup> Ibid., pp. 151-152.

<sup>44</sup> K. WOJTYLA, *Sources of Renewal: The Implementation of the Second Vatican Council*, trans. by P.S. Falla, San Francisco, Harper and Row, 1980, p. 18. It was originally published in Polish as *U Podstaw Odnowy*, Cracow, Teol, 1972.

<sup>45</sup> K. WOJTYLA, *Sign of Contradiction*, New York, Seabury Press, 1979, p. 140, citing *GS*, no. 16.

between good and evil.... Obedience to conscience, which in its turn is obedient to the divine law of love, is what equates ‘serving Christ in others’ with ‘reigning’.<sup>46</sup> This is language he had developed decades earlier in his methodology for Christian anthropology in *The Acting Person*.

In 1979, in his first encyclical, *Redemptor hominis*, John Paul II strongly addresses the responsibility of the Church for the truth, the value of the Eucharist, and the sacrament of penance. As for the truth, the Pope writes:

Faith, as a specific supernatural virtue infused into the human spirit, makes us sharers in knowledge of God as a response to his revealed word. *Therefore it is required, when the Church professes and teaches the faith, that she should adhere strictly to divine truth, and should translate it into living attitudes of obedience in harmony with reason.... A sense of responsibility for truth is one of the fundamental points of encounter between the Church and each man and also one of the fundamental demands determining man’s vocation in the community of the Church.* The present-day Church, guided by a sense of responsibility for truth, must persevere in fidelity to her own nature, which involves the prophetic mission that comes from Christ himself<sup>47</sup> [emphasis added].

Regarding the Eucharist and penance, John Paul II instructs:

When celebrating the Sacrament of the Body and Blood of the Lord, the full magnitude of the divine mercy must be respected, as must the full meaning of this sacramental sign in which Christ is really present and is received, the soul is filled with grace and the pledge of glory is given.... This is the source of the duty to carry out rigorously the liturgical rules and everything that is a manifestation of community worship offered to God himself, all the more so because in this sacramental sign he entrusts himself to us with limitless trust, as if not taking into consideration our human weakness, our unworthiness, the force of habit, routine, or even the possibility of insult. *Every member of the Church, especially Bishops and Priests, must be vigilant.... Nor can we ... ever forget the words of Saint Paul: “Let a man examine himself, and so eat of the bread and drink of the cup.”... In the Church, gathering particularly today in a special way around the Eucharist*

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<sup>46</sup> Ibid., p. 141.

<sup>47</sup> Encyclical *Redemptor hominis*, no. 19, 4 March 1979, in AAS, 71 (1979), pp. 257-324, English translation in *Origins*, 8 (1979), pp. 625-644 (= RH).

and desiring that the authentic Eucharistic community should become a sign of the gradually maturing unity of all Christians, there must be a lively-felt need for penance, both in its sacramental aspect, and in what concerns penance as a virtue<sup>48</sup> [emphasis added].

After the Holy Father addressed subjects of the Eucharist and penance in *Redemptor hominis*, he wrote his encyclical on reconciliation and penance in 1984, in which he addressed sin. His methodology of *The Acting Person* comes through in the following passage, and it supports a reconsideration of the manner in which the pertinent clause of c. 915 is applied.

Sin, in the proper sense, is always a personal act, since it is an act of freedom on the part of an individual person and not properly of a group or community. This individual may be conditioned, incited and influenced by numerous and powerful external factors. He may also be subjected to tendencies, defects and habits linked with his personal condition. *In not a few cases such external and internal factors may attenuate, to a greater or lesser degree, the person's freedom and therefore his responsibility and guilt*<sup>49</sup> [emphasis added].

With respect to grave sin, the pope instructs in the encyclical that, in the Church's doctrine and pastoral action, grave sin is in practice identified with mortal sin. However, the Holy Father then continues:

Here we have the core of the church's traditional teaching, which was reiterated frequently and vigorously during the recent synod. The synod in fact not only reaffirmed the teaching of the Council of Trent concerning the existence and nature of mortal and venial sins, but it also recalled that mortal sin is sin whose object is grave matter and which is also committed with full knowledge and deliberate consent. It should be added—as was likewise done at the synod—that *some sins are intrinsically grave and mortal by reason of their matter.... These acts, if carried out with sufficient awareness and freedom, are always gravely sinful*<sup>50</sup> [emphasis added].

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<sup>48</sup> *RH*, no. 20.

<sup>49</sup> *RP*, no. 16.

<sup>50</sup> *Ibid.*, no. 17.

To the pope, this is true notwithstanding a person's fundamental orientation regarding the act. He clarifies his meaning as follows.

... the fundamental orientation can be radically changed by individual acts. *Clearly there can occur situations which are very complex and obscure from a psychological viewpoint and which have an influence on the sinner's subjective culpability.* But from a consideration of the psychological sphere one cannot proceed to the construction of a theological category [emphasis added].<sup>51</sup>

The pope laments the loss of a sense of sin and sets out a variety of reasons for this. He cautions, among other things, against a certain cultural anthropology which "emphasizes the undeniable environmental and historical conditioning and influences which act upon man, that it reduces his responsibility to the point of not acknowledging his ability to perform truly human acts and therefore his ability to sin."<sup>52</sup> The Holy Father then broaches the subject of historical relativism.

The sense of sin ... easily declines as a result of a system of ethics deriving from a certain historical relativism.... Herein lies a real overthrowing and downfall of moral values, and the problem is not so much one of ignorance of Christian ethics, but ignorance rather of the meaning, foundations and criteria of the moral attitude. Another effect of this ethical turning upside down is always such an attenuation of the notion of sin as almost to reach the point of saying that sin does exist, but no one knows who commits it.... *The restoration of a proper sense of sin is the first way of facing the grave spiritual crisis looming over man today. But the sense of sin can only be restored through a clear reminder of the unchangeable principles of reason and faith which the moral teaching of the church has always upheld*<sup>53</sup> [emphasis added].

In *Veritatis splendor* in 1993, Pope John Paul II focuses on moral evil according to its species. In this encyclical, the pope teaches that the decisive element for moral judgment

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<sup>51</sup> Ibid.

<sup>52</sup> Ibid., no. 18.

<sup>53</sup> Ibid.

is the object of the human act which is the primary criterion for determining whether it is capable of being ordered to the good and to the ultimate end, which is of God. He specifically rejects teleological and proportionalist theories, “which hold that it is impossible to qualify as morally evil according to its species – its ‘object’ – the deliberate choice of certain kinds of behavior or specific acts, apart from a consideration of the intention, for which the choice is made or the totality of the foreseeable consequences of that act for all persons concerned.”<sup>54</sup>

These writings of the pope evidence the potential influence of his thought on interpretations of c. 915. Evident are the notion of objective grave sin and the concern about societal influence and relativism. Fundamental norms of moral teaching, to the pope, do exist and they must be fostered for the good of the community, for the person himself, and for the plan of salvation from God. However, a consistent theme throughout the pope’s writings undeniably relates to the fact that a person’s consciousness of his actions is presumed but may be shown to be at issue. Complexities related to sin and conscious choices that are made by the exercise of conscience, as well as considerations regarding error due to invincible ignorance as well as psychological factors, are all evident in this pope’s thought. They actually provide support for an institutional remedy focusing on the content of a personalized catechesis of those to whom the pertinent clause may be applied.

*Veritatis splendor* was promulgated in August of 1993, well after the time during which most of the persons to whom c. 915 was being applied were already married or had become professionally involved in politics. The purpose of the encyclical, according to its

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<sup>54</sup> D. BOHR, *Catholic Moral Tradition*, Huntington, IN, Our Sunday Visitor Publishing, 1999, p. 221 (= BOHR, *Catholic Moral Tradition*).

author, is to set forth principles of moral teaching based on scripture and tradition “and at the same time to shed light on the presuppositions and consequences of the dissent which that teaching has met.”<sup>55</sup> This language evidences an obvious acknowledgment that there was a problem with the reception of the moral teachings of the Church on the part of the faithful that needed to be addressed well after the time the documents of Vatican II had been promulgated. Though it might be shown that dissent did exist at this time, many Catholics simply were not exposed to the basic tenets of moral law for decades after the close of the Second Vatican Council. This impacted their view of discernment before presenting themselves for Communion.

From this point, in consideration of the fact that the pope consistently acknowledged the possibility of genuine ignorance, it is logical to deduce that he would support a program focused on reconciling persons to the gift of God that is the truth, to their community, and to fuller realization of themselves. Consciousness-raising towards that end is a hallmark of the teachings of John Paul II even before the Council. His theories directly impacted it. He consistently sought to infuse it into his writings during his pontificate. Its influence is evident in the interpretations of the pertinent clause of c. 915.

Reconciliation is a pre-eminent theme of John Paul II, as evidenced in following statement:

In intimate connection with Christ’s mission, one can therefore sum up the church’s mission, rich and complex as it is, as being her central task of reconciling people: with God, with themselves, with neighbor, with the whole of creation; and this in a permanent manner since, as I said on another occasion, “the church is also by her nature always reconciling.”<sup>56</sup>

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<sup>55</sup> *VS*, no. 5.

<sup>56</sup> *RP*, no. 8.

In this vein, those who apply the pertinent clause of c. 915 should be called upon to promote reconciliation with those who are told they must be denied Communion. In this way, just as they do by applying the PCLT Declaration, they will be in keeping with the thoughts of John Paul II.

### **3.3 – Conscience and Moral Imputability**

The confusion prompted by the “virtual council” and general societal changes was compounded by the development of opposing models of morality within the Church in the wake of Vatican II. This fact is not recognized by all who apply c. 915 in pastoral practice. The confusion has led to disparate applications of the law. Decades before he shared his analysis about the “virtual council,” J. Ratzinger wrote and widely lectured about two opposing models of morality which were evidenced in the post-conciliar Church. The first is a pre-conciliar model which “subjects Christian existence to authority, regulating life even into its most intimate preserves, thereby attempting to maintain control over people’s lives.”<sup>57</sup> The second is a conciliar model which “is a renewed understanding of the Catholic essence and which expounds Christian faith from the basis of freedom and the very principle of freedom itself.”<sup>58</sup> The exercise of freedom and conscience in relation to authority is a primary consideration for the application of c. 915 and for this study. One’s understanding of the exercise of freedom and conscience in relation to authority directly impacts the way in which one perceives how the pertinent law should be applied.

Yet, application of the words “obstinate persistence in manifest, grave sin” is oftentimes approached in a way that ignores the complexity of interpretations of theology

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<sup>57</sup> Ibid., p. 11.

<sup>58</sup> Ibid., pp. 11-12.

in relation to conscience and imputability. Some interpretations of theology focus on the conduct of certain faithful as being objectively grave sin without sufficient analysis of the relationships between the education of conscience and the primacy of conscience, and between the primacy of conscience and sin. The concept of objective moral truth, considered in that interpretation, discounts Christian anthropology. Other interpretations of theology would have the conciliar fruits regarding man, moral law, and expressions of conscience more frequently used in addressing the manner of approaching the application of the law. The interpretations should emphasize consciousness in the application of conscience. This study seeks to demonstrate that, while the tenor of the interpretation of the clause since the year 2000 addresses objective moral truth and pastoral responsibility in relation to that truth, much more is needed for the law to be received and less confused in application.

Admittedly, the question of moral imputability in relation to denial of Communion for “obstinate persistence in manifest, grave sin” creates a conundrum. Authority does have the right to intercede where the conduct of the communicant could bring scandal. Yet, immutability of the moral law conflicts with many people’s understanding of grave sin in relation to it because of how they were formed in the faith. In the minds of many communicants, what constitutes sin to one may not constitute sin to another.

There can be a balanced approach between the disparate interpretations of theology to those situations to which the pertinent clause of c. 915 may be applied. For example, some believe that the Church would be lacking in mercy if the marital nullity process were

simplified; others do not.<sup>59</sup> Others believe that publicly refusing Communion to certain politicians is not within their purview as pastor, notwithstanding the fact that the PCLT Declaration says they *must* do so.<sup>60</sup> Currently, no clear and uniform method for addressing this insufficiency exists. The result, as is arguably evidenced in the lack of reception of the law on the part of many faithful, is simply more confusion. Addressing confusion in the areas of conscience and moral imputability in relation to the law can help the Church in understanding the many problems the faithful have with the application of c. 915. It can bridge the gap caused by disparate interpretations of theology and their impact on the manner of application of the law and lead to an understanding of the principles of conscience and moral imputability in a way that acknowledges truth. It can also assist the Church in seeing the need for a structured program designed to correct problems which resulted from history.

### 3.3.1 – Conscience

The maxim of Catholic moral theology regarding the primacy of conscience vivifies the gift of free will that is given to each by God. This is because free will provides the power to perform an act, but conscience relates to choosing whether to do the act.<sup>61</sup> With

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<sup>59</sup> See J. MCELWEE, “Burke Warns against Simplifying False Annulments, ‘False Mercy’,” in *National Catholic Reporter*, 21 March 2014, referenced at <http://ncronline.org/faith-parish/burke-warns-against-simplify-false-annulments-false-mercy>. See also A. GAGLIARDUCCI, “Cardinal Kasper’s Speech on Divorce, Remarriage and Communion,” in *National Catholic Register*, 4 March 2014, referenced at <https://www.ncregister.com/daily-news/cardinal-kaspers-speech-on-divorce-remarriage-and-communion>.

<sup>60</sup> See K. GILBERT, “Archbishop Wuerl Refuses to Deny Communion to Pro-Abortion Speaker Pelosi,” LifeSiteNews.com, 6 May 2009, referenced at <http://www.lifesitenews.com/?/news/archbishop-wuerl-refuses-to-deny-communion-to-pro-abortion-speaker-pelosi>.

<sup>61</sup> CCC, nos. 1731, 1744, 1778.

free will, one can shape one's own life and strive for perfection. In conscience, which has been called the "aboriginal vicar of Christ,"<sup>62</sup> one recognizes the moral quality of actions that are exercised in freedom by listening to the voice of Christ within oneself. The Code of Canon Law is replete with evidence substantiating the legislator's intent that God-given free will should be protected. Those who focus on the primacy of authority over the primacy of conscience will approach the application of c. 915 differently from those for whom expression of conscience must be zealously guarded.

Reconciling the emphasis placed on free will and primacy of conscience with the application of c. 915 prompts consideration of the role of canon law and the relationship between conscience and free will. The concept of the role of canon law regarding this relationship has been addressed by Coughlin in certain situations pertaining to conscience.

Canon law attempts to protect the conscience of the individual in a variety of ways. For example, Canon 219 of the *CIC-1983* recognizes the right of the baptized to be free from any kind of coercion in choosing a state of life in the church. Canon 1103 declares a marriage invalid if it was entered into due to force or grave fear. Canon 630 requires religious superiors "to recognize due freedom of their members regarding the sacrament of penance and the direction of conscience...." Canon 227 affirms the right of Christians to freedoms guaranteed by the state in temporal affairs.... Each of these canons acknowledges the relationship between an individual's conscience and autonomy.<sup>63</sup>

This relationship is consistent with the words of the Second Vatican Council regarding free will, as seen in *Gaudium et spes*.

God willed that men and women should "be left free to make their own decisions" so that they might of their own accord seek their creator and freely attain their full and blessed perfection by cleaving to God. Their

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<sup>62</sup> CCC, no. 1778.

<sup>63</sup> COUGHLIN, *Law, Person, and Community*, pp. 32-33.

dignity therefore requires them to act out of conscious and free choice, as moved and drawn in a personal way from within, and not by their own blind impulses or by external constraint.<sup>64</sup>

It is also consonant with the tenor of Vatican II regarding conscience in *Dignitas humanae*.

On his part, man perceives and acknowledges the imperatives of the divine law through the mediation of conscience. In all his activity a man is bound to follow his conscience in order that he may come to God, the end and purpose of life. It follows that he is not to be forced to act in a manner contrary to his conscience. Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious. The reason is that the exercise of religion, of its very nature, consists before all else in those internal, voluntary and free acts whereby man sets the course of his life directly toward God. No merely human power can either command or prohibit acts of this kind.<sup>65</sup>

Clearly, the relationship between freedom and conscience is shown to be absolute and consistent with the tenor of Vatican II and with the law. Yet, concomitant with these rights are responsibility and moral imputability. According to the Catechism, freedom makes man *responsible* for his acts to the extent that they are voluntary, and every act that a person directly wills is imputable him.<sup>66</sup> Thus it is said that freedom makes one responsible for an action, but conscience “tracks imputability” in relation to it.<sup>67</sup>

Conscience, however, is not a perfunctory exercise in abiding by mandatory rules. Its complexity has historically led to numerous interpretations of its content and application. Karl Rahner emphasizes that the decision of conscience takes place in solitude and that it is a responsibility before God. For him, though, “[a]n authentic spirituality

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<sup>64</sup> *GS*, no. 17.

<sup>65</sup> *DH*, no. 3.

<sup>66</sup> *CCC*, nos. 1734, 1736.

<sup>67</sup> K. GESE, *Recht und Frieden in der Philosophie Kants*, New York, W. De Gruyter, 2008, p. 284.

always involves both a mystical and a societal component.”<sup>68</sup> Additionally, in his book *Nature and Grace: Dilemmas in the Modern Church*, which was published approximately fifty years ago, Rahner wrote the following in his chapter titled “The Appeal to Conscience” in the section called “The Tendency towards an Extreme Situation Ethic.”

What used to be an extreme borderline case in a moral situation which hardly ever occurred has now become almost the “normal” case; there are very few things which everyone is agreed about; countless different and contradictory opinions are held about the right way to behave, and each man has more or less to sift out the right one for himself; we know “statistically” how little the actual behavior of people is in accordance with the officially held standards of behavior.<sup>69</sup>

Rahner describes situations presenting difficulties in life which are “chronic and universal,” and he notes: “we run the risk of a short circuit; we want to keep the moral law and obey the binding commands of our conscience, we – at least Christians – don’t want to give in to a mere moral relativism and skepticism.”<sup>70</sup> However, Rahner also notes that, admittedly or not, people today often give up hope of being able to clarify and master overwhelmingly complex situations with moral norms. They retreat to the motive for an action. “What you do is not important,” he says, “but only the motive for which you do it; if this is good, nothing else matters before your conscience and before God.”<sup>71</sup> As a result, Rahner posits, “We reduce Christianity’s moral demands to perform definite actions to a purely formal duty to be faithful to our own conscience and brave enough to do what it

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<sup>68</sup> D. MARMION, “Rahner and his Critics: Revisiting the Dialogue,” in *Australian Journal of Theology*, 4 (2005) p. 4.

<sup>69</sup> K. RAHNER, *Nature and Grace: Dilemmas in the Modern Church*, New York, Sheed and Ward, 1964, p. 41.

<sup>70</sup> *Ibid.*, p. 43.

<sup>71</sup> *Ibid.*, pp. 43-44.

tells us.... The norm for the individual conscience is no longer the objective nature of the act concerned, the moral law and the commandments of God, but in a sense, the conscience itself.”<sup>72</sup> This observation seems most astute in terms of the confusion among the faithful regarding the understanding of grave sin. Further, it shows why a remedy which seeks to clarify the understanding of conscience is critically important, most especially for those persons who may not be admitted to Communion.

In analyzing Karol Wojtyla’s understanding of conscience, Buttiglione writes: “As moral consciousness, conscience is directly interested in the process through which man intends the truth.”<sup>73</sup> He further states that “the realization of the person cannot be one-sidedly linked either to knowledge of values or to the intentional acts through which these are perceived.” Rather, people realize themselves and show their transcendence “through the particular modifications of intentionality and self-determination which is the taking up of obligations which belong to them according to the truth.”<sup>74</sup> Buttiglione notes that Wojtyla’s assessment of conscience considered the following.

All human and psychological events are reflected in consciousness; it reflects sensible as well as emotional experience. On one side consciousness is linked to self-consciousness; on the other it receives sensible and emotional impressions. It is possible, though, that because of the strength of the emotion or because of the weakness of the cognitive faculty, the balance breaks down and consciousness becomes overly emotional. Then consciousness limits itself to reflecting emotion but cannot judge it objectively.<sup>75</sup>

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<sup>72</sup> Ibid., p. 44.

<sup>73</sup> BUTTIGLIONE, *Wojtyla*, p. 151.

<sup>74</sup> Ibid., p. 153.

<sup>75</sup> Ibid., p. 133.

As an antidote to this, one's participation in the community is of critical importance. This is due to the fact that "[t]he one adequate basis of every communal action and of every community is the common good."<sup>76</sup>

As applied to cases of c. 915, participation in the community of faith is essential on the part of those who are not to be admitted to Communion. Consciousness is inextricably tied to the exercise of the conscience. An interpretation of theology, which would have many faithful feel excluded as a result of the exercise of their conscience, departs from Wojtyla's notion of how best to assist the person in ascertaining, and assenting to, objective truth.

Grisez instructs that, as used by Vatican II, "conscience" refers to the awareness of principles of morality, to the process of reasoning from principles to conclusions, and to the conclusions, which are moral judgments on choices made or under consideration.

Conscience plays a further role after choice. One compares the choice one actually made with one's judgment as to the choice one ought to have made (for example, in examining one's conscience). Even here, conscience is an act of knowledge, not to be confused with feelings or guilt or security, which may also be present.<sup>77</sup>

Thus, in accord with the conciliar understanding, it seems that there must be some determination whether the member of the faithful to whom the law is applied possesses the requisite knowledge regarding their grave sins; to do otherwise contravenes legislative intent.

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<sup>76</sup> Ibid., p. 171.

<sup>77</sup> GRISEZ, *The Way to the Lord*, p. 76.

Richard Gula, in his book *Moral Discernment*, notes that a contemporary approach to conscience focuses on the whole person.<sup>78</sup> Analogous to Karol Wojtyla, Gula's approach acknowledges that there are three dimensions of conscience: a *capacity* whereby we have a fundamental ability to discern good and evil; a *process* for discovering what it takes to be a good person and what kinds of actions are right or wrong; and a *judgment* which dictates to a person what one must do because moral truth demands it. Not unlike Wojtyla, Gula analyzes the application of conscience in terms of how the individual relates in his society. He asserts: "As *humans* we consult our own experience as well as the experience of family, friends, colleagues, and experts in the field that pertains to our area of judgment at hand. We analyze and test the stories, images, laws, rituals, actions, and norms by which the various communities in which we participate live the moral life."<sup>79</sup> To him, "[c]onscience is the whole person's commitment to value and the judgment one makes in light of that commitment of who one ought to be and what one ought to do or not do."<sup>80</sup> However, because every conscience is social, the manner by which the convictions of persons' consciences get shaped, and the way they learn what their moral obligations are, take place within the communities that influence us.<sup>81</sup> The current application of the law seems insufficiently to acknowledge these principles and offers nothing to rectify the fundamental problem on the part of the faithful in understanding the moral law or their role in the Church in relation to it.

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<sup>78</sup> R. GULA, *Moral Discernment*, Mahwah, NJ, Paulist Press, 1997, p. 18.

<sup>79</sup> *Ibid.*, pp. 21-22.

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

J. Ratzinger wrote and lectured about conscience during the period that included the celebration of the Second Vatican Council, the promulgation of the Catechism and the Compendium of the Social Doctrine of the Church, and during the period since the PCLT Declaration in the year 2000 and its progeny. He describes conscience as existing at two levels. The first level is ontological. It is understood as a Christian memory – an anamnesis – to be cultivated. It is “instilled in our being, needs, one might say, assistance from without so that it can become aware of itself.... It is, to be sure, always learning, but proceeding from its sacramental identity, it also distinguishes from within between what is a genuine unfolding of its recollection and what is its destruction or falsification.” He writes that the memory at the ontological level knows the truth and cannot change, and that this supposition is found in St Augustine who says: “We could never judge that one thing is better than another if a basic understanding of the good had not already been instilled in us.”<sup>82</sup> Yet, the second level of conscience, which pertains to judgment and decision, is most relevant for our consideration here. Like the first level of conscience, the Christian memory, it is also a gift from God. It is verifiable through conduct and provides us with an opportunity to engage our free will in a way pleasing to God. While the Christian memory is a gift from within, the second level of conscience is actually “assistance from without,” in the words of Ratzinger. In the same manner in which it can be said that conscience vivifies the gift of free will, the judgment and reason level of conscience can be said to vivify the ontological level of conscience.<sup>83</sup>

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<sup>82</sup> RATZINGER, *Worthiness to Receive*, pp. 31-35.

<sup>83</sup> *Ibid.*, p. 37.

Logically, if the judgment and reason parts of the conscience are not informed, the anamnesis – the memory – is not going to be easily triggered. The inevitable result will be that the exercise of the conscience will be compromised and the decision to engage in certain acts on the part of many will not engage the level of conscience that even says the act is wrong. This is a great casualty of insufficient catechesis that took place in the wake of the Council. The greater casualty, however, is arguably the impact of this problem on the faithful relative to the Church. Many do not understand or, at a minimum, are unclear about how their expression of free will can be said to be gravely wrong. In view of the history of how Church teaching was imparted to them, theirs is not an illogical assessment.

As Ratzinger explains, though conscience at the ontological level of the will cannot change, the more demonstrable level of conscience is formed and expressed as an understanding of the gift of the fullness of the faith as the conscience develops.<sup>84</sup> As the judgment and decision level of conscience grows closer to what is known at the ontological level, conversion occurs.

The Catechism says that conversion *requires convincing of sin*; it includes the interior judgment of conscience, and this, “being a proof of the action of the Spirit of truth in man’s inmost being, becomes at the same time the start of a new grant of grace and love: ‘Receive the Holy Spirit.’ Thus, in this ‘convincing concerning sin’ we discover *a double gift*: the gift of the truth of conscience and the gift of the certainty of redemption.”<sup>85</sup> Yet this double gift of conversion which requires “convincing of sin” and relates to conscience formation is bound to the conversion of the bread and wine into Christ’s body and blood

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<sup>84</sup> Ibid.

<sup>85</sup> CCC, no. 1848.

through which He becomes present in the sacrament of the Eucharist. The Catechism strongly affirms the Church's faith in the efficacy of the Word of Christ and of the action of the Holy Spirit to bring about the conversion of bread and wine.<sup>86</sup> Both conversions pertain to conscience formation. The "convincing of sin" breathes life into the faith of the Church. Further, both conversions are prompted by the Holy Spirit. Indeed, "[t]he same Spirit who of himself is the principle of unity in the body, by his own power and by the interior cohesion of the members produces and stimulates love among the faithful."<sup>87</sup> He guides the Church in the way of the truth.<sup>88</sup>

Thus, the two conversions directly relate to one another and to the use of the Dialogue of Charity, as explained in the next chapter. Because the "convincing of sin" relates to the "faith of the Church" in a way that is grounded in conscience formation, each conversion, at the prompting of the Holy Spirit, can be said to relate to the pertinent clause of c. 915 because it juxtaposes reception of the bread and wine to sin. The law by which certain persons are not to be admitted to Communion should be much more judiciously evaluated than is accomplished under the current legislation. The institutional remedy offered here accomplishes that level of evaluation.

### **3.3.2 – Moral Imputability**

The Catechism instructs that imputability revolves around knowledge and freedom. Moreover, it provides that the education of the conscience is a lifelong task which from the earliest years awakens the child to the knowledge and practice of the interior law

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<sup>86</sup> Ibid.

<sup>87</sup> *LG*, no. 7.

<sup>88</sup> Ibid., no. 4.

recognized by conscience.<sup>89</sup> It further clearly states: “the education of conscience is indispensable for human beings who are subjected to negative influences and tempted by sin to prefer their own judgment and to reject authoritative teachings.” It propounds that “[p]rogress in virtue, knowledge of the good, and asceticism enhance the mastery of the will over its acts.”<sup>90</sup> And, in the wake of his announcement to retire, Pope Benedict, in addressing the clergy in Rome, stated: “Only ongoing formation of hearts and minds can truly create intelligibility and participation that is something more than external activity, but rather the entry of the person, of my being, into the communion of the Church and thus into communion with Christ.”<sup>91</sup>

These very basic statements reflect an obvious commitment on the part of the Church to foster the formation of the faithful in moral theology with catechetical assistance. As has been presented earlier in this study, it is a matter of pastoral responsibility which the Church does recognize. Yet, the luster of the stated Church understanding that people need formation to be able to make correct choices dissipates in the face of the application of the pertinent clause of c. 915 in a society where many do not have the benefit of certain instruction regarding conscience throughout their formation in the faith. The reality of this seems to be ignored in interpretations of the law since the PCLT Declaration of 2000. Careful consideration should be given to the question of the moral imputability of the communicant in relation to the act that is considered objectively sinful for reasons which

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<sup>89</sup> CCC, nos. 1735, 1784.

<sup>90</sup> Ibid., nos. 1783, 1732.

<sup>91</sup> BENEDICT XVI, allocution to the Roman Rota, 26 January 2013, in AAS, 105 (2013), p. 171; English translation accessed on 28 May 2015 at [http://w2.vatican.va/content/benedict-xvi/en/speeches/2013/january/documents/hf\\_ben-xvi\\_spe\\_20130126\\_rota-romana.html](http://w2.vatican.va/content/benedict-xvi/en/speeches/2013/january/documents/hf_ben-xvi_spe_20130126_rota-romana.html).

are imparted to the faithful as being foundational in moral theology and reflected in the Catechism. Those who ignore the complexities of moral imputability inherent in the application of c. 915 ignore the truth.

Notwithstanding the objective nature of certain sins, “unintentional ignorance can diminish or even remove the imputability of a grave offense,” and “the promptings of feelings and passions can also diminish the voluntary and free character of the offense, as can external pressures or pathological disorders.” Further, the precepts of natural law are not perceived by everyone clearly and immediately. In the present situation, sinful human beings need grace and revelation so moral and religious truths may be known by everyone “with facility, with firm certainty and with no admixture of error.”<sup>92</sup>

In consideration of principles of imputability, moral theologian Bohr states that, in more than a few cases, personal freedom can be severely limited because of any number of external and internal factors. He notes that the classical manuals of moral theology include invincible ignorance, error, inattention, violence, fear, passion, and evil habits as factors that can diminish the imputability of human actions. Social pressure and the influence of one’s cultural milieu may also contribute to the lessening of culpability in certain instances. In all of these considerations regarding the essential elements that make up a mortal sin, Catholic tradition has recognized that it is not always easy in concrete situations to define clear and exact limits.<sup>93</sup>

These are fundamental tenets of traditional Catholic moral theology, found also in the documents of Vatican II and the universal Catechism. Yet, they are not being factored

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<sup>92</sup> CCC, nos. 1860, 1851.

<sup>93</sup> BOHR, *Catholic Moral Tradition*, p. 223.

into the current application of c. 915 by some. Indeed, the degree of moral imputability possessed by each communicant must be part of any analysis of the application of the pertinent clause of c. 915 in terms of how to address the faithful who must be denied Communion. The subjective aspect of grave sin in relation to denying the Sacrament of Redemption bears some contextual consideration.<sup>94</sup> There is no transparency on this issue without this consideration.

Admittedly, consideration of moral imputability is difficult to reconcile with the “aboriginal vicar of Christ,” the mind of the legislator regarding obstinate persistence in manifest grave sin, and moral law. Those who do not consider factors relating to imputability might suggest that it is important to do so. Indeed, no one is deemed to be ignorant of the principles of the moral law, which are written in the conscience of every man.<sup>95</sup> However, the words “no one is deemed to be ignorant,” convey a message that is not absolute but is rebuttable. If “no one is deemed to be ignorant,” then some can be proven to be so. Thus, proof that one reasonably is ignorant of the principles of moral law should militate against a strict application of c. 915 in some cases. In those cases where a violation is at issue, and it may take a protracted period of time for the communicant to understand discernment in relation to their situation, the process of not admitting them to Communion might be prolonged. Though considering mitigation of imputability becomes difficult in the face of objective acts against the moral law, mitigating factors may be

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<sup>94</sup> See CONGREGATION FOR DIVINE WORSHIP AND DISCIPLINE OF SACRAMENTS, instruction on certain matters to be observed or to be avoided regarding the Most Holy Eucharist *Redemptionis sacramentum*, 25 March 2004, in *AAS*, 96 (2004), pp. 549-601, English translation in *Origins*, 33 (2004), pp. 802-822.

<sup>95</sup> *CCC*, no. 1955.

significant and must be considered before determining that certain persons “are not to be admitted to Holy Communion.” That is how a rebuttable presumption like this must be addressed. Pastoral responsibility and catechesis are of primary importance here, as is charity.

Saliently, principles of invincible and vincible ignorance provide a framework for analyzing the impact of the confusion that occurred after Vatican II, its effect on catechesis, the faithful’s understanding of the moral law, and the application of their conscience in decision-making. These principles provide this framework because they directly relate to imputability yet show how it can be mitigated. The Council instructs that the “conscience frequently errs from invincible ignorance without losing its dignity.”<sup>96</sup> As was previously set out, John Paul II reiterated this principle. Moreover, the Catechism teaches:

Ignorance of Christ and his Gospel, bad example given by others, enslavement to one’s passions, assertion of a mistaken notion of autonomy of conscience, rejection of the Church’s authority and her teaching, lack of conversion and of charity: these can be at the source of errors of judgment in moral conduct. If, on the contrary, the ignorance is invincible, or the moral subject is not responsible for his erroneous judgment, the evil committed by the person cannot be imputed to him. It remains no less an evil, a privation, a disorder. One must therefore work to correct the errors of moral conscience.<sup>97</sup>

Based on this text, one may conclude that the imputability of some persons, who are judged as “obstinately persisting in manifest, grave sin,” may be substantially mitigated as a result of influences beyond their control. Applying a law requiring the refusal of Communion is now for them, decades after they were catechized, analogous to the application of an *ex*

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<sup>96</sup> *GS*, no. 16.

<sup>97</sup> *CCC*, nos. 1792-1793.

*post facto* law, which is prohibited by most legal systems and is even enshrined in the constitution of the USA.<sup>98</sup> Though the analogy falters in virtue of the fact that, from the time of Vatican II, the Church has made clear that doctrine did not change, influences were such that, for many, doctrines were obfuscated. Many in the United States and Canada can relate to this fact. Each set of circumstances must be addressed in a structured, educative format.

The relationship between free will and primacy of conscience in relation to decisions involving the non-admission to Communion is acknowledged by the Church as being complicated. This is due to the fact that “man is sometimes confronted by situations that make moral judgments less assured and decisions difficult,” but that “no one is deemed to be ignorant of the principles of the moral law which are written in the conscience of every man.”<sup>99</sup> Moreover, there are theological dictates regarding how best to address those situations which oftentimes seem to conflict with the pertinent provision of c. 915; yet, they actually demonstrate the critical need for formation in the areas of personal and pastoral responsibility. They should prompt an approach that does not lead to a perfunctory application of denying people Communion with no future direction for sacramental participation. To apply the clause simply and perfunctorily without an action plan for this participation is not envisioned in the teachings of John Paul II,<sup>100</sup> no more than it is required by a strict interpretation of the canon.

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<sup>98</sup> U.S. Const., art. I, § 9, cl. 3.

<sup>99</sup> CCC, nos. 1787, 1860.

<sup>100</sup> FC, no. 84.

The Catechism instructs that “man must always seriously seek what is right and good and discern the will of God expressed in divine law.”<sup>101</sup> Additionally, it provides that, “to this purpose, man strives to interpret the data of experience and the signs of the times assisted by the virtue of prudence, by the advice of competent people, and by the help of the Holy Spirit and his gifts.”<sup>102</sup> However, in the situations to which c. 915 is being applied, the “data of experience,” “signs of the times,” and “advice of competent people” were often unclear to many, substantially through no fault of their own. Indeed, most of the persons to whom the provision of c. 915 is applicable meet the criteria of being considered unintentionally ignorant regarding grave sin even at the time they are being told they may not receive Communion.

As a result of this situation, there is a crisis in need of a remedy, for, as Cardinal Ratzinger wrote: “[m]an is in himself a being who has an organ of internal knowledge about good and evil. But for it to become what it is, it needs the help of others. Conscience requires formation and education.”<sup>103</sup> Sadly, there has been an undeniable historical gap in the Church in relation to these requirements. The inevitable result has been a disconnection in the Church between many faithful who have discerned choices in good conscience and their full participation in the Sacrament of Redemption. When a decision is made that these same faithful are not to be admitted to Holy Communion against this backdrop, they are stunned, confused, and angry. Church commitment to pastoral responsibility and catechesis can respond to the crisis.

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<sup>101</sup> CCC, no. 1787.

<sup>102</sup> Ibid., no. 1788.

<sup>103</sup> RATZINGER, “Worthiness to Receive,” p. 62.

In *Evangelii gaudium*, Pope Francis addressed the problems caused by heightened secularization in North America, how it has affected moral discernment, and the impact that positive education in the faith can have on these problems.

The process of secularization tends to reduce the faith and the Church to the sphere of the private and personal.... By completely rejecting the transcendent, it has produced a growing deterioration of ethics, a weakening of the sense of personal and collective sin, and a steady increase in relativism.... As the bishops of the United States of America have rightly pointed out, while the Church insists on the existence of objective moral norms which are valid for everyone, “there are those in our culture who portray this teaching as unjust, that is, as opposed to basic human rights. Such claims usually follow from a form of moral relativism that is joined, not without inconsistency, to a belief in the absolute rights of individuals. In this view, the Church is perceived as promoting a particular prejudice and as interfering with individual freedom.” We are living in an information-driven society which bombards us indiscriminately with data – all treated as being of equal importance – and which leads to remarkable superficiality in the area of moral discernment. In response, we need to provide an education which teaches critical thinking and encourages the development of mature moral values.<sup>104</sup>

The Dialogue of Charity, as detailed in Chapter Four, is designed to assist those adults who are facing the possibility of being denied Communion because of problems they have experienced in discerning moral choices. The remedy will raise the consciousness of the participants to the Dialogue about sin and clarify interpretations of the law. It will provide a venue for expressing how the historical changes impacted the particular circumstances of each party. It will foster the development of mature moral values even in today’s

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<sup>104</sup> *EG*, no. 64.

challenging secular culture. Finally, it will provide an opportunity for the faithful to bear witness to the stated Church commitment to sacramental participation.<sup>105</sup>

Formation in the faith and application of conscience – moral choices – were principles that were not and, in many cases, are still not clearly understood by the faithful. Surely, this directly impacted any understanding that the faithful have about “obstinate persistence in manifest, grave sin.” Surely, too, the Church can provide that remedy.

The changes in the formation of the faithful to whom the pertinent clause of c. 915 may be applied have had an inestimable impact. However, one thing is abundantly clear: the majority of faithful to whom the law is being applied were formed during a period of profound changes. In the interest of truth and charity, this must be factored into the manner and method by which the law is applied to them on the basis of an assessment of their participation in grave sin.

## **Conclusion**

Incontrovertible changes in the Church in the latter decades of the twentieth century surely impacted the faithful’s understanding of theological principles, moral law, the use of freedom, and the exercise of conscience from what had been their experience before Vatican II. At the same time that these changes in the Church were occurring, there were many changes in society as well. The Church moved to correct any confusion on the part of the faithful by issuing the Catechism and the Compendium of the Social Doctrine of the Catholic Church. However, these documents were issued decades after the close of the Second Vatican Council and years after the time period during which many of the faithful

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<sup>105</sup> See *FC*, no. 84; see also BENEDICT XVI, allocution to the Roman Rota, 26 January 2013, in *AAS*, 105 (2013), p. 171.

to whom c. 915 is being applied had been formed in the faith. It is only right, therefore, that these circumstances should be considered in relation to their admission to Communion. This does not mean that the law must be changed. It cannot be changed with respect to the proscriptions of the moral law and the gift of the Eucharist. However, nothing is currently in place for addressing the complexities attached to the application of the law. Because there are disparate interpretations of theology, there are differing applications of the law. This plays out in a way that is confusing and seems unfair to many faithful.

Grisez acknowledges the difficulties faced by the faithful in relation to the moral evil and guilt of the latter twentieth century. He writes: “In the present cultural period the reality of moral evil is somewhat hidden. This general climate of opinion makes it very difficult for Christians to recognize and admit their own moral guilt.”<sup>106</sup> Grisez, nevertheless, recognizes that the “will to live a good life is the indispensable foundation of an upright conscience.”<sup>107</sup> To do so, however, Grisez asserts that we must be clearly aware of the norms that distinguish right from wrong. In addition, he says that we must have sufficient factual knowledge to see a practical possibility of making choices, including at least one which is morally acceptable. Moreover, he adds, we also must attend to the relationship between the norms and the practical possibilities. As a backdrop against all of this, he writes: “Ignorance and error are possible in regard to all these matters and instruction and learning are therefore needed in regard to all.”<sup>108</sup>

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<sup>106</sup> GRISEZ, *The Way to the Lord*, p. 79.

<sup>107</sup> *Ibid.*, p. 82.

<sup>108</sup> *Ibid.*

Conscience formation and expression regarding moral law, as well as an understanding of enhanced meanings of marriage and of social doctrine, were greatly affected in the post-conciliar period. This, in turn, impacted choices that the faithful made which pertain directly to the grave sin of c. 915. Arguably, these facts all substantially impacted choices that many faithful have made which could trigger the application of the pertinent provision of this canon. They present compelling reasons why the Church must assiduously address the manner and method of application of the pertinent clause of the canon. There was an incontrovertible problem of formation of the faithful in consideration of the law which provides that those who “obstinately persevere in manifest, grave sin” are not to be admitted to Communion. The implementation of an initiative which utilizes a mediated setting and dialogue to raise consciousness and correct error, as detailed in the following chapter, is consistent with the constant teaching of the Church’s universal magisterium that certain factors can lead one to error.

## CHAPTER FOUR

### A DIALOGUE OF CHARITY: *kairos* of MERCY

#### **Introduction**

Christ, our mediator, in a loving way has indelibly gifted to the Church an example for confronting the deep-rooted conflict we call the human condition. As the reconciler of God and man, He lived the truth, disseminated wisdom, spoke of remorse and forgiveness, and broke the bondage of sin. He confronted pain, doubt and judgment against Him. He assumed the role of victim and high priest and taught by way of word and ritual. He lived a life, even unto death, in perfect charity. In so doing, He re-structured the manner in which man could attain union with God. That union occurred not merely by striving for daily legalistic perfection but by responding to a call for perfect charity in mercy towards others. Members of the Body of Christ are called to do the same.

This final chapter proposes an original program which may profitably be used to avert the pastoral and canonical problems that have arisen in the application of c. 915. The first part of the chapter sets out the basic organization and structure of this program, called the “Dialogue of Charity: *kairos* of Mercy.” The second part is a detailed commentary on the program which provides a thorough explanation of its purpose, content, structure, and dynamics.

#### **4.1 – The Dialogue Program**

The “Dialogue of Charity: *kairos* of Mercy” is intended as a diocesan-wide program. It should be directed or overseen by the diocesan office of canonical services or an official with a degree in canon law. Optimally, the program should be approved by the diocesan bishop, or at least the tribunal or other sponsoring diocesan office should inform

him of it and report on its progress. The program is presented here in a format that may be easily adapted for dissemination to diocesan officials and canonists. Some of its content may also form the basis for developing a brochure for distribution to persons who could benefit from the Dialogue.

### **Dialogue of Charity: *kairos* of Mercy**

#### **Instructions for Implementation of the Program**

##### **4.1.1 – Preamble**

Canon 915 of the 1983 Code of Canon Law states: “Those who have been excommunicated or interdicted after the imposition or declaration of the penalty and others obstinately persevering in manifest grave sin are not to be admitted to holy Communion.” The clause, “and others obstinately persevering in manifest grave sin are not to be admitted to holy Communion,” is applied mainly to two categories of persons: (1) those who are in an irregular marriage, that is, either (a) they are civilly divorced and remarried without benefit of an ecclesiastical declaration of nullity or dissolution of the prior marriage(s) or (b), though not previously married themselves, they are civilly married to someone in category 1(a); and (2) politicians who support laws that contravene tenets of the divine law, in particular, those who favor legal access to elective abortions.

The question of how to address the dilemmas, in consideration of doctrine, bears thoughtful deliberation. Ours is a Church of mercy. We are impelled to reach out to parties who seek to be re-integrated into full Eucharistic participation as much as possible, under the law, and in consideration of their particular circumstances. This program, the “Dialogue

of Charity: *kairos* of Mercy,”<sup>1</sup> provides a setting for helping the Church bring this stated goal to fruition in a framework grounded in Catholic teaching. The context in which this occurs is that of structured meetings which are designed to serve as a platform for healing both the Body of Christ generally and, in a very particular way, the wounds of the persons who request to participate in the Dialogue meetings.

#### **4.1.2 – Applicable Situations**

The program titled, “Dialogue of Charity: *kairos* of Mercy,” is intended to be of canonical and pastoral assistance to those who are, or could be, denied holy Communion in view of the clause of c. 915 referring to persons who are “obstinately persevering in manifest grave sin.” The Dialogue applies mainly to persons to whom the issue of denial of Holy Communion has arisen, or may arise, because (1) a decision has been made by the pastor or other authority that the person must not be admitted to Communion due to obstinate perseverance in manifest grave sin (c. 915); (2) the person is in an irregular marriage or may wish to marry someone who is; (3) the person may be, or has been, denied Communion due to one or more political positions contrary to Church teaching.

#### **4.1.3 – The Dialogue Meetings**

The Dialogue is a response to the reality that very many of those to whom c. 915 is, or may, become applicable want to practice their Catholic faith, and they long for full sacramental participation in the life of the Church. Through the Dialogue, the Church at the diocesan level can provide a setting for confidential meetings to address this great problem. The function of the meetings is personal direction and doctrinal instruction. The

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<sup>1</sup> The Greek word *kairos*, as used in the New Testament, refers to an indeterminate time — a moment, a season, etc. Thus, the Dialogue process is intended to be a time to experience God’s mercy through the Church.

goal is to assist persons in discerning the appropriate course of action in their circumstances and to provide an opportunity for them to plan and work towards re-integration into as full a sacramental participation in the Church as is allowed under the law and in accordance with Church doctrine.

There are three participants in a Dialogue meeting: (1) the *Communicant*, namely, the person who has been, or may be, denied Communion under the pertinent clause of c. 915; (2) the *Canonist* or, if not a decreed canonist, a cleric or suitably trained lay person who is knowledgeable in the pertinent canon law and Church doctrine; and (3) a *Facilitator* who is trained to prompt and address issues which arise during the Dialogue. It is preferable that the Facilitator be a lay person so that he or she can better represent a stance and an appearance of neutrality.

The Dialogue meetings are confidential.<sup>2</sup> Each Dialogue meeting should last approximately one hour. The meeting is intended to provide a venue in which Communicants are encouraged to share details about themselves and be guided in understanding how their situation is regarded by the Church's teaching and law so as to discern a future course of action. Participation in the Dialogue can be invaluable in the event that the Communicant wishes to participate in a relevant legal process, to wit, taking

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<sup>2</sup> cf. CANON LAW SOCIETY OF AMERICA, *Code of Professional Responsibility*, Washington, CLSA, 1987, c. 4: "The canonist should exercise mature professional judgment with respect to confidentiality, exercising due care that any information obtained in the course of any canonical investigation or proceeding is disclosed only to appropriate persons. When a doubt exists as to whether certain information should be disclosed to a specific person, the canonist ought to engage in appropriate consultation to resolve that doubt before revealing such information. This consultation should include the person who has provided the information in question. Furthermore, canonists are not to reveal anything communicated to them in confidence by persons seeking representation or advice except to the extent necessary to prevent the commission of a crime or serious injustice, or to avoid grave public harm."

recourse against a decision denying them Communion or petitioning or re-petitioning for a declaration of nullity of their marriage.

The lay person who is the neutral and detached third party Facilitator must be educated in the process and be intimately familiar with the issues surrounding the meetings (cf. c. 231). The primary reason for this is that the level of conflict and emotion may be high, and the Facilitator has to be prepared for this. Though it will be a significant challenge to the person who facilitates the mediated setting to remain neutral and detached, the entire process will be positively impacted to the extent that this can be accomplished. Participation as the Facilitator in these cases is a ministry of service. As part of the process, the Facilitator must determine:

- 1) what is at stake in the interpretation of the human dynamic in question;
- 2) whether the parties have a personal agenda that does not invite potential change;
- 3) whether personal bias figures into his/her participation in the mediation and so excuse himself/herself from the process;
- 4) the extent to which emotions will drive the dynamic and, hence, the outcome;
- 5) how to counter excessive emotions that arise in the setting with logic and skilled, mediative methods of reducing conflict.<sup>3</sup>

The Facilitator should emphasize to the Communicant that he or she must be completely forthcoming about their conscience formation and the choices that have ultimately led to the denial of Communion or the possibility of its denial. Exploration is

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<sup>3</sup> V. REDEKOP, *From Violence to Blessing: How an Understanding of Deep-Rooted Conflict Can Open Paths to Reconciliation*, Ottawa, Novalis, 2002, p. 177.

made in the Dialogue regarding family of origin issues, the extent of religious education, and socialization and development experiences.

At the outset of the Dialogue meeting, the Facilitator is to make it clear to the Communicant that he or she is not being asked to share facts or details which properly belong to the sacrament of reconciliation or to spiritual direction.<sup>4</sup> It is to be emphasized at the meeting that the primary function of the Dialogue is to help cultivate an understanding of the Church's legal processes and to help the Communicant make informed decisions about whether or how to proceed in such a process. It is also to be noted that the Dialogue aims to encourage participation in the ecclesial community as fully as is possible under the law.

It is anticipated that the Dialogue program can greatly assist those who are petitioning or re-petitioning for a declaration of marital nullity as well as those who may be responding to a petition seeking a declaration of nullity, even those who are presently not in an irregular marriage. Emphasis in the meetings will be placed on the distinction between the discipline of the canonical court process and that of the civil court divorce. A canonical analysis focuses on issues tied to the exchange of consent to marry. Civil divorce primarily addresses issues which arise in the wake of marital disintegration. In the case of politicians, the circumstances under which the politician became politically active, as well as the intended manner of continued political involvement, will be addressed.

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<sup>4</sup> The Communicant must be made fully aware of the voluntary character of the dialogue meeting and that, while principles of confidentiality will govern any information shared, the meeting is not intended to take the form of confession of sins and absolution or general spiritual direction for addressing life's challenges. The meetings are tied to a legal process and proofs for use in the process. At the same time, however, it must be made clear that information shared will necessarily be utilized by the Canonist and the Facilitator in providing direction to the Communicant as to the best manner to proceed.

The Facilitator directs the meeting and prompts the sharing of information. The Facilitator particularly encourages openness on the part of the Communicant in the meeting so that issues pertaining to application of the law are as completely addressed as is practical and that any subsequent legal process will be better understood and seem less onerous.

Both the Facilitator and the Canonist emphasize that the Communicant must carefully reflect upon his or her formation of conscience and how it impacted choices that did, or could, lead to the denial of Communion. The Facilitator then prompts the Communicant to talk about how that may have occurred. It may be advisable, moreover, that the Canonist devote part of the meeting to sharing the problems with catechesis that have been experienced in the Church since the time of Vatican II which had led to personal choices made by an inadequately formed conscience. The Communicant discusses and is helped to discern the best way in which they might address their particular circumstances. The Dialogue, therefore, should help the Communicant develop a heightened awareness of (1) the law, (2) the process that may be applicable (declaration of nullity, dissolution, recourse); and (3) the doctrines that apply to the particular circumstances.

The Dialogue is intended to help Communicants prepare to present facts and proofs in the event they will participate in a formal judicial or administrative process. It is also intended to lead them to a better understanding of Church teaching. The recollection of the life experiences of the Communicant, including formation in the faith, are discussed in consideration of correct Church teaching and the pertinent legal process. The end result should be an action plan for seeking as full a participation in the sacraments as is possible under the law.

#### 4.1.4 – The Content of the Dialogue Meeting

Depending on the nature of case, the content of the Dialogue meetings is directed to educate the party about administrative or judicial processes which exist in the diocese pertaining to the particular issue as well as fundamental Catholic teaching about the particular matter of doctrine that is relevant to why the person is, or may be, denied Communion. The discussion of Church teachings and legal processes will be more relevant if done in the context of a wider discussion addressing the particular circumstances of the Communicant's life. The meeting should lead to an enhanced understanding about the teaching and the canonical process with the goal of helping the Communicant more fully to integrate into Eucharistic participation.

The Dialogue meetings are to be used as a means through which parties might better understand the reasons behind Church teaching and discern how that teaching can best be applied for use in making subsequent life choices. The Dialogue assists persons in discerning whether to seek recourse against a decision to deny them Communion; to petition or re-petition in a case for a declaration of nullity (or how to respond to a petition); if a politician, to consider the appropriate extent of participation in promoting a certain political platform; or to develop a plan for sacramental participation in the event that none of the other options are viable.

Notwithstanding doctrinal issues that may be applicable to any given situation under the pertinent clause of c. 915, the act of denying Communion to a member of the faithful is an administrative act against which recourse may be taken.<sup>5</sup> The Canonist outlines the recourse process and evaluates the advantages and disadvantages of seeking it

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<sup>5</sup> A Communicant may take recourse against a decision denying him or her Holy Communion according to the canons governing administrative recourse (cc. 1732-1739).

in the diocese. Other possible options are given careful consideration and thoughtful discussion.

#### **4.1.4.1 – Explaining the Marriage Nullity Process**

In cases of irregular marriages, it is imperative to explain that the applicable ecclesiastical process is a legal one and thus requires committed participation throughout the process, including an active role in providing proofs of nullity. At times, decisions are rendered in marriage cases which may not seem equitable to the parties to the action. Yet, the decision is based on applying the law to the proofs that have been provided or suggested largely by the parties themselves. There is often difficulty experienced by tribunals in obtaining adequate proof from the parties to justify an affirmative judgment with the requisite degree of moral certitude. The need to obtain such proofs becomes time-consuming and may lead to delays.

The kernel of most marriage cases is some ground of defective consent, and this is determined only after thoughtful analysis about how the parties got to the point of saying “I do.” This analysis typically begins by having the parties share extremely personal information. Many times, when parties are called upon to make this analysis and provide answers to the tribunal, they discover that they had not previously shared, or may not even consciously have been aware of, the reasons for their past choice of marriage, for example, an unexpected pregnancy, or intense grief over the loss of a parent during the period of courtship. Additionally, there is oftentimes a natural inclination to present only positive information and to avert shame and embarrassment about any problems or mistakes of the past. These inclinations are addressed in the meetings to help encourage the Communicant

to fully disclose information in response to any inquiry that may be made in the legal process.

The Canonist should explain to the Communicant that a lack of disclosure may lead to a longer period of time for the processing of the case. It must also be explained that a lack of disclosure can create a void in the proofs that might ultimately lead to an erroneous conclusion regarding the validity of the marriage in question. The Communicant must be made aware that a void in proofs is most often not the fault of the tribunal. Additionally, the three parties to the meeting should discuss how a lack of proofs shared in a process can result in many problems ultimately impacting sacramental participation. If proofs are not shared, it may not matter how many times the tribunal can set different grounds for consideration. The Communicant must be clear from the discussion at the meeting that a lack of disclosure can generate a tremendous amount of confusion and frustration which can be averted.

It should be acknowledged to the Communicant in the meeting that this void in the sharing of proofs is most often compounded by the atmosphere in which the parties to the judicial process are assisted with their petition preparation. Completion of the petition is often done in a group seminar setting, or one-on-one, by well-meaning and committed members of the Church community. However, the person presenting the seminar or directly working with the petitioner or respondent may not have formal investigatory or interviewing techniques for probing detailed information. In addition to this challenge, the person rendering the assistance may have little experience with psychological or canonical issues. It becomes incumbent upon the petitioner or respondent in the process to disclose as much information as possible about themselves, the other party, and the circumstances

surrounding the exchange of consent. The process of discernment about what to share in any process must be acknowledged and encouraged for preparation for and future use in the proceeding. Moreover, each diocese and, indeed, often each judge, has disparate ways of culling proofs and offering assistance or suggestions for the preparation of a petition. A Communicant cannot, therefore, passively rely on the tribunal officials to discover all the proofs. Proactive measures should be taken by the petitioner or respondent to share facts and provide documentation or further assistance relating to the particular ground the court has set in the case.

Understanding the evidentiary value of what is discussed in the meetings can greatly assist in the nullity process.<sup>6</sup> Communicants are to be helped to see the extent to which the evidentiary portion of the process directly impacts the outcome of any cause. This includes a possible use of such evidence for an administrative recourse if Communion is denied as a result of a negative decision in a judicial case. Details often determine the outcome of a case. Thus, in pressing the Communicant to think about and share details that he or she might have never even discussed before, the Dialogue will provide a strong preliminary venue for the work of the tribunals. It will also ultimately lead to less confusion, better acceptance of the outcome of a case on the part of those who participated in it and, consequently, it ought to result in fewer appeals. Additionally, parties to the judicial process must be told that, unlike civil divorce, the investigation into the validity of the marriage is not adversarial; it is an objective, truth-seeking process. This shift in focus

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<sup>6</sup> “In marriage cases, as in all cases, the judge must evaluate the proofs presented and only the proofs in the acts (as the adage reminds us, what is not in the acts is not in the world).” See L. ROBITAILLE, “Evaluating Proofs: Is It Becoming a Lost Art?” in *The Jurist*, 57 (1997), p. 545.

from adversarial to objective truth-seeking is very confusing for many parties, so it should be addressed in the Dialogue.

Finally, there is often real confusion about the fact that, in the event that a party does not prevail in a marriage case before a tribunal on one ground, there is an opportunity for the parties to petition on another ground. The Dialogue meeting is a place where the parties can be assisted in discerning whether or not to re-petition for a declaration of nullity on another ground. The marriage nullity process is arduous, and an intention to recommit to it requires a degree of discernment.

Ensuring this depth of understanding about the process on the part of the Communicant in the Dialogue meetings may avert many negative consequences, including frustration and confusion, which are often experienced by the parties. It might also have the happy consequence of the Communicants avoiding any basis for the application of c. 915 due to their newfound, enhanced understanding of the law, ecclesiastical processes, and the pertinent teachings of their Church.

#### **4.1.4.2 – Politicians**

There is undeniable confusion about Catholics participating in a political process in the USA where there are two dominant party platforms, Democrat and Republican, and each includes features that are both consistent with Catholic teaching and in opposition to it. Additionally, there are often subgroups of politicians who clearly present an opinion that varies from the standard of the party (e.g., Democrats for Life of America). There is a strong need for clarification as to the hierarchy of values within the doctrine (e.g., abortion,

war, capital punishment, immigration) which can best be addressed in a private, educative, and neutral setting.

The Communicant can be encouraged to continue to participate in political life. However, it is hoped that, with an enhanced understanding of doctrine and conscience presented during the Dialogue, a more informed choice about how to live out political participation will take place so the pertinent clause of c. 915 will no longer apply. If Communion has already been denied, the Communicant can discuss with the Facilitator and the Canonist some ideas about how to address the pastor of the place where the politician wishes to receive Communion.

#### **4.1.5 – Difficult Cases**

Some persons may have to face the inevitability that they may not be able to receive Holy Communion. It may happen that the Dialogue results in the conclusion that petitioning for marital nullity or dissolution is not possible or feasible, or that a way cannot be found to meet the objections of an ecclesiastical authority to a certain politician's stance on an issue. In the event that there is no way in which the circumstances leading to the meeting might be resolved,<sup>7</sup> a plan for sacramental and ecclesial participation should be explored. The Facilitator and Canonist can offer several options, for example, explaining the value of a spiritual Communion, providing instances of situations in which others who are similarly situated approach the challenges, etc. Some parties, especially if they are of a more advanced age, may even be open to the traditional "brother-sister" solution. This part of the Dialogue acknowledges that options for active participation in the Church are in

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<sup>7</sup> e.g., all attempts at obtaining a declaration of marital nullity have been exhausted, or it has been granted over the objection of the respondent; or the politician has spent a lifetime in political venues which contravene Church teaching and has no plan to retire from politics.

some ways limited, and it introduces the Communicant to the realities of the limitations. However, it also makes clear to the Communicant that participation in the Mass and in many facets of parish life remains open to them and that, perhaps in the future, circumstances may change and their status in the Church can be regularized.

#### **4.1.6 – Conclusion of the Dialogue**

The final meeting of the Dialogue should optimally include the Communicant's pastor or other responsible priest. In this session, the Canonist and Facilitator will summarize the outcome of the sessions and the recommended plan for the Communicant's ecclesial participation in the parish to the fullest extent possible.

#### **4.2 – A Commentary on the Dialogue Program**

The purpose of the commentary that follows is to provide a detailed rationale for and explanation of the Dialogue of Charity program that was introduced in the first part of this chapter. The commentary first treats the Dialogue program as an opportunity for appropriate catechesis and then discusses some additional advantages of the program. Next, the commentary situates the program in a larger canonical context. There follows several sections which show how the Dialogue is modelled on principles and structures of dispute resolution and restorative justice by means of a relational process within a relational system and how this model can become a vehicle for the reconciliation of the participants. The final two sections point to the Christian anthropological and theological values that underpin the proposed program, "Dialogue of Charity: *kairos* of Mercy."

#### 4.2.1 – Opportunity for Catechesis

Christ is at the heart of catechesis.<sup>8</sup> Directing the apostles to teach was His final command before He ascended to the Father. Thus, “[t]he Church has always considered catechesis one of her primary tasks.”<sup>9</sup> Catechetical instruction is of inestimable value to each member of the faithful individually, and wholly, as part of the sacrament of unity. Catechetics is the other principal form of the ministry of the divine word along with preaching.<sup>10</sup> Attention directed to catechesis in the Church is attention directed to the mission of faith. Indeed, Vatican II made clear that:

In the exercise of its functions in education, the Church is appreciative of every means that may be of service, but it relies especially on those which are essentially its own. Chief among these is catechetical instruction, which illumines and strengthens the faith, develops a life in harmony with the spirit of Christ, stimulates a conscious and fervent participation in the liturgical mystery and encourages men to take an active part in the apostolate.<sup>11</sup>

From the time of the Second Vatican Council, Paul VI, “[t]hrough his gestures, his preaching, his authoritative interpretation of the Second Vatican Council (considered by him the greatest catechism of modern times), and through the whole of his life ... served the Church’s catechesis in a particularly exemplary fashion.”<sup>12</sup> The value of instruction was reaffirmed during the papacy of John Paul II in the *Catechism of the Catholic Church*,

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<sup>8</sup> CCC, no. 426.

<sup>9</sup> JOHN PAUL II, apostolic exhortation on catechesis in our time *Catechesi tradendae*, 16 October 1979, in AAS 71 (1979), pp. 1278-1340, no. 1, English translation in *Origins*, 9 (1979), p. 329. (=CT)

<sup>10</sup> Title I of Book III of the Code, entitled “The Ministry of the Divine Word,” has two chapters, the first on preaching and the second on catechetical formation.

<sup>11</sup> *Gravissimum educationis*, no. 4, English translation in FLANNERY1, p. 730.

<sup>12</sup> CT, no. 2.

*Catechesi tradendae*, *Christifideles laici*, and the *General Directory for Catechesis*.<sup>13</sup> More recently, the statement of the pastoral plan from the USCCB, *Our Hearts Were Burning within Us*, in referencing the Catechism, instructs that catechesis aims at putting people in communion with Jesus Christ. This pastoral plan calls for concrete approaches to catechetical instruction and notes the pivotal role of the parish.<sup>14</sup> This is consistent with c. 779 highlighting the use of instructional aids “which seem more effective, so that the faithful, in a manner adapted to their character, capabilities and age and conditions of life are able to learn Catholic doctrine more fully and put it into practice more suitably.” Unquestionably, catechetical instruction, which the faithful need, for which the law provides, and which is part of the Dialogue, is necessary and should be very practically promoted.

Because of their formation in the faith, or lack of it, many of the affected faithful never understood the consequence of being denied Holy Communion. In the interest of time and often heartbreak, it is best if parties are confronted with the reality that, under the law, if they cannot completely engage in the process, be forthcoming and assist in getting to the heart of the proofs, they may not be able to receive Holy Communion.

According to the Center for Applied Research in the Apostolate (CARA), there are 30 million married Catholics in the United States and 4.5 million Catholics who are

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<sup>13</sup> JOHN PAUL II, post-synodal apostolic exhortation on the vocation and the mission of the lay faithful in the Church and in the world *Christifideles laici*, 30 December 1988, in AAS, 81 (1989), pp. 393-521, English translation *The Lay Members of Christ's Faithful People*, Boston, St. Paul Books and Media, 1989; CONGREGATION FOR THE CLERGY, *General Directory for Catechesis*, 15 August 1997, Libreria Editrice Vaticana, 1997.

<sup>14</sup> COMMITTEE ON EDUCATION OF THE UNITED STATES CATHOLIC CONFERENCE, *Our Hearts Were Burning within Us: A Pastoral Plan for Adult Faith Formation in the United States*, Washington, USCCB, 1999, no. 1.

divorced and remarried without benefit of a declaration of nullity. The research bears out the fact that 12 percent of Catholics in the United States are currently divorced, and 85 percent of those individuals have not even sought the assistance of the Church's tribunals. Of the 15 percent who petitioned for a declaration of nullity, more than half of those were denied it.<sup>15</sup> Adding to these numbers the percentage of American politicians whose political involvement might lead them to be denied Communion, the matter of the application of the pertinent clause of c. 915 bears immediate attention. A politician may act out of what he believes to be Catholic social teaching. His formation in the faith may have taken place well before the teaching primarily focused on life issues. This component of the law is something which the Church should direct pastors to incorporate into the application of the law.

Those persons refused Holy Communion often feel that they are being subjected to public ignominy. They are told that they are "obstinately persevering in manifest grave sin," though many are unclear about what constitutes grave sin, much less what the other words in the clause mean. Out of charity and as a remedy for catechetical failings, it is imperative for the Church to assist these individuals. The Dialogue of Charity offers them the opportunity to more perfectly receive the teachings of the Church, including the affirmation of the moral law as well as the validation of them as the wounded persons they are in the face of making those choices. The Dialogue also provides a forum for instruction on conscience formation, marriage, and the serious consequences of their choices in relation to their being denied Holy Communion. They can also be assisted with seeing how

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<sup>15</sup> CARA, statistics as reported by M. WALSH, *America Magazine* (online edition), "Revisiting Remarriage," 6 October 2014, accessed on 9 February 2015 at <http://america magazine.org /issue / revisiting-remarriage>.

this instruction relates to averting further problems in their lives and in the lives of future generations.

Many problems can be averted through the Dialogue of Charity in which parties can be helped to discern whether they should participate in a legal process to rectify their marital status in the external forum. It provides individuals with a setting in which they can learn about the types of proofs that are required for moral certitude in marriage cases, and they can be advised of possible consequences if a negative decision is rendered. As a result, by the time the parties engage in a tribunal process, they will be better able to navigate their case and will have a more realistic expectation of the outcome. Finally, the Dialogue will educate the parties in the setting of the meeting – the Canonist, the person who may be denied Communion, and the third-party neutral Facilitator of the meeting – about the law relating to denial of Communion, marriage, and fundamentals about making choices. This will be accomplished through the dissemination in the meeting of written materials in a catechetical format that will be discussed and related to that person's history during the meeting. The party can then take home the materials. This will help to accurately disseminate the law of the Church and truth about its doctrine.

#### **4.2.2 – Additional Benefits of the Dialogue**

Those among the faithful to whom it has been made clear by members of the relational system of the Church – their pastors – that they can be denied Holy Communion, often take exception to the possible consequences. The result is most often conflict between pastor and Church member or that member and the universal Church. At a more public level, conflict about the issue is fodder for news media and websites. Indeed, those who are denied Holy Communion often feel aggrieved, or at least misunderstood, and even

rejected to the extent that some complain in public venues like blog sites. Some members of the faithful who are denied Holy Communion even stop participating in Mass and join other Churches or ecclesial communities. Pastors oftentimes feel like they are put in an untenable position based on vague canonical wording. Application of the law is inconsistent. Public perception and reaction are very mixed. Church unity is disrupted. This is substantiated by the number of times that the issue has been presented in the mainstream public news outlets.

The proposed Dialogue of Charity directly addresses the sources of these problems because it provides a confidential venue for expression in situations when Holy Communion can be denied on the basis of a determination of a person being publicly unworthy or obstinately persistent in manifest grave sin. It is structured in such a way that it provides an opportunity for persons who may be denied Communion, or who participate as a respondent in a situation where this might occur, to share feelings, frustrations, and fears about the situation surrounding the denial of Christ in the Eucharist, the Sacrament of Charity. Images conjured by the words of the clause in c. 915 naturally elicit intense emotion and invite reaction when the faithful attend Holy Mass but are rejected in no small measure based upon application of these words to them. As to those who may respond in a marriage case, the Dialogue provides a venue for discerning whether or how to participate in the process. It also provides a place for processing many emotions that go along with that decision. Additionally, it assists those who are discerning whether to take recourse against the decision that they are not to be admitted to Communion. It is to be hoped, however, that such recourse will be unnecessary, for the Dialogue of Charity provides an

alternative to the parties seeking hierarchical recourse against a decision to not admit them to Communion.

The Dialogue promotes catechesis and proper formation of conscience directed to the Eucharist, as well as an understanding of the language and application of the law regarding Communion. It is a program which provides a structured process for dialogue and is specifically formulated to address conflict about denying Holy Communion in a relational process. It is designed to accomplish this in a way that presses the participants in the Dialogue to live the Beatitudes within the relational structure of the Church.

By engaging in the Dialogue, the participants can bear great witness to the model provided by Christ as related in the Gospels at the same time that they can propagate the mission of the Church. Though the participants in the Dialogue may be embroiled in a conflict regarding that essence which goes to the heart of Christian existence – the source and summit of Christian life – they are open to communicating with and in front of other members of the faith – the Canonist and the Facilitator. Their willingness to participate suggests that they are open to sharing, teaching, learning and growing, in ways that Jesus taught.

The Dialogue of Charity addresses issues of identity. It is envisioned that in the process the parties will engage in relating their history and life experience, their beliefs, their understanding of doctrine and law, and that they will devise a plan of action with one another regarding meaningful participation in the Eucharist. It is designed so that the person who is denied Communion might begin again to receive or be provided with a means by which he or she can prevent the circumstances that gave rise to the denial of Communion. In the event that such circumstances cannot be prevented, it provides a means

by which the person can work with their pastor to be more participatory and integrated into sacramental participation without indices of shame or ostracization. It provides the Communicant with an opportunity to explain, in detail, what led to the circumstances by which he or she is in the situation regarding the denial of Communion before engaging in a legal process tied to that issue. It further provides a chance for the Communicant to be catechized about the Eucharist and the determination of worthiness to receive Holy Communion as well as to discuss options for addressing the circumstances which may lead, or have led, to the denial. This includes, in the cases of civilly divorced and remarried, the value of strong proofs in a judicial process.

The Dialogue of Charity brings to the fore realistic challenges faced by the Church and by the parties in relation to the law. The structure promotes communication in an atmosphere of parity. The dialogue between the participants addresses Communion in a way that teaches, validates, and edifies the parties to the process. In this way, the process will address those conflictual situations where parties have been or may be denied Communion. It will instead bring forth blessings of healing, reconciliation, and unity.

#### **4.2.3 – The Canonical Context for the Program**

Various obligations and rights of the faithful are set out in the Code which are relevant to the application of the pertinent clause of c. 915, among them cc. 217, 224, and 225. The law makes clear that the faithful can make known their views, needs, and wishes to their pastors and that they have protection under the law in so doing (cc. 212, 221). There must, however, be a spirit of collaboration that relates to both moral and juridical matters; indeed, the *communio ecclesiastica* must include the *communio hierarchica*.<sup>16</sup> Against this

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<sup>16</sup> D. CENALMOR, commentary on c. 212 in *Exegetical Comm*, vol. 1, pp. 66-68.

backdrop, the faithful have the right under cc. 212 and 221 to petition the hierarchy in reference to questions about not being admitted to Communion and even to legitimately vindicate and defend their rights. This further pertains to the manner by which recourse may be taken under cc. 1732-1739 and by use of the general norms regarding singular administrative acts (cc. 35, 36, 37, 43, 48, 50, 51, 52, 54, 55, 56) by which recourse may be pursued.

The decision that a person must be denied Holy Communion in virtue of c. 915 is a singular administrative act under c. 35. It is an act of authority intended for a specific or concrete (singular) individual and is issued by one who, within the limits of his competence, has executive power. It is the decision of c. 48 and, if given in writing, is a singular administrative decree.

A fundamental general norm of law requires that a strict interpretation be given to a law that restricts rights (c. 18). Canon 915 is such a law as it may lead to a restriction on the right to receive Holy Communion (cc. 213, 912). Therefore, there must be a strict interpretation of the words “obstinate persistence” in “manifest” “grave sin.” Each of these conditions must be proven before Communion may be denied. Before the decision to deny Communion can be made, c. 50 requires the authority to seek the necessary information and proofs and to consult with those who rights could be harmed insofar as possible. If this process results in the judgment that Communion must be denied, the decision should be given in writing (cc. 51, 54 § 2), especially if given by the ordinary. The decree takes effect upon its communication to the affected person (c. 54 § 1). The faithful have a right to redress grievances under c. 220, and so have the right to take recourse against a decision to deny them Holy Communion in keeping with cc. 1732-1739.

The faithful also have the right to a Christian formation which imparts magisterial teaching (cc. 217, 229). As it relates to the issue of not being admitted to Communion under the pertinent clause of c. 915, this right intersects with norms located in other parts of the Code, including cc. 773-774 on catechetical formation, c. 843 § 2 on the right to preparation for the sacraments, cc. 1063-1064 in relation to the civilly divorced and remarried, and c. 227 regarding politicians. Moreover, there are fundamental rights that relate to privacy and the protection of one's reputation that should be factored into any method of addressing the decision to not admit a member of the faithful to Communion in a public venue (c. 220).

#### **4.2.4 – Dispute Resolution**

The Church, in its legal system, judiciously offers methods of dealing with potential disputes that arise as a result of the hierarchical decision-making process. It provides hierarchical recourse, litigation, and alternative dispute resolution in the two Codes. Both the 1983 *Code of Canon Law* (cc. 1446, 1713, 1733) and the 1990 *Code of Canons of the Eastern Churches* (cc. 998, 1103) encourage parties to be non-judgmental and open to change. Recommendations for engaging in dispute resolution had also been provided for in the Pio-Benedictine Code,<sup>17</sup> and they are enhanced in the Codes of 1983 and 1990,

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<sup>17</sup> Book IV (*De processibus*) of the 1917 Code contained two short chapters relative to alternative dispute resolution, one on *De transactione* (cc. 1925-1928), or negotiated settlement, and the other on *De compromisso in arbitros* (cc. 1929-1932), or arbitrated agreements. While the canons on negotiated settlement looked to the judge as the one to urge parties toward working out an agreement, usually someone other than the judge should assist the parties in doing so. Regrettably, the provisions of the 1917 Code were rarely employed, but they nevertheless stood as official reminders of the Church's desire that, where possible, disputes should be settled in a conciliatory mode rather than a contentious process.

arguably because of a shift in ecclesiology.<sup>18</sup> Many dioceses have offices of mediation.<sup>19</sup> In fact, diocesan websites often provide information about how to use the services that can be offered by those offices.<sup>20</sup> Hence, it may be said that the Church promotes the use of settings that reflect an enhanced understanding, empathy and responsiveness to the faithful in ways that have evolved over the course of time.

The mediated setting in the Dialogue of Charity specifically addresses a situation where Communion may be or is being denied to a member of the faithful. Though arguably the methodology of mediation as it is generally understood goes into the Dialogue process, there are prominently distinguishable features. There is a focus on developing a fuller understanding of the law and promoting sacramental participation. There is a deconstruction of confusion, frustration, and disappointment in relation to the law of the Church which may be applied to deprive a member of the Bread of Life.

Mediation used in diocesan settings seeks to promote understanding and reduce conflict in those settings. The Dialogue expands this use of mediation principles and more completely delves into the complexities of the dynamics that have created the conflict. It relies on the capacity of the parties to address memories and anticipate reconciliation in ways that are not generally a goal in standard mediation, and it directs the communicant about how to deal with these within the context of the marital nullity process or in their political career choices. This is prompted by the Facilitator.

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<sup>18</sup> cf. R. KASLYN, commentary in *CLSA Comm2*, p. 242.

<sup>19</sup> For example, see the website of the Conciliation Office at the Archdiocese of Chicago at <http://www.archchicago.org/conciliation>.

<sup>20</sup> For example, the Military Archdiocese provides such information on its website at <http://www.archmil.org/Resources/PastoralMediation.htm>.

The fact that many dioceses have mediation offices demonstrates that the Church is an institution which acknowledges the value of dispute resolution. Diocesan adoption of the Dialogue will demonstrate recognition by the Church that, while there is an ultimate truth reflected in the law, there are undoubtedly historical developments, relationship issues, varying degrees of human consciousness, and methods of making choices that are extremely complex. It will further demonstrate that the Church seeks to be relevant to the times in which it finds itself at the same time that it must provide a moral compass of truth. It is a palpable expression of God's love for us until the end of time and cannot be compromised, but it must acknowledge the spiritual poverty of mankind and work to eradicate that poverty in the spirit of radical faith, love, and mercy.

The proposed relational process which is the Dialogue is consistent with the intent of the legislator of the Church. The fact that dispute resolution in mediated settings is recommended in the law bears out this assessment. In the mind of the legislator, then, the Church must strive to be sensitive to the use of a relational process to address conflict within it as a relational structure. The intent of the legislator is clear. Dispute resolution is to be promoted.

The development of a relational process for certain disputes is consistent with the stated position of the Church regarding the laity in the wake of Vatican II. Developing and promoting use of the Dialogue can be viewed as an apostolate of the Church as set forth in the Decree, *Apostolicam actuositatem*. In the Decree the Council instructs:

Whether the lay apostolate is exercised by the faithful as individuals or as members of organizations, it should be incorporated into the apostolate of the whole Church according to a right system of relationships. Indeed, union with those whom the Holy Spirit has assigned to rule His Church (cf. Acts 20:28) is an essential element of the Christian apostolate. No less necessary

is cooperation among various projects of the apostolate which must be suitably directed by the hierarchy.<sup>21</sup>

Additionally, *Lumen gentium* poignantly and clearly provides direction for understanding the roles played by the hierarchy and the laity. This can be seen in the chapter titled “The People of God” and in the additional chapters, “The Church is Hierarchic” and “The Laity.” Indeed, as the Council instructs, within the hierarchical structure of the Church the laity has a significant role. Lay faithful can assist in implementing a relational process for resolving Church disputes. Lay faithful will participate in the mediated settings in some instances as neutral and detached third parties and as parties to the process. As *Lumen gentium* recognizes, in the hierarchical structure of the Church, lay people can be of great service.<sup>22</sup> The use of laity in the role of neutral and detached third party facilitators in the Dialogue relational process is consistent with the goal of the Council to promote the apostolate of the laity. That goal was to direct the hierarchy to more actively engage the laity to aid in the mission of the Church.<sup>23</sup>

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<sup>21</sup> *Apostolicam actuositatem*, no. 23, English translation in FLANNERY1, pp. 789.

<sup>22</sup> *Lumen gentium*, no. 30 states: “Everything that has been said above concerning the People of God is addressed equally to laity, religious and clergy. Because of their situation and mission, however, certain things pertain particularly to the laity, both men and women, the foundations of which must be more fully examined owing to the special circumstances of our time. The pastors, indeed, know well how much the laity contribute to the welfare of the whole Church. For they know that they themselves were not established by Christ to undertake alone the whole salvific mission of the Church to the world, but that it is their exalted office so to be shepherds of the faithful and also recognize the latter’s contribution and charisms that everyone, in his own way will, with one mind, cooperate in the common task.” Translation in FLANNERY1, p. 388.

<sup>23</sup> The Code of Canon Law is relatively silent with regard to the formation and requirements for lay ecclesial ministry. Only c. 231 states the obligation of laity to acquire appropriate formation to fulfill their functions properly. In 2005, the USCCB approved the text, a resource document to assist bishops and others responsible for lay ecclesial ministry in their respective dioceses. The document aims to lay the foundation for the development of particular law at the local level with a view to structuring lay participation in the ecclesial community. The document treats various aspects related to the formation and authorization for lay ecclesial ministry. See USCCB, *Co-*

The Church acknowledges that the contribution of the laity to its salvific mission is part of God's plan for evangelization and salvation. Thus, it seems that the relational process proposed here should be received in light of the law, which seeks dispute resolution, and in light of the stated goal to better incorporate the laity into decision-making processes and working for the welfare and mission of the Church.

#### **4.2.5 – Relational System and Relational Process**

The relational structure of the Church has historically been fruitful for propagating its stated mission of evangelization and salvation. Church authorities have instructed and directed those over whom they have been vested with oversight to engage in various works throughout the two millennia of its existence. Indeed, the relational system that is the hierarchical Church has been effectively used to accomplish great apostolic works in the venues of education, healthcare, and social justice programs. Those works have enlivened the faithful and unified them with one another, with those who are not of the faith, and with

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*Workers in the Vineyard of the Lord: A Resource for Guiding the Development of Lay Ecclesial Ministries*, Washington, USCCB, 2005.

Limitations to participation should be decided by the diocesan bishop, pastors, and other administrators of ecclesial institutions who are competent to make decisions as to whether a lay person may be entrusted with a specific ecclesiastical office, ministry, or some other role in a diocese or parish. As noted by Rose McDermott, "They must make a sound judgment based on the integrity and capability of the person to perform the specified ministry in accord with his or her gifts, competencies, and training. This decision is somewhat similar to employers in the secular realm deciding on the suitability of a person for a specific profession. He or she would have to meet the criteria for that profession and be accepted by those making a judgement on his or her capabilities for the undertaking." R. MCDERMOTT, "Co-Workers in the Vineyard of the Lord: A Canonical Analysis," in *The Jurist*, 67 (2007), p. 454.

As an example of particular law which has been promulgated at the local level regarding the requirements for lay ecclesial ministry, see Diocese of Covington, Norms for Extraordinary Ministers of Holy Communion and Lectors, at [http://home.catholicweb.com/covingtonworship/files/Covington\\_EM\\_Final\\_Draft\\_9\\_7\\_10\\_WEB\\_COPY.pdf](http://home.catholicweb.com/covingtonworship/files/Covington_EM_Final_Draft_9_7_10_WEB_COPY.pdf). Also of interest in this regard is the taxative list of limitations to parish involvement for divorced and remarried Catholics found on the website of Holy Angels Catholic Church in Sandusky, Ohio, which may be accessed at [http://www.holyangels sandusky.org/ministry Separated\\_and\\_Divorced.asp#a2](http://www.holyangels sandusky.org/ministry Separated_and_Divorced.asp#a2).

God. Thus it may be said that the Church structure of stratified authority, fueled by obedience, has been most efficacious for building up the Body of Christ.

However, in addition to the efficacy of the relational structure of the Church, promotion of the mission and unity of the faithful can be enhanced by way of the use of a precise understanding and application of a relational process in the Church. An increased, conscious reliance by Church authority on the use of a relational process like the “Dialogue of Charity,” which is appropriate for addressing conflict within the relational system, can add strength to an already efficacious effort in building up the Body of Christ.

To be effective for use in mediated settings where there is a goal of conflict resolution, the process should be developed with an understanding of what is meant by the term “relational system” within which it will be applied. An understanding of what constitutes a relational system has been culled from many years of scholarship and experience. That scholarship is linked to an effort to elucidate how an understanding of deep-rooted conflict can open paths to reconciliation. Use of the term “relational process” here is drawn from the scholarship of Vern Neufeld Redekop. A world-renowned expert in conflict resolution, he derived principles from a restorative justice paradigm for use in mediated settings and coined the term “relational system.” To Redekop, every process must have a system within which to work. He defines “relational system,” which we will use in the proposed “relational process,” in the following way.

“[R]elational” speaks of having interaction or mutual impact through time and “system” comes from Greek words meaning, literally, to stand together. A relational system creates a context—such as a family, a workplace, or a region—in which parties have to deal with one another. A relational system may change from being congenial to being contentious, or it may begin as conflictual and end as reconciled.<sup>24</sup>

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<sup>24</sup> REDEKOP, *From Violence to Blessing*, p. 13.

In the context of his “relational system,” Redekop uses the terms “deep-rooted conflict” and “identity-based conflict.” For him, they have the same meaning, that is, they support his position that developing an understanding of deep-rooted conflict provides opportunities for reconciliation. He recognizes the supposition that identity is very complex. “To understand deep-rooted conflict we need to understand identity needs and how we define our satisfiers of these needs.”<sup>25</sup> He uses these concepts to support his teachings on how parties can go from violence to blessing.

This theory is directly on point with the type of conflict that exists in relation to denial of Holy Communion. The matters at issue which have led or may lead to the determination of “obstinate persistence in manifest grave sin” or public unworthiness are often extremely personal or based on deeply ingrained notions of Catholic teaching. Oftentimes, a person presents for Communion while, in his personal life, he is making choices that he believes are either out of his control or not relevant to his worthiness to receive the Eucharist. At times, long-held belief systems in which a person’s lifestyle or choices or, in the case of politicians, their livelihood, cause conflict with the decision of the pastor to deny Communion. There is a need to address intense emotions tied to pride, shame, rage, liberty, rejection, and sometimes even actual physical harm (e.g., a spouse who was a victim of domestic violence but has not obtained a declaration of nullity before civilly remarrying). As Redekop writes, “Emotions have everything to do with interpretation.”<sup>26</sup>

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<sup>25</sup> Ibid., p. 32.

<sup>26</sup> Ibid.

Developing an understanding of the relational system relative to the proposed relational process for use in these contexts is a priority for constructing that process. Here the system – the hierarchical Church – is directly tied to what a communicant sees as an extremely personal matter that intersects with the law of the Church—denying Holy Communion to someone who has been determined to be “obstinately persevering in manifest grave sin.” Logically, the dispute resolution process being proposed for use by the Church in cases of denial of Holy Communion must inexorably incorporate an understanding of a “relational system” like that defined by Redekop. The process cannot occur without the system. Yet the system will be enhanced through use of the process.

Decisions which lead to conflict may be made by those in authority in any structure. The Church is no exception. However, in this context where someone is publicly being denied Holy Communion, the effect can be that a member of the faithful feels extremely aggrieved. Within the Church’s structure, the program can specifically be applied to address the concerns of all parties and open them to discussion. It can assist them in developing an understanding with one another about how the conflict arose. It provides a forum for devising an action plan that addresses the source of the conflict. As a result, throughout the process of the “Dialogue of Charity,” there will be validation, healing, reconciliation, and growth of the participants. The inevitable outcome will likely be increased sacramental participation. Because of the numbers of persons who will be invited to participate in the program, the entire Church relational system will be impacted. Indeed, the Dialogue can more firmly bind authorities of the Church to its members. In this way, the Spirit of Christ will be clearly seen to have vivified His Church on earth.

#### 4.2.6 – Reconciliation Through a Relational Structure

The concepts and practice of mediation and reconciliation are inherent in the understanding of the faith on the part of the faithful.<sup>27</sup> By His example, and in His willingness to participate in a sacrifice of Himself for our salvation in spite of our sins, Christ bore witness to the value of such participation. This foundation provides a natural segue for the Church to explore with the faithful how, as a relational system, it can be assisted by use of a relational process and lead parties to reconciliation. Application of the Dialogue as a way to reduce conflict within the Church and encourage participation in the process will demonstrate a commitment to the use of mediated resolution.

The concept of reconciliation is well known to Catholics through the sacrament of penance or, as it is called by some, the sacrament of reconciliation. Through the gift of that sacrament, the faithful are instructed that they may, in part, become properly disposed to receive the gift of the Eucharist. Reconciliation is an imperative feature of determining worthiness to receive Communion. Most faithful possess some understanding of reconciliation. Thus, it is incumbent upon the Church to explore the Dialogue of Charity for use in support of the relevant canonical provisions sanctioning mediated dispute resolution. Additionally, because we are redeemed by Christ, and at some level each member of the faithful comprehends mediation and reconciliation, the Church's commitment to the application of the relational process can even enhance the way in which the Church addresses other conflicts like school or parish closings.

Undeniably, the activity of the Church is accomplished through its structure. Hierarchical in nature, that structure is nevertheless relational, as it involves all the Catholic

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<sup>27</sup> CCC, nos. 65, 1422.

faithful and is utilized toward the ultimate goal of the restoration of mankind to union with God and one another. Though in many ways the Church exists as a collegial entity, the practical structure of it is grounded in stratified authority with an emphasis on strict adherence to the notion of hierarchy.<sup>28</sup> It is sustained by a loving and conscientious obedience and is fortified by a rigorous dependence on that obedience. The Church is structured, therefore, in a way that obedience to ecclesiastical authority is a necessary and encouraging feature for participation by every member of the faithful.

No structure, however, can eradicate all conflict from human interaction. The Church is not an exception to this axiom. Further, historical and cultural circumstances have greatly contributed to the existence of the conflict which ensues when Holy Communion is denied. For many of the faithful, acting according to one's conscience has taken the form of lifestyle choices that are inconsistent with Church law and teaching. Additionally, canon law sets out various rights of the faithful which make clear that obedience in the Church does not amount to a rejection of thoughtful and questioning participation. Many of the faithful take issue with Communion being denied when, as Christ hung on the cross, He called all people to Himself.<sup>29</sup> These faithful question decisions that are made by ecclesiastical authorities in the face of these words of Christ that do not seem to comport with denying the Eucharist. Thus, a relational process which addresses conflict in a context where a principal feature is a "Dialogue of Charity" is

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<sup>28</sup> CCC, no. 877.

<sup>29</sup> Jn 12:32, "And I, when I am lifted up from the earth, will draw all people to myself." Translation from *Holy Bible: New Revised Standard Version, Catholic Edition, Anglicized Text*, New York, Harper Catholic Bibles, 2007.

consistent with the law that acknowledges both conflict and expression of rights as a part of the dynamics of the Church.

Deep-rooted conflict impacts an overall relational structure as well as personal relationships within that structure.<sup>30</sup> This also applies to the relational system of the institutional Church because the issues tied to denial of Holy Communion are based on history. There is the institutional history of Church doctrine regarding Holy Communion. There is the personal history of how the Communicant was formed in the faith, prepared for marriage, the person's understanding of social doctrine, and the choices that were made as an adult. There is the period of history around the time that the person is assessed by the pastor to be in violation of the law and that he should be denied Communion. In a situation where one may be, or is being, denied Holy Communion based on "obstinate persistence in manifest grave sin" or public unworthiness, the circumstances most often present in relation to institutional and personal history and memory. Yet, there is always the anamnesis tied to the Creator. The feelings are complex. Man's history and memory intersect with the law and the personal choices which impact the reception for Holy Communion.

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<sup>30</sup> REDEKOP, *From Violence to Blessing*, pp. 181-182, states: "The dynamic nature of deep-rooted conflict demands that we examine the temporal or time-related scope of such conflicts including a sense of relational structures—mimetic structure of violence or of blessing—in our analysis. The term "relational structure" follows Rene Girard's use of the word structure: namely, that it is concerned with historical development, [is] relationship-oriented, and [is] hidden, yet rooted in human consciousness. The emphasis is on the relationship between deep-rooted conflicts and temporality.... Deep-rooted conflict as a function of time includes three significant factors. The first factor is history as shown in memory. Most deep-rooted conflicts are based in large measure on a memory of victimization. A second factor is change; the specific mimetic structures of violence can change like a kaleidoscope as they interact with another. A third factor is a promissory dimension of deep-rooted conflict. Most, if not all, deep-rooted conflicts are about imaginations of the future. Various parties either wish to cling to the status quo or radically change it for the future."

Where Communion may be or is denied, there is often a feeling of victimization based on the fact that the Communicant has most probably formed his conscience about reception of the Eucharist according to the exposure he or she had in life. This most probably occurred in his or her home, school, with friends, in religious instruction classes, and/or parish community. Then, at the same time that feelings about being denied Communion present, the experiences of life in which the person was taught about conscience formation and all of the feelings associated with those experiences also factor into the intensity of any reaction. By the time the Communicant participates in the Dialogue, his pastor might have notified him that he may or must be denied Communion because of the law. The same pastor may have tried by way of fraternal correction, most probably on a number of occasions, to have the Communicant stop presenting himself for Communion. There then surfaces all of the personal and institutional history, the feelings of being victimized as a result of that history, and the gaps in what it provided in terms of conscience formation, as well as a fear that rejection will occur. At the same time that these dynamics are taking place, the pastor may feel constrained by the law. The pastor can feel that his efforts will be to no future avail. Conflict then ensues that disrupts unity, and it must be addressed. The Dialogue is created for just such situations.

For example, conflicts present when parties are in irregular marriages but were not at fault in the divorce. They are often emotionally ill prepared to meet the challenges of petitioning for a declaration of nullity or responding to such a petition, including sharing intimate details about their lives before and during their marriage. Further, they might not have received sufficient catechesis about the ends of marriage. There are often real crises of faith already taking place in the lives of many individuals who are in these

circumstances. Yet, the pastor, to follow the law of the Church, may or must deny them Communion. The potential rush of emotion, memories, and need for validation and acceptance can be part of the Dialogue meeting to address these challenges.

The Dialogue can be a forum for processing memories, addressing proofs for nullity cases, or for clarifying one's positions vis-à-vis political platforms. Undoubtedly, it can serve to advance the conscience formation of the participants. It maintains a connection with the Church and members of the faith who might otherwise feel confused, aggrieved, or seek spiritual consolation in a setting outside the Church. The Dialogue of Charity will thereby foster the reconciliation of the faithful with the Church. Reconciliation in this context must be considered in the framework of the hierarchical Church which has Christ as its Head and its role model. Essentially, the proposed process, consonant with the desire of Christ, will bring the Church to greater perfection.

There is a christological component to the Dialogue of Charity. Redekop invites us to ask: "What did Jesus do and say to address deep-rooted conflict?"<sup>31</sup> To that end, Redekop has listed key features of a relational process that parties must do in order for reconciliation to occur. These features are directed to the goal of reconciliation and are necessary for any process used in the Church setting. Each party must do, or enable the other to do, the following in a participatory neutral setting:

- deal with the pain;
- create a safe space;
- break the trance;
- introduce or recall teachings;
- tell the truth;
- signal remorse and forgiveness;
- transform identity;
- create rituals;

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<sup>31</sup> Ibid., p. 315.

- heal;
- reframe;
- engage in structural change;
- celebrate.<sup>32</sup>

In addition to these features, the Dialogue of Charity will provide instruction about:

- moral teaching;
- conscience formation;
- Catholic social doctrine; and
- the liturgy.

This will all be done with a view to promoting sacramental participation.

Redekop states that “closeness and intimacy set up a relational system where mimetic conflicts become most intense.”<sup>33</sup> By its very nature, the Eucharist is close and intimate. The system of the Church, of which the Eucharist is the most substantive feature, can be a place of intense conflict. However, there are real opportunities for reconciliation within that conflict, precisely because of the nature of the conflict. This theory is based on the probability that there may be “many unconscious memories of blessing—memories of a time before the conflict or before it was so intense.”<sup>34</sup> Clearly, this is the case regarding Holy Communion. For many Catholics, strong memories of family, friends, school and community are attached to the participant’s association with Holy Communion. Indeed, there is a high degree of probability that the experience of first Holy Communion gave the party to the Dialogue a sense of belonging, an identity which revisiting the law and doctrine may serve to enhance.

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<sup>32</sup> Ibid., pp. 290-302.

<sup>33</sup> Ibid., p. 293.

<sup>34</sup> Ibid., p. 256.

Denying Communion without more direct pastoral involvement than the law currently calls for threatens that sense and that identity. This produces a violence to the psyche that can lead to frustration. Use of Redekop's methodology can be of great benefit here. Reconciliation and transformation in the wake of that conflict can only take place once violence to the psyche in the dynamic between persons is supplanted with the recovery of lost positive memories and identity is salvaged. Often, being made mindful of the blessings which occurred at the time of first Holy Communion will make one more receptive to healing, being reconciled, and transformed.

The process, then, which taps into the past, will evoke in the Communicant memories of blessings in relation to Communion. It will supplant the feelings of anger, confusion and rejection and will rekindle the desire to belong in the community and be a part of Church in ways that are correct under the law. This will be a foundation for reconciling the party and the Church and for renewing the commitment to the faith for all participants to the Dialogue: the communicant, the priest, and the facilitator. Though engaging in the program will be challenging, those involved in the Church's institutional structure should welcome it, as it emphasizes living as a community of faith.

The person who is facilitating dispute resolution in a Church system can move the dynamic towards a place for reconciliation and transformation once these considerations are settled to the extent possible. Reconciliation has two significant moments. The first moment, according to Redekop, "is an escape from the mimetic structure of violence brought about by the deep-rooted conflict. The second moment is the creative construction of mimetic structures of blessing." He continues:

Each of these has a dynamic, back-and-forth quality. The first moment of escape from mimetic structures of violence involves healing and

forgiveness as internal phenomena that release some of the hold violence has on us.... The transition to the second moment of reconciliation includes reconnecting the parties and reframing past and present reality.... The second moment itself involves creating new, and mutually empowering, relational structures. These two moments need not happen in this sequence.<sup>35</sup>

Scholarship provides an understanding of “mimesis” as encompassing language, values and patterns of behavior. It comes from imitation of our parents, members of society and our peer group. As such, our desires imitate the desires of these people.<sup>36</sup> Mimetic structure, then, must be addressed in the Dialogue. Thus, a primary focus in structuring the mediated setting, which has reconciliation and sacramental participation as a goal, must be to have the Facilitator assess the degree to which each of the parties is willing to assume the responsibility for prompting healing and reconciliation. In many cases, this will mean not reacting to statements or tone in such a way that feeds the conflict between the two. This requires professional training which will be provided as part of the Dialogue program adopted by the diocese.

#### **4.2.7 – Restorative Justice**

The “relational system” that is the Church is manifested through the use of the relational process of the Dialogue of Charity which borrows principles from a restorative justice paradigm. In this paradigm, the victim and offender meet in a neutral and detached setting and both parties engage in a dialogue of validation with the assistance of a neutral

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<sup>35</sup> Ibid., p. 287.

<sup>36</sup> Ibid., pp. 62-83.

and detached third party. The aim is to achieve healing, reconciliation, and a pastoral plan for sacramental participation.<sup>37</sup>

By use of this paradigm, the relational process provides solutions of healing and reconciliation in cases where pastors can determine, or have already determined, that certain faithful must be denied Holy Communion based on application of the “obstinate persistence in manifest grave sin” clause of c. 915 (cf. *CCEO* 712). The parties to the Dialogue interact with one another in the relational system that is the hierarchical Church. Yet, features of any relationship can at times be conflictual. Conflict may occur where individuals experience feelings of violence to their identity or what they perceive to be the identity of the relational system of which they are a part, or its rule of law.<sup>38</sup> In the proposed Dialogue of Charity, the parties are members of the faithful. The relational system is the Church.

Biblical notions found in the principles of restorative justice logically relate those principles to the functioning of the Church. Similar logic shows that there is nothing about the application of restorative justice principles in conflict resolution that is inapposite to decision-making by ecclesiastical authority. That is because those notions are consistent with, and point toward, a Church envisioned by the Second Vatican Council and the Compendium of the Social Doctrine of the Catholic Church.

A definition of restorative justice which is ascribed to one of its founding theoreticians, Howard Zehr, is the following: “Restorative justice is a process to involve,

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<sup>37</sup> cf. H. ZEHR, *Changing Lenses: A New Focus for Crime and Justice*, Waterloo, ON, Herald Press, 1995, pp. 83-94.

<sup>38</sup> V. REDEKOP, *From Violence to Blessing*, pp. 19-29.

to the extent possible, those who have a stake in a specific offense, and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.”<sup>39</sup> The principles of the restorative justice model uniquely qualify it as a paradigm for the relational process proposed here because it has historically focused on persons who are injured at the hands of another with a view to coming to terms with that person. It is victim-centered, yet it developed as an alternative of forgiveness and reconciliation in a criminal justice system which focused on retribution. It was intended to be “restorative” in situations where emotions run high and conflicts are expected to arise from the circumstances surrounding the criminal offense.

Retributive theory holds that the imposition of some form of pain will vindicate the crime, most frequently through deprivation of liberty and, in some cases, even through loss of life. Restorative theory argues that “what truly vindicates is acknowledgment of victims’ harms and needs, combined with an active effort to encourage offenders to take responsibility, make right the wrongs, and address the cause of their behavior.”<sup>40</sup>

The paradigm has been modified over the years since its institution. It has come to be applied in any number of contexts in which one party is aggrieved and the offense is recognized by one in authority, and another party is perceived by that authority to have perpetrated the offense. As a result, the application of traditional restorative justice principles has been applied to situations outside strict victim-offender models.<sup>41</sup> The focus

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<sup>39</sup> H. ZEHR, foreword to M. UMBREIT and M. ARMOUR, *Restorative Justice Dialogue: An Essential Guide for Research and Practice*, New York, Springer Publishing Company, 2011, p. 7.

<sup>40</sup> *Ibid.*, p. 8.

<sup>41</sup> *Ibid.*, pp. 293-300.

of the paradigm has now come to include parties to many different sorts of conflict, as varied as educational settings, and for use in countries where there are various political factions, to local community-watch enforcement issues.<sup>42</sup>

The same modification of the application of a restorative justice paradigm can be applied in Church settings. For example, in an application of the paradigm, a person, who may be or who has been denied Communion and may feel confused or aggrieved, contacts the diocesan office (many dioceses already have some form of a mediation program) which sets up the place and parties for the Dialogue, and the meeting process will be put into place. The structure and introductory text for the Dialogue will be shared with the parties in the first few minutes of the meeting. There is no limit on the number of meetings which the parties can agree to for resolution of the attendant issues.

An example of this would be the case of a person who is civilly divorced and remarried without benefit of a declaration of nullity. The pastor determines, after conversation with the party, and in consideration of the law, that they may or must be denied Holy Communion to avert public scandal. The person(s) who feel aggrieved by the action of that pastor can seek the mediated Dialogue process to address the problem through the diocese by means of the meetings facilitated in the presence of a neutral third party. Because the process involves the application of restorative justice principles, the aggrieved person would have a number of opportunities that could lead to reduction of the conflict, healing and reconciliation: to express their feelings about the situation, to explain how they got to the point in their life where they are being denied Communion, and to work from that point to develop with the parties a plan of action relative to the situation. At the

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<sup>42</sup> Ibid., pp. 308-309.

same time, the parties representing the Church would also have opportunities to learn how the situation had occurred, to create an atmosphere of empathy, to educate the party about the law and how the decision that is the subject of the meeting was made, and to help that person to develop a plan with them that will be satisfactory to the parties concerned and that is consonant with the law. The same principles apply to those who may be respondents in a marriage case.

What makes the Dialogue process distinctly different from a strictly interpreted mediation methodology is that this plan has a goal of healing, reconciliation and education that focuses on the source of the deep-rooted causes of the conflict and works at healing from that point. All of this is done in relation to sacramental participation. In this plan there is not a mediated agreement reached regarding reception of the Eucharist. However, an action plan for sacramental participation is developed that is consonant with the law and the party's circumstances. The meeting guides the participant to the truth and to a plan of participation. This can be accomplished because the atmosphere is a safe, structured, and open environment in which there occurs sharing and learning and explaining the why's and wherefore's of the situation that exists. The Dialogue is non-judgmental. A plan devised by the parties for healing and reconciliation (re-unification) can take place. In essence, the plan commits to helping the Communicant excise the root of the problem and create change. In these ways, the process borrows principles from the restorative justice model. Elucidated by understanding basic dynamics of the relational system in which it will be used (the institutional Church), the Dialogue of Charity will connect the parties who are in conflict within the Church, in a restorative, not retributive, way.

The result will be a stronger Church consisting of more committed faithful, and this for several reasons. The first reason is that the parties who may be or are being denied Communion will be provided with an intimate pastoral forum for sharing how the choices were formed that may lead or have led them to being denied Holy Communion. In this way they will feel validated by the Church. The second reason is that these persons will know that they can share those circumstances and feelings in the Dialogue with Church representatives and not be negatively judged on legalistic principles that do not seem relevant to the circumstances of their life. They will feel that they can work with the Church at resolving conflict, confusion, or fear – all in the spirit of charity. Finally, all of the participants to the process will be edified about the practical application of Church teaching. This edification will lend itself to greater empathy, even greater charity, which is the thrust of Church teaching. These same features of the Dialogue that address conflict are inherent in restorative justice.

At the international level, the United Nations has issued a handbook providing the following about restorative justice programs.

Restorative justice refers to a process for resolving crime by focusing on redressing the harm done to the victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of that conflict. Participation of the parties is an essential part of the process that emphasizes relationship building, reconciliation and the development of agreements around a desired outcome between victims and offender.<sup>43</sup>

Moreover, Pope Benedict XVI, in a post-synodal apostolic exhortation directed to the African continent, spoke of restorative justice. He said that the Church in Africa recognizes

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<sup>43</sup> Y. DANDURAND and C. GRIFFITHS, *United Nations Office on Drugs and Crime, Handbook on Restorative Justice Programmes*, New York, United Nations, 2006, accessed on 8 July 2012 at [http://www.unodc.org/pdf/criminal\\_justice/06-56290\\_Ebook.pdf](http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf).

her prophetic mission towards all those affected by crime and their need for reconciliation, justice and peace, and he added: “Pastoral workers have the task of studying and recommending *restorative justice* as a means and a process for promoting reconciliation, justice and peace, and the return of victims and offenders to the community.”<sup>44</sup> This text is an act of the universal, ordinary magisterium which introduces, in a very significant way, the Church’s commitment to the principles of restorative justice. Clearly, the Church seeks to have people dialogue, feel listened to, be validated, healed, restored to the community, and even transformed. These same principles can be expanded to address conflict which occurs in Church settings involving denial of Holy Communion.

Additionally, restorative justice principles are applicable in these contexts because they are consistent with tenets of the faith—our Gospel values. Restorative justice is grounded in love. “Love” in this context, however, is more than a feeling. It is expressed through action and is engaged volitionally. Pope Benedict XVI has taught us about true love which, he instructs, “is the response to the gift of love with which God draws near us.”<sup>45</sup>

In circumstances where a party is aggrieved, they perceive that a degree of personal control has been taken from them. The party longs to be restored to the former self. Conflict develops in the dynamic between the parties because of this, and there is a real risk of continuous alienation. In the context of the scenario here – denial of Holy Communion – there will be a directive imparted by a Church authority with which the lay person takes

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<sup>44</sup> BENEDICT XVI, post-synodal apostolic exhortation *Africae munus*, 19 November 2011, in *AAS*, 104 (2012), pp. 239-314, no. 83, English translation at [http://www.vatican.va/holy\\_father/benedict\\_xvi/apost\\_exhortations/documents/hf\\_ben-xvi\\_exh\\_20111119\\_africae-munus\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/apost_exhortations/documents/hf_ben-xvi_exh_20111119_africae-munus_en.html).

<sup>45</sup> *Ibid.*, no. 1.

issue. Application of restorative justice principles in such a context can restore a sense that there is a balance of personal control through respectful dialogue with the laws propounded by the Church. The same can be said with respect to respondents in a marriage case who decide to participate in the Dialogue.

The application of restorative justice principles to the scenario involving the Church could be criticized in that the restorative justice model is not relevant because it is victim-centered, and there is no clear victim in c. 915 cases. Is the victim the communicant? Is the victim the pastor, the parish community, the Church? Is it the Eucharistic Christ? Another potential criticism is that one party has to be blamed for harming the other, which means that either the Church would be placed in the role of the offender and the person being denied Communion would be the victim, or vice versa. Yet, the law under which Communion may be denied suggests that the offender is the person who presents for Communion while in a state of obstinate persistence of manifest grave sin or public unworthiness.

Another potential criticism of the approach being proposed is that the hierarchical structure of the Church precludes the feasibility of using this relational process in the face of the divine law proscription. Further, parties opposed to the use of the relational process might strenuously argue that, since the Church is not a democracy, there is no place for such a process. Critics might say these things as if to suggest that application of a relational process using restorative justice would be the death knell of the relational structure of the Church, thereby undermining its moral authority. This is an erroneous conclusion. The legislator intended for disputes to be addressed in mediated settings, as shown above.

Moreover, these arguments can be countered with the recognition that what takes place through the application of restorative justice principles is a process that does not focus on blame. The process focuses on restoration, transformation and peace-making. In that process, there is a construct created in a mediated setting wherein both parties address disappointment, betrayal, distrust, anger, shame, and feelings of hopelessness.<sup>46</sup> The focus of the constructed dynamic is to resolve an issue where one party feels aggrieved by the conduct of another party. The restorative justice process presses the participants to address these feelings and to learn from the expression of them in a safe and supportive setting involving a neutral and detached third party. There is a fundamental recognition that every participant in the process actually has the need to be listened to and be healed. Emphasis is placed on the participants being treated with dignity as they work through emotions, many of which are negative. This same construct is what is envisioned here in the Dialogue of Charity.

Application of restorative justice principles uniquely prepares persons in mediated settings with a charitable approach to acquire a better understanding of Church law and doctrine. The restorative justice model restores through validation and healing and thus returns the individual to a place where he or she feels safe and included.

Just as the use of the relational structure of hierarchy has been effective, so too will be the use of the relational process of mediation with an application of restorative justice principles to the human dynamics of the setting where each individual to the process responds freely. The Dialogue will create a setting with a transformative dynamic. In that dynamic, the manner that the free will of participants can be informed is addressed. Free

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<sup>46</sup> REDEKOP, *From Violence to Blessing*, p. 169.

will is given a voice inasmuch as deliberate action – choice of the free will – is acknowledged and talked about in terms of consequences. The subjective dimension of conflict is accepted because the Church has its stated position on matters of faith and law, yet it consists of persons who make individual choices. Thus, neither the Church nor the Communicant is criticized in the Dialogue of Charity. In this way, use of the Dialogue confirms the Church's recognition of the dignity of every person (cf. c. 208).

#### **4.2.8 – Christian Anthropology**

The Dialogue process, which addresses conflict surrounding denial of Holy Communion, is consistent with Church teaching that discernment on the part of each person should be encouraged. In fact, the Church zealously honors the free will of each person. That each person has received the gift of free will is a tenet of the faith. A process of dialogue, like the relational process proposed here, directly encourages the expression of the true self within the mediated setting.

A process that is used to reduce conflicts related to issues of obedience and authority, and also to assist in the formation of the faithful, must lend itself to a continuous and permanent thrust toward God. The Dialogue process is grounded in love and directed toward God. It assists members of the faithful to grow closer to Him because it provides a context for talking about Him. It is a venue for learning how and why to change, for *metanoia* to occur in open dialogue that is emotionally safe for parties embroiled in conflict. This is consistent with the goals of Christian anthropology. The Spirit has moved the Church in the promotion of Christian anthropology which promotes personalist approaches to decision-making. An analysis of the writings of Karol Wojtyła reveal a doctrine of man made to the image and likeness of God and a Trinitarian theology of

relationships, which add insight to historically fundamental principles of anthropology.<sup>47</sup> The impact of this insight was a metamorphosis of thinking about use of free will, relationships, and responsibility. This was reflected in the Second Vatican Council and subsequent magisterial teachings. It impacts how we must analyze freedom of thinking and of making choices about personal decisions, including the way in which one can be returned to Communion.

The Church is not a democracy. The correct use of free will, that is, the will subjectively ordered to reason and in support of the good, should be the goal of every person. As John Paul II wrote:

In order to be able to grasp the object of an act which specifies that act morally, it is therefore necessary to place oneself *in the perspective of the acting person*. The object of an act of willing is in fact a freely chosen kind of behavior. To the extent that it is in conformity with the order of reason, it is the cause of the goodness of the will; it perfects us morally.... By the object of a given moral act, then, one cannot mean a process or an event of the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world. Rather that object is the proximate end of a deliberate decision [=free choice] which determines the act of willing on the part of the acting person.<sup>48</sup>

The Dialogue of Charity can assist in this because it addresses, in a simple way, foundational principles of catechesis that one must use in order to act morally.

When subjective determination of the will is manifested in choices for dispute resolution, as proposed in the Dialogue, it prompts use of free will that is ordered to the good. A venue for dispute resolution employing restorative justice principles provides the

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<sup>47</sup> See T. MCGOVERN, "The Christian Anthropology of John Paul II: An Overview," in *Josephinum Journal of Theology*, 8 (2001), p. 1.

<sup>48</sup> JOHN PAUL II, encyclical *Veritatis splendor*, 6 August 1993, in AAS, 85 (1993), pp. 1133-1228, no. 78. English translation at [http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf\\_jp-ii\\_enc\\_06081993\\_veritatis-splendor.html](http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_06081993_veritatis-splendor.html).

opportunity for an appropriate exercise of reason, working to restore mankind to union with God. Thus, where principles derived from a restorative justice paradigm are used in a relational process in mediated settings for Church disputes, free will can be perfected. This theory impels the Church to consider the application of the proposed relational process in conflict resolution of intra-Church disputes about denial of Holy Communion. The pursuit of human needs and desires, bound up with self and other, is best structured when the good of the parties is the goal. The Church can take this orientation of conflict resolution and help to always foster the good of the other—the mutual desire for the well-being of the other—within the construct of the Dialogue meeting and apply these principles in a relational process which can end disputes, transform the parties, and promote sacramental participation.

Grounded in a personalist approach which acknowledges that the Church is enhanced by the promotion of Christian anthropology in relational settings, the proposed program can provide opportunities for persons to draw closer to God. Those who participate in conflict resolution using restorative justice principles can better respond to God's call. They are participating in healing and reconciling themselves with others and with Him. In so doing they are saying "Yes" to Him. They are participating in His creating and co-creating, renewing the face of the earth. Additionally, through an exchange of ideas and perspectives, the faithful will learn how to become more charitable in relation to one another. The example of effectively utilizing the Dialogue to exchange understandings of fundamental principles of Church doctrine and to share life experiences will positively impact all the participants and, ultimately, the Church. The process turns on resolving disputes based on restorative justice principles which employ Gospel values in a

systematized way. Those values are then acted on by an expression of a free will that is properly oriented to God. These aspects of the program are at the heart of the faith and are the kernel of the proposed process.

#### **4.2.9 – Theological Values**

All of the principles discussed above should be examined with a view toward mercy. Ours is a Church of mercy.<sup>49</sup> Pope Francis consistently refers to this period of Church history as “the time of mercy.”<sup>50</sup> This is in keeping with the words of Popes John

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<sup>49</sup> FRANCIS, *The Church of Mercy: A Vision for the Church*, Chicago, Loyola Press, 2014.

<sup>50</sup> See, for example, excerpts from the interview given by Pope Francis to journalists while on board a flight from Argentina to Rome on Sunday, 28 July 2013, as reported by J. ALLEN, *National Catholic Reporter*, online edition, accessed on 6 March 2015 at <http://ncronline.org/blogs/all-things-catholic/one-word-describe-pope-francis-papacy-date>. There is even a World Apostolic Congress of Mercy. See <http://www.worldapostoliccongressonmercy.org>.

Paul<sup>51</sup> and Benedict<sup>52</sup> as well as Pope Francis.<sup>53</sup> It is also in the spirit of the Second Vatican Council.<sup>54</sup> Christ healed mankind and provided the opportunity for all who engage in

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<sup>51</sup> John Paul II offers the following regarding mercy: “Jesus Christ taught that man not only receives and experiences the mercy of God, but that he is also called “to practice mercy” towards others: “Blessed are the merciful, for they shall obtain mercy.” The Church sees in these words a call to action, and she tries to practice mercy. All the beatitudes of the Sermon on the Mount indicate the way of conversion and of reform of life, but the one referring to those who are merciful is particularly eloquent in this regard.... Christ crucified is for us the loftiest model, inspiration and encouragement. When we base ourselves on this disquieting model, we are able with all humility to show mercy to others, knowing that Christ accepts it as if it were shown to Himself.” See JOHN PAUL II, encyclical letter *Dives in misericordia*, 30 November 1980, in AAS, 72 (1980), pp. 1177-1232, no. 14, English translation accessed at [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_3011198dives-in-misericordia\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_3011198dives-in-misericordia_en.html).

<sup>52</sup> cf. FC, no. 84, “Together with the Synod, I earnestly call upon pastors and the whole community of the faithful to help the divorced, and with solicitous care to make sure that they do not consider themselves as separated from the Church.... Let the Church pray for them, encourage them and show herself a merciful mother, and thus sustain them in faith and hope.” Commenting on this passage of his predecessor, Benedict XVI goes a step further and explains that “it should be emphasized with greater clarity what the pastors and brethren in the faith can do so that they may truly feel the love of the Church. I think that they should be granted the possibility of participating in ecclesial associations and even of becoming godfathers or godmothers, something that the law does not provide for as of now.” See BENEDICT XVI, “Zur Frage nach der Unauflöslichkeit der Ehe. Bemerkungen zum dogmengeschichtlichen Befund und zu seiner gegenwärtigen Bedeutung” (“On the question of the indissolubility of marriage. Observations on dogmatic-historical findings and their present-day importance”). The article was originally published in Munich in 1972 in F. HENRICH and V. EID (eds.), *Ehe und Ehescheidung. Diskussion unter Christen*. The new edition of the article, with the concluding part entirely rewritten, appeared in 2014 in J. RATZINGER - BENEDIKT XVI, *Einführung in das Christentum. Bekenntnis, Taufe, Nachfolge*, Joseph Ratzinger Gesammelte Schriften, vol. 4, Freiburg, Herder, 2014.

<sup>53</sup> The desire to bring the love of the Church “to the peripheries” has been a constant theme in the pontificate of Francis and has found unique expression within the context of ecclesial participation among the divorced and remarried. In an interview published in the Argentine daily newspaper, *La Nación*, Francis highlights the pastoral problem and reflects upon the importance of integrating these faithful in the life of the Church: “We must move forward.... In the case of divorcees who have remarried, we posed the question, what do we do with them? What door can we allow them to open? This was a pastoral concern: will we allow them to go to Communion? Communion alone is no solution. The solution is integration. They have not been excommunicated, true. But they cannot be godfathers to any child being baptized, Mass readings are not for divorcees, they cannot give Communion, they cannot teach Sunday school, there are about seven things that they cannot do, I have the list over there. Come on! If I disclose any of this it will seem that they have been excommunicated in fact! Thus, let us open the doors a bit more.” (cf. E. Piqué, *La Nación*, 7 December 2014, “The Synod on the Family: The Divorced and Remarried Seem Excommunicated,” accessed on 8 February 2015 at <http://www.lanacion.com.ar/1750351-the-synod-on-the-family-the-divorced-and-remarried-seem-excommunicated>).

accepting the New Covenant to be with the Trinity in celebration for all eternity. He bridged the chasm that existed between heaven and earth and helped man see that the two are one reality created by God. He taught how to live in faith, hope, and love in the social structure of the Church which accepts that reality. Each of these features of the life of Christ is modeled in the relational process, “Dialogue of Charity: *kairos* of Mercy.”

Logically, the example Christ gave must be employed in the Church founded by Him that it might bear good fruit and help mankind to attain salvation. Thus, the Church on earth is impelled to commit to all means consistent with this goal in the manner in which Christ gave us to accomplish it. This includes, of course, resolution of conflict in ways that are grounded in charity. As God is love, and the Eucharist is the Sacrament of Charity, application of a program by which the Church and the laity engage in dialogue devoted to issues pertaining to denial of Holy Communion, as an act of mercy, will demonstrate this commitment. The Second Vatican Council instructed that Christ as mediator founded the Church on earth which, though a visible structure and a human element, is joined to the

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<sup>54</sup> cf. JOHN XXIII, discourse on the solemn occasion of the opening of the Second Vatican Ecumenical Council, 11 October 1962, in *AAS*, 54 (1962), pp. 792-793, no. 7.1-2, English translation accessed on 6 February 2015, at <https://jakomonchak.files.wordpress.com/2012/10/john-xxiii-opening-speech.pdf>. “At the outset of the Second Vatican Council, it is evident, as always, that the truth of the Lord will remain forever. We see, in fact, as one age succeeds another, that the opinions of men follow one another and exclude each other. And often errors vanish as quickly as they arise, like fog before the sun. The Church has always opposed these errors. Frequently she has condemned them with the greatest severity. Nowadays, however, the Spouse of Christ prefers to make use of the medicine of mercy rather than that of severity. She considers that she meets the needs of the present day by demonstrating the validity of her teaching rather than by condemnations.... The Catholic Church, raising the torch of religious truth by means of this Ecumenical Council, desires to show herself to be the loving mother of all, benign, patient, full of mercy and goodness toward the brethren who are separated from her. To mankind, oppressed by so many difficulties, the Church says, as Peter said to the poor who begged alms from him: “I have neither gold nor silver, but what I have I give you; in the name of Jesus Christ of Nazareth, rise and walk” (Acts 3:6).

invisible society of the Church as one reality. The conciliar explanation of this fact supports the use of the Dialogue regarding the issue of denying Communion.<sup>55</sup>

The relational process proposed here – the Dialogue of Charity – is grounded in love precisely because it is based on the law and teaching of the Church which correctly directs a person’s conduct. Love in the context of the proposed process here will show how obedience to the law takes form as a feature of the Church system because it is consistent with a goal to move participants closer to God. It reconciles them to Him. Thus, the program should be received by both the Church and the faithful. Moreover, by use of this proposed relational process, the cardinal virtues of faith, hope and charity will be lived, learned, and reinforced in that dynamic. The result of using this process will be a Church which is transparent in being properly ordered to the good of all the faithful. Accuracy, consistency, and sensitivity will be its features. There will be tangible results. Hierarchical decision-making will be received by persons from a place within them which employs subjective freedom. This will result in a reduced number of future conflicts. Confidence in the hierarchical structure will exponentially increase. Members of the hierarchy will come to better understand how and why educational gaps occurred in formation for many of the faithful. Empathy will be shown by the authorities of the Church in relation to the choices made by certain faithful, and by those faithful in relation to their pastors who have been

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<sup>55</sup> *LG*, no. 8 states: “The one mediator, Christ, established and constantly sustains here on earth his holy church, the community of faith, hope, and charity, as a visible structure through which he communicates truth and grace to everyone. But, the society equipped with hierarchical structures and the mystical body of Christ, the visible society and the spiritual community, the earthly church and the church endowed with heavenly riches, are not to be thought of as two realities. On the contrary, they form one complex reality comprising a human and a divine element. For this reason the church is compared, in no mean analogy, to the mystery of the incarnate Word. As the assumed nature, inseparably united to him, serves the divine Word as a living instrument of salvation, so, in somewhat similar fashion, does the social structure of the church serve the Spirit of Christ who vivifies it, in the building up of the body.” English translation in FLANNERY1, p. 357.

called upon to make the choice of denying Communion. There will be a shared experience of community in relation to the Eucharist. This is consistent with the stated intention of the foundation of the Church. It can lead to better catechesis and a closer ecclesial community. The relational process—the Dialogue—will work. Properly structured, dispute resolution exemplifies Gospel values. To accomplish this, a methodology which goes to the essence of these values must be adopted and employed. The Dialogue of Charity, employing restorative justice principles for mediated settings, accomplishes that goal.

### **Conclusion**

The Dialogue process does not seek to change the moral, canonical, or extra-canonical law of the Church. Indeed, the ultimate goal envisioned by use of the process is to clarify and solidify that law and doctrine by raising consciousness in charity through dialogue about why decisions and choices are made by the Church and by the faithful. Properly structured and employed, the process can produce positive effects. It can help fulfill the mission of the Church. It can do so by application of the very principles provided in the Gospels, in Catholic social teaching, and in Church law. Surely, the process is something which must be applied in today's beloved, but beleaguered, Church.

Acceptance and application of a relational process which employs restorative justice principles as a paradigm for mediated Church settings in situations where Holy Communion may be or is being denied to members of the faithful will promote truth, which is the stated goal of the legal processes of the Church.<sup>56</sup> It will, moreover, promote the

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<sup>56</sup> Francis Morrisey recently highlighted the contrast between secular and ecclesiastical courts and opined that, whereas the object of secular courts tends to focus on the strict application of justice, "Church courts have as their focus to determine the truth." See F. MORRISEY, "Canon Law for Today," in *Prairie Messenger Journal*, online edition, accessed on 21 February 2015 at [http://www.prairiemessenger.ca/15\\_02\\_18/Morrisey\\_15\\_02\\_18.html](http://www.prairiemessenger.ca/15_02_18/Morrisey_15_02_18.html).

salvation of souls—the supreme law of the Church (cf. c. 1752). These are, broadly, the aims of the Dialogue of Charity program introduced in this thesis.

The Dialogue can be said to promote truth and salvation of souls because it necessarily and materially, in a spirit of charity and mercy, promotes communication and use of free will. The process enables the parties to communicate in a safe setting and thus encourages complete openness, and it imparts correct catechesis and formation of conscience. It highlights the pastoral nature of the application of the law regarding Holy Communion and worthiness to receive. At the same time, it encourages the faithful to exercise free will in relation to their life choices, in relation to one another, and in relation to God. The perfect charity to which each member of the faithful is called creates a setting of service and understanding. It is not judgmental.<sup>57</sup>

The proposed relational process should be incorporated into the legal system, optimally through its adoption in particular law. It is designed for sharing revealed truths in a setting that is an external work directed to another out of a love of God and neighbor.

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<sup>57</sup> This is consistent with the tenor of the papacy of Pope Francis, whose apostolic exhortation is edifying. In no. 36 of the exhortation, the Pontiff states, “All revealed truths derive from the same divine source and are to be believed with the same faith, yet some of them are more important for giving direct expression to the heart of the Gospel. In this basic core, what shines forth is the beauty of the saving love of God made manifest in Jesus Christ who died and rose from the dead. In this sense, the Second Vatican Council explained, “in Catholic doctrine there exists an order or a ‘hierarchy’ of truths, since they vary in their relation to the foundation of the Christian faith.” ...This holds true as much for the dogmas of faith as for the whole corpus of the Church’s teaching, including her moral teaching.... Saint Thomas Aquinas taught that the Church’s moral teaching has its own “hierarchy,” in the virtues and in the acts which proceed from them.... What counts above all else is “faith working through love” (Gal 5:6). Works of love directed to one’s neighbor are the most perfect external manifestation of the interior grace of the Spirit.... Thomas thus explains that, as far as external works are concerned, mercy is the greatest of all the virtues: “In itself mercy is the greatest of the virtues, since all the others revolve around it and, more than this, it makes up for their deficiencies. This is particular to the superior virtue, and as such it is proper to God to have mercy, through which his omnipotence is manifested to the greatest degree.”

It seeks to promote the truth about the law and doctrine in a way that is relevant and to raise consciousness about the lives of everyday faithful in relation to reception of Holy Communion. Truth is of pre-eminent importance in the mission of the Church. Yet, it must be presented in a way which expresses the integrity of the Gospel of the God who saves us, as expressed by Pope Francis.<sup>58</sup> The sentiments of this pope support an inviting setting, with an openness to dialogue, which is directed to promoting the good of the other. This can be accomplished as part of a relational process for dispute resolution, one that incorporates restorative justice principles and serves to restore a wounded person's relationship to the Church and encourage the fullest possible participation in it.

Lay people, consistent with the spirit of the Second Vatican Council, will participate in the process as facilitators who provide direction to the format of the process in which the parties are participating. By their presence throughout the process, the laity will assist in promoting an atmosphere which is neutral and grounded in an exchange regarding the law of Holy Communion – the Sacrament of Charity – in the spirit of charity. It is logical, at the same time that it is loving, for the Church to employ the proposed

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<sup>58</sup> The pope writes: “Just as the organic unity existing among the virtues means that no one of them can be excluded from the Christian ideal, so no truth may be denied. The integrity of the Gospel message must not be deformed. What is more, each truth is better understood when related to the harmonious totality of the Christian message; in this context all of the truths are important and illumine one another. When preaching is faithful to the Gospel, the centrality of certain truths is evident and it becomes clear that Christian morality is not a form of stoicism, or self-denial, or merely a practical philosophy or a catalogue of sins and faults. Before all else, the Gospel invites us to respond to the God of love who saves us, to see God in others and to go forth from ourselves to seek the good of others. Under no circumstance can this invitation be obscured! All of the virtues are at the service of this response of love. If this invitation does not radiate forcefully and attractively, the edifice of the Church's moral teaching risks becoming a house of cards, and this is our greatest risk. It would mean that it is not the Gospel which is being preached, but certain doctrinal or moral points based on specific ideological options. The message will run the risk of losing its freshness and will cease to have “the fragrance of the Gospel” (*EG*, no. 39).

process. The Church should do so during this time of mercy to propagate its mission. Christ gave Her the Spirit to fulfill this mission.<sup>59</sup>

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<sup>59</sup> *CT*, no. 1.

## APPENDIX

### CASE STUDIES

The persons in the cases presented below were encountered in the professional experience of the author of this thesis. They are a representative sampling of the kinds of real-life situations faced by persons who have been denied Holy Communion because they were judged by their pastor to be obstinately persevering in manifest grave sin. For each case, certain facts have been altered to prevent the possibility of recognition.

#### **1. Emotional Trauma Caused by Denial of Communion**

Mr. V is a 73-year-old man who files a petition for a declaration of nullity of a twelve-year marriage which produced no children and which had ended in divorce some thirty years ago. Nearly twenty years ago, when he was not practicing the faith, he civilly remarried a baptized Protestant, and the two have attended a fairly large and vibrant parish for years. They are very generous in their financial commitment to it.

When their former pastor retires, Mr. V approaches the new pastor to discuss the fact that he is petitioning to obtain an annulment and that his wife wants to come into the Church. He describes his relationship history, including the several serious relationships that he had after his divorce but before he remarried. He then relates that when he met his wife his life changed for the better. He explains that she had begun R.C.I.A. the year before the new pastor had come to the parish, and the V's had been advised during that process that Mr. V should obtain a declaration of marital nullity. He wanted to assure the pastor that he was beginning the process but that his wife had had a few health problems so he had gotten a little behind with the application.

The new pastor is very off-putting and shows no appreciation for the fact that Mr. V is so forthcoming about his circumstances. After some conversation he tells Mr. V that he will not be able to give him Communion in the present circumstances. He says things to Mr. V that cause Mr. V to genuinely despair. In fact, Mr. V had not felt that badly about himself since the times when he was a little boy and his father had been incredibly physically and verbally abusive towards him and to his mother and sisters. He had never spoken with anyone about the details of the all of that abuse years ago and how it made him feel when people were displeased with him now. All of that came flooding back when the pastor talked with Mr. V about his conduct in relation to the law of being denied Communion because, as the pastor said, "of how he'd lived his life."

Mr. V walks out of his meeting with the pastor with no hope and no one to talk to about all his intense emotions, including the old feelings from when he was little. He wanted to get right with the Church but now did not have any hope that this would occur. His wife would not be able to become Catholic as long as he was alive. He had ruined her life by marrying her. He was a bad person. He was a sinner. He might not ever be able to go to Communion again, and the priest had made it clear that he could not even hear Mr.

V's confession as long as he was living in the state of sin with Mrs. V. Mr. V thought he would, and perhaps that he should, die.

## **2. Adverse Reaction of Children to Denial of Communion**

Mrs. N was a young college student during the 1970's when she became pregnant with her boyfriend. The priest they consulted suggested they "do the right thing," and they married and later had two more children. Though both finished college and enjoyed professional success, Mr. N always expressed that he felt he had missed out on so much because he "had to get married." Eventually he divorced Mrs. N and remarried.

Now, nearly twenty years after the divorce, Mrs. N has begun to date someone. Though she does not know whether the relationship will become serious, she wants to be sure she can marry again if the relationship develops that way. She counts on the fact that her former spouse will share with the tribunal how he consistently expressed feelings of regret during the years that the two were together. Unfortunately for Mrs. N, he does not do so. He does not even participate in the process.

The judgment on the nullity of the marriage is negative. Mrs. N herself is very accepting of the decision. Her children, however, are extremely bitter about the Church. They cannot comprehend how their devoted and "very Catholic" mother has been treated by the Church in this way. They no longer wish to attend church, and she cannot sufficiently explain to them why they should keep going.

## **3. Denial of Communion to Active Parishioners**

Mr. and Mrs. C were raised and educated as Catholics and committed to marry each other after they graduated college. They attended a small Catholic university in the early 1970's when they were just "Albert and his serious girlfriend Betty." A horrible drowning death of a close fraternity brother of Albert's occurs during Spring break while he and Betty were out of state visiting one of Albert's relatives. At the last minute, Albert invited his father, who had been depressed at the time, to join them on the trip. While there, Albert and Betty receive word of the missing fraternity brother and return back to campus to find underway a frantic search for the body at the lake outside the fraternity house where Albert and his friend live. The body is found floating in the lake three weeks later. Albert blames himself for his friend's death because Albert had invited the friend and the friend's girlfriend to go with him on the trip, but his friend said he did not want to intrude on Albert and Betty. Albert did not reassure him that they would not be imposing and did not discuss it with him any further.

In the wake of the death, Albert begins to distance himself from his family, from Betty, and from their friends. His once happy personality is gone and he changes his outward appearance. Albert then goes to another university to fulfill graduation requirements. Betty does not understand Albert's withdrawal. He stopped communicating as before, and now Betty believes Albert's love has diminished. The two parted ways with no discussion as to why. There was no official breakup; they just stopped talking. Albert graduates and begins working full time, throwing himself into his work. Eventually, he starts dating someone much younger. Out of intense guilt and grieving, he wants no

reminders about his friend's untimely death or what he believes was his role in it. He marries the younger person he is dating and with whom he never talks about much of anything other than his new car and his job. The two have no common interests, are not similarly educated, and actually talk very little. He married her, he now says, because he felt terribly depressed except for the times he was with her family. In fact, during the courtship and marriage, the two spent most of their time with her family. They became, in effect, his surrogate parents and sisters.

The marriage rapidly disintegrates after a couple of years and a child. By the late 1970's his wife leaves and divorces him. Albert looks up and contacts his first love, Betty, calling her at work on a pretense of a business meeting. They immediately rekindle their romance and marry at the courthouse to become Mr. and Mrs. C. Nearly thirty years and several children later, Mr. and Mrs. C, who become active members of their parish, are told by a new and zealous pastor that they should not be receiving Communion because of the situation of the civil marriage without an annulment. The two are devastated and embarrassed.

In the wake of the conversation that Mr. and Mrs. C have with the pastor about being denied Communion, Mr. C – now in his late fifties and with cancer – attends a diocesan sponsored “how-to” workshop and fills out his petition for a declaration of marital nullity. Few details about the actual judicial process are provided, and no personal advice is given to him because it is a workshop. No advocate assists him in preparing his case. As a result, he is not particularly forthcoming in his petition about his mental state at the time he consented to marriage in the Church or all of the circumstances that had occurred in his life around that time. The notion of the extent to which his friend's death had impacted him had never really dawned on him. Also, he believes he has to present himself as someone who is aspiring to be a model Catholic, and that becomes the primary focus of what he submits to the tribunal. Further, because a family friend had petitioned for an annulment in the mid-1980's and had experienced no problems, Mr. C believes the process will be simple and will have a positive outcome. He sees no need to go into too much detail about much at all. The case proceeds through the tribunal on the ground of a grave defect of discretion of judgment on the part of the Petitioner and/or the Respondent. The Respondent does not even participate. The judgment is a negative.

Mr. and Mrs. C are disconsolate, and Mr. C tries petitioning the tribunal again. They are both educated professionals and do not understand how the tribunal can deny Mr. C's request but think that if they provide more facts the outcome will be different. This time Mr. C shares that he and the Respondent had married in church with little regard for the fact that marriage is a sacrament. He shares that the two had gone through the motions of a few marriage preparation meetings “for the sake of having a church wedding” but that they were not even practicing the faith at the time. The priest who had married them had done so as a favor to the family of the Respondent. The family had made all the arrangements, and the parents had even bought the engagement ring for their daughter. Everyone had been well intentioned, but the marriage had not worked out. They share these facts in a new process, but Mr. C receives another negative.

Neither they, their children, or close family friends understand how all of a sudden, at 61 years of age, over thirty years of marriage, and active parish participation, Mr. and

Mrs. C cannot go to Communion with the family on Sundays. Everyone is angry and cannot understand “how the Church can suddenly do this” to them. Mr. and Mrs. C. do not feel that they can approach their pastor about this issue. They still attend church and bring up the gifts at Mass, but they are grieving, embarrassed, and dismayed. They feel now that they stand out in a negative way and are sure everyone in the parish is gossiping about why they have not gone up for Communion for a long time. Their grown children become openly hostile towards the Church. Although the C’s made sure their children were Catholic school educated, the children now find themselves in disagreement with their faith, and they are making their feelings known to their friends at and outside of the parish who, like them, are married with young children.

#### **4. Positive Experience after Catechesis by Pastor**

Mr. P dated and married a woman who was in his partying circles when the two were just out of college and working in a city far from home. They had each received what he believes to have been a solid Catholic upbringing, but the law regarding divorce and remarriage and denial of Communion had never been presented in any religious education or marriage preparation classes. The years go by and the two have a family. Mrs. P’s partying never abates and the marriage disintegrates.

The two divorce, and Mr. P petitions for an annulment. He is encouraged by his pastor to believe he has a solid case. During the course of the two-plus years that it takes for his case to be processed because of out-of-state witness issues, Mr. P becomes seriously involved with a woman who, like him, has primary custody of the children. The two families blend really well. Believing a declaration of nullity of his marriage to be imminent, and wanting to ensure that his soon-to-be stepchildren (whom he hopes to adopt) are entitled to share in some of his employment benefits, Mr. P and his fiancée have a civil marriage ceremony. The families move in together.

Within months of this occurring, the tribunal’s judgment is negative. A sheet is included in the letter Mr. P receives from the tribunal stating the parties to the process are not to attempt remarriage and, if they do, may not receive Communion. The children may be seriously disrupted due to this because they had all begun to grow as a family and regularly attend church together. The situation could be disastrous for everyone.

Mr. P and the “new” Mrs. P reach out to the pastor of the church they now all attend. The pastor sees their intense anguish and dedicates an inordinate amount of time to meet with them over the course of the next month, to review the pertinent Church law and doctrine. He devotes time talking with them about conscience formation and making choices, particularly as it relates to marriage. He teaches them what the Church says about marriage and provides them with documents to read and share. He provides them with homework from the Catechism. He discusses with them the law of the Church as it pertains to the denial of Communion for the civilly divorced and remarried and how they might still live together as a family. He gives them documents which set out the rules relating to their situation. He explains why the Church has such rules.

Mr. and the new Mrs. P are grateful to the pastor. They feel that now, as they are both approaching fifty years of age, they have been catechized about marriage and about

the issue regarding denying Communion. As a family, they can now work at creating a new life for themselves and their children, consonant with the faith.

### **5. Negative Judgment Given to the Innocent Spouse**

Mrs. R is the mother of eight children, and she and her husband are from a very traditional Catholic background. During the course of her marriage, when she is well into her eighth pregnancy, her husband begins an extramarital affair. The two decide that he should seek the counsel of their parish priest. The priest advises Mr. R to “listen to his inner voice.” With that, Mr. R leaves his wife, and Mrs. R is left to care for her children by herself, including the last child who is born with “special needs.”

Eventually, family and friends prevail upon Mrs. R to file for divorce and seek child support. Then, after nearly twenty years of exclusively caring for her children, Mrs. R begins to enjoy the company of a very nice Catholic she meets at church who is a widower and well received by her children. They are very worried about their mother being alone some day and want her to have emotional and financial support. The children are married, live on their own, or are in college. The special needs child is in an integrated assisted living setting and is meeting with great success there. The widower is very happy to be a part of a family because he and his wife had no children.

Mrs. R and the widower start to talk about marriage. She decides to petition for a declaration of marital nullity but wants to fill out the paperwork on her own because it is such a private matter. Her petition is denied. She is incredulous. She does not feel she can talk to her new pastor because the parishes in the diocese have just merged and he seems too busy. She is also very embarrassed. She knows that she cannot civilly remarry or she will not be permitted to receive Communion; yet, she cannot help but feel that she is being punished for something she did not do. She feels that she lived her life according to the rules and was abandoned by her husband and now by her Church. She cannot bear the thought of making another attempt at petitioning for a declaration of nullity of her marriage and feels that she has nothing more to say. She is resigning herself to the fact that she might spend the next thirty years alone and lose the man she believed would be her husband and with whom she would grow old. The widower, who had assumed he would be her intended spouse, is also devastated. Her children are furious.

### **6. Lack of Advice and Pastoral Care for Aggrieved Respondent**

Mr. and Mrs. S dated for five years, then shared a common life of nearly forty years. They had children and grandchildren, relocated, and moved the aging parents of Mr. S into their home. Soon after Mr. S departs one morning after waving to the next door neighbor, he files for divorce and subsequently for a declaration of marital nullity. Mrs. S is disconsolate. She tries to prevail upon their pastor to talk to her husband about marriage counseling. Her in-laws are caught in the middle and move back home to another part of the country where they are far away from their grandchildren and great-grandchildren, and they are pressed to enter a senior living facility because they no longer have the same degree of family support. In the wake of these changes, Mr. S works to prevail upon his children to develop a relationship with his younger girlfriend, whom, he makes known, will be his future wife and their stepmother.

When Mrs. S receives word from the tribunal about the matter, she calls the staff there and tells them she needs assistance in addressing the situation. “Surely,” she relates, “this request cannot realistically be considered by the Church after all of these years of us being together.” She then shares the intimate details of how the two had had marital relations within ten days of her husband’s abrupt departure. When she is called to the tribunal to testify, she begins to emotionally decompensate. She had not been, she believes, sufficiently apprised about expectations regarding her participation in the process. The attitude of the tribunal staff in securing her testimony, while arguably appropriate from a canonical legal point of view, causes Mrs. S to experience tremendous emotional distress. The session of questions caught her unaware, just like the divorce and annulment papers did. She experiences emotional pain to the point that a friend has to be called to drive her home.

Then, in the aftermath of her testimony, and after affirmative decisions are rendered at both First and Second Instance, she feels she is given short shrift when she asks for assistance about appealing to Rome. Eventually, she reaches out to an organization which developed in response to the many travails of Respondents participating in annulment cases who are similarly situated (many of whom were abandoned spouses) to assist her with advice about how to canonically proceed. Acrimony is building between Mrs. S and the tribunal and her pastor. She is pressed to share with the organization the many negative details about the manner in which she has been treated as a member of the faith. She believes her fidelity to what she was taught by the nuns decades before is being made a mockery of. Well into her sixties in age, Mrs. S is beginning to experience health problems as a result of the cumulative stress.

Her husband, in the meantime, is planning his church wedding with his new bride at their family’s parish. Mrs. S feels bereft and betrayed and is experiencing a crisis of faith in addition to the intense grief she is feeling about the loss of her marriage and family lifestyle. Neighbors and couple friends of the S’s for years take her on trips and try to make sure they continue to include her in the activities she and her husband once shared with them. They, too, are surprised at how the entire matter unfolded within the Church. There is a degree of tension about the matter at the parish they all attend. Mrs. S and some of the family and friends feel as though the pastor has betrayed Mrs. S and her family. The children are divided about how to respond to each of the parents. There is no assistance provided to the family about how to move forward, particularly in the realm of parish life.

## **7. Lack of Proper Advocacy**

Mr. D has decided to petition for a declaration of nullity as he approaches his senior years and wants to marry a woman he knows from the “old neighborhood.” His wife left him, divorced him, and remarried over thirty years ago. The trouble is that the preparation of the petition is scheduled to take place with a deacon and the deacon’s wife at a diner over coffee one evening. Mr. D is shy by nature and has no concept of what is required of him in terms of proofs for the case. It is the newly ordained deacon’s first petition. Mr. D feels uncomfortable with the entire matter in the first place. Sharing intimate details of his childhood, courtship history, and aspects of his relationship with his former spouse is definitely not something he is prepared to do that evening and in that venue. The tribunal to which the deacon submits the paperwork for the case does not receive in-person

testimony. As a result of the combination of these circumstances, there are scant proofs before the tribunal on the question of the sacramentality of the marriage, which is upheld.

Mr. D cannot help but feel that the entire matter was perfunctorily handled. He now wants to reveal many more details of what occurred in his life and marriage and what was said by the two parties and their families and friends during the courtship and engagement. He does not know where to turn and so goes to his pastor. His pastor directs him to the judicial vicar of the diocese to talk about the entire matter. One major difficulty with the situation, however, is that the most appropriate grounds based on the new facts that he shares have already been used and cannot be used again.

### **8. New Pastor's Denial of Communion to a Congressman**

Still others have devoted lives to public service as members of the only political party they have known from the time they memorized their Baltimore Catechism and have never been catechized to understand the problem with their public choices.

Congressman G is a first generation American who grew up in an inner city where a certain political party precinct served as a sort of community center. His parents owned a corner store on the same block where the precinct offices were located. They encouraged G to go there and would send him with snacks and drinks on a consistent basis. He became very well-known and liked and began to work in politics as his parents had desperately hoped. Last year, at the age of 59, Congressman G was pulled aside by his new pastor and was asked if they could talk. It was explained to him by the priest that, while it was great that he was such a fine role model for showing how to live the American dream, because his party was heavily involved in the politics of abortion and he was very visible in the local media about this, he would have to be denied Holy Communion.

Congressman G could not believe this was happening and became very angry. He said he would go to the bishop about it and complain and so wanted the priest to explain the situation in writing. He wanted the priest to give him a written explanation of what had occurred between the two of them. The pastor told him that this was the law of the Church because of Church doctrine and that Congressman G would not have a leg to stand on. Congressman G was stunned because, as he tells it, the political party he is a part of helps everybody and made it possible for him to learn English, obtain an education at a Catholic university in the city, and historically helps the poor and underprivileged. In fact, he often sees the bishop at the same functions he attends.

Congressman G decides that, when he is next in Washington, D.C., he will call on a friend whom he knows at the United States Conference of Catholic Bishops to discuss his concerns. He does not clearly understand what he could or should have done differently in the course of his life and now. He, of course, does not subscribe to abortion and never says that he does. His party though, has done so much good for so many for generations. He does not want to alienate the bishop but he believes the denial of Communion to be an injustice.

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## **BIOGRAPHICAL NOTE**

Laura MORRISON was born and raised in Morris County, New Jersey, USA. She graduated with a B.S. Degree from the University of Scranton in 1981 and went on to obtain a Juris Doctor degree at Saint Louis University, St. Louis, Missouri, USA, in 1984. After having devoted several years to teaching at the college level, she worked as a civil attorney for nearly two decades and co-authored a textbook in civil legal ethics for the world's largest legal publishing company. Ms. Morrison furthered her studies by obtaining an M.A. in Theology from Catholic Theological Union in 2005. In the Fall of 2009 she began studies in canon law at Saint Paul University in Ottawa, Ontario, Canada, where she earned the licentiate in canon law (J.C.L.) in 2011. Doctoral studies in the Faculty of Canon Law at the same University commenced in January, 2012. She presently serves as a Judge-Ponens, Defender of the Bond and Advocate for the Diocese of Albany, New York, and she engages in a private canon law practice concentrating in marriage law.