

The canonical liceity of *Old Roman* sacraments

with reference to the CIC 1983 and the contemporary Roman Catholic hierarchy

✠Jerome Seleisi

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Preamble

Due to the nature of the present crisis in the Church and the situation that has existed since the annexation by Bl. Pius IX of the primitive See of Utrecht, a not infrequent question posed by Catholic enquirers about receiving sacraments from *Old Roman* clergy concerns canonical liceity, e.g., does a Catholic fulfil their Sunday Obligation by attending Mass at an *Old Roman* chapel or Mass centre? Or even, does a Catholic receive a valid absolution for their confession heard by an *Old Roman* priest, etc?

Though the short answer is, “yes” the explanation as to how this is possible is not straightforward and requires a nuanced understanding of Canon Law more than the average layperson or even contemporary cleric may possess. This is aside from understanding the complexities, context, and development of *Old Roman* history!

While as *Old Romans*, we understand ourselves to be in every respect Catholics, and though estranged from the Holy See by force of historical circumstance and doctrinal polity not our own; many contemporary Catholics, unburdened by the weight of inconvenient history and beguiled by the Modernist confusion, think us “schismatics.” So it is, that now and again, *Old Romans* must attempt to correct ignorance and reprove superstition, by explaining to modern Catholics their own Canon Law, and sometimes doctrine.

The following answers questions arising from the *1983 Code of Canon Law* promulgated by Pope John Paul II. Though this is not the Code followed by *Old Romans*, it is the version most often quoted by contemporary Catholic enquirers and thus relevant to our purpose. Incidentally, much of the principles contained in the later Code are to be found in the *1917 Code of Canon Law* that *Old Romans* do observe.

It should be noted, for the purpose of appreciating references to the contemporary *1983 Code of Canon Law* that those of us who were formerly members of the contemporary Catholic Church, by our episcopal consecration have incurred *latae sententiae* excommunication (Canon 1382ⁱ); and those ordained to major orders are technically *ipso facto* suspended *a divinis* (Canon 1383ⁱⁱ). While such sentences have never been declared by Rome individually nor severally upon *Old Roman* clergy, anecdotally individuals who have later reconciled with Rome have been treated as though such

sentences had been passed. This only serves to prove the obvious validity of our holy orders and that we are not regarded technically as "schismatic"; though this is a popular polemic against us.

Holy Church, despite the present crisis, has by God's grace yet retained powerful minds able to express in continuity with Apostolic Tradition, the mission and vision of Her founder, Our Lord Jesus Christ to facilitate the salvation of souls! Eminent canonists cited below offer a clear understanding of Her laws and disciplines that enable *Old Roman* and other Traditional Catholic clergy still to serve the faithful.

Context

It is important to remember that although the justification for the existence of *Old Romans* is historically distinct from other more recent Traditional Catholics i.e., orthodox Roman Catholics estranged from Rome by perception of necessity or polity e.g. the Society of St Pius X or Sedevacantists; nonetheless the regard of contemporary Catholics that generally applies to them also applies to us.

We are first and foremost "Catholics" and what's more we are distinctly "Roman" Catholics even though distinguishable from the contemporary Roman Catholic hierarchy by virtue of history and doctrinal polity. We exist because of an unresolved historical canonical dispute over privileges and exemptions given to the primitive See of Utrecht by previous Popes. Due to the passing of time and the vicissitudes of men, we find ourselves currently in the unique position of being both "of the Church" yet not recognised as being "in it". We are "of it" by virtue of our history, the Catholic Faith, our confession, praxis, and apostolic succession; yet estranged from the current temporal institution of the Church by polity and situation.

However, the distinction between "Old" Catholic and "Old Roman" Catholic has always been the adherence by the latter to perpetuate continuity with our historic Roman Catholic origins, as opposed to the former's disavowal of the same. Though we are the materially disinherited continuation of the Ultrajectines rather than the temporal inheritors i.e. the Old Catholic Union of Utrecht churches, we are the authentic progeny of the historic orthodox See of Utrecht. Irrespective of the various mistakes and sins of men in the intervening years between Archbishop Mathew's declared independence from apostate Utrechtⁱⁱⁱ until now, the mission and subsequent apostolate of the *Old Romans* has persisted to us today.

Thus, in continuity with our Ultrajectine forbears we are not "schismatic" as some would like us to be or regard us as being, but neither are we *regular* in the commonly perceived way people interpret canon law with regard to the contemporary institution of the Church. We are *irregular* in as much as we are presently estranged from Rome, but we are "Catholic" by virtue of our faith and praxis. It is in this latter respect that for the purposes of appreciating the contemporary canonical context, we may identify ourselves with other orthodox Catholics similarly estranged from and said to be not in "full communion"^{iv} with the present Holy See.

As referenced before, like other Traditional Catholic clergy, e.g., the SSPX, we labour without an obvious declaration of schism from the Holy See. Neither the *Directory for the Application of Principles and Norms on Ecumenism* nor the *Pontifical Council for Promoting Christian Unity* reference us, for we are not "separated brethren"^v like the Eastern Orthodox or Protestant "ecclesial communities"^{vi}. This lack of clear ecclesiological placement is why we are often derided and treated with suspicion by the average Catholic since 1870, "if you're not with the Pope you're not Catholic" and it is this erroneous hyper-papalism that is at the root of the crisis in the Church today.

The *communio in sacris* that Archbishop Mathew accomplished with the Eastern Orthodox in 1911 via the Patriarchate of Antioch and All the East and recognised in 1912 by the Patriarchate of Alexandria and All Africa did not consist of a declared disavowal of Rome but simply recognised *Old Romans* as "Orthodox" i.e. no formal "schism" from the western Church occurred, only a partial restoration of Christian unity. We were recognised by the Eastern Orthodox as having the "same faith".

Our Ultrajectine forbears, Archbishop Mathew and others in the 20C approached Rome several times in a spirit of rapprochement. Unity with Rome has always been our corporate desire and in truth, if circumstances were favourable i.e., if the temporal institutional Church returned to the veritable fullness of the Catholic faith and religion, perennial magisterium, traditions, customs and liturgy, every one of us individually and severally would reconcile with contemporary Rome.

This is why we are not “schismatics” but as Cardinal Cajetan teaches, *“If someone, for a reasonable motive, holds the person of the Pope in suspicion and refuses his presence, even his jurisdiction, he does not commit the delict of schism nor any other whatsoever, provided that he be ready to accept the Pope were he not held in suspicion. It goes without saying that one has the right to avoid what is harmful and to ward off dangers.”*^{vii} Such is the nature of the state of necessity as we have perceived it since 1853, we remain estranged until the Papacy is “restored.”

Fulfilling the Sunday Obligation

While as *Old Romans* we might - from our perspective - balk at the suggestion that attendance at our own Sunday Mass might not fulfil the obligation that is a fundamental precept of the Church for the faithful, nonetheless this is a question often asked by ignorant contemporary Catholics.

Canon 1248 §1 of the *1983 Code of Canon Law* states that:

“A person who assists at a Mass celebrated anywhere in a Catholic rite either on the feast day itself or in the evening of the preceding day satisfies the obligation of participating in the Mass.”

Canonist, the Rev. Brian Dunn, J.C.D., writes:

...This broad understanding of the fulfilment of the Mass obligation seems to have been the mindset of those who prepared the 1983 Code of Canon Law. While the proposed text for canon 1248 had read that the obligation of Mass attendance is satisfied “anywhere that a Catholic rite is celebrated legitimately” the commission eliminated the word “legitimately” since, the members argued, the cause of illegitimacy rests with the sacred minister, and the faithful should not be punished for the fault of the minister.^{viii}

The notes from the discussions of the preparatory committee that formed this particular canon, stated the following:

It has been suggested that the word “legitimately” be deleted. All the consultants, with one exception, approve of such a suggestion, because often the cause of illegitimacy resides in the sacred minister, and the Christian faithful should not be punished for such a fault of the sacred minister.^{ix}

The fact that the Code, in using the term “Catholic rite” is referring to a Catholic liturgical rite is apparent from the previous draft which used the term “celebrated legitimately.” One “celebrates” a liturgical rite. This is further confirmed by the history of determining the liceity of which Masses Catholics can assist at. When examining the issue of under what circumstances Catholics could participate in even schismatic worship in 1948, canonist Fr. Ignatius J. Szal stated:

The foregoing discussion on the rites to be observed in the administration of the sacraments has a bearing on the present subject. There are times when the Church does permit the faithful to receive the sacraments from a schismatical minister, but when such a permission is granted a necessary condition is set, namely, that the sacrament be administered according to the rite of the Church. It is not very likely that the schismatical minister will administer the sacraments in exactly the same rite as would be observed by a Catholic priest. However, before the faithful could receive the sacraments from a schismatical minister, there would have to be some certainty that the substantial or essential rites necessary for the validity would be observed by him when he confers the sacrament.^x

In 1984 the Prefect of the Sacred Congregation for the Clergy in Rome confirmed the above interpretation applying it to the priests of the Society of St Pius X, who were suspended *a divinis*. As traditionalist Catholic writer Michael Davies recorded:

“In a personal letter to Cardinal Oddi, Prefect of the Sacred Congregation for the Clergy in Rome, a Catholic lady who recently started attending the Latin Tridentine Mass wrote to him on January 11, 1984, regarding the "important issue concerning Archbishop Lefebvre's Society of St. Pius X" and pointedly asked His Eminence what is probably an unprecedented request:

“... could you kindly send my family and myself a letter with the information that you told me on the telephone that we are fulfilling our Sunday obligation for Sunday Mass by attending Holy Mass at the Chapel of St. Michael the Archangel which is under Archbishop Lefebvre . . .”

This letter was signed by Mrs. Barbara Kennan. The Cardinal's reply was as follows:

17 March 1984

Dear Mrs. Keenan,

I have your letter of January 11th and thank you for it. According to the new Code of Canon Law, "The obligation of assisting at Mass is satisfied wherever Mass is celebrated in a Catholic rite either on the day of obligation itself or in the evening a previous day." (Canon 1248.1)

I hope that settles your doubts. In the meantime, I send you and your loved ones my blessing and wish you God's choicest graces,

Faithfully in Christ,

Signature”xi

A similar and more recent anecdotal testimony demonstrates a slightly different Curial perspective, perhaps noting a difference in regard to the situation after Msgr Lefebvre's 1988 consecrations. Msgr. Camille Perl then secretary of the now extinct Pontifical Commission *Ecclesia Dei* in an infamous "private" correspondence^{xii} wrote:

Points 1 and 3 in our letter of 27 September 2002 to this correspondent are accurately reported. His first question was “Can I fulfill my Sunday obligation by attending a Pius X Mass” and our response was:

“1. In the strict sense you may fulfill your Sunday obligation by attending a Mass celebrated by a priest of the Society of St. Pius X.”

His second question was “Is it a sin for me to attend a Pius X Mass” and we responded stating:

“2. We have already told you that we cannot recommend your attendance at such a Mass and have explained the reason why. If your primary reason for attending were to manifest your desire to separate yourself from communion with the Roman Pontiff and those in communion with him, it would be a sin. If your intention is simply to participate in a Mass according to the 1962 Missal for the sake of devotion, this would not be a sin.”

His third question was: “Is it a sin for me to contribute to the Sunday collection at a Pius X Mass,” to which we responded:

“3. It would seem that a modest contribution to the collection at Mass could be justified.”

While the anecdotal evidence above was originally situated in relation to the Society of St Pius X, nonetheless the canonical jurisprudence evident in the interpretation by both Curial officials lends itself to wider application such as our own, as will be made clearer below.

Any just cause

Can. 1335 of the 1983 Code of Canon Law states:

If a censure prohibits the celebration of sacraments or sacramentals or the placing of an act of governance, the prohibition is suspended whenever it is necessary to care for the faithful in danger of death. If a *latae sententiae* censure has not been declared, the prohibition is also suspended whenever a member of the faithful requests a sacrament or sacramental or an act of governance; a person is permitted to request this for any just cause.

As with all Traditional Catholic priests, e.g., the SSPX, all Catholic men ordained as *Old Roman* clergy incur automatically *latae sententiae* suspension – though so far “undeclared” by Rome - so the provisions of this canon apply to us.

Canon 194 provides for removal from an ecclesiastical office by the law itself in the following cases:

- 1) a person who has lost the clerical state;
- 2) a person who has publicly defected from the Catholic faith or from the communion of the Church; and
- 3) a cleric who has attempted marriage even if only civilly.

However, canon 194 adds this restriction: “*The removal . . . can be enforced only if it is established by the declaration of a competent authority.*” Such a declaration must be “personal” i.e. the offender must be named and the decree published and by the “competent authority” meaning the individual’s diocesan bishop, the Congregation for the Clergy or the Pope himself.

Therefore, in this context, Catholics are allowed to approach *Old Roman* clergy for either a sacrament, a sacramental, or an act of governance (including jurisdiction for confessions) for “*any just cause*”. If this is done, Canon 1335 eliminates the suspension for these asked for sacraments and sacramentals. This has the effect of making these activities permissible for the priest carrying them out and for the faithful receiving them.

The definition of a “*just cause*” is relatively non-prescriptive. The *New Commentary on the Code of Canon Law*, commenting on this canon, states “In such situations the faithful may generally seek such ministry for any just cause, e.g., deepening one’s spiritual life.”^{xiii}

Even the 1917 Code contained this principle as Fr. Francis Hyland, J.C.L., gave the following examples of what qualifies as “*just cause*” from a canonical perspective:

...the earlier conferring of Baptism, the dispelling of a doubt concerning the gravity of a sin, the intention of approaching Holy Communion with greater purity of soul, the intention of receiving the Holy Eucharist more frequently, etc. "Any reason may be called just which promotes devotion or wards off temptations or is prompted by real convenience, for instance, if one does not like to call another minister."^{xiv}

Fr. Hyland commented on this requirement of the faithful to request the sacrament or sacramentals from even an excommunicated priest in order for the censure to be lifted for these acts. Fr. Hyland was examining Canon 2261 in the 1917 Code which is one of the corresponding provisions to Canon 1335 in the 1983 Code:

In order that a *simpliciter toleratus*^{xv} may illicitly celebrate Mass, administer the sacraments and prepare and administer the sacramentals, he must be requested to do so (*requisitus*) . It is

not necessary, however, that the request be explicit. Almost all authors teach that an implicit or reasonably presumed petition suffices. Such a petition is had whenever the good of souls demands the celebration of Mass, the administration of the sacraments, or the preparation or administration of the sacramentals...xvi Hence, such an excommunicate may show himself ready to hear confessions on Saturdays and vigils of feasts, to distribute Holy Communion even on weekday mornings, to celebrate Mass on Sundays and Holydays, and it would seem in these days of daily attendance at Mass, even on days throughout the week.xvii

Likewise for teaching and preaching, Dom Charles Augustine, O.S.B., in his commentary on the *1917 Code of Canon Law* published in 1918 states the following regarding priests excommunicated without a “special sentence.” Considering the question of priests excommunicated without a condemnatory or declared sentence under Canon 2661 of the 1917 Code which is comparable to contemporary suspended Traditional priests, e.g., *Old Roman* clergy whose sentences haven’t been declared under Canon 1335 of the 1983 Code:

Persons excommunicated by a condemnatory or declaratory sentence, and *a fortiori vitandi*, can neither validly nor lawfully perform acts of jurisdiction, except in danger of death, according to can. 2261, §3. Acts of jurisdiction are here expressly declared to comprise both the internal and the external forum. An act of jurisdiction is the so-called *missio canonica* because the commission to teach or preach, according to the more common doctrine, is an act emanating from jurisdiction. Consequently, this mission also is lost by excommunication.

However, here, too, must be applied what our text allows for those simply excommunicated without a special sentence. Therefore, if an excommunicated priest would be asked to preach or teach, he could do it lawfully.xviii

Thus, for “any just cause” Catholic faithful are allowed to request sacraments, sacramentals, teaching, and preaching from *Old Roman* priests who may be “suspended” in the manner stated above. Any of the following reasons would most certainly qualify as “just cause”: the desire for reverent traditional Masses, avoidance of rampant liturgical abuses among regular priests, avoidance of heretical teaching of regular priests, sound Catholic guidance in the confessional, sound Catholic teaching, especially to the children, sound doctrinal teaching on marriage, confirmation, etc.

Common error, positive and probable doubt

In addition to the power of orders, certain sacraments, such as confessions and marriages, also require the power of governance known as jurisdiction in order to be valid. Canon 144 §1 of the 1983 Code states:

- 1) In common error or in positive or probable doubt about either law or fact, the Church supplies jurisdiction for both the external and internal forum.”
- 2) The same norm is applied to the faculties mentioned in cann. 882.883.966. and 1111, §1.

An example of a “common error” would be the mistaking of an *Old Roman* chapel to be a regular diocesan church, or an assumption that an *Old Roman* priest is a regular Catholic cleric. In such a situation, the Church supplies jurisdiction to whatever sacrament an individual may have received under such a confusion of identity. As *Old Roman* chapels and clerics usually describe themselves as “Catholic” this is a reasonable error and is covered by Canon 144 §1.

It is interesting to note that *The New Commentary* on the 1983 Code states the following regarding section two:

The second paragraph states that the canon applies to the faculties mentioned in canon 883 on the sacrament of confirmation, canon 966 on hearing confession, and canon 111 1. §1 on

assisting as an official witness at a wedding. Furthermore, the canon applies to the executive power of all superiors and chapters in institutes of consecrated life (c. 596, §3).xix

An interpretive error suffices to meet the requirements of common error.xxxxixxii This means that the Church will supply jurisdiction when there are factual circumstances surrounding the confession that would lead people to believe the priest had faculties to absolve in that particular case. Thus, the key question in these cases is not whether certain penitents actually are in error, but whether a factual situation exists where people could be induced to believe the priest can validly absolve.

If the priest can think of good reasons why people might believe he has authority to absolve (he is in a confessional in a Catholic chapel), but also sees good reasons why they might not, this is called a positive and probable doubt of law (a doubt of the application of canon 144, section 1, to his case) and thus canon 144, section 2, would supply jurisdiction for validity.

People commonly have a dubious response to the notion of "interpretive error", since this way of interpreting the law can appear contradictory. However, the idea of interpretive error has been a widely accepted practice of canonical interpretation since the early 1900s, which is demonstrated by the works of Fr. John C. Ford, S.J.

Fr Ford received his Doctor of Sacred Theology degree from the Pontifical Gregorian University in Rome and was a professor at the same institution. He is most renowned for his substantial contribution to the issuance of the encyclical *Humanae Vitae*. According to John MacGreevy, who wrote *Catholicism and American Freedom: A History*, Ford's role in the encyclical was critical:

On the papal birth control commission...which overwhelmingly recommended a change in official church teaching, Ford's voice became perhaps the most powerful dissenting voice. (The conservative moral theologian Father Francis Connell, worried about the makeup of the commission, lauded Ford as a "staunch defender of truth.") Even after nine of the twelve bishops and fifteen of the nineteen theologians on the commission voted for a change in church teaching, Ford helped draft (and distribute) an unofficial minority report that challenged the majority recommendation for change. When another Jesuit, Richard McCormick, Ford's successor as an editor at *Theological Studies*, expressed the view that *Gaudium et Spes* left open the possibility of a change in church teaching on contraception, Ford retorted, "I do not consider it theologically legitimate or even decent and honest, to contradict a doctrine and then disguise the contradiction under the rubric: growth and evolution."xxiii

In 1940, Fr Ford assessed a doctoral dissertation about the power of supplied jurisdiction for the magazine *Theological Studies* which was published by Weston College. The author of the dissertation claimed that the concept of "*interpretive error*" was not sufficiently trustworthy to be utilized in the assessment of Canon 209 (or Canon 144 in the new Code) based on positive and probable doubt. Fr Ford contested this opinion, saying:

...his conclusion that the interpretive theory lacks all probability and hence cannot even claim the benefit of the second half of the canon does not commend itself to the present writer. Apart from the argumentation which seems not to be flawless, it is a very bold assertion to say that an opinion which has been taught publicly in Rome for about thirty years, not in one university but in many, by some of the greatest modern canonists the Church has had, consultors to the Roman Congregations and of the Commission for Interpreting the Code, and which moreover has been taught by some of them not merely as a tenuously probable theory but as the only practical doctrine to follow,—it is a very bold thing to say that such an opinion is so devoid of probability that one is not justified in using the second part of canon 209 and putting it into practice.

Ecclesia supplet

The Latin phrase “*Ecclesia supplet*” meaning “the Church supplies” found in Canon 144 §1 is a longstanding principle in canon law but often misunderstood. It does not mean that anything contrary to the norms of canon law is permissible, but only in specific situations.

The Council of Trent in Session XIV, Chapter VII states:

Wherefore, since the nature of a judgment requires that sentence be imposed only on subjects, the Church of God has always maintained and this council confirms it as most true, that the absolution which a priest pronounces upon one over whom he has neither ordinary nor delegated jurisdiction ought to be invalid.xxiv

The fact that *Old Roman* priests do not have a recognised canonical status in the contemporary Church and therefore arguably do not exercise a legitimate (licit) ministry, simply means they do not have ordinary jurisdiction to absolve sins. Does this mean that a priest who has neither ordinary jurisdiction nor jurisdiction delegated directly from an ordinary, cannot validly absolve sins? No.

Both the 1917 Code and the 1983 Code attest, jurisdiction can be delegated either by the ordinary or by the law itself. Clear evidence that the Council Fathers of Trent recognized this principle is located later in Chapter VII where it is stated that any priest whatsoever can absolve penitents from sins and censures normally reserved to the Holy See in danger of death. Obviously, jurisdiction in these cases was delegated by the law itself (the Council).

It is essential to recognize that Chapter VII of Trent, which comprises this quotation, does not form part of the doctrinal section of the Council Session. This is because, although the Church has always held that a priest requires jurisdiction to legitimately absolve, how the Church assigns that jurisdiction is an issue of discipline, and thus open to alteration. The Church presently allots jurisdiction according to its canon law as demonstrated in its 1983 Code. This code permits the delegation of jurisdiction from the law itself in specified circumstances (supplied jurisdiction), such as those given in Canon 144 §1.

Then there is also the principle of *aequitas canonica* (Canon 19, 20 in the 1917 Code) i.e. recourse to the mind of the legislator (when there is nothing explicit in writing), who never wants his legislation to be too onerous (burdensome), but always wants it to be interpreted in a just and favourable manner. That it is indeed the mind of the Church to be generous in the granting of jurisdiction and not overstrict or onerous is also apparent from the following two canons:

Canon 1335^{xxv} (1917 Canon 2261 §2). The Church suspends its prohibition for an excommunicated or suspended priest celebrating the sacraments or posing acts requiring jurisdiction, provided it be in favour of the faithful who request it for any reasonable cause at all, and especially if there is no other minister.

Canon 970^{xxvi} (1917 Canon 878 §2). Ordinaries and superiors are not to restrict jurisdiction. If the priest is suitable and the good of the faithful requires his services, this jurisdiction cannot be refused to him. Clearly traditional priests should in justice receive personal jurisdiction and that everywhere (1984 Canon 967^{xxvii}).

As Fr Peter Scott concludes in his introduction to Bishop Tissier de Mallerai’s notes on this same question,

“...therefore, it is obvious that, besides the case of common error, besides the case of probable and positive danger of death as interpreted in the broad sense of spiritual death, traditional priests receive a iure (from the law itself) a supplied jurisdiction for all cases in which this jurisdiction is required. This is simply the application of Canon 20 (1917 CIC), notably of Canonical Equity. There are no solid arguments against this and since there is at least a positive and probable doubt in favour of this argument, and we know that in such a case the

Church certainly supplies jurisdiction, then traditional priests can and must act accordingly and the faithful can and should approach them for Confession. ”^{xxviii}

Non-Catholic minister

It is sometimes erroneously asserted that *Old Roman* clergy, for want of Papal approbation, are “non-Catholic” ministers and so our sacraments e.g., confessions (that require juridical permission) are “invalid” despite the arguable validity of our ordinations, because we lack canonical status in the contemporary Catholic Church.

Can. 844 of the 1983 Code of Canon Law states:

Whenever necessity requires it or true spiritual advantage suggests it, and provided that danger of error or of indifferentism is avoided, the Christian faithful for whom it is physically or morally impossible to approach a Catholic minister are permitted to receive the sacraments of penance, Eucharist, and anointing of the sick from non-Catholic ministers in whose Churches these sacraments are valid.

A “non-Catholic minister” as described in the canon is further defined by the Pontifical Council for Promoting Christian Unity’s Directory for the application of principles and norms on ecumenism to be “the minister of a non-Catholic Eastern Church in which these sacraments are valid,^{xxix}[n.123] or the minister of a non-Catholic Western Church in which these sacraments are valid” or “who is known to be validly ordained according to the Catholic teaching on ordination”.^{xxx}[n.132]

Unlike Anglican ordinations that have been declared “null and utterly void”^{xxxi} by the Catholic Church, holy orders descended from the primitive See of Utrecht have variously been acknowledged as “valid” by canonical commentators and sacramental theologians. Even Cardinals asked to give a judgement have answered positively the question of our validity.^{xxxii}

Evidently, by providing Catholics with the opportunity to get absolution from “non-Catholic” ministers in situations other than “in danger of death”, the Church is aiming to expand the availability of sacraments to the faithful and attempting to prevent the issue of jurisdiction from becoming an impediment to the legitimacy and validity of a sacrament. Another illustration of this is the 1983 Code which includes “common error of law” explicitly in canon 144, though it was only a supposition before.

As to the mind of the legislators who wrote the canon, we have the testimony of Bishop Juan Ignacio Arrieta, then secretary of the *Pontifical Council for Legislative Texts*, who stated to Catholic News Service in an article dated 17 May 2013:

The current code was drafted in the 1970s, Bishop Arrieta said, “a period that was a bit naive” in regard to the need for a detailed description of offenses, procedures for investigating them and penalties to impose on the guilty. It reflected a feeling that “we are all good,” he said, and that “penalties should be applied rarely.”^{xxxiii}

The authors of the canon had a permissive attitude, thus enabling the faithful now to be able to ask absolution of *Old Roman* priests, who are in a less severe canonical state than the Orthodox, under the same or more expansive circumstances. In fact, canon 1335 does just this by allowing the faithful to ask certain censured Catholic priests for absolution “for any just cause.”^{xxxiv}

Thus, the lack of a canonical status does not mean that *Old Roman* absolutions are per se invalid. This is obvious as both Orthodox priests and excommunicated clerics, neither of whom have a canonical status in the contemporary Church, can validly absolve in certain circumstances under canon law.

In Conclusion

According to the contemporary 1983 Code of Canon Law, Masses offered by *Old Roman* priests are both valid and fulfil the Sunday Obligation by attending Catholics as they are celebrated in a Catholic Rite. (Canon 1248 §1)

Even though *Old Roman* priests might be regarded as “suspended” under an undeclared *latæ sententiæ* censure, Catholics are permitted to request sacraments, sacramentals, preaching or teaching from them for “any just cause.” These requests can be implicit, and the priest is not required to inquire into the reason. Thus, all these acts performed by an *Old Roman* priest are licit. (Canon 1335)

Jurisdiction is supplied to *Old Roman* priests under “common error and positive and probable doubt” for confessions, marriages, and confirmations. These sacraments are valid. (Canon 144 §1) But even if regarded as “schismatics” jurisdiction is supplied to *Old Roman* clergy under Canon 844 *in extremis*.

However, irrespective of all the above, the last words of the 1983 Code, found in Canon §1752 read, “...*the salvation of souls, which must always be the supreme law in the Church, is to be kept before one’s eyes.*”

Pius XI confirmed this principle as canonist, Fr. Szal, stated:

The Church by its very purpose must look to the salvation of souls, and hence is bound to grant, to that end, all things that depend on its power. He [Capello, a noted canonist] states also that Pope Pius XI openly declared and wished it to be expressly known that the Roman Pontiff supplied jurisdiction, if there be need for it, to whatever extent it was required.^{xxxv}

Pope Pius XII confirmed this as well:

For canon law, too, is for the good of souls, and all its rules and laws tend chiefly to this ultimate purpose that men may live sanctified by God's grace and may die holy deaths.^{xxxvi}

So it is that *Old Roman* clergy should have no qualms about ministering to contemporary Catholics not yet aligned with Catholic Tradition i.e., by formally becoming members of our missions and oratories. Whether intentional or not, Catholics who receive sacraments from *Old Roman* clergy may do so with clear consciences and restful souls, for the Church in Her own canon law enables them to do so for their salvation.

ⁱ Can. 1382 *A bishop who consecrates someone a bishop without a pontifical mandate and the person who receives the consecration from him incur a latæ sententiæ excommunication reserved to the Apostolic See.*

ⁱⁱ Can. 1383 *A bishop who, contrary to the prescript of can. 1015, ordains without legitimate dimissorial letters someone who is not his subject is prohibited for a year from conferring the order. The person who has received the ordination, however, is ipso facto suspended from the order received.*

ⁱⁱⁱ 29 December 1910

^{iv} On the lifting of the excommunications on the SSPX bishops by Benedict XVI “*It is hoped that this step be followed by the prompt accomplishment of full communion with the Church*”

<https://www.catholicculture.org/culture/library/view.cfm?recnum=8730>

^v The phrase is a translation of the Latin phrase *fratres seiuncti* used as a polite euphemism in contexts where the terms “formal heretics” or “material heretics” might cause offense. Pope Leo XIII “was the first to speak of ‘separated brothers’” Kelly, John N. D.; Walsh, Michael J, eds. (2010). “Leo XIII”. *A Dictionary of Popes*. Oxford paperback reference (2nd ed.). Oxford [u.a]: Oxford University Press. p. 317. ISBN 9780199295814.

^{vi} Congregation for the Doctrine of the Faith, Responses to Some Questions regarding Certain Aspects of the Doctrine of the Church, Fifth Question Archived August 13, 2013

^{vii} Cardinal Thomas Cajetan, *Commentary on the Summa* (Commentarium in II-II, 39, 1)

^{viii} “*Canon 1248: The Concurrence of Liturgical Days and the Obligation of Assisting at Mass,*” Rev. Brian Dunn, J.C.D., Roman replies and CLSA advisory opinions 2008, Canon Law Society of America, 2008, p. 117.

- ^{ix} *“Suggestum est ut deleatur verbum « legitime ». Omnes Consultores, uno excepto, talem suggestionem approbant, quia sæpe sæpius causa illegitimitatis residet in ministro sacro et non debent puniri christifideles pro tali culpa ministri sacri.”* *Communicationis 12 (1980) 361.*
- ^x *“The Communication of Catholics with Schismatics: A Historical Synopsis and Commentary,”* Rev. Ignatius J. Szal, A.B., J.C.L., Catholic University of America Press, 1948, p. 62.
- ^{xi} *“THE LEGAL STATUS OF THE TRIDENTINE MASS: Some Further Thoughts,”* Michael Davies, The Angelus, September 1984.
- ^{xii} <http://web.archive.org/web/20040415000423/http://www.unavoce.org/articles/2003/perl-011803.htm>
- ^{xiii} *“New Commentary on the Code of Canon Law: Study Edition,”* Beal, Coriden, Green, Editors., Paulist Press, 2000, p. 1553.
- ^{xiv} *“Excommunication: It’s Nature, Historical Development, and Effects,”* Catholic University of America Canon Law Studies, Number 49., Fr. Edward Hyland, J.C.L., Catholic University of America, 1928, p. 92.
- ^{xv} *“Canon 2261, § 2 has reference to petitioning the sacraments and sacramentals from excommunicates who are neither vitandi, nor tolerati against whom any sentence, either declaratory or condemnatory, has been issued. They will be spoken of as the simpliciter tolerati.”* Id.p. 91.
- ^{xvi} Id. The cited text adds *“and there is present no other minister besides a simpliciter toleratus.”* However, this refers to the 1917 Code provision language in Canon 2261 §2 that used to say *“The faithful, with due regard for the prescription of § 3, can for any just cause seek the Sacraments and Sacramentals from one excommunicated, especially if other ministers are lacking...”* The language *“especially if other ministers are lacking”* has been removed from Canon 1335 in the 1983 Code and is no longer applicable. p. 92
- ^{xvii} Id., pp. 92-93.
- ^{xviii} *A Commentary On The New Code Of Canon Law*, Volume 8: Book 5. Penal code (Can. 2195-2414) with complete index by Charles Augustine, Rev. P., O.S.B., B. Herder Book Co., 1918. pp. 194.
- ^{xix} *A Commentary On The New Code Of Canon Law*, Volume 8: Book 5. Penal code (Can. 2195-2414) with complete index by Charles Augustine, Rev. P., O.S.B., B. Herder Book Co., 1918. pp. 189-190.
- ^{xx} Pugliese, in Palazzini’s *Dictionary of Moral Theology*, 1962, article Jurisdiction, Supplied: the Church supplies jurisdiction in a case of common error. Cited by Fr. Ramon Angles, SSPX in his canonical study, *“The Validity of Confessions and Marriages in the chapels of the Society of St. Pius X”* found at <http://www.ireland.sspX.net/miscellaneous/validity%20confessions%20&%20marriages/code/2.htm>. Fr. Angles also cites many more examples of Canon Law commentary confirming this concept in his study.
- ^{xxi} Lombardía, *Código de Derecho Canónico*, 1983. Cited by Fr. Angles at <http://www.ireland.sspX.net/miscellaneous/validity%20confessions%20&%20marriages/code/2.htm>
- ^{xxii} *New Commentary on the Code of Canon Law*, edited by John P. Beal, James A. Coriden and Thomas Joseph Green, Published 2000 by Paulist Press, p. 193.
- ^{xxiii} MacGreevy, John T., *Catholicism and American freedom: a history*, p. 245
- ^{xxiv} <http://www.ewtn.com/library/COUNCILS/TRENT14.HTM#3>
- ^{xxv} Can. 1335: *If a censure prohibits the celebration of sacraments or sacramentals or the placing of an act of governance, the prohibition is suspended whenever it is necessary to care for the faithful in danger of death. If a latae sententiæ censure has not been declared, the prohibition is also suspended whenever a member of the faithful requests a sacrament or sacramental or an act of governance; a person is permitted to request this for any just cause.*
- ^{xxvi} Can. 970 *The faculty to hear confessions is not to be granted except to presbyters who are found to be suitable through an examination or whose suitability is otherwise evident.*
- ^{xxvii} Can. 967 §1. *In addition to the Roman Pontiff, cardinals have the faculty of hearing the confessions of the Christian faithful everywhere in the world by the law itself. Bishops likewise have this faculty and use it licitly everywhere unless the diocesan bishop has denied it in a particular case.*
- ^{xxviii} Introduction by Fr. Peter Scott *“Supplied jurisdiction & traditional priests”* on Bishop Bernard Tissier de Mallerais’s notes for a conference given to the Catholic Study Groups in Paris, March 9-10, 1991
- ^{xxix} Pontifical Council for Promoting Christian Unity (1993-03-25). *Directory for the application of principles and norms on ecumenism*. Retrieved 2014-01-23 – via Vatican.va.
- ^{xxx} Pontifical Council for Promoting Christian Unity (1993-03-25). *Directory for the application of principles and norms on ecumenism*. Retrieved 2014-01-23 – via Vatican.va.
- ^{xxxi} *Apostolicæ Curæ On the Nullity of Anglican Orders* Pope Leo XIII – 1896 <https://www.papalencyclicals.net/leo13/l13curæ.htm>
- ^{xxxii} Edouard, Cardinal Gagnon (1918-2007) in Montreal, 6 May 2002 in a statement by letter concerning the episcopal consecration of Mgr André Letellier by Archbishop André Barbeau *“But nothing allows me to doubt*

the validity of episcopal ordination... The ordinations of the "Old Catholics" are generally considered to be the same as those of Orthodox bishops."

^{xxxiii} MacGreevy, John T., *Catholicism and American freedom: a history*, p. 245

^{xxxiv} This canon allows a censured priest to validly absolve when a Catholic asks him to hear his confession for "*any just cause.*"

^{xxxv} "*The Communication of Catholics with Schismatics: A Historical Synopsis and Commentary,*" Rev. Ignatius J. Szal, A.B., J.C.L., Catholic University of America Press, 1948, p. 58-59.

^{xxxvi} Pius XII, Address to Seminarians, June 24, 1939; <https://www.ewtn.com/catholicism/library/address-to-seminarians-8938>