The Validity of Confessions and Marriages in the chapels of the Society of St. Pius X

A CANONICAL STUDY

by Rev. Ramón Anglés

1. SOME CONSIDERATIONS ON THE POWER OF JURISDICTION

1.1. THE PROBLEM

It is often heard that the priests of the Society of Saint Pius X do not have jurisdiction, and that the bishops consecrated by Archbishop Marcel Lefebvre and Bishop Antonio de Castro Mayer do not claim any jurisdiction either. In a way, this is true.

And yet, we know that the power of jurisdiction over the penitent is required for the validity of absolutions (Canon 872), and that the ordinary canonical form of marriage requires the presence of an authorized priest (Canon 1094). Furthermore, without a canonical mission - which is an act of jurisdiction- a priest is not allowed to preach (Canon 1328). Authorization or delegation is as well required for performing a baptism in the usual way (Canon 739), and also to take Holy Communion to the sick in a solemn manner (Canon 848), to keep the Blessed Sacrament reserved in chapels of convents, schools and churches which are not parishes or attached to exempt religious houses (Canon 1265), to perform funeral rites (Canon 1230), to build a church (Canon 1162), and faculties are required by a cleric in order to be a legitimate minister of the Sacramentals (Canon 1146). The Code maintains that a Bishop can confirm licitly only his subjects (Canon 783), upon whom he has ordinary jurisdiction.

Nevertheless, our Bishops confirm worldwide, our priests perform all the sacred actions mentioned above, and traditional Catholics build churches and chapels where the Eucharistic Lord dwells permanently in His tabernacle. All this is done without the delegation of the diocesan prelate, and often very much against his will.

So, let us face the problem: if the priests of the Society of Saint Pius X do not have jurisdiction, it appears that the confessions they hear and the marriages they bless are invalid. If they have no faculties, all the priestly work they perform every day is illegitimate and therefore evil. If this is so, it would be a sin to receive their services, maybe even to ask for them. If such is the case, the Society is deceiving the good traditional Catholic faithful!

As the Spartans replied to the invading army before the decisive battle, when the herald described the terrible retribution which would be inflicted upon their homeland IF they lost, our answer is also a laconic: "IF."

All the conditional aforementioned propositions are wrongly founded, and it will be the purpose of this study to prove it. Let us see in the following pages how indeed the legislation of the Church is on our side, how it helps us to perform our priestly ministry in these extraordinary times, how indeed *Codex vere est amicus noster!*

1.2. WHAT IS JURISDICTION?

We are not interested here in studying the foundation and existence of jurisdiction, only its notion, so that we may understand what are we talking about. The former is the field of Juridical Philosophy, and there are very

good studies on the subject; I recommend Ottaviani (*Institutiones Iuris Publici Ecclesiastici, vol. I, 109ss.*), the very concise article of Dom Baucher in the *Dictionnaire de Théologie Catholique* (*Juridiction, volume VIII, columns 1976ss.)* as well as various dissertations in Taparelli (*Saggio Teoretico di Dritto Naturale*) .

Let me nevertheless point out some concepts of the utmost importance:

1) A juridically perfect society is the one which pursues an end which is complete and perfect in its own order, a society which possesses the necessary means to attain such perfect end, and which in its own order is self sufficient and independent, a fully autonomous society (Ottaviani, *Institutiones Iuris Publici Ecclesiastici*, # 25). The Catholic Church is a perfect society, with a perfect end and full rights to obtain it: the end is **the salvation of the souls** and the means are the ones which her Divine Founder entrusted her, the doctrine to be taught, the Sacraments to sanctify, and the hierarchical structure to govern. These means correspond with the three *munera* or "functions" given by Our Lord to the Church: *munus docendi, munus sanctificandi, munus regendi*. By being faithful to these duties and using the means given by Our Lord, she leads the souls of the faithful to their eternal destiny in Heaven.

2) The juridical status of a society, perfect or imperfect, depends on its purpose. Because of her supernatural purpose, the Church has the authority to rule her members for the attainment of their eternal salvation. This power of divine institution (Canon 196) is what we call *ecclesiastical jurisdiction.*

Following such great principles Cappello explains Canon 196, which concerns the power of jurisdiction in the Church. ***Iurisdictio ecclesiastica generatim sumpta, est potestas publica regendi subditos in ordine ad vitam aeternam.*** (Cappello, *Summa Iuris Canonici, # 242*). When we speak about "jurisdiction" we are actually referring to the *power* of ecclesiastical jurisdiction or government. **The New Code prefers to call it *potestas regiminis*** (New Code Canon 129), **even though it still accepts the old terminology *potestas jurisdictionis*** (ibidem).

Cappello continues: *Dicitur PUBLICA ut a dominativa (patria, maritali,herili) distinguatur; REGENDI, ut indicetur discrimen inter ipsam et potestatem ordinis quae directe et immediate ordinatur ad sanctificandos homines; IN ORDINE AD VITAM AETERNAM, ut exprimatur finis ultimus ad quem directe refertur, qui utrique potestati communis est.*

Let us retain this principle during our reading of the present study: the power of jurisdiction in the Church is exercised in order to foster *the eternal salvation of the souls.* This is an essential concept. **The Church has jurisdiction in order to save souls, and whatever law frustrates such purpose is to be considered as not binding**, because the Church cannot contradict her very purpose. The law of the Church must always be interpreted with the sublime axiom in mind: ***Prima lex salus animarum,* "The first law is the salvation of the souls."**

1.3. THE NATURE AND THE SOURCES OF JURISDICTION

To be precise, instead of "jurisdiction" we should speak about the POWER OF JURISDICTION. Agostino Pugliese, S.D.B., in his article *Jurisdiction*, published by Palazzini in his excellent *Dizionario di Teologia Morale*, specifies clearly: *The power of jurisdiction in the Church includes legislative, executive and judicial authority. Thus, while the power of orders stems from the sacrament of holy orders and is immediately directed to the sanctification of her members, the power of jurisdiction or government springs from the very nature of the Church as a supreme and perfect society that needs to be guided and governed in order fully to attain her spiritual end. Ordinarily, ecclesiastical jurisdiction can only be exercised by clerics (Canon 118).*

Jurisdiction does not come from the reception of holy orders. The Pope receives it directly from Christ once he has been legitimately elected and has freely accepted the election. All the other degrees of jurisdiction are

normally received by a *canonical mission* (Canon 109).

This canonical mission or official appointment is either ORDINARY or DELEGATED. *Ordinary jurisdiction* is automatically attached to an office by the law; it is the case of a diocesan Bishop, or of those prelates who in law are equal to him; this why they are called Ordinaries. *Delegated jurisdiction* is that which is committed to a person, and this can be done by an administrative act of the legitimate Superior or by the law itself; it is the case of a regular priest exercising his ministry in a diocese (See Canons 197ss.). Jurisdiction is also delegated *in extraordinary cases by the law itself*, which supplies for the lack of jurisdiction in a subject: we call it JURISDICTION SUPPLIED BY THE CHURCH. Therefore, it is technically erroneous to speak, for instance, of a priest of the Fraternity of St. Peter as having ordinary jurisdiction (his jurisdiction is delegated, not ordinary) or a priest of the Society of St. Pius X as having extraordinary jurisdiction (the Church supplies *in actu* the required jurisdiction in extraordinary circumstances contemplated by the law).

The sources of the power of jurisdiction in the Church are therefore multiple:

1) Christ himself, for the Pope, who in His name governs the Church as her visible head on earth (see Canons 109 and 218).

2) The appointment to an office to which jurisdiction is automatically attached, as it is the case of a diocesan Bishop (Canons 197 and 198).

3) The legitimate delegation of jurisdiction from a Superior, for instance when the Ordinary gives faculties to a priest so that he may hear confessions in the diocese (Canon 874, #1).

4) Canon Law itself, when contemplating extraordinary cases in Canons 209, 882, 1098 and 2261; and the exceptional situations indicated in New Code Canons 844 and 1117.

My intention is to develop #4 with the help of the Code, the jurisprudence of the Holy See, and the commentaries of the many authors who have treated the subject, in order to proof beyond doubt that the confessions and matrimonies in our chapels are perfectly valid and legitimate. The development of the application of New Code Canons 844 and 1117 is presented here only as an argument *ad hominem.*

1.4. WHAT IS SUPPLIED JURISDICTION?

The Church is a mother, a mother legislating for the good of her children. Her first law is the salvation of souls; the Church governs the souls because it must lead them to Heaven. Certain juridical or administrative acts in the Church require the power of jurisdiction; although an unauthorized agent without jurisdiction might observe every formality required by the law, his act will be invalid. A series of invalid acts, placed by an unauthorized agent, maliciously or in good faith, especially when such acts are distributed throughout a long period of time, will work havoc in any society, the Church not exempted.

It is a function, then, of good government to provide against this peril, not in the sense that invalid acts must be rendered valid, which will be tantamount to the legislator contradicting himself, but in the sense that the legislator PROVIDES FOR THOSE CASES IN WHICH A DANGER TO THE SOULS IS VERIFIED. The Church provides by SUPPLYING jurisdiction to an agent who lacks it, and she does it for both the internal and the external forum.

This suppliance is to be conceived as a delegation by the law, *delegatio a iure*. The active subject of this extraordinary delegation is the common law, in the sense that is disposed in the legislation. The power is given not habitually but *in actu:* the agent does not possess the power before he uses it, nor does he retain it afterwards: he possesses it by delegation of the law ONLY AS LONG AS IT IS NECESSARY FOR THE VALID EXERCISE OF THE ACT.

The Church supplies only those things which pertain to the state and condition of persons, but not the formalities required by the law for the validity of acts. Also, the Church can supply only the power which is entrusted to her, not what is required by divine or natural law (example: a layman cannot receive supplied jurisdiction to hear confessions; he is not a priest).

1.5. ELEMENTS OF SOLUTION: THE CANONS IN QUESTION

1.5.1. NEW CODE OR OLD CODE?

I will quote consistently in my study the Canon Law of Saint Pius X, promulgated by Benedict XV in 1917, which has been the wise canonical legislation of the Latin Church until 1983. It was then replaced by a New Code, *"in order that the Church may progress in conformity with the spirit of the Second Vatican Council"* (Apostolic Constitution *Sacrae Disciplinae Leges,* January 25, 1983). The Society of Saint Pius X disagrees profoundly with the letter and the spirit of this New Code which enshrines juridically the conciliar views on the Church and the world.

Nevertheless, it is interesting to note that the new legislation is almost identical to the precedent one in what concerns the subjects which we are treating here; a quick view at the Canons quoted in this article shows it clearly. In fact, the evolution of canonical doctrine tends ostensibly to develop in favor of a wider application of favors and freedom, everything being to our advantage. **Having in mind that our case will be judged by our antagonists according to the New Code, I will often make reference to the correspondent canons, indicating it with the words *New Code*.**

It may happen that someone claims that the past canonical doctrine is out of date, or that it has been suppressed by the New Code, and that consequently the commentaries and opinions which I am quoting and using in this study are no longer valid. I want therefore to recall that *"Canones huius Codicis, quatenus ius vetus referunt, aestimandi sunt ratione etiam canonicae traditionis habita"* (New Code Canon 6, 2), which means that although the New Code substitutes completely the one of 1917, the norms that reproduce concepts and practices of the old legislation must be understood and studied in the light of canonical tradition. Identical approach is to be found also in the 1917 Code, Canon 6, concerning the ancient legislation of the past centuries. It makes perfect sense, because without such a policy no jurisprudence nor coherent canonical study would ever be possible.

1.5.2. THE CANONS

(There is an English translation of each Canon in the correspondent article.)

1.5.2.1. **Common error and positive probable doubt:**

***** *In errore communi aut in dubio positivo et probabili sive iuris sive facti, iurisdictionem supplet Ecclesia pro foro tum externo tum interno.* **(Canon 209)**

***** *Matrimonium gaudet favore iuris; quare in dubio standum est pro valore matrimonii.* **(Canon 1014)**

** #1. In errore communi de facto aut de iure, itemque in dubio positivo et probabili sive iuris sive facti, supplet Ecclesia, pro foro tam externo quam interno, potestatem regiminis exsecutivam. #2. Eadem norma applicatur facultatibus de quibus in cann. 883, 966, et 1111, #1.* **(New Code Canon 144)**

***** *Matrimonium gaudet favore iuris; quare in dubio standum est pro valore matrimonii, donec contrarium probetur.* **(New Code Canon 1060)**

1.5.2.2. **Danger of death:**

** In periculo mortis omnes sacerdotes, licet ad confessiones non approbati, valide et licite absolvunt quoslibet poenitentes a quibusvis peccatis aut censuris, quantumvis reservatis et notoriis, etiamsi praesens sit sacerdos approbatus...* **(Canon 882)** See also Canon in 1.4.2.3. for marriages in danger of death.

** Quilibet sacerdos, licet ad confessiones excipiendas facultate careat, quoslibet poenitentes in periculo mortis versantes valide et licite absolvit a quibusvis censuris et peccatis, etiamsi praesens sit sacerdos approbatus.* **(New Code Canon 976)** See also Canon in 1.4.2.3. for marriages in danger of death.

** Ipso iure facultate confirmationem ministrandi gaudent... quoad eos qui in periculo mortis versantur...immo quilibet presbyter.* **(New Code Canon 883, 3)**

1.5.2.3. **Extraordinary form for marriage:**

** Si haberi vel adiri nequeat sine gravi incommodo parochus vel Ordinarius vel sacerdos delegatus qui matrimonio assistant ad normam canonum 1095, 1096:*

1º In mortis periculo validum et licitum est matrimonium contractum coram solis testibus; et etiam extra mortis periculum, dummodo prudenter praevideatur eam rerum conditionem esse per mensem duraturam;

2º In utroque casu, si praesto sit alius sacerdos qui adesse possit, vocari et, una cum testibus, matrimonio assistere debet, salva coniugii validitate coram solis testibus. **(Canon 1098)**

** # 1. Si haberi vel adiri nequeat sine gravi incommodo assistens ad normam iuris competens, qui intendunt verum matrimonium inire, illud valide ac licite coram solis testibus contrahere possunt:* 1º *in mortis periculo; 2º extra mortis periculum, dummodo prudenter praevideatur earum rerum condicionem esse per mensem duraturam. # 2. In utroque casu, si praesto sit alius sacerdos vel diaconus qui adesse possit, vocari et, una cum testibus, matrimonii celebrationi adesse debet, salva coniugii validitate coram solis testibus.* **(New Code Canon 1116)**

1.5.2.4. **Sacraments and Sacramentals administered by an excommunicated minister:**

** #2. Fideles, salvo praescripto #3, possunt ex qualibet iusta causa ab excommunicato Sacramenta et Sacramentalia petere, maxime si alii ministri desint, et tunc excommunicatus requisitus potest eadem ministrare neque ulla tenetur obligatione causam a requirente percontandi. #3. Sed ab excommunicatis vitandis necnon ab aliis excommunicatis, postquam intercessit sententia condemnatoria aut declaratoria, fideles in solo mortis periculo possunt petere tum absolutionem sacramentalem ad normam can. 882, 2252, tum etiam, si alii desint ministri, cetera Sacramenta et Sacramentalia.***(Canon 2261)**

** Si censura vetet celebrare sacramenta vel sacramentalia vel ponere actum regiminis, vetitum suspenditur, quoties id necessarium sit ad consulendum fidelibus in mortis periculo constitutis; quod si censura latae sententiae non sit declarata, vetitum praeterea suspenditur, quoties fidelis petit sacramentum vel sacramentale vel actum regiminis; id autem petere ex qualibet iusta causa licet.* **(New Code Canon 1335)**

1.5.2.5. **New legislation concerning the reception of certain Sacraments from non-Catholic ministers:**

#2. Quoties necessitas id postulet aut vera spiritualis utilitas id suadeat, et dummodo periculum vitetur erroris vel indifferentismi, licet christifidelibus quibus physice aut moraliter impossibile sit accedere ad ministrum catholicum, sacramenta poenitentiae, Eucharistiae et unctionis infirmorum recipere a ministris non catholicis, in quorum Ecclesia valida existunt praedicta sacramenta. **(New Code Canon 844)**

1.5.2.6. **New legislation exempting from the canonical form for marriage those Catholics who have left the Church**
by a formal act:

** Statuta superius forma servanda est, si saltem alterutra pars matrimonium contrahentium in Ecclesia catholica baptizata vel in eandem recepta sit neque actu formali ab ea defecerit, salvis praescriptis can. 1127 #2.* **(New Code Canon 1117)**

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2. SUPPLIED JURISDICTION IN CASE OF COMMON ERROR

2.1. A LITTLE HISTORY

Many of the canonical rules of the Church have their origin in Roman Law, and the suppliance of jurisdiction in case of common error is one of them.

There was a well-educated slave named Barbarius who escaped from his master and arrived in Rome. Roman Law declared null and void the acts of slaves, and they were unable to exercise any public charges. But clever Barbarius managed successfully to hide his origins and presented himself as a citizen, and he did it so well that the discriminating Roman people elevated him to the important dignity of Praetor, in which capacity Barbarius handed down many judicial sentences for years. Years of invalid acts, because he remained an unauthorized agent, a slave! Only after his death the truth about his lowly origin was known. What was to be done?

Pomponius and Ulpianus, both great jurists, explained that in order to avoid the great public disorders to follow from the invalidity of such actions, the Roman people ratified them as though they were valid from the beginning. This solution was a more human method of acting, and after all, Rome could have given jurisdiction to a slave, had she so wished! *Hoc enim humanius erat.* And therefore the people of Rome prevented the consequences of such actions. The solution was extended to a multiplicity of similar legal matters, and soon a new axiom of law became generally accepted: *Error communis facit ius.* We read this interesting story in the Digestum, l. I, tit. xiv, c.3.

2.2. THE CANONS IN ENGLISH

In common error or in positive probable doubt wether of fact or law, the Church supplies jurisdiction both for the external and the internal forum. (Canon 209)

**** #1. In common error about fact or about law, and also in positive ad probable doubt about law or about fact, the Church supplies executive power of governance both for the external and for the internal forum.***

#2. This same norm applies to the faculties mentioned in cann. 883, 966 and 1111,1. (New Code Canon 144)

2.3. NOTIONS

COMMON ERROR is not common ignorance; the terms are not convertible, and therefore the fact that a community ignores that the priest lacks jurisdiction is not a sufficient reason for the Church to supply jurisdiction. An ERROR is required on the part of a community, whose members (or a number of them) actually believe that a priest has jurisdiction, even though in fact he does not have it. This is what we call ERROR OF FACT. However, it is a common sentence among canonists nowadays that it is sufficient to have an ERROR OF LAW, also called VIRTUAL ERROR, in order to fulfil the conditions required for the

suppliance of jurisdiction. The New Code ratifies explicitly this doctrine in Canon 144, 1. **Error of law consists in a FACT whose nature is sufficient to induce the error in a community, even though nobody in the community is mistaken about the lack of jurisdiction in the agent**. It is not an actual error, but a fiction of law: an interpretative error, a fact that of its nature WOULD lead many in actual error. This means practically that if a priest without jurisdiction to hear confessions sits in a confessional or puts on a purple stole indicating that he is ready to hear confessions, the Church will supply his lack of jurisdiction for every absolution he will give. Surprising as it may appear, this is sound canonical doctrine. The different authors will shed light in the question, and will provide us as well with the elements required to prove our case.

* Bucceroni, *Casus Conscientiae, 6 edit. 129, 5.* Well before the Old Code of 1917, this known author considers sufficient a virtual common error in order to obtain the suppliance of jurisdiction.

* Vidal, *Jus Canonicum, II, 1923, p.369* affirms that there is common error in the sense of the Canon when there is a public fact which in itself suffices to provoke an error.

* Cappello, *De Poenitentia, 1944, #340ss.* declares as certain the opinion which requires for common error *factum externum et publicum ex quo fideles necessario in errorem inducantur*. And in the same article, # 342, he gives as an example of such sufficient fact the one of a priest without licenses entering the confessional signifying that he is ready to hear confessions. In this circumstance, Cappello says, *sive ille sacerdos plures aut paucos audiat poenitentes, sive forte nullum, habetur iam antecedenter communis error ortus ex praefatis adiunctis.*

* Regatillo and Zalba, *Theologia Moralis Summa, 1954, De Matrimonio, 928: Error communis de iure est qui fundatur in facto de se publico quod ex natura sua inducit quemlibet ad putandum talem sacerdotem habere iurisdictionem, cum ea careat; seu qui fundatur in facto per se apto ad inducendum omnes in errore de existentia iurisdictionis. Ut si sacerdos publice sedeat in confessionali, quasi spectans poenitentes. Hodie SENTENTIA GENERALIS EST ECCLESIAM SUPPLERE IURISDICTIONEM AD CONFESSIONES NON SOLUM IN ERRORE COMMUNI DE FACTO, SED ETIAM DE IURE.*

* Coronata, *Compendium Iuris Canonici, 1950, Vol. 1, #558: Sufficit ut causa posita sit ex qua multi et fere omnes in errorem inducantur, vel saltem ex communiter contingentibus induci possint, licet forte de facto pauci prorsus vel etiam unica persona erraverit.*

* The same Coronata, *op. cit., Vol. 3, #259: Plures tamen auctores, praesertim e modernioribus, docent sufficere ut fundamentum erroris habeatur seu ut habeatur factum aliquod ex quo facile notabilis pars communitatis coniicere possit sacerdotem illum ad quem accedet populus ad suam confessionem faciendam iurisdictione gaudere, quamvis de facto nemo adhuc accesserit et forte pauci omnino accesuri sint. Tale factum esset e.g. si sacerdos missionarius aut concionator in sede confessionali ad poenitentes exspectandos sedeat.*

* Vermeersch and Creusen, *Epitome Iuris Canonici, 1937, 1, #322: Errorem interpretativum seu de iure exsistentem sufficere censemus. Nam, posito publice facto quod prudentes quoque in errorem inducit, hic publicus, non privatus, erit, atque Ecclesia, quae ob bonum commune iurisdictionem supplet, non censenda est permittere ut multi, immo pauci fructu validi exercitii iurisdictionis careant, quia plerique non simul, sed alii post alios in errorem inciderunt.*

** L'ami du Clergé, 1925, p.106, and 1948, p. 252,* admits that it is sufficient to have a case of virtual common error, meaning by this *une cause de nature à fonder l'erreur d'un grand nombre.*

* Aertnys and Damen, *Theologia Moralis, 1950, II, #359,* repeat the same doctrine by defining common error as follows: *si factum publicum aliquod positum fuerit quod per se natum est multos in errorem ducere.*

* Pugliese, in Palazzini's *Dictionary of Moral Theology, 1962, article Jurisdiction, Supplied: the Church supplies jurisdiction in a case of common error. The error may be due to a false conviction concerning the possession of the required jurisdiction. It is necessary, however, that this conviction arise from a positive fact which would cause the faithful reasonably to assume that the priest had the required jurisdiction. A case in point might be . . . that of the priest who, acting as if he had jurisdiction, occupies the confessional or imparts absolution, when in fact he has no jurisdiction . . .* ***(Common error) is called error of law when it stems or may stem from a fact which of itself is such as to lead many people into error even though in fact no one errs. Today it is generally held (and such an interpretation may be called certain) that the error of law is sufficient to require that jurisdiction be supplied.***

* Van Kol, *Theologia Moralis, 1968, vol. II, #316: Communior sententia hodie admittit Ecclesiam etiam supplere in errore de iure tantum communi: i.e. si habetur factum seu fundamentum publicum, quod natura sua aptum est ad communitatem in errorem inducendam... Idcirco error communis certe habetur... si sacerdos, iurisdictione carens, in sede confessionali sedet exspectans fideles ad sese accedentes.*

* Lombardía, *Código de Derecho Canónico, 1983*, in his commentary to New Code Canon 144: *Common error of law is the one which refers in some way to the interpretation of the juridical norms which regulate the exercise of the power of jurisdiction. In order to obtain the suppliance of power, it is necessary that the error has its foundation on a public fact, firm and solid, capable of producing such error, and that the application of the suppliance may have an incidence in the general interest and benefit. This has a particular application to the usual faculties for hearing confessions, to assist to marriages and to the cases contemplated in Canon 883 concerning the minister of confirmation.*

* **The New Code expressly recognizes in its Canon 144, #1, that the error *de iure* is sufficient for the suppliance.**

2.4. COMMON ERROR IS ALSO APPLICABLE TO MARRIAGES

For some time there was a doubt concerning the application of the suppliance of jurisdiction in case of common error to the assistance to marriages by a putative pastor or similar cases in which the priest did not have delegation. This was solved by a decree of the Code Commission, 26 March, 1952, which appeared in the *Acta Apostolicae Sedis* 44-497 and which I transcribe in the English translation given by Bouscaren, *The Canon Law Digest, vol.3, p. 76:*

The Code Commission was asked: Whether the prescription of Canon 209 is to be applied in the case of a priest who, lacking delegation, assists at a marriage.

REPLY: In the affirmative.

Given at Rome, from Vatican City, 26 March, 1952.

With the New Code of 1983, all controversy in this subject must definitely cease. Indeed, it is explicit in Canon 144, # 2, that the norm concerning the suppliance of jurisdiction in case of common error must also be applied to the assistance to a marriage.

In the same New Code we read elsewhere a direct reference to the same exceptional case:

** Ea tantum matrimonia valida sunt, quae contrahuntur coram loci Ordinario aut parocho vel diacono ab alterutro delegato qui assistant, necnon coram duobus testibus, secundum tamen regulas expressas in canonibus qui sequuuntur,* ***et salvis exceptionibus de quibus in cann. 144****, 1112,#1, 1116 et 1127, ## 2-3.(New Code Canon 1108)*

It remains for us to explain in which circumstances can we apply the doctrine of common error to the celebration of a marriage. It is very simple: it is sufficient to have a situation in which a priest without the required faculties REGULARLY assists to marriages in the same place, so that a public fact is repeatedly presented which by its nature may induce the faithful to believe that the priest has the faculties to assist to marriages. Remember that this is pertinent and applicable EVEN THOUGH the faithful know that the priest has no faculties: as we saw it so clearly explained in Palazzini's work, error of law ***stems or may stem from a fact which of itself is such as to lead many people into error even though in fact no one errs.***

A quick overview of matrimonial jurisprudence reveals that a *parochus putativus* validly assists to marriages despite his lack of faculties.

Naz, *Traité de Droit Canonique, I, # 496: Ainsi, si l'erreur commune existe sur la qualité de curé, les mariages contractés devant ce curé putatif sont néanmoins valides.*

Lazzarato, *Jurisprudentia Pontificia, De Causis Matrimonialibus, vol. II, 917 # 20-21: Contingit autem error communis, si quis est parochus putativus, quia publice existimatur legitimus parochus et non est. Item de putativis vicariis paroecialibus, de rectoribus aut capellanis, deque delegatis puta ad confessiones excipiendas. Neque amplius consistit controversia, an exigatur titulus coloratus, quem c. 209 non requirit. En exemplum: Mortuo parocho aliquo in oppido, alius sacerdos munera parochi exercet, ita ut nunc ab omnibus verus existimetur parochus et non est. Ecclesia supplet.*

And in # 24 he explains the case of a priest who fraudulently presented himself as the pastor of the immigrants from Belgium: *Attentis igitur Patris Philippi dictis et gestis, ut parochus Belgarum facile existimari potuit, et revera existimatus videtur. Atqui, ut in iuris expositione ostensum est, Ecclesia propter bonum publicum supplet iurisdictionem parochi putativi, illius scilicet qui non est, sed reputatur publice talis, nec, Codice vigente, titulus requiritur coloratus, v.g. ut paroecia ei collata sit quamvis irrite.*

It is interesting to note the insistence of the canonists in repeating that a colored title is no longer required. The colored title is some act or situation which ordinarily is sufficient to confer jurisdiction, but which in the particular case is rendered invalid by some secret impediment. In a word, it was an empty title, a fictional foundation upon which the suppliance could take form. This is no longer required, and we will see its importance when we make the application to our case.

Van Kol, a post-Vatican II theologian, treats the application of common error to marriage as follows (op. cit. # 656): *Quid de suppletione in errore communi? Iam dudum constat CIC 209 applicari posse in casu alicuius parochi vel Ordinarii loci putativi, qui sc. vi officii habilis habetur sed ratione alicuius vitii officium suum invalide exercet. Hodie praeterea constat canonem etiam applicari posse in casu alicuius sacerdotis qui, delegatione carens, matrimonio assistit, at iusta sententiam communiorem tantummodo si sacerdos ille, non ex delegatione ad matrimonia determinata, sed ex delegatione generali assistere supponitur: quia tunc tantum periculum est ne plura matrimonia invalide contrahantur.*

But even the danger of invalidity of MANY matrimonies (and therefore a common danger following) seems no longer to be a requirement to apply the doctrine of common error, if we must believe the illustrious canonists of the University of Navarra (Spain), Instituto Martín de Azpilcueta, who were requested by the Pontifical Commission for the Revision of the Code to work on the first *schemata* of the new legislation of 1983.

In their excellent commentary to the New Code, they do not hesitate to write: *Esta suplencia opera, como en el c. 144 #1, en caso de error común y de duda positiva y probable. En ambos casos es indiferente que sea de hecho o de derecho. De este modo se solventa la discusión doctrinal acerca de si el error virtual o de derecho bastaba para la operatividad de la suplencia. Por lo demás, analizando los trabajos preparatorios del CIC (cfr. Communicationes, 10, 1978, pp.90-92) parece que la ratio de esta expresa mención es* ***limitar***

al máximo los supuestos de nulidad por defecto de forma, haciendo que la suplencia actúe en el mayor número de supuestos posibles. Por esto, no parece que pueda sostenerse hoy que el error común vaya necesariamente unido a la noción de interés público o general*, como se sostiene en la jurisprudencia posterior a la respuesta de la CPI de 26.III.1952:* ***bastará el bien privado (un solo matrimonio) para que pueda aplicarse la suplencia.***

What this Spanish quotation affirms is that the post-conciliar legislation wishes to reduce as much as possible the cases of invalidity because of defect of canonical form, and that the present approach is to make the suppliance act in as many cases as possible. Furthermore, it cannot be sustained nowadays that common error is united to the notion of common interest, but that the application of suppliance can be made in the case of the private interest of only one matrimony. The introduction of this important innovation in canonical doctrine reinforces our case.

2.5. IS IT PERMITTED TO EXERCISE JURISDICTION SUPPLIED BY COMMON ERROR?

The question is not the validity of such suppliance of jurisdiction; this has been treated extensively already. What we want to know is IF IT IS LICIT to use such jurisdiction supplied *pro casu*, if a priest without jurisdiction can voluntarily put an act which provokes common error, in order to validate his action, whether it may be hearing confessions or assisting at matrimonies.

There is indeed a very solemn interdiction for a priest to hear confessions without the required faculties (see Canon 2366). But all the authors teach that a GRAVE REASON justifies and legitimates the use of such supplied jurisdiction.

Naz, *Dictionnaire de Droit Canonique, article Erreur Commune, IV: Un pretre dépourvu du pouvoir de confesser serait coupable si, sous prétexte d'erreur commune, il confessait quelques fidèles qui peuvent facilement se confesser à d'autres; mais le même se mettrait licitement au confessional dans l'église où tout le monde attend une veille de grande fête et où, sans son concours, beaucoup de fidèles seraient privés des sacrements.*

Cappello, *Summa Iuris Canonici, vol. 1, # 255: Sacerdos licite agit in casu erroris communis, si diebus dominicis et festis de praecepto aut alia occasione extraordinaria fideles cupiant confiteri, et alius sacerdos desit, aut nonnisi cum notabili incommodo adiri possit.*

Van Kol, *op. cit., # 316: In errore communi sacerdos semper valide absolvit omnes ad sese accedentes, etiam paucos illos qui defectum iurisdictionis forte noscant. Attamen illicite agit sacerdos qui absqui gravi ratione errorem communem provocat.*

It is therefore licit for a priest without faculties to create a situation of common error in order to provide the faithful with the Sacraments that they may not receive otherwise.

Once again, the first law must be the salvation of the souls.

2.6. APPLICATION TO OUR CASE

2.6.1. REGARDING CONFESSIONS

In the Society of Saint Pius X chapels, schools, Mass centers, summer camps, and extraordinary gatherings of faithful in the occasion of pilgrimages, ordination ceremonies, and similar cases, it is sufficient for a priest to sit in the confessional, to put on a violet stole or to give some external public sign which the faithful recognize as an indication that he is ready to hear confessions for a group of people, for common error at least *de iure* to exist. In many established chapels the common error will be *de facto.*

The priest in such conditions will VALIDLY absolve the faithful in virtue of Canon 209, New Code Canon 144.

He will also LICITLY use this power because of the need of the souls who, without his action, would be obliged to remain for some time without confession, or else to go to a Modernist priest who may very well put their faith in danger.

2.6.2. REGARDING MARRIAGES

In our established chapels and Mass centers, where the faithful usually receive the Sacraments and where matrimonies are habitually blessed, there is an undeniable situation of common error at least *de iure*. Our priests act as putative pastors and the faithful go to them in order to ask their assistance to marriages. The Church supplies jurisdiction in every case because there are many external and public facts (the actual existence of the "parish," the frequent weddings celebrated in it, the common acceptance of the fact that marriages are blessed in our chapels) and also because there is a common interest to serve, and a common danger to prevent.

The modern interpretation exposed by the Navarra professors, who declare that private interest suffices nowadays for the application of suppliance on the grounds of common error, allows us to extend common error to the sporadic celebration of one marriage, which is the prevalent case of most of our Mass centers.

It is pertinent to remember at this point that a colored title is no longer required to profit from this exceptional suppliance of jurisdiction. We are not to discuss whether our chapels are parishes or not, nor if we have a juridical basis in acting as parish priests, etc. The mere FACT that we administer habitually the Sacraments to some community of faithful is sufficient to apply the doctrine of common error.

Our priests act therefore VALIDLY when they bless the marriages of traditional Catholic faithful, on the grounds of common error, in which the Church supplies the required jurisdiction. They also act LICITLY because of the same reason indicated before: there is a GRAVE cause motivated by the present crisis of faith.

2.6.3. IS THERE ANY DOUBT?

Perhaps all these arguments do not fully convince the adversary of our thesis. The Church in her motherly wisdom has given us the answer in Canon 209 (New Code Canon 144).

Do you still doubt that our reasoning is correct? As long as the doubt is a positive and a probable one, the Church will supply jurisdiction for both the internal and the external forum. Which is the easy subject of our next article.

The Validity of Confessions and Marriages in the chapels of the Society of St. Pius X

A CANONICAL STUDY

by Rev. Ramón Anglés

3. SUPPLIED JURISDICTION IN CASE OF POSITIVE AND PROBABLE DOUBT

3.1. THE CANONS IN ENGLISH

In common error or in positive probable doubt wether of fact or law, the Church supplies jurisdiction both for the external and the internal forum. (Canon 209)

**** Marriage enjoys the favor of law. Wherefore, in case of doubt, the marriage is to be considered valid until the contrary is proved. (Canon 1014)***

**** #1. In common error about fact or about law, and also in positive ad probable doubt about law or about fact, the Church supplies executive power of governance both for the external and for the internal forum. #2. This same norm applies to the faculties mentioned in cann. 883, 966 and 1111,1. (New Code Canon 144)***

**** Marriage enjoys the favour of law. Consequently, in doubt the validity of a marriage must be upheld until the contrary is proven. (New Code Canon 1060)***

3.2. NOTIONS

Who is exempt from doubts? Especially when navigating in the not-always-clear waters of Canon Law, some anxiety or scruple may appear. As an example, the case of common error before the New Code: in common error of law, does the Church supply jurisdiction? Some authors answered in the affirmative -we quoted many of them already- and some were opposed to it. There was indeed a DOUBT whether the law of suppliance applied or not in that case. The solution was to be found in Canon 209: as long as the doubt is positive and probable, *Ecclesia supplet*, and so, if the minister acted in the hypothesis that the error of law sufficed, the Church supplied jurisdiction, even though it may have happened that in fact such error was not sufficient.

DOUBT is that state of mind in which the intellect suspends judgment between two or more opposed propositions; the intellect cannot assent to one or the other without the fear of erring. If the mind assents to one of these propositions with prudent fear that the contrary might be true, such a state is called OPINION. This, too, in a broad sense may be regarded as doubt. A consultation of any moral treatise *De Conscientia* will confirm it.

A doubt is **POSITIVE** if there are serious motives of an objective foundation for assenting to two or more of the opposed propositions; it is **NEGATIVE** if the entire reason for doubt consists in the absence of motives capable of provoking prudent assent. Positive doubt is always PROBABLE doubt, since the motives on either side are serious ones.

DOUBT OF LAW is verified when there is a doubt concerning the existence or the extent of the law.
DOUBT OF FACT is present when it is question whether or not a particular fact or circumstance is verified.

By virtue of Canon 209, New Code Canon 144, in positive and probable doubt either of law or of fact on the part of the minister, the Church supplies jurisdiction both for the internal and for the external forum.

Let us see some authors in order to complete and understand better this consoling doctrine, which resolves so many difficulties.

* Woywood-Smith, *A Practical Commentary on the Code of Canon Law, 1962, # 162: Generally speaking, a negative doubt means that one has no reason to serve as a basis for deciding a question, and it is about equal to ignorance on that question. A positive doubt means that one has a good reason for deciding a question one way, but that there is also a reason in favor of a contrary decision of the question. For example, the reasons for and against the existence of jurisdiction in a certain case create a positive doubt; and if the reasons on both sides are of such weight so as to create a bona fide doubt, the Church supplies the jurisdiction, even though actually the person did not possess it.*

* Van Kol, *op. cit., # 315: Dubium iuris est dubium doctrinale de ipsa exsistentia et extensione iurisdictionis, praesertim propter disputationes auctorum; dubium facti est dubium de exsistentia mere physica alicuius facti, ex quo iurisdictio pendet. Requiritur igitur dubium verum seu fundatum; mera ignorantia legis aut levis suspicio non sufficit.*

* Regatillo and Zalba, *op. cit., # 403: Si est dubium positivum et probabile seu fundatum, iuris vel facti, supplet (Ecclesia), etsi sit privatum, i. e. unius vel alterius, non publicum; nam canon non distinguit. Sed ut suppleat, dubium iuris debet esse obiectivum, i. e. fundatum in ipsa lege, quae clara non sit aut diversimode a doctoribus intelligatur.*

3.3. WHAT IS REQUIRED TO USE SUPPLIED JURISDICTION IN CASE OF DOUBT?

Is it LICIT? When? The authors are clear, even the strictest ones: NO REASON OR A VERY LIGHT ONE is required to use supplied jurisdiction on the grounds of Canon 209.

Cappello, *op.cit. # 257, 4: In dubio positivo et probabili iuris sacerdos valide et licite utitur iurisdictione, v.g. absolvit, etiam **SINE CAUSA**, quia Ecclesia CERTO supplet. Porro causa illiceitatis foret vel damnum poenitentis vel irreverentia erga sacramentum seu periculum nullitatis; atqui ex can. 209 utrumque abest; ergo. Quod valet, generatim, etiam ubi agitur de dubio positivo et probabili facti.*

Merkelbach, *Summa Theologiae Moralis, 1949, De Sacramentis, # 586: Ad utendum autem dubia iurisdictione, in dubio, scil. positivo et probabili sive iuris sive facti, **specialis ratio necessitatis non requiritur.***

Cabreros, Lobo and Morán, *Comentarios al Código de Derecho Canónico, 1963, vol. 1, # 512: La sentencia moral más generalizada afirma que para usar lícitamente de la potestad suplida en caso de duda positiva y probable, tanto del sujeto activo como del pasivo, **basta una causa leve.***

3.4. DOES IT APPLY ALSO TO MARRIAGES?

Yes, it does. Canon 209 does not make any restriction in the suppliance of jurisdiction, and the New Code is explicit, Canon 144, #2, applying the same norm to the faculties required in order to assist to marriages.

Lazzarato, op. cit., presents in cause # 893 the case of an Austrian priest in Russia who blessed one marriage without having the required faculties and without fulfilling the conditions for common error. I copy some of the points which refer to our case: *Valide assistit matrimoniis qui parochus putativus est ratione can. 209. Ecclesia iurisdictionem supplet publicae utilitatis causa, si minister, suae potestatis haud certus, putat tamen, se iurisdictionem habere, ob dubium grave et probabile, seu ob gravem rationem, sive iuris sive etiam facti, qua ad suam iurisdictionem affirmandam movetur.*

3.5. APPLICATION TO OUR CASE

It cannot be more clear: when the minister has an objective doubt, founded on the law itself or on the authoritative interpretation of the law, concerning the existence of his jurisdiction, the Church supplies the jurisdiction, even though the minister may have no jurisdiction at all.

Let us see some of the many practical applications which illustrate this doctrine:

* A priest of the Society of Saint Pius X doubts about the existence of common error for confessions or for marriages in his chapel. He realizes that there are many canonical reasons and arguments for it, but he still doubts because the Bishop or the chancellor of the diocese say that such absolutions and marriages are invalid. The Church supplies jurisdiction because his doubt of law is positive and probable.

* The same priest is taking care of a sick person and, even though there are many indications that the patient is getting worse, he doubts whether there is or is not a danger of death. Can he administer the Sacrament of Confirmation validly using the faculties of New Code Canon 883, 3? Yes, he can, because in a positive and probable doubt of fact the Church will certainly supply the jurisdiction which he may not have if the patient is actually not in danger of death.

* The same scrupulous priest wonders if the extraordinary form of marriage contemplated in Canon 1098, New Code Canon 1116, is to be applied to the case of a couple who considers that they have no moral access to the Modernist parish priest. After hearing their reasons, he realizes that they have serious motives in arguing a grave spiritual danger and therefore impossibility of moral access to a Modernist parish priest. He can be at peace because, in the worst case, his doubt of fact and of law puts him in a state in which the Church will supply for the jurisdiction required to validly assist to such marriage.

* Our Hamletic priest is now trying to justify this particular absolution on the grounds of Canon 2261, New Code Canon 1135, which recognizes to any faithful the right to ask a Sacrament or Sacramental from an excommunicated priest, *a fortiori* from a priest of our Society. *Did he really ASK? I think he DID. Does the interpretation of this Canon apply to our case? It should, it seems it does, but maybe someone else will not agree* . . . He agonizes! Well, since his doubt is an objective one, founded upon the law and upon the commentators, on facts and not on mere conjectures, he can be sure at least that the Church supplies in virtue of Canon 209.

We can and we should have recourse to the suppliance in case of positive and probable error in order to answer those adversaries who oppose our canonical reasoning. Let us tell them that because our case is supported on solid canonical grounds, on the old and the new legislation, on the practice of the Church, on the sentences of the Roman jurisprudence, on the doctrine of renowned authors, even on favorable opinions of Cardinals, Bishops and diocesan chanceries throughout the world, we can definitely affirm that in such doubt *Ecclesia supplet iurisdictionem*. The Vatican itself takes our arguments so seriously that in the Protocol of May 5, 1988, the Holy See called for a *sanatio in radice AD CAUTELAM* of the marriages celebrated by our priests without the required delegation. So for the Vatican there is a chance that such marriages are valid. Again, this doubt is positive and probable, and once more the Church supplies jurisdiction.

Let us keep in mind that marriage enjoys the favor of the law, and that **in case of doubt one must stand for the validity of the sacrament**. Both the traditional and new legislation concord in this point.

The Validity of Confessions and Marriages in the chapels of the Society of St. Pius X

A CANONICAL STUDY

by Rev. Ramón Anglés

4. EXTRAORDINARY JURISDICTION IN DANGER OF DEATH

4.1. THE CANONS IN ENGLISH

4.1.1. CONCERNING CONFESSIONS

**** In danger of death, all priests, although not approved for confessions, can validly and licitly absolve any penitent from any sins and censures, though reserved and notorious, even if an approved priest is present. (Canon 882)***

**** Even though he lacks the faculty to hear confessions, any priest validly and licitly absolves from any kind of censures and sins any penitent who is in danger of death, even if an approved priest is present. (New Code Canon 976)***

4.1.2. CONCERNING MARRIAGE

**** If the pastor or the local Ordinary or a priest delegated by either, who should according to Canons 1095, 1096 assist at the marriage, cannot be had, or the parties cannot go to him without great inconvenience:***

#1. In danger of death, marriage will be validly and licitly contracted in the presence of only two witnesses.

#2. ...if there is at hand another priest who can be present, he should be called and he should assist at the marriage together with the witnesses. (Canon 1098)

**** #1. If the presence of or access to a person who is competent to assist at marriage in accord with the norm of law is impossible without serious inconvenience, persons intending to enter a true marriage can validly and licitly contract it before witnesses alone:***

1. In danger of death;

#2. ...if another priest or deacon who can be present is readily available, he must be called upon and must be present at the celebration of the marriage, along with the witnesses. (New Code Canon 1116)

4.1.3. CONCERNING CONFIRMATION

**** The law itself gives the faculty to administer confirmation:***
#3. to those who are in danger of death, the parish priest, or even any priest. (New Code Canon 883)

4.2. NOTIONS

Is it necessary to explain what is DANGER OF DEATH? Yes, because there may be some misunderstandings

in the matter.

The Church in her legislation is always faithful to the axiom *Sacramenta propter homines*, and she extremes her zeal so that nobody dies without confession, for lack of faculties in a priest. This is why her legislation disposes that when one of the faithful is in danger of death, ALL PRIESTS (including excommunicated, suspended, interdicted, non approved, irregulars, heretics, schismatics, reduced to the lay state, even degraded from their priestly office) can absolve VALIDLY and almost always LICITLY from any sin and censure, **even though an approved confessor may also be present.**

According to this ancient and important norm, which we can already see explicitly in the Council of Trent, sess. 14 ch. 7 (Denz.-Sch.1688), it is sufficient that a cleric has validly received the sacred order of priesthood for him to obtain in this particular case full powers of jurisdiction, delegated by the Roman Pontiff through the law; and the concomitance of the two elements ORDER+JURISDICTION makes a minister capable of absolving.

On the subject's part it is required to be in DANGER OF DEATH. Danger of death is not here to be understood as "danger of spiritual death," as some erroneously affirm. The law refers to a danger of physical death, the separation of body and soul. The reference to "spiritual death by sin" is in this matter totally gratuitous and misleading. **"Danger of death" does not mean either that the person should be in his agony**, which is no longer called *periculum mortis* but *articulum mortis*. It is enough for him to be in a true danger, in which one can reasonably assume that death may follow soon, or even that he may lose permanently the use of his reason, becoming incapacitated to make his confession.

The cause of this danger of death can be INTRINSICAL (illness, old age, etc.) and also EXTRINSIC (war, grave surgery, imminent disaster, etc.). In case of doubt concerning the estimation of the motive, the priest can nevertheless validly absolve on the grounds of supplied jurisdiction in case of positive and probable doubt, as we already saw in the precedent article commenting Canon 209.

Please note that the danger of death has canonical consequences not only for confessions. **The New Code allows ANY PRIEST to administer the Sacrament of Confirmation to any faithful in DANGER of death** (see above, New Code Canon 883), **and both legislations permit the extraordinary form of marriage in case of danger of death of at least one of the parties** (see Canon 1098, New Code Canon 1116). We will study the special conditions for this particular case in the next article.

We find both confirmation and clarification of this doctrine in the texts of canonists and in the decrees of the Sacred Penitentiary:

* Gomez, *De Censuris in Genere, 1955, Cann. 2241-2251: Periculum mortis significat illud discrimen vitae in quo quis constitui potest, ita tamen ut superesse vel occumbere, est vere graviterque probabile. Adest proinde PRUDENS TIMOR de morte imminenti, quin requiratur ut sit certa quia tunc persona dicitur versari in articulo mortis. Huiusmodi autem periculum provenire potest ex causa intrinseca, v.g. ex morbo, vulnere inflicto, vel ex causa extrinseca, v.g. ex bello, terremotu, incendio, navigatione periculosa, operatione chirurgica, etc.*

* Van Kol, op. cit., # 663: *Periculum mortis habetur in omnibus casibus, in quibus rationabiliter timetur alterutrum saltem nupturientem moriturum esse vel sensibus destitutum iri, antequam testis qualificatus adesse vel adiri poterit. In hisce circumstantiis matrimonium valide coram solis duobus testibus celebratur, etiamsi iudicium de periculo mortis forte erroneum sit. Non refert quaenam sit causa timoris: morbus, incisio chirurgica, exsecutio poenae capitis, pugna, incursio aeria, inundatio, tempestas, etc.*

* Regatillo and Zalba, *op. cit., #930: Periculum ex quavis causa, ut morbo, proelio, sufficit ut alterutri immineat. Moraliter aestimandum; error in aestimatione periculi valori nuptiarum non officit, nisi fuerit*

omnino imprudenter iudicatum aut prorsus fucatum. NULLA CAUSA requiritur ad matrimonium sic contrahendum, sicut requiritur as impedimentorum dispensationem (c.1043).

* Sacred Penitentiary, 18 March 1912 and 29 May 1915, *Acta Apostolicae Sedis* 7-282, in Bouscaren 1, p. 411: *Every soldier who is in a state of warlike assembly, or "mobilization" as it is called, can ipso facto be considered as in danger of death, so that he can be absolved by any priest he meets.*

4.3. APPLICATION TO OUR CASE

The practical application of the Canons indicated in 4.1. is obvious:

* when one of the faithful is in danger of death, even though another approved priest may be present, any priest will absolve him validly and licitly from all censures and sins;

* in danger of death, any priest can administer Confirmation, using the chrism previously blessed by the Bishop;

* in the same danger, and as long as the conditions required by the law are fulfilled (see next article for further explanation), any priest can bless a marriage.

Our priests will find many opportunities in the performance of their apostolate to confess people in danger of death (especially the old and the sick). In cases of baptism of emergency because of danger of death for the child, they will do well in using the extraordinary faculty allowing a simple priest to administer Confirmation, which after all is a necessary Sacrament *necessitate praecepti*.

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A CANONICAL STUDY

by Rev. Ramón Anglés

5. THE EXTRAORDINARY FORM FOR MARRIAGE

5.1. THE CANONS IN ENGLISH

** If the pastor, or the local Ordinary, or a priest delegated by either, who should according to Canons 1095 and 1096 assist at the marriage, cannot be had, or the parties cannot go to him without great inconvenience, the following rules are to be observed:*

1. In danger of death, marriage may be validly and licitly contracted in the presence only of two witnesses; even apart from the danger of death marriage may be thus contracted, if it can be prudently foreseen that this state of affairs will continue for a month;

2. In both cases, if there is at hand another priest who can be present at the marriage, he should be called and should assist at the marriage together with the witnesses, without prejudice however to the validity of the marriage contracted only before the witnesses. (Canon 1098)

** #1. If the presence of or access to a person who is competent to assist at marriage in accord with the norm of law is impossible without serious inconvenience, persons intending to enter a true marriage can validly and licitly contract it before witnesses alone:*

1. in danger of death;

2. outside the danger of death, as long as it is prudently foreseen that such circumstances will continue for a month.

#2. In either case and with due regard for the validity of a marriage celebrated before witnesses alone, if another priest or deacon who can be present is readily available, he must be called upon and must be present at the celebration of the marriage, along with the witnesses. (New Code Canon 1116)

5.2. NOTIONS

The Church has determined in Canon 1094 (New Code Canon 1108) that the ordinary form for a valid marriage requires the presence of the pastor, or the local Ordinary or a delegated priest, and of at least two witnesses. However, both Codes contemplate exceptions from the ordinary canonical form, in which it is possible for the parties to contract valid and licit marriage before two witnesses, and without the presence of the authorized priest. Canon 1098 (New Code Canon 1116) considers two exceptional cases, of which the second interests us particularly.

* **The MAIN CONDITION** laid down by the Code in order to permit a marriage without the presence of an authorized priest is expressed in the following very far-reaching terms: *Haberi vel adiri nequeat sine gravi incommodo*. This **grave inconvenience** is something which cannot be defined with mathematical accuracy, because much depends on circumstances and conditions; this is the reason why the Code is not more explicit,

remaining almost reticent to precise cases.

It must be understood that this difficulty of securing the presence of the priest at the marriage need not be a general or common difficulty, but may be a particular and individual difficulty of the particular priest and couple.

The commonest situation is the one in which the priest is not **physically** reachable: there is no priest in the region, as it still happens in the immense territories of mission areas; or there is a religious persecution which makes it dangerous for his life to leave his refuge. The authors and the decisions of the Roman Rota clearly state that not only a physical impossibility, but also a **MORAL INCONVENIENCE of a spiritual nature for the parties to have recourse to an authorized priest is sufficient to invoke the exception** from ordinary canonical form, as long as the other conditions are also existing (danger of death, or physical/moral absence estimated for a month). For us, this is a capital argument.

* **The FIRST CASE considers the danger of death on at least one of the parties, when the authorized priest can neither be secured nor approached** according to the general aforementioned condition. In such situation, the expression of mutual consent **before two witnesses** (words or even signs if the parties cannot speak) will be sufficient for a valid and licit marriage.

The danger of death, as we saw in the past article, need not necessarily arise from illness only, for the Code speaks of danger of death generally, from any source. A *bona fide* belief of the parties that there is a danger of death before the authorized priest can be had is more than sufficient. If a mistake is made in estimating the danger, the marriage remains valid. Furthermore, there is no need of a special reason why the parties want to get married in danger of death, for the law does not require any.

If a priest without faculties is at hand, he is to be called in order to assist at the marriage, even though this is not necessary *ad validitatem matrimonii*. In virtue of Canons 1043-1046 (New Code Canon 1079) this priest has ample faculties to dispense from all ecclesiastical impediments, excepted the one resulting from the reception of sacred orders. He could also dispense from the *forma substantialis*, therefore from the need of having two ordinary witnesses.

* **The SECOND CASE when permission is given to the parties to marry without observing the ordinary form is the one in which:**

1. the authorized priest is physically or morally absent and cannot be had or approached without grave inconvenience, and

2. it is prudently foreseen *(praevideatur*) that this state of affairs (namely, the difficulty of getting an authorized priest without grave inconvenience) will last for at least ONE MONTH.

When these two conditions concur, the parties do not need to observe the canonical form, even outside the danger of death. **Two ordinary witnesses suffice**. And, when in extraordinary circumstances even the two witnesses demanded by Canon 1098 cannot be present, and there is no one who can dispense from the *forma*, the parties may in a case of very grave necessity proceed without the two witnesses. Such is the liberality of the Church, always zealous of the spiritual good of her children, making readily available to them the Sacrament of marriage in exceptional situations.

The first condition has been already briefly explained; the texts in 5.3. will be more explicit and satisfying. But note that the marriage will be null if the belief that the priest cannot be reached is erroneous; so, if the FACT of the physical or moral impossibility was nonexistent, though the parties honestly and inculpably believed that it existed, there is no valid marriage.

The second condition simply requires a prudent and objective estimation, by inquiry or from notoriety of the

fact, that the authorized priest will be neither available nor accessible physically or morally without grave inconvenience for at least one month.

It is immaterial if the authorized priest happens to be available within the month, or if the Ordinary shows unexpectedly for a visit. The marriage once celebrated under these conditions remains valid.

Vermeersch, *Periodica XIV, 185-186; XV, 45-46*, goes even further. According to him, the marriage would be valid whenever the circumstances were such that it could have been prudently foreseen that for at least one month there would be no competent priest available, even if the parties themselves did not foresee this fact nor avail themselves of the opportunity offered to them to obtain a dispensation from the ordinary canonical form.

Miguélez, Comentarios al Código de Derecho Canónico, 1963, II, 507, says that the marriage will be valid even though the parties are firmly persuaded that the state of affairs is to change the next day, as long as reality indicates objectively that it will continue for one month. A hypothetical case, no doubt, but nonetheless revealing clearly the mind of the Church.

The Code adds for the LICEITY of the marriage the same condition mentioned above: if a priest without faculties can be called, he must be called and must assist at the marriage.

The precept obliges the priest and the parties, but its fulfilment only affects the liceity of the marriage, never the validity of its celebration before only two ordinary witnesses.

5.3. SOME TEXTS

* Merkelbach, *Summa Theologiae Moralis, 1949, III, # 849: Ad validitatem forma extraordinaria... sufficit: 1)* ***QUODCUMQUE INCOMMODUM GRAVE, SPIRITUALE*** *VEL TEMPORALE, sive partes directe afficiat, sive sacerdotem . . . 2) sufficit et requiritur* ***IMPOSSIBILITAS PERSONALIS****, non requiritur communis seu localis, nec sufficit communis si desit personalis... 3) non requiritur specialis causa:* ***quodcumque motivum*** *ineundi matrimonium sufficit.*

* Coronata, *op. cit. III, 1048: Relative adire nequit si absolute quidem possint sacerdotem adire, at id non posssint sine gravi incommodo sive personali, sive sacerdotis competentis, sive tertiae personae, sive boni publici. Non est necesse ut incommodum grave sit omnibus commune;* ***sufficit incommodum personale*** *quod vel unam contrahentium partem afficiat.*

* Regatillo and Zalba, *op. cit. III, # 930: Absentia parochi vel ordinarii vel delegati, seu impossibilitas eum habendi vel adeundi, non requiritur iam physica;* ***SUFFICIT MORALIS****, quae adest quando parochus vel Ordinarius, licet materialiter praesens, ob grave incommodum matrimonio assistere nequit requirens et excipiens consensum.*

*Iidem, *ib.: Vocandus est etiam censuratus ante sententiam condemnatoriam vel declaratoriam; post sententiam videtur posse vocari, quia nec sacramentum conficit nec sacramentale, si solum consensum requirat.*

* Code Commission, 25 July 1931, as in Bouscaren, *op. cit., I, p. 542: The Code Commission was asked: Whether the "physical absence of the pastor or Ordinary" includes also a case where the pastor or Ordinary, although materially present in the place, is unable by reason of grave inconvenience to assist at the marriage asking and receiving the consent of the contracting parties. REPLY: In the affirmative.*

* Van Kol, *op. cit., II, # 662: Adire vel arcessere testem qualificatum impossibile esse potest, non solum physice,* ***SED ETIAM MORALITER*** *OB GRAVE SC. INCOMMODUM.*

* Idem, *ib., # 665: Sacerdos iste, qui ex supposito facultate assistendi caret, non prohibetur quominus contrahentium consensum requirat iisque benedictionem nuptialem impertiat, sed neque ad haec tenetur vi huius canonis.*

* Wernz and Vidal, *Ius Canonicum, V, # 544: Relativa impossibilitas datur cum ad hoc ut habeatur vel adeatur sacerdos competens aut ut obtineatur sacerdoti incompetenti necessaria delegatio sit subeundum* ***GRAVE DAMNUM PHYSICUM VEL MORALE.***

* Lazzarato, *op. cit, # 926, 5: Impossibilitas parochum habendi vel adeundi est absoluta, si tempus desit omnino aut medium nequaquam suppetat, ut vel nupturientes ad ipsum se conferre vel cum eo convenire possint vel ut ab eodem per epistolam delegatio obtineatur; est RELATIVA, SI* ***NOTABILE DAMNUM*** *physicum vel* ***MORALE*** *. . . PARTIBUS proveniret.*

* Idem, *ib., 6: Unde sponsi non tenentur magnas sustinere expensas, vel iter valde durum et molestum suscipere, aut* ***PERICULO ALICUIUS GRAVIS DAMNI*** *se exponere, ut testem habeant qualificatum, quamvis forte culpabiliter neglexerint, immo fraudulenter, occasionem, eum commode habendi.*

* Idem, # 927, 6: *Non sufficit ergo quaelibet subiectiva persuasio, sed IMPOSSIBILITAS requiritur, seu* ***GRAVIS DIFFICULTAS SALTEM MORALIS****, innixa fundamento reapse exsistente.*

5.4. APPLICATION TO OUR CASE

The most important elucidation to make concerning the application of Canon 1094 (New Code Canon 1108) is the one which regards the grave inconvenience on the part of the couple to be married to approach an authorized priest.

It is proven by the law, the authors and the praxis of the Church that:

1) the grave inconvenience may be **on the part of the couple only,**

2) the grave inconvenience may be **of a moral nature,**

3) this grave inconvenience of a moral nature may be **a significant moral harm** for the parties.

Consequently, the ordinary canonical form for marriage does not apply :

> 1) when full observance of the law requesting the presence of an authorized priest would involve a **danger for the soul**, AND
>
> 2) at least one of the parties is in **danger of death**, OR there is a prudent assessment that the state of affairs contemplated in # 1 will continue for **at least one month.**

It is beyond doubt that traditional Catholic faithful cannot approach a Modernist parish priest who will submit them to a **deformed teaching concerning the doctrine of the ends of marriage,** or the duty of procreation, or conjugal morals. The New Code (and with it the New Catechism of the Catholic Church) reverts the ends of marriage, and presents them as equal and independent: *The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the procreation and education of offspring (New Code Canon 1055,1).*

The traditional doctrine expressed in Canon 1013 established an order and subordination among the ends of marriage, as the consultation of any pre-Vatican II moral manual will confirm: *The primary purpose of marriage is the procreation and education of children. The secondary purpose is to furnish mutual aid and a remedy for concupiscence.* A radical difference indeed!

Such distortion constitutes a very serious danger for the faithful, who can be led to wrong opinions such as the primacy of the common good of the spouses over the duty of procreation and education of the children. It is the open door to justify modern prevalent errors concerning divorce, contraception, sexual behavior, etc.

The faithful who have recourse to a Modernist priest put their very faith in **danger of compromising with the post-conciliar Liberal doctrines** such as ecumenism and religious liberty, not to mention the myriad of horrors that have issued from the Vatican II revolution and which have affected Catholic beliefs and practice. They are perpetrated in virtually every "modern" parish in the world.

The parties have also the unalienable right to celebrate their union with the Mass for the Spouses according to the **traditional Mass**, in virtue of Saint Pius V's Bull *Quo Primum Tempore*, and not with the New Mass of Paul VI, which "*represents, both as a whole and in its details, a striking departure from the Catholic theology of the Mass as it was formulated in Session 22 of the Council of Trent"* (Cardinals Ottaviani and Bacci, *Short Critical Study of the New Order of the Mass*). New Code Canon 214 confirms that: *"The faithful have the right to worship God according to the prescriptions of their own rite approved by the legitimate pastors of the Church, and to follow their own form of spiritual life consonant with Church's teaching."*

We cannot forget the **danger of scandal.** Even though a particular couple may be and remain strong in the faith despite the recourse to the local Modernist priest, their implicit acceptance of a Modernist liturgy or of the deformed Modernist teachings may cause other couples to follow their example and expose their not-so-strong faith to a serious danger. This **grave inconvenience for a third party** is also a reason to claim exception from the ordinary canonical form (see above Coronata's text).

The present crisis of faith in the Catholic Church puts our faithful in the precise condition required by Canon 1098 (New Code Canon 1108): they cannot have recourse to any authorized priest without putting their soul in grave danger of compromising, diminishing or even losing their faith.

Therefore, IN DANGER OF DEATH our traditional Catholic faithful can exchange vows before two ordinary witnesses, and such matrimony will be perfectly valid. Furthermore, OUTSIDE THE DANGER OF DEATH, since it is a prudent estimation that the present crisis and the danger for the faith will continue to make it morally impossible for the parties to have access to an authorized priest for more than one month, they may exchange vows before two ordinary witnesses, and such matrimony will be perfectly valid.

For the liceity of the ceremony, our priests if available must be called and must assist, performing the usual ceremonies.

If a doubt remains, since the doubt is founded on solid canonical and theological grounds, it is a positive and probable one. In the occurrence, the Church supplies the necessary jurisdiction according to Canon 209 (New Code Canon 144).

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6. SACRAMENTS AND SACRAMENTALS ADMINISTERED BY AN EXCOMMUNICATED MINISTER

6.1. THE CANONS IN ENGLISH

**** # 2. Without prejudice to the rule of # 3 of this Canon, the faithful may for any just reason ask the Sacraments and Sacramentals from an excommunicated person especially if there is no other minister available, and the excommunicated person at their request may minister to them without any obligation to inquire into the reason for the request.***

 # 3. From a minister who is an excommunicatus vitandus, or who has been excommunicated by a declaratory or condemnatory sentence, the faithful may ask for sacramental absolution in accordance with Canons 882 and 2252 only in danger of death, but, in the absence of other ministers, they can also ask for the other Sacraments and Sacramentals. (Canon 2261)

**** If a censure prohibits the celebration of the Sacraments or Sacramentals or the placing of an act of jurisdiction, the prohibition is suspended whenever it is necessary to take care of the faithful who are in danger of death; and if an automatic censure is not a declared one, the prohibition is also suspended whenever a member of the faithful requests a Sacrament, a Sacramental or an act of jurisdiction; this request can be made for any just cause whatsoever. (New Code 1335)***

6.2. NOTIONS

This Canon constitutes **the most formidable argument against our adversaries**. It manifests in a splendid manner the motherly concern of the Holy Church, always providing for the spiritual welfare of her children.

The sense is obvious and it does not require long explanations: for any just cause whatsoever, the faithful may ask from a censured priest all the Sacraments and Sacramentals, and even an act of jurisdiction. The priest will act validly and almost always licitly.

This concession to the faithful is a consequence of the general canonical principle established in Canon 682: ***Laici ius habent recipiendi a clero, ad normam ecclesiasticae disciplinae, spiritualia bona et potissimum adiumenta ad salutem necessaria*** (similar declaration in New Code Canon 213).

The spiritual goods spoken of here are the ordinary suffrages, Sacramentals, indulgences, ecclesiastical burial, etc., while the necessary means of salvation referred to are the Sacraments, especially those necessary for salvation *necessitate medii vel praecepti*.

This right is conferred partly by the divine law in reference to the necessary means of salvation, especially the Sacraments; and partly by ecclesiastical law, as regards the Sacramentals, Sacraments not necessary by divine precept, etc.

Again and again throughout this study we find the practical application of the axiom ***Salus animarum est suprema lex***. Translated to a concrete juridical reality by Canon 2261, this means that by their Baptism **the faithful have the right to receive all services** required for the good of their souls; and that **the priests have the duty to administer them.**

Some texts to complete, explain and confirm:

* García Barberena, *Comentarios al Código de Derecho Canónico, 1964, IV, # 406: The interdiction for a priest to administer the Sacraments is mitigated when the faithful, using their right, ask for the Sacraments. The excommunicated administers licitly the Sacraments and the Sacramentals ratione censurae, since the **law suspends the censure** for these exceptional acts.*

*The minister has the obligation to put himself into the **state of grace** if he is not already in it, according to the rules of the moralists.*

*The exceptions are established not in favor of the excommunicated but in favor of the faithful, and therefore **the act will be licit only when it answers a legitimate request**; the excommunicated cannot take the initiative.*

*If the minister is an excommunicated tolerated, he can administer every time he is asked reasonably. **The mere fact that the faithful ask for the Sacrament in good faith is sufficient cause to justify the request**. To eliminate doubts and anxieties, the legislator expresses that the minister excommunicated does not have to investigate whether or not the faithful ask with a sufficient cause. Many authors believe that the request can be implicit.*

* Prummer, *Manuale Iuris Canonici, 1933, # 571: Fideles enim possunt ex qualibet iusta causa ab excommunicato sacramenta et sacramentalia petere, maxime si alii ministri desunt, et tunc excommunicatus requisitus potest eadem administrare neque tenetur percontari causam a requirente. Excipiuntur tamen excommunicati vitandi et alii excommunicati post sententiam condemnatoriam aut declaratoriam. Ab his enim fideles in solo mortis periculo possunt petere tam absolutionem sacramentalem, quam etiam, si alius deest minister, cetera sacramenta.*

* Roberti, *De Delictis et Poenis, 1944, # 330: **Confectio et ministratio sacramentorum et sacramentalium per excommunicatos generatim est valida**. Sacramenta enim cum sint a Christo instituta, nequeunt poenis ecclesiasticis mutari. Sacramentalia dependent ab Ecclesia, sed Codex eadem non declarat invalida (c. 2261,1). Nihilominus confectio et ministratio sive sacramentirum sive sacramentalium prohibentur generatim excommunicatis, sed fideles possunt intra certos limites ea ab iisdem petere, quo in casu excommunicati generatim licite ministrant... **Requisitio fidelium potest esse etiam implicita, e.g., si sacerdotem expectent ad audiendas confessiones, ad celebrandam Missam, ad impertiendam benedictionem, etc.***

6.3. APPLICATION TO OUR CASE

We present this Canon simply as an argument *ad hominem*, being well aware of the state of mind of our opponents, and forcing them to take the logical conclusions of their positions concerning the legal status of the Society of Saint Pius X.

For us there is no doubt that the Priestly Society of Saint Pius X, erected canonically as a *Pia Unio* by the Bishop of Lausanne, Geneva and Fribourg, November 1, 1970, and praised by an official letter of the Cardinal Prefect of the Sacred Congregation for the Clergy, February 18, 1971 was illegally suppressed by the same Bishop. It is a fact that the action of Paul VI in order to validate such suppression did not constitute a confirmation *in forma specifica*, and that therefore **the suppression remains invalid in law.** The refusal of

the Supreme Apostolic Signature to judge our case constitutes still now a scandal and an injustice of immense proportions.

We believe that the permissions to incardinate different religious in the Society given directly from Rome in the first years of the Society, well before it developed at an international level, authorizes our institute to continue to **incardinate** its members, and that **our ordinations are perfectly legal.**

However, for the sake of argumentation, let us accept for a moment the opinion of our opponents, and let us apply to our case the doctrine of Canon 2261 (New Code Canon 1335).

If the priests of the Society of Saint Pius X are under any canonical censure, be it an excommunication or a suspension, since the censure has not been declared, the faithful have the right to ask from them any Sacrament, Sacramental or act of jurisdiction, for any just cause whatsoever including the simple good of their soul. The priests will act both validly and licitly, without having any need to scrutinize the reasons of the faithful.

Please note the extremely important addition of the New Code: **ACTUM REGIMINIS, AN ACT OF THE POWER OF GOVERNANCE** (same as power of jurisdiction, see the terminology in New Code Canon 129). This includes any **legislative, executive and judiciary act** which may be necessary for the good of the faithful's soul.

Founded on the PRINCIPLES upon which this extraordinary concession is granted for the good of the faithful, the Society of Saint Pius X has created, for the present situation of emergency in the Church, a **Canonical Commission** which thoroughly investigates and answers the legitimate requests of traditional Catholic faithful in matters concerning vows, marriage cases, etc.

Against all law and right, the faithful are denied the essential right of having access to the pure sources of salvation by a Modernist clergy, which tyrannically imposes on them a New Mass, New Sacraments and Sacramentals, a New Catechism and a New Bible, a new conception of the Church and the world. They come to us asking for a service which we cannot refuse. We answer their just call, making ours the last words of the New Code, Canon 1752: "*having before our eyes the salvation of the souls, which is always the supreme law of the Church*."

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7. NEW LEGISLATION CONCERNING THE RECEPTION OF CERTAIN SACRAMENTS FROM NON-CATHOLIC MINISTERS

7.1. THE CANON IN ENGLISH

**** Whenever necessity requires or genuine spiritual advantage suggests, and provided that the danger of error or indifferentism is avoided, it is lawful for the faithful for whom it is physically or morally impossible to approach a Catholic minister, to receive the sacraments of penance, Eucharist, and anointing of the sick from non-Catholic ministers in whose churches these sacraments are valid. (New Code Canon 844, # 2)***

7.2. A LITTLE HISTORY

The Second Vatican Council, in its Decree on Ecumenism, *"De Oecumenismo, Unitatis Redintegratio*," 21 November, 1964, presented the guidelines for the so-called ecumenical movement within the Catholic Church. Its immediate practical application was substantiated in the Directory "*Ad Totam Ecclesiam*," issued by the Secretariat for Christian Unity on 14 May, 1967, signed by Cardinal Bea, President, and Bishop Willebrands, Secretary. In it we find section 2, "*Sharing in Liturgical Worship with Other Separated Brethren*," with the ancestor of New Code Canon 844:

"Since the sacraments are both signs of unity and sources of grace, the Church can for adequate reasons allow access to these sacraments to a separated brother. This may be permitted ***in danger of death or in urgent need*** *(during persecution, in prisons) if the separated brother has no access to a minister of his own communion, and spontaneously asks a Catholic priest for the sacraments so long as he declares a faith in these sacraments in harmony with that of the Church, and is rightly disposed . . .* ***A Catholic in similar circumstances may not ask for these sacraments except from a minister who has validly received the sacrament of Order****."*

There was no surprise when, in 1983, we saw this ecumenical policy included in the New Code, codifying under specious pretexts the *communicatio in sacris* which the Church had always abhorred. How far we were already from the sane doctrine of the old Code!: *"Haud licitum est fidelibus quovis modo active assistere seu partem habere in sacris acatholicorum*." *(Canon 1258)*

7.3. NOTIONS

The new legislation is clear in its ecumenical discipline. According to the New Code of Canon Law, a Catholic may receive from a non-Catholic minister the Sacraments of Penance, Holy Communion and Extreme Unction, under the following conditions:

1) there is a NEED, or a TRUE SPIRITUAL ADVANTAGE to be obtained,

2) the danger of error and indifferentism is avoided,

3) there is a physical or moral impossibility to approach a Catholic minister,

4) the Sacraments to receive are valid in the church to which the minister belongs.

We already studied what Canon Law means by **physical or moral impossibility to approach a priest** when we considered the exemption from the ordinary canonical form for marriage. This does not present any problem: a persecution, a very long distance, onerous expenses, a scandal to avoid, a grave inconvenience, a spiritual harm to follow, all these are justifiable circumstances and valid arguments.

I confess that for a long time I wondered about the meaning of the fourth condition. What does it exactly mean "*in quorum Ecclesia valida existunt praedicta Sacramenta*?" There is no doubt that, for example, an Old Catholic who has been validly ordained and fulfils the required conditions of matter, form and intention, can celebrate a valid although illicit Mass. Any validly ordained priest can administer a valid Extreme Unction, and any validly ordained Bishop can validly confirm and ordain.

Nonetheless, the reference to the Sacrament of Penance as being valid in a non-Catholic church did puzzle me. It was only by rereading the directory *Ad Totam Ecclesiam* that I finally understood the precise meaning. **For the Vatican innovators, this means that the non-Catholic priest who is validly ordained administers validly the Sacrament of Penance in his church.**

There is no other way to explain the restriction of #55 in the aforementioned directory: **"Catholicus autem, similibus in rerum adiunctis, haec sacramenta petere nequit, nisi A MINISTRO QUI ORDINIS SACRAMENTUM VALIDE SUSCEPIT."**

This ecumenical measure has become an acceptable practice in the post-conciliar Church. When one of the faithful who judges impossible to be able to approach morally a Catholic priest, and who sees in it a true spiritual advantage, can ask from a non-Catholic priest who is validly ordained to hear his confession. The absolution will be valid according to New Code Canon 844.

He may also attend Mass, receive Holy Communion and also fulfil the Sunday obligation. The directory is explicit in # 47, alluding to a Catholic who attends Sunday Mass "*apud Fratres orientales seiunctos,*" in the Divine Liturgy of our separated brethren of the Oriental churches.

7.4. APPLICATION TO OUR CASE

We will proceed once more accepting *ad hominem* an absurd opinion, namely the one of those who consider the members of the Society of Saint Pius X outside the Church, schismatic and even "founders of a new church," as a certain American Bishop claims in grotesque personal letters written to concerned faithful and clergy.

IF the Society of Saint Pius X is a non-Catholic church, and its priests are validly ordained (point that nobody in his right mind discusses), New Code Canon 844, # 4 authorizes any of the Catholic faithful to ask from them the Sacraments of Penance and Extreme Unction, and also to attend their Masses, fulfilling as well the Sunday obligation.

The condition to take advantage of such permission is that there must be a true spiritual benefit for the person and that he avoids all danger for his faith. Any reasonable fear of spiritual harm arising from an approach to a Modernist priest in good standing will suffice to legitimate the recourse to the "Lefebvrites."

We are decidedly approaching the kingdom of lunacy. Unfortunately, such a miserable argument is the one which may convince and pacify our adversaries.

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8. NEW LEGISLATION EXEMPTING FROM THE CANONICAL FORM FOR MARRIAGE THOSE CATHOLICS WHO HAVE LEFT THE CHURCH BY A FORMAL ACT

8.1. THE CANON IN ENGLISH

**** With due regard for the prescriptions of Canon 1127, # 2, the form stated above is to be observed whenever at least one of the contractants was baptized in the Catholic Church or was received into it and has not left it by a formal act. (New Code Canon 1117)***

8.2. NOTIONS

In the old Code, and after the modification of its Canon 1099 by the *Motu Proprio Ne Temere*, August 1, 1948, the obligation to observe the canonical form of marriage was determined both by the baptism received into the Catholic Church and by the fact of a conversion to Catholicism. Some other modifications took place concerning mixed marriages, essentially exempting from the obligation to keep the canonical form in cases of marriages celebrated between Catholics and baptized Oriental non-Catholic, as long as the wedding was blessed by a sacred minister.

An innovation is included by New Code Canon 1117: **exemption from the canonical form for those who, having been baptized within the Catholic Church or converted to Catholicism, subsequently abandon the Church ACTU FORMALI, BY A FORMAL ACT.**

Since 1983 there has been an extensive exegesis of the term *actu formali*. It will be enough for our purpose to quote the professors of Navarra, *op. cit. pp. 680ss.: De los trabajos preparatorios del nuevo código (cfr. Communicationes, 8, 1976, pp. 54-56; y 10, 1978, pp. 96-98) se deduce que la separación formal no es siempre equivalente a acto público o notorio de apartamiento de la fe católica. Así, el término PÚBLICO tanto puede incluir una defección normal como una defección virtual de la fe católica; es decir, tanto una separación seguida de adscripción a otra confesión, como una vida notoriamente contrastante con la doctrina católica, pero sin formal acto de abandono de la Iglesia católica...* ***Será necesario un hecho público que implique, al tiempo, un formal apartamiento de la Iglesia católica****: adscripción a una confesión acatólica, declaración ante el párroco hecha por escrito, etc.; es decir,* ***un acto jurídico externo del que inequívocamente se deduzca el formal apartamiento de la Iglesia católica.***

The authors indicate that to abandon the Church *actu formali* requires an **EXTERNAL ACT** of a juridical value, denoting clearly and unequivocally the formal renunciation of the Catholic faith. An example would be the ascription into a non-Catholic sect.

Accordingly, when the two contractants have abandoned the Church by a formal act, the New Code exempts them from the ordinary canonical form for marriage. This means practically that a simple exchange of vows in the presence of two witnesses is sufficient for a valid marriage to be contracted.

8.3. APPLICATION TO OUR CASE

Obviously we will never justify the validity and liceity of the marriages in our chapels upon such an argument, because it would suppose that we are outside the Catholic Church, whom we serve in this her post-conciliar Calvary.

Still, *ad hominem* once more, and reducing *ad absurdum* the reasoning of our adversaries, it will help us to make a conjectural application of this Canon.

If the Society of Saint Pius X is a schismatic group, the only possible grounds for the adhesion to schism is the acceptance and defense of the Episcopal Consecrations of June 30, 1988 performed by Archbishop Marcel Lefebvre and Bishop Antonio de Castro Mayer in order to continue the "operation rescue" of the Catholic priesthood in the present situation of emergency caused by the post-Vatican II spiritual devastation.

We could easily enter into a clear demonstration that the "excommunications" were invalid, and also that the "schism" did never take place. We could even quote the decision of the Sacred Congregation for the Doctrine of Faith, June 4, 1993, declaring null and void the decree of excommunication pronounced by the Bishop of Honolulu, Anthony Ferrario, on a group of six traditional Catholics who attended a Society chapel. According to Cardinal Ratzinger, Prefect of the said Roman Congregation, there were no grounds for a declaration of the Society group as being schismatic.

But what we actually want to use as a hypothetical argument is exactly the opposite: let us accept for a moment the argument of those who call us schismatic. **If the faithful of the Society of Saint Pius X, by their adhesion to the Episcopal Consecrations of 1988, are to be considered as being schismatic, Canon 1117 exempts them from the canonical form of marriage. Hence their weddings in our chapels are perfectly valid, and since both parties are baptized, the contract is a sacramental one.**

This is the singular way in which the arguments of our antagonists turn against them.

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by Rev. Ramón Anglés

9. COROLLARIES

9.1. EPIKEIA

The term *EPIKEIA* does not appear in the Code. Nevertheless, it is a capital concept which deserves to be mentioned here, even though my study is not directly concerned with it.

We have proven beyond doubt (and, in case of doubt, back to Canon 209) that the extraordinary situation in which we traditional priests exercise our ministry finds a friend in the Code of Canon Law. The Church has provided us with a legislation for exceptional cases, which justifies juridically our actions.

However, it may happen and it has already happened that in some situations we must act directly against the letter of the law. The Episcopal Consecrations of 1988, without Apostolic Mandate and against the explicit interdiction of Pope John Paul II, are the best example of such extraordinary instances. It is by the exercise of *epikeia* that we act according to the spirit of the law, in those special cases in which to follow strictly the law would have results contrary to the spirit of the law and the original intention of the legislator.

EPIKEIA is simply defined as **the prudential and subjective judgment which estimates that the law does not apply in a particular case because of exceptional circumstances**.

The intention of the legislator is reasonable and human, and certain situations may appear in which it would be unreasonable and inhuman to apply strictly the law, against the general intention of the legislator who has not precisely foreseen such particular case.

We have encountered in these pages some striking cases in which the rigid application of the general law would result in grave spiritual damage, or it would impede the exercise of a better action, even a supererogatory one.

Saint Thomas Aquinas (Summa Theologica, Ia IIae, q. XCVI, art. 6), following Aristotle, considers *epikeia* as a **correction of the law**, when the law is defective because of its universal character. The use of *epikeia* requires the existence of a superior right. A positive law loses its coercive power when its fulfilment is in **conflict with the common good, or with natural or divine law**. ***Epikeia*'s use is limited to those cases in which there is a danger for the common good, or the natural or divine law are violated.**

One can easily see the importance of studying and developing this issue.

9.2. THE POPE'S ORDINARY VICARIOUS POWER

This is another momentous and extremely delicate question, and I just want to outline it.

The power of jurisdiction is either ordinary or delegated. Ordinary power is either personal or vicarious. **Ordinary vicarious power is the one exercised ON BEHALF of another person who has ordinary**

personal jurisdiction. Ordinary vicarious jurisdiction is exercised by a Vicar General on behalf of his Ordinary, by the Roman Tribunals and Congregations on behalf of the Pope.

When a Pope dies, the Sacred Apostolic Penitentiary continues to exercise vicarious papal ordinary jurisdiction for all questions concerning the internal forum. Meanwhile, the other offices of the Roman Curia are paralyzed until a new Pope is elected. But, as it happened in the past, if the conclave takes a long time and it appears that the vacancy will continue for an extended period of time, all the essential mechanisms of the Roman Curia will slowly start moving, although restricting to emergencies the use of their ordinary vicarious jurisdiction.

The reason for this extraordinary exercise of power is THE COMMON GOOD OF THE CATHOLIC FAITHFUL.

Another scenario in which the exercise of the Supreme Pontiff's ordinary vicarious jurisdiction is to be contemplated would be the one in which **the Pope is unable to fulfil his office**. There are many hypothetical cases: a long illness incapacitating the Pope, a coma, imprisonment, persecution, etc.

Still another situation: **if the Pope cannot be attained at all**, the highest ecclesiastical authority available would legitimately exercise ordinary vicarious papal jurisdiction for the good of the faithful, as long as the situation lasts. In this hypothesis, which in Communist Russia or in China was a tragic reality for decades, a bishop (and even a priest, if he is the only cleric available) would use these extraordinary powers, without having received a mandate but with the interpretative consent of the Pope.

In the present crisis of the Church, when we see the Pope himself, with his decisive support of the "*spirit of the Council*," contributing to confuse and mislead the faithful, couldn't we consider that we find ourselves in a situation deserving at least the study of this question? I simply place a premise and leave the rest to better and more daring minds.
