

Traditional Priests, Legitimate Sacraments

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Divine law *obliges* us to confer sacraments.

NOW AND AGAIN a traditional Catholic will hear someone claim that the sacraments he receives are “illicit.”

Sometimes members of the *Novus Ordo* establishment — the diocesan bishop or local pastor, say — will make this charge, citing one provision of canon law or another.

Or a traditional Catholic may come across a tract by a traditionalist type popularly called a “home-aloner.” This is someone who rejects Vatican II and the New Mass, but at the same time denounces the sacramental ministrations of all (or most) traditional Catholic priests as illegal, sinful, punishable by excommunication, against canon law or, in the case of confession, invalid. So in place of receiving sacraments, he recommends that you stay “home alone.”

In the early 1990s I wrote two articles dealing with these issues, “Canon Law and Common Sense” and “Home Alone,” both of which enjoyed a fairly wide circulation in traditionalist circles.

I decided to return to the topic because several new home-aloner tracts have appeared over the past few years, the most recent claiming that traditionalist clergy violate not merely *canon* law, but *divine* law.

Now, making credible arguments based on such concepts requires a fairly high degree of specialized knowledge in moral theology, canon law, sacramental law, and dogmatic theology. Ordinarily this can only be acquired by taking formal courses in these disciplines at a Catholic seminary or university, and then augmenting this basic knowledge through comparative study of major canonical and theological works, all of which are in Latin. (Some are listed in the bibliography below.)

No home-aloners I know of have this background, or even *suspect* how extensive their ignorance of these disciplines really is. Hence it is not surprising to find in their most recent writings two underlying errors.

First, these writers assume that *the* most important question a Catholic priest must always ask about a sacrament is whether he is “permitted” or “forbidden” to confer it.

This turns everything on its head. The priesthood is not just a privilege that stintingly *permits* something; it is a *munus* or *officium* (duty) to *do* something: to offer sacrifice and to dispense sacraments. So for a priest the *real* question is always: “What sacraments am I now *obliged* to confer?”

Second, probably because less specialized works sometimes use the terms indiscriminately, the writers confuse two distinct concepts in canon law as they relate to the administration of the sacraments:

(1) *deputation* (a legitimate faculty or permission from the Church to administer sacraments) and

(2) *jurisdiction* (ruling power over others in spiritual things.)

A priest or bishop must have legitimate deputation for *all* the sacraments he confers because their “confection and administration is divinely committed to the ministry of the Church.” (Cappello, *de Sacramentis* 1:49) *Jurisdiction*, on the other hand, is required only for confession.

The would-be lay canonists, however, seem to think the law requires a priest to have *jurisdiction* whenever he confers a sacrament, and they base most of their criticism on this hidden assumption. But since *deputation* suffices, such arguments are beside the point.

I will briefly develop both these issues below. Most of what follows serves equally well for answering the home-aloners and members of the Vatican II establishment.

I. Divine Law

OUR LORD’S COMMANDS to baptize (Mt 28:19), forgive sins (Jn 20:22), offer Mass (Lk 22:19), etc. constitute a *divine law* that binds all Catholic bishops and priests until the end of time.

Some priests are obliged in *justice* to administer sacraments; the rest are obliged on other grounds, explained either as in *charity* or in *virtue of ordination*. Here are the principles:

A. Obligation in Justice (*ex justitia*). This category comprises all priests who have the *cura animarum* (care of souls).

This technical term in canon law refers to priests who, by reason of their office or special title of jurisdiction, whether *ordinary* (a diocesan bishop, a superior general, a pastor or his equivalents) or *delegated* (coadjutor or assistant pastors) are obliged to “shepherd a particular part of Christ’s flock.” (Merkelbach, *Summa Theologiae Moralis* 3:86)

Their obligation to administer sacraments arises from “the divine law [SS citations] that commands shepherds to feed their sheep and indeed procure their spiritual good and their salvation.” (Hervé, *Manuale Theologiae Dogmaticae* 4:491)

Priests with the *cura animarum* are gravely bound by divine law to provide the sacraments to faithful Catholics qualified to receive them.

B. Obligation in Charity (*ex caritate*). Other priests who lack this type of ordinary or delegated jurisdiction — e.g., seminary professors, administrators, teachers, unassigned, retired, etc. — are *also* nevertheless obliged to provide sacraments to the faithful, depending on how serious the need is for an individual or a community.

Some authors say their obligation is based in the virtue of *charity*: “When priests who have the *cura animarum* are lacking, other priests are bound out of *charity* to administer the sacraments.... in *serious need for a community*, [such priests] are bound to administer the sacraments, even at the risk of their lives, as long as there is reasonable hope of assisting and there is no one else who will help.” This obligation binds under pain of mortal sin. (Merkelbach 3:87. My emphasis.)

C. Obligation in Virtue of Ordination. Other authors say that such priests are obliged to provide sacraments not simply out of charity, but in virtue of their *sacramental ordination* itself. Here is one explanation:

“They are bound by a certain general obligation arising from the sacred order they received. For Christ the Lord made them priests to devote themselves to saving souls. Because of this purpose, their special duty is to administer the Sacraments. This is obvious from the ordination rite, which gives them the power to offer sacrifice and absolve from sins, and which specifies administering the other sacraments among their other duties.... This obligation binds more gravely depending on the seriousness of the spiritual need of the faithful in the diocese where [such a] priest is supposed to serve or in the place where he lives. When such a community is obviously in serious need — when, for instance, due to the small number of priests or confessors, people have no convenient way to assist at Mass on Sundays and feast days and receive the Eucharist, or where it is inconvenient for people to frequent the Sacrament of Penance, so that many remain in sin — a priest has a grave obligation to administer these sacraments and to prepare himself properly for the duty of confessor.” (Aertnys-Damen, *Theologia Moralis* 2:26: *“Generali quadam obligatione tenentur ex ordine suscepto ... in necessitate simpliciter gravis talis communitatis... gravis est obligatio...”* Original emphasis.)

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These principles apply as follows: After Vatican II nearly all bishops and priests with the *cura animarum* defected to the new religion. The few priests who resisted, on the other hand, were professors, outcasts in their religious orders or dioceses, retired, etc.

These priests were then bound by divine law to provide sacraments for Catholics, who, since their pastors had apostasized, were now “obviously in serious need.” The priests were not obliged to “seek permission.” Rather, they were *obliged*, both in charity and in virtue of their ordination, to baptize, absolve, offer Mass, etc.

Not only that, but the bishops among them — Abps. Lefebvre and Thuc — were *obliged* to confer Holy Orders on worthy candidates who would then continue to provide sacraments for faithful Catholics throughout the world.

Their obligation arose from the sacred order of episcopacy they had both received. The one-sentence exhortation to the candidate in the Rite of Episcopal Consecration expresses this obligation succinctly: “It is the *duty of a bishop* to judge, to interpret, to consecrate, to ordain, to offer sacrifice, to baptize and to confirm.”

Moreover, those of us who derive our orders from Abps. Lefebvre or Thuc obviously have no appointment to the *cura animarum*. But like all other priests, we are likewise *obliged* by divine law, in charity and in virtue of ordination, to provide sacraments to the faithful who remain in grave common need.

II. Legitimate Deputation & Mission

FURTHER, “as regards legitimacy... all authority to dispense the sacraments originates from the mission given to the apostles” by means of the same divine commands cited above (to baptize,

absolve, offer Mass, etc.). (Billot, *De Ecclesiae Sacramentis* 1:179.) This is because:

“No one dispenses another person’s property legitimately unless he does so based on that person’s command. Now, the sacraments are Christ’s property. Only those, therefore, who have a mission from Christ — namely, those to whom the apostolic mission derives — dispense them legitimately.” (Billot, *ibid.*)

Those whom Our Lord has bound by divine law to confer sacraments, then, simultaneously receive from Him the *legitimate deputation* and the *apostolic mission* to confer them.

III. Human Ecclesiastical Law

ALTHOUGH CERTAIN CANONS in the Code expressly recall principles of the divine positive law (for examples, see Michels, *Normae Generales Juris Canonici* 1:210ff), the canons that prescribe *how* the legitimate deputation to baptize, absolve, offer Mass, etc. is conferred or obtained are not themselves divine law, but only *human law*. According to general principles of law, a human law:

A. Ceases automatically and positively when it becomes harmful (*nociva*) to observe. For this, see the works by moral theologians and canonists Abbo-Hannon, Aertnys-Damen, Badii, Beste, Cappello, Cicognani, Cocchi, Coronata, Maroto, McHugh-Callan, Merkelbach, Michels, Noldin, Regatillo-Zalba, Vermeersch, Wernz-Vidal, etc. in the bibliography below.

B. Ceases in “common need,” even if the law would otherwise render a sacrament invalid. Thus, for instance, an invalidating impediment to marriage normally requiring dispensation by a church official with ordinary jurisdiction would cease to bind “because of common need,” when access to someone with the requisite authority is impossible. (Merkelbach 1:353)

Such a common need would also occur, for instance, “during a time of persecution or upheaval in a particular country.” In this case, “if the purpose of the law would cease in a contrary way for the community — that is, if common harm would result from it — the law would not bind, because it would rightly be considered to be suspended, due to benign interpretation of the mind of the lawgiver.” (Cappello 5:199)

C. Does not bind when it conflicts with the divine law. “In a conflict of obligations, the higher one takes precedence.... Divine positive law takes precedence over human legislation.” (Jones, *Moral Theology* 70). “The supreme rule in the matter is this: The obligation that prevails is the one arising from the law which, considering its nature and purpose, is of greater importance... Precepts of the divine positive law must prevail over precepts of human positive law.” (Noldin, *Summa Theologiae Moralis* 1:207)

IV. Application

AS REGARDS the human ecclesiastical laws cited as prohibiting traditional Catholic priests to administer sacraments in the present situation:

A. Common Good. Applying these laws would deprive Catholics of the sacraments and thus directly impede the common good (*bonum commune*) that the Church intends for *all* her laws. This common good, the theologian Merkelbach says, is “the

worship of God and the supernatural sanctification of men.” (*Summa Theol. Mor.* 1:325: “*Dei cultus et sanctificatio supernaturalis hominum...*”)

B. Cessation. Such human ecclesiastical laws would therefore become harmful (*nocivae*), and as such would, according to the general principles of law laid down by moral theologians and canonists, automatically cease. (See III.A)

This includes Canons 953 and 2370, which would otherwise forbid the consecration of a bishop without an apostolic mandate (the papal document authorizing the consecration), because observing them would eventually deprive the faithful of sacraments whose conferral requires a minister in Holy Orders.

This also includes Canon 879.1, which governs jurisdiction for absolution: “To hear confessions validly jurisdiction must be granted expressly, either orally or in writing.” The moral theologian and canonist Prümmer specifically characterizes this canon as “ecclesiastical law.” (*Manuale Theologiae Moralis* 3:407: “*A jure ecclesiastico statuitur, ut jurisdictionis concessio a) sit expressa sive verbis sive scripto...*” Original emphasis).

Since the canon is *human ecclesiastical law* and not divine law, the requirement for an express grant of jurisdiction could therefore cease on grounds of “common need” (see III.B), because Catholics in mortal sin need absolution and because we priests are obliged to provide it.

Our obligation would arise, as St. Alphonsus explains, “*out of the very nature of the priestly office itself, to which Christ’s institution has connected this duty, and that a priest is bound to fulfill it when the need of the people demands it.*” (Aertnys-Damen 2:26n. “*...ex proprio Sacerdotis officio... quod Sacerdos exercere tenetur...*” Original emphasis.)

C. Prevailing Obligation. In any case, the grave obligation to dispense the sacraments that *divine* law imposes on traditional Catholic priests in charity and in virtue of their ordination takes precedence over the human ecclesiastical laws cited against them. (See III.C)

D. Legitimate Deputation & Mission. Simultaneously, this same divine law necessarily endows traditional Catholic bishops and priests with legitimate deputation or an apostolic mission to dispense sacraments. (See II) Moreover, if it were otherwise, God would be imposing a grave obligation while withholding any morally licit means to fulfill it — *quod impossibile*.

V. Jurisdiction for Absolution

IN THE CASE of legitimate deputation for confession, divine law requires that for valid absolution of sinners, a priest must also possess the power of *jurisdiction* in addition to the power of Holy Orders. No traditional Catholic priest I know of disputes this.

Jurisdiction is “a moral power to rule subjects in those things that pertain to their supernatural end.” (Merkelbach 3:569) As noted above, jurisdiction is either *ordinary* (attached to an office) or *delegated* (committed to a person, either by law or a superior). It operates in the *external* forum (the Church as a society) or the *internal* forum (the individual before God — usually meaning in confession).

The jurisdiction we traditional Catholic priests possess has been *delegated* to us from Christ Himself in virtue of the divine law and operates in the *internal* forum, because:

A. Canon 879 ceases. The human ecclesiastical law (canon 879) requiring that jurisdiction for confessions be expressly granted in writing or orally has ceased. (See IV.B)

B. Divine Law provides jurisdiction. The divine law by which Christ grants *jurisdiction* to those he commands to forgive sins (as distinct from *sacramental power* to do so) is found in John 20:21: “As the Father sent me, so I send you.” (Merkelbach 3:574)

This divine law always endures, together with the jurisdiction from Christ necessary to fulfill it. It is obvious, says the theologian Herrmann, “that *this power of the keys will last forever* in the Church. For since Christ willed that the Church last until the end of the world, He also lavished upon her the means without which she could not achieve her purpose, the salvation of souls.” (*Institutiones Theologiae Dogmaticae* 2:1743. My emphasis.)

Indeed, Christ’s Church *must* supply jurisdiction for absolution in extraordinary circumstances: “The Church must, because of her special purpose, provide for the salvation of souls, and so she is therefore bound to provide everything that depends on her power.” (Cappello 2:349. My emphasis.)

For although, as Cardinal Billot says, ecclesiastical law is directed more at binding than loosing, and divine law is more directed at loosing than binding, ultimately, “the Church’s instrumental jurisdiction is directed at loosing — indeed, at loosing the bonds which depend not upon ecclesiastical law, but upon *divine law*.” (*Tractatus de Ecclesia Christi* 1:476. My emphasis.)

C. God exercises the authority. Our delegated jurisdiction in the internal forum is “not an ecclesiastical power, but a divine power granted by authority proper to God Himself (who alone is able directly to touch the conscience and the bond of sin). It operates through the pope however as a minister and instrument of divinity, and therefore not by authority proper to the Church, but rather by God exercising His own authority.” (Merkelbach 3:569. My emphasis.)

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TO SUM UP the foregoing:

- Divine law obliges traditional Catholic priests and bishops to administer sacraments to the faithful. (See I)
- This same divine law also provides legitimate deputation and apostolic mission for their apostolate. (See II)
- Human ecclesiastical (canon) laws whose application impedes fulfilling this divine law have ceased because they are now harmful (*nocivae*). (See III & IV)
- This includes canon 879, requiring an express grant of jurisdiction for validity of absolution. (See III.B & IV.B)
- Instead, divine law directly delegates jurisdiction in the internal forum to traditional Catholic priests for the absolution they impart. (See V)

None of this, I hasten to add, justifies ignoring the many other provisions of ecclesiastical law regulating the conferral and reception of the sacraments, especially those forbidding the conferral of Holy Orders on the ignorant and the unfit.

Christ Himself commands His priests to dispense His sacraments to His flock. Since the pastors invested with jurisdiction for the *cura animarum* have all defected to the modernist religion, their obligation now devolves to us, the few faithful priests who remain.

We confer Christ's sacraments because He has made it our duty.

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