Restricting a Diocesan Priest's Celebration of the Eucharist *coram populo* by Non-Penal Administrative Decree

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ABSTRACT

In the wake of the sexual abuse crisis by clergy that gained notoriety at the beginning of this century, there has been an increased use of administrative decrees when disciplining secular priests, even when there are no delicts involved. Almost universally, priests who are being disciplined have the faculty for celebrating Mass *coram populo* removed by their diocesan bishop. Celebrating Mass is central to the very life and nature of the priesthood. This thesis looks at the jurisprudence of the Supreme Tribunal of the Apostolic Signatura to see the limits and parameters placed by it around these administrative disciplinary restrictions. It examines the nature of the priesthood from a canonical perspective, comparing and contrasting it to the episcopal order. Finally, the thesis examines in detail the canons on the celebration of Mass to see if, and to what extent, the jurisprudence of the Signatura conforms to the canons. The thesis argues that the mind of the Legislator, as manifested in the canons, rules out the possibility of an administrative restriction on the celebration of Mass *coram populo* outside of the very specific cases outlined in the 1983 *Code of Canon Law*.

À la suite de la crise des abus sexuels commis par des membres du clergé, qui a fait grand bruit au début de ce siècle, on a assisté à un recours accru aux décrets administratifs pour sanctionner les prêtres séculiers, même en l'absence de délits. Presque partout, les prêtres faisant l'objet de mesures disciplinaires se voient retirer par leur évêque diocésain la faculté de célébrer la messe *coram populo*. La célébration de la messe est au cœur même de la vie et de la nature du sacerdoce. Cette thèse examine la jurisprudence du Tribunal suprême de la Signature apostolique afin de déterminer les limites et les paramètres qu'il impose à ces

restrictions disciplinaires administratives. Elle examine la nature du sacerdoce d'un point de vue canonique, en la comparant et en la mettant en contraste avec l'ordre épiscopal. Enfin, la thèse examine en détail les canons relatifs à la célébration de la messe afin de déterminer si, et dans quelle mesure, la jurisprudence de la Signature est conforme aux canons. La thèse soutient que l'intention du Législateur, telle qu'elle se manifeste dans les canons, exclut la possibilité d'une restriction administrative à la célébration de la messe *coram populo* en dehors des cas très spécifiques énoncés dans le *Code de droit canonique* de 1983.

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ABBREVIATIONS

AAS	*Acta Apostolicæ Sedis, Commentarium officiale*,
art.	article
ASS	*Acta Santae Sedis*
c./cc.	canon/canons
CCEO	*Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione auctus*
CCLA4	J. ARRIETA (ed.), *Code of Canon Law Annotated*, 4th ed.
CD	SECOND VATICAN COUNCIL, Decree on the Pastoral Office of Bishops in the Church *Christus Dominus*
CIC/17	*Codex iuris canonici, Pii X Pontificis Maximi iussu digestus*
CIC/83	*Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus*
CLSA Comm2	J. BEAL, J. CORIDEN, and T. GREEN (eds.), *New Commentary on the Code of Canon Law*
Comm	*Communicationes*
DANIEL1	W. DANIEL (ed.), *Ministerium iustitiae*. *Jurisprudence of the Supreme Tribunal of the Apostolic Signatura Official Latin with English Translation*, Gratianus Series, Montreal, Wilson & Lafleur, 2011.
DANIEL2	W. DANIEL (ed.), *Ministerium iustitiae vol. II: The Lex propria and More Recent Contentious-Administrative Jurisprudence of the Supreme Tribunal of the Apostolic Signatura, Gratianus Series,* Montreal, Wilson & Lafleur, 2021
DANIEL3	W. DANIEL (ed.), *Ministerium iustitiae vol. III: More Recent Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, Gratianus Series, Montreal, Wilson & Lafleur, 2026.

Exegetical Comm	A. MARZOA, J. MIRAS, R. RODRÍGUEZ-OCAÑA (eds.) and E. CAPARROS (gen. ed. of English translation), *Exegetical Commentary on the Code of Canon Law*
Fontes	GASPARRI, P., *Codicis iuris canonici fontes*
IC	*Ius canonicum*
IE	*Ius ecclesiae*
J	*The Jurist*
LG	SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church *Lumen gentium*
ME	*Monitor ecclesiasticus*
nn.	numbers
no.	number
OT	SECOND VATICAN COUNCIL, Decree on the Training of Priests *Optatam totius*
Periodica	*Periodica de re canonica*
PE	FRANCIS, apostolic constitution *Praedicate Evangelium*
PO	SECOND VATICAN COUNCIL, Decree on the Ministry and Life of Priests *Presbyterorum ordinis*
QDE	*Quaderni di diritto ecclesiastico*
STAS	Supreme Tribunal of the Apostolic Signatura
StC	*Studia canonica*
TANNER	N. TANNER (ed.), *Decrees of the Ecumenical Councils*, 2 vols.
vol./vols.	volume/volumes

INTRODUCTION:

WHAT ARE WE TO DO? THE QUESTION THAT WON'T GO AWAY

In early nineteenth-century England, so the story is recounted: "the Rector of St Buryan in Cornwall, however, capped all other[s…] by installing a lunatic to provide Sunday services. The man was secured to the altar rail by a chain which allowed him to move between altar and reading desk, but no further."[1]

We may not have priests[2] chained to communion rails; however, we still have "lunatics" in the Church. Given our fallen human nature, problems will always abound in much the same way that Jesus told the apostles: "For you always have the poor with you" (Mt 26:11). Twenty-five years after the clergy sex abuse scandals became headlines in American newspapers, it seems almost trite to say that the abuse crisis has caused the Church great suffering. Even before the crisis became public, canonists and bishops were asking "what are we to do?" in the face of problem priests.[3] The short answer was, and

[1] R. GRAY, *Cardinal Manning: A Biography*, New York, St. Martin's Press, 1985, 37-38.

[2] There are two Latin words that denote a priest: *presbyter* and *sacerdos*. The former refers specifically to what in English we call priest or presbyter; the latter refers to both priests and bishops, who both share in the priesthood of Christ. *Episcopus* is the Latin word referring only to bishop. This thesis will use the English words priest and presbyter interchangeably to translate the word *presbyter*, referring only to it. It will employ the Latin term *sacerdos* when referring to both priests and bishops at the same time.

[3] In the 1990's, John Beal argued for declaring the irregularity to exercising sacred orders of *amentia* (c. 1044 §2, 2°) as a way of removing a priest guilty of sexual abuse from ministry because the law was seen as inadequate to deal with the delict. See J. BEAL, "Doing What One Can: Canon Law and Sexual Misconduct," in *J*, 52 (1992), 642-683. William Woestman, in response, began a famous exchange between

remains: follow the law of the Church.[4] We are not there yet, it seems, as the law is evolving and is the subject of this thesis.

In 2001, Pope John Paul II addressed some of the concerns and canonical issues of the emerging crisis by reserving competence, as envisioned by canon 1362 §1, 1°[5] of the

the two canonists, arguing against Beal in W. WOESTMAN, "Too Good to Be True: A Current Interpretation of Canons 1041, 1° and 1044, §2, 2°," in *ME*, 120 (1995), 619-629.

[4] See, for example, the remarks of Raymond Leo Cardinal Burke at a 2012 address to the Canon Law Society of Kenya: "It is profoundly sad to note, for instance, how the failure of knowledge and application of the canon law, which was indeed still in force, contributed significantly to the scandal of the sexual abuse of minors by the clergy in our [sic] some parts of the world." (R. BURKE, "Canon Law at the Service of Justice and Freedom in the Church as the People of God," 28 August 2012 at https://zenit.org/2012/08/30/cardinal-burke-to-kenya-canon-law-convention/, and https://www.catholicculture.org/culture/library/view.cfm?recnum=10035 [October 25, 2025]**).**

[5] According to c. 1362, prescription for delicts reserved to the CDF is determined by special norms. Prior to the promulgation of the 1983 Code there was no period of prescription for the reserved delicts. See C. SCICLUNA, "Procedura e prassi presso la Congregazione per la Dottrina della Fede riguardo ai *delicta graviora*," in D. CITO (ed.), *Processo penale e tutela dei diritti nell'ordinamento canonico*, Pontificia Università della Santa Croce Monografie Giuridiche 28, Milan, Giuffrè Editore, 2005, 284. Prior to the promulgation of the 1983 Code, the delicts reserved to then-Sacred Congregation for the Holy Office were enumerated in its instruction *Crimen sollicitationis* of 1962 outlining the procedures to be followed when dealing with delicts of solicitation in confession and what were known as the *pessima*, namely homosexual acts, sexual acts with prepubescents of either sex, and acts of bestiality. Because the Sovereign Pontiff was the head of the Holy Office, the laws pertaining to the *pessima* were not abrogated by the promulgation of the 1983 Code. See B. FERME, "Graviora delicta: the M.P. sacramentorum sanctitatis tutela," in Z. SUCHECKI (ed.), *Il processo penale canonico*, Facoltà di Diritto Canonico Quaderni di Apollinaris, Rome, Lateran University Press, 2003, 369. Notwithstanding, the contents and very existence of *Crimen sollicitationis* seem to have been forgotten in the intervening years. For a detailed analysis of this now-controversial curial document, see J. BEAL, "The 1962 Instruction *Crimen sollicitationis*: Caught Red-Handed or Handed a Red Herring?" in *StC*, 41(2007), 199-236 who states: "What is truly surprising is that there is no evidence that the Holy See reminded bishops of the existence of this document and of their obligation to follow it as the clergy sexual abuse crisis began to unfold in the United States and elsewhere during the 1980s and after" (ibid., 230).

CIC/83,[6] over more grave delicts to the then Congregation[7] for the Doctrine of the Faith.[8] In 2002, shortly after the crisis became public, the United States Conference of Catholic Bishops published the *Essential Norms* as particular law dealing with sexual abuse of minors.[9] Since that time, the Church in many countries has had to deal with public exposure

[6] Unless otherwise noted, all references to canons will be from *Codex iuris canonici auctoritate Ioannis Pauli PP*. *II promulgatus*, *fontium annotatione et indice analytico-alphabetico auctus*, Vatican City, Libreria editrice Vaticana, 1989, English translation *Code of Canon Law*: *Latin-English Edition*, *New English translation, Fourth Printing*, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 2023.

[7] In 2022, Pope Francis reorganised the Roman Curia in his apostolic constitution *Predicate Evangelium*. Part of the reform was to abolish the titles congregation and pontifical council for the various offices and give them all the title of dicastery. In this thesis, when referring to documents issued by an office of the Holy See, I shall retain the title that was current at the time the document was issued. See FRANCIS, apostolic constitution *Predicate Evangelium*, 19 March 2022, in *AAS*, 114 (2022), 375-455, English translation in *Code of Canon Law: Latin-English Edition, New English translation, Fourth Printing*, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 2023, 573-615. (Hereafter *PE*).

[8] See JOHN PAUL II, apostolic letter *motu proprio Sacramentorum sanctitatis tutela*, 30 April 2001, in *AAS*, 93 (2001), 737-739, English translation in W. WOESTMAN, *Ecclesiastical Sanctions and the Penal Process: A Commentary on the Code of Canon Law*, 2nd ed., Ottawa, Faculty of Canon Law Saint Paul University, 2003, 300-302. The actual norms, not published at the time, were described with a revised list of reserved delicts in a letter of the Congregation for the Doctrine of the Faith (hereafter CDF) in May, 2001. See CONGREGATION FOR THE DOCTRINE OF THE FAITH, letter *Ad exsequendam ecclesiasticam legem*, 18 May 2001, in *AAS*, 93 (2001), 785-788, English translation in *Comm*, 33 (2001) 163-165. The norms were subsequently revised by Pope Benedict XVI in 2010 and most recently by Pope Francis on 11 October 2021. See CONGREGATION FOR THE DOCTRINE OF THE FAITH, *rescriptum ex audientia Ss.mi*, 11 October 2021, in *AAS*, 114 (2022), 113. The actual norms were finally published in the same volume of the *AAS*, see CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Normae de delictis Congregationi pro Doctrina Fidei reservatis*, in *AAS* 114-122, English translation at https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20211011_norme-delittiriservati-cfaith_en.html (21 April 2026). The norms were updated several times because it was noticed, in applying them, that there were several lacunae. This author noted a glaring one upon their promulgation in 2001, namely the lack of a provision dealing with retroactivity. (Private letter of the author to the then-Prefect of the CDF, Joseph Cardinal Ratzinger, 24 June 2002.) The current norms will hereafter be cited as *Norms for Delicts Reserved to the DDF* (since dicastery is the currently correct nomenclature for the then-Congregation.)

[9] Those norms, considered particular law of the United States of America, require the perpetual removal from ministry of any priest or deacon, but not bishop, who has admitted to, or who has been found guilty of, the sexual abuse of a minor. See THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, "Essential Norms for Diocesan/ Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons," in *Promise to Protect Pledge to Heal*, Washington, DC, United States Conference of Catholic Bishops, 2018, no. 8, 23-24 at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.usccb.org/resources/Charter-for-the-Protection-of-Children-and-Young-People-2018-final%281%29.pdf (21 April 2026). This author has argued that those norms, *qua* laws published by an episcopal conference, in contradistinction to individual diocesan bishops, are not valid, binding laws. See S. MACDONALD, "Legality and Law: Some Reflections," in P. DUGAN, (ed.), *Advocacy Vademecum*, Gratianus

of abusive priests with pressure from civil governments for transparency about the situation.[10] Bishops have been under immense pressure in these decades to recover credibility with the Christian faithful and the public at large by showing that they are going to deal responsibly with the issue in the future. While these solutions of penal law address delictual behaviour, the perennial question of "what are we to do?" is being raised again, this time with regard to immoral or negligent behaviour that is not, in any sense, a delict for which, therefore, penal law cannot be used (c. 221).

1. State of the Question

The answer, as experience in the recent past demonstrates, has been an increased discipline placed upon clergy. Any sort of disciplinary infraction, even if it is not a delict, is seen as a threat to the good of the Church that must be dealt with. In the recent past, it often seemed as if priests were being punished with actual penalties for actions which were not delicts.[11] In the secular world, to inflict penalties on non-delictual behaviour is seen as

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Series, Montreal, Wilson & Lafleur, 2006, 107-113. For a more thorough discussion of the possible invalidity of the norms see B. AUSTIN, "Due Process of Law and the USCCB Norms," in *StC*, 51 (2017), 58-64.

[10] See, for example: THE COMMISSION TO INQUIRE INTO CHILD ABUSE, *Commission Report*, 5 vols., Dublin, Government of Ireland, 2009 at https://childabusecommission.ie/, (20 April 2026); ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE, *Final Report*, 17 vols., Commonwealth of Australia, 2027 at https://www.childabuseroyalcommission.gov.au/final-report (20 April 2026); DEFENSOR DEL PUEBLO, *Informe sobre los abusos sexuales en el ámbito de la Iglesia católica y el papel de los poderes públicos: una respuesta necesaria*, Madrid, 2023, at https://www.defensordelpueblo.es/en/publications/report-sexual-abuse-within-catholic-church-role-public-authorities/ (20 April 2026); FRENCH INDEPENDENT COMMISSION ON SEXUAL ABUSE IN THE CATHOLIC CHURCH, *Sexual Violence in the Catholic Church France 1950 – 2020: Final Report*, 2021 at https://www.ciase.fr/ (20 April 2026). Various states in the United States of America also issued grand jury reports, for example in Pennsylvania. See PENNSYLVANIA ATTORNEY GENERAL, *40th Statewide Investigating Grand Jury Report 1 Redacted*, 2023 at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.attorneygeneral.gov/wp-content/uploads/2023/05/INVESTIGATING-GRAND-JURY-REPORT-NO.-1_FINAL_May-2023_Redacted.pdf (20 April 2026).

[11] See, for example, STAS, definitive sentence *coram* FAGIOLO, 11 June 1993 in *IE*, 32 (2020), 183-197, at page 196: "Dicimus proinde quod ex his omnibus quae iam retulimus, etsi prohibition exercitii potestatis Ordinis et iurisdictionis possit pertinere ad ius poenale, temen hoc, re per se et substantialiter bene perpensa, non excludit possibilitatem comminandi eandem prohibitionem per decretum naturae mere disciplinaris." (We therefore state that, from all that we have already set forth, although the prohibition of the

a grave abuse of authority and a denial of basic human rights.[12] The jurisprudence of the Supreme Tribunal of the Apostolic Signatura is authoritative, according to canon 19, in resolving cases for which the law does not seem to apply to the particular circumstances. As this thesis will show, a spate of decisions of the Signatura has been published in the last few years that deal with hierarchic recourses made in response to limitations placed on presbyteral ministry, often by what seemed to be penal in nature but which are characterized in the jurisprudence as non-penal or disciplinary sanctions. In our day, the Signatura continues to wend its way through the questions and complexities of situations not explicitly, or imperfectly, addressed in the law but which demand attention because the Church is still trying to recover its equilibrium in the aftermath of the sex abuse scandals.

If the original solution to the problem of "what are we to do?" involved an incorrect application of irregularities, the focus now is using discretionary administrative decrees to restrict ministry in a non-penal way. As this is a rather new canonical development, it has not received a great deal of academic attention, especially in English. Much of the academic work in this area has been limited to Italian and Spanish commentary on singular pieces of Signatura jurisprudence. Only two studies, and these in English, have attempted to analyse systematically non-penal restrictions, one with reference to the particular law of the United

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exercise of the power of Orders and of jurisdiction may pertain to penal law, nevertheless, upon due and thorough consideration of the matter in itself and in substance, this does not exclude the possibility of imposing the same prohibition by a decree of a merely disciplinary nature.) The number of cases has risen so sharply that canonical slang has a term for priests who have been removed from all public ministry by a non-penal decree: cancelled priest. In fact, there is even a website providing information about such priests and seeking financial help for them. See https://www.unprofitableservants.org/ (20 April 2026).

[12] The UN Declaration of Human Rights, article 11.2 2 states "No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed." See UNITED NATIONS GENERAL ASSEMBLY, *General Assembly Resolution 217 A: Universal Declaration of Human Rights*, 1948, art. 11.2.2 at https://www.un.org/en/about-us/universal-declaration-of-human-rights (20 April 2026).

States,[13] the other with regard to religious.[14] Few canonists address the fact that jurisprudence of the Signatura merely posits the existence of non-penal sanctions. Little has been written on their genesis in law or on their *ratio*.

2. Aim of This Research

This thesis aims to analyse the jurisprudence of the Apostolic Signatura regarding non-penal sanctions to see if, and how, it may licitly be applied to the specific aspect of the celebration of the Eucharist by a diocesan priest. It is but a small part of a much broader study needed on authority and the use of discretion in its administration, on the relationship of a presbyter to his diocesan bishop, as well as on the laws governing clerical life. Specifically, this thesis is a study of the limits that the law of the Church and the jurisprudence of the Signatura place on a diocesan bishop with respect to restricting the celebration of the Eucharist *coram populo* by his presbyters. I chose this one aspect of priestly life not only because it is so central to a priest's vocation, but because a restriction on the public celebration of Mass is almost universally present in any case of a priest involved in non-delictual but problematic behaviour. It is the go-to, immediate restriction. Furthermore, as we shall see, the celebration of Mass has the least canonical restrictions in the Code and, therefore, is the least cumbersome avenue by which to examine what are, in fact, uncodified exercises of episcopal discretion. Moreover, unlike any other ministry or function, the celebration of the Eucharist is perhaps the only one, unique to his sacramental

[13] See P. REILLEY, *Non-Penal Disciplinary Measures Imposed on Clerics: An analysis in the Light of the Essential Norms of the United States Conference of Catholic Bishops and Published Jurisprudence from the Apostolic Signatura Regarding the Principle of Proportionality*, Dissertationes Series Canonica LXXI, Rome, Edizioni Santa Croce, 2024.

[14] See M. ROSINSKI, Due Process to Be Followed in the Administration of Discipline in Religious Institutes according to the Code of Canon Law, JCD thesis, Ottawa, Saint Paul University, 2016.

status, to which a priest has what we might call a right, even if not in the canonical or strict sense.

While this thesis is addressing primarily the role of a priest incardinated in a diocese, *mutatis mutandis*, it applies with respect to any priest and his ordinary.[15] It will limit itself to consideration of the laws on the celebration of the Eucharist, specifically *coram populo*, and not any other sacraments such as hearing confessions, or even preaching.

3. Methodology

Chapter One will begin by providing a systematic examination of particular decisions of the Apostolic Signatura as well as individual commentaries on them. It will enumerate the principles to be applied in making non-penal sanctions culled from the jurisprudence. Finally, it will seek to analyse the justification or *ratio* for the existence of prudential exercises of administration in this regard that are not codified. In sum, the chapter will seek to define what non-penal sanctions are, and outline their general parameters according to the jurisprudence of the Apostolic Signatura.

Chapter Two will examine the nature of the relationship between a diocesan bishop and his presbyters. It will involve a canonico-theological examination of the sacrament of holy orders and the role of both *episcopus* and *presbyter* in the Church. Specifically, it will examine the role of the diocesan bishop both as the ordinary who has full power of governance as well as the moderator of the liturgy vis-à-vis his priests.

[15] Religious priests, priest members of a society of apostolic life, or personal prelatures and other such institutions in the Church may have peculiarities in their rules or constitutions which may need to be accounted for but which peculiarities are too numerous and broad for this study.

Chapter Three will examine the actual canons of the 1983 Code on the celebration of the Eucharist. It will examine the requirements of law for the licit celebration of the sacrament. This will include an excursus on the history of the faculty for saying Mass. Furthermore, it will analyse the various codified restrictions placed on any *sacerdos* with respect to the celebration of the Eucharist. It will also examine the notion of Mass *coram populo* and its canonical requirements.

Chapter Four will conclude the study by examining if and how the principles given to us by jurisprudence can be applied equitably to the reality of the nature of holy orders and the mind of the Supreme Legislator as expressed in the law as it exists. It will provide some suggestions on how the law could be clarified or augmented.

This thesis merits attention because the use of administrative, non-penal, measures to address disciplinary problems is seen as the emergence of a new canonical institute: "disciplinary sanction." It behoves us to study dispassionately the law in place and the jurisprudence shaping its application precisely so that the Church does not repeat prudential errors of the past by not applying the law properly or even at all, so that we might not proverbially resort to chaining priests to altar rails while throwing up our collective hands to ask "what are we to do?"

CHAPTER ONE

JURISPRUDENCE OF THE

SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA

Introduction

We have already mentioned how jurisprudence and praxis of the Roman Curia is canonically authoritative in determining how to apply the law for cases that are not expressly covered by the canons (c. 19). Unlike in common law systems of justice, the jurisprudence of ecclesiastical tribunals does not become binding precedent. As a former Dean of the Roman Rota has stated, "ecclesiastical tribunals, even including that of the Roman Rota, are not capable of creating or producing a new juridical norm."[1] Montini posits that such is not the case when it comes to the jurisprudence of administrative law and the decisions of the sole administrative tribunal in the Church, namely the Signatura.[2]

His argument is that it is indisputable that the law allows the Signatura to inflict damages on an administrative authority that issued an administrative act that subsequently was ruled unlawful by the Signatura. Montini argues, "and what does this mean, if not precisely that the administrative office is held *a posteriori* to have contravened the law

[1] "[I] tribunali ecclesiastici, compreso anche quello della Rota Romana, non siano abilitati a creare o produrre una nuova norma giuridica." (A. STANKIEWICZ, "La portata della funzione nomopoietica della giurisprudenza rotale," in *Periodica*, 100 [2011], 402-403 quoted in G. MONTINI, "La funzione nomopoietica della giurisprudenza amministrativa per il diritto amministrativo canonico: alcuni esempi," in *Ephemerides iuris canonici*, New Series, 65 [2025], 257). Minor editorial modifications, e.g., capitalization, spelling, inclusive language, have been made in this and other quotations to conform to the adopted style for this work. Translations into English, unless otherwise noted, are the author's using the assistance of ChatGPT and/or DeepL.

[2] MONTINI, "La funzione nomopoietica," 259.

(damages are, by definition, a harm unlawfully done to another), a law which the ruling in the contentious administrative decision declares to have been broken by the administrative office?"[3] In other words, what the decision of the Signatura established in its decision becomes law for the administrative authority since the basis for awarding damages is failure to comply with the law.[4] In this regard, Montini continues, repeated assertions by the Signatura of its settled jurisprudence cannot free the administrative authority of its duty to follow the obligatory jurisprudence of the tribunal, albeit that the jurisprudence is disseminated and known because of publication in academic journals.[5] Hence, as was mentioned earlier, we can appreciate the importance of the spate of decisions published by the Signatura in the last several years concerning the restriction of the exercise of priestly ministry and faculties.

1.1 Individual Decisions in Chronological Order

Not many decisions rendered for cases of hierarchic recourse by the Supreme Tribunal of the Apostolic Signatura have been published.[6] Furthermore, when they are published, they are not necessarily published in chronological order. For example, one

[3] "E che cosa significa questo se non precisamente che l'ufficio amministrativo si ritiene a posteriori che abbia contravvenuto alla legge [Il danno è per definizione iniuria datum,] legge che la pronuncia nel contenzioso amministrativo dichiara lesa dall'ufficio amministrativo?" (MONTINI, "La funzione nomopoietica," 259).

[4] See ibid.

[5] See ibid., 259-260.

[6] An invaluable resource for locating decisions, or summaries thereof, of the Apostolic Signatura is to be found at https://www.iuscangreg.it/stsa_contadmin.php#j1983 (7 November 2025). This resource is the source of information for the existence of some of the unpublished cases cited below. Following the writing of a draft of this chapter, William Daniel published an important article outlining the jurisprudence of the Signatura across thematic lines in these and similar cases. He cites several unpublished decisions to which he had access. Relevant cases have now been inserted into the chronology of the cases cited here with reference to pertinent page numbers of his article. See W. DANIEL, "The Judicial Protection of Priestly Ministry in the Jurisprudence of the Apostolic Signatura," in *J*, 81 (2025), 227-274.

decision from 1993 was only published by a canon law journal in 2020.[7] In this study of the jurisprudence of those cases, to understand better the development of the jurisprudence, cases will be examined not in the order that they were published and made known to canonists at large but rather in the order in which the decisions were rendered. Their importance is not *when* we knew the content of Signatura jurisprudence but rather what is the jurisprudence, how did it develop, and why.[8]

1.1.1 *coram* Fagiolo/1993[9]

This case involved the removal from office of a priest and a prohibition from exercising the power of orders in a specific place for a period of five years. The removal and prohibition were accomplished by decree. The recurrent made recourse on the grounds that the loss of office and prohibition of exercising orders were penalties. The college of judges of the Signatura ruled against the recurrent on the grounds that the removal from office which pertains to the discretion of the competent authority to confer and revoke was a disciplinary, administrative act and not a penalty, which would have resulted in the privation of office after a judicial penal process. Furthermore, the prohibition from exercising orders for a limited amount of time in a specified place does not constitute a penalty.

[7] See STAS, definitive sentence *coram* Fagiolo, 11 June 1993, in *IE*, 32 (2020), 183-210.

[8] For ease of reference, individual cases will be referred to by abbreviations which cite only the name of the author of the decree and the year, e.g. "*coram* Fagiolo/1993" rather than by the full citation or its protocol number.

[9] STAS, definitive sentence *coram* Fagiolo, 11 June 1993, in *IE*, 32 (2020), 183-210, English in *DANIEL3*, 157-179.

Canosa identifies four important principles to be taken from the decision.[10] First, that there exists a clear distinction between the administrative and judicial orders or procedures. Even though administrative law and penal law both make use of administrative and judicial procedures, he notes that, in penal matters, the administrative procedure is used in exigent circumstances. The second principle is that a singular administrative act is generally not penal in nature. The third principle is that a clear distinction must be made between removal from, and privation of, office. The former implies no imputability on the part of the office holder and serves to facilitate the proper functioning of the office for the sake of the community. The latter is done as a result of a delict committed by the office holder that seeks to restore justice, to avoid scandal,[11] and to the reform of the offender.

For our purposes, it is important also to note the fourth principle that the sentence affirms that "[a] prohibition to exercise an office in a certain place can affect the offender as an expiatory penalty (see c. 1336, § 1, 3°), but even apart from a delict it can also be imposed as a merely disciplinary precept for a just and proportionate reason while that endures. However, with difficulty can a perpetual prohibition to exercise power in a certain place be considered merely a disciplinary precept."[12]

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[10] See J. CANOSA, "L'articolazione dynamic della distinzione fra diritto penale e diritto amministrative nella chiesa," in *IE*, 32 (2020), 201-203.

[11] For a discussion of the difficulty of ascertaining a precise canonical meaning of this word, see P. CONNOLLY, "The Concept of Scandal in a Changed Ecclesial Context," in *StC*, 51 (2017), 143-148; and J. P. KIMES, "Reclaiming 'Pastoral:' *Pascite gregem Dei* and Its Vision of Penal Law," in *J*, 77 (2021), 269-289; and D. ASTIGUETA, "Lo scandolo nel CIC: significato e portata giuridica," in *Periodica*, 92 (2003), 589-651.

[12] "Prohibitio exercendi potestatem in certo loco delinquentem afficere potest tamquam poena expiatoria (cfr. c. 1336, § 1, °3), atvero etiam citra delictum tamquam praeceptum mere disciplinare ob iustam et proportionatam causam eaque perdurante imponi potest. Perpetua autem prohibitio exercendi potestatem in certo loco difficulter tamquam praeceptum mere disciplinare considerari potest" (*coram* Fagiolo/1993, no. 8).

We see in this decision that, even though a measure – administrative/disciplinary or penal – may have the same effect, in this case the loss of office, determining its species is found both in the procedure used and the goal sought by the act. If the act is not penal in nature, then there must be a just and proportionate cause present for its imposition. Furthermore, the effect of the act may perdure only as long as the cause perdures. What is not given in this decision is any reasoning why a prohibition to exercising orders in a certain place is an acceptable form of restriction in non-penal cases.

1.1.2 *coram* Agustoni/1995[13]

This case involved the transfer of a parish priest, actually three separate cases that the judges considered together in one sentence. Apart from consideration of the canons on the rights of pastors and the particulars of transferring them, the sentence provided an important note on priestly ministry in general. The judges decreed that "the good of souls is always the supreme end to be obtained, so that, when it happens, the good of the individual parish priests is to yield to the good of souls."[14] Daniel comments that "[w]hile priestly ministry is obviously carried out by a specific physical person endowed with the priestly character, it [priestly ministry] is an ecclesial good superior to the personal welfare of the individual man who is a priest."[15] While an individual priest may have a vision for how he wishes to minister, he is required to submit himself to the authority of the bishop,

[13] STAS, definitive sentence *coram* Agustoni, 24 June 1995, in *DANIEL1*, 357-376. All sentences in this publication include English translations, which translations are used in this thesis.

[14] "Bonum animarum semper supremus est consequendus finis, eo usque ut, ubi occurrat, bonum singulorum, seu ipsorum parochorum, bono animarum cedat" (ibid., no. 4).

[15] DANIEL, "The Judicial Protection of Priestly Ministry," 233.

which submission does not mean that his rights can be ignored, even if they must be regulated.

1.1.3 *coram* Pompedda/2000[16]

This case involves a priest who was required to undergo a psychological evaluation after years of problems in ministry involving several transfers. The priest's financial support was cut off after he refused to release the results of the evaluation to the bishop. Recourse was made eventually to the Signatura.

Several interesting points are made which pertain to our study. The Signatura pointed out that, while a doubt may exist about this priest's suitability to be appointed to any ecclesiastical office, such doubt does not affect the ties the priest has with his diocese nor with his right to receive material and spiritual support (*subsidia*).[17] Furthermore, it was at pains to emphasise the significance and force of "incardination." The college of judges stated:

> If we follow the doctrine of the Second Vatican Council contained in the decrees *Christus dominus* and *Presbyterorum ordinis*, we clearly understand that in it there is a new notion of the institution of incardination that entails total availability, so that diocesan priests are collaborators of the episcopal order and as incardinated in the particular Church, they dedicate themselves totally to its service "for the pastoral care of the one portion of the flock of the Lord" (Decree *Christus dominus* no. 28).
>
> Therefore, the incardination of any cleric requires a prior judgment on his usefulness to the Church, and hence it is presumed that the cleric, once ordained, is suitable for assuming an office or ecclesiastical position. However, this presumption falls if the contrary is proven […]
>
> If there is any doubt about the mental or emotional capacity of Rev. X to obtain an ecclesiastical office or assignment in his diocese of incardination, the diocesan bishop cannot deny him the necessary material or financial assistance (c. 384), but rather must first resolve the doubt […]

[16] STAS, definitive sentence *coram* Pompedda, 6 May 2000, in *IE*, 30 (2018), 593-613.

[17] See ibid., no. 9. ("merito Episcopum N. sibimet dubium proponit an et quondam ecclesiasticum seu pastorale officium adhuc concredi possit … Dubium legitime ponitur, sed non tollit vinculum sacerdotis cum sua dioecesi, atque ideo ius ad subsidia materialis, praeterquam spiritualia recipienda.")

> This right, confirmed by positive canon law, cannot be subject to any condition, provided that the person legitimately belongs to the clerical state and that the cleric is willing to assume the legitimate canonical mission out of obedience.[18]

Incardination is such that, as long as an incardinated priest makes himself totally available to his bishop of incardination, in other words that he is willing to undertake the ministry assigned to him by his bishop, he has a right to be materially and spiritually supported without any conditions. The import is that even if the priest is mentally or physically unable to undertake ministry, as long as he is willing to do so – infirmities notwithstanding – he has a right to support. The question arose, in this case, about disobedience. The college considered what the object and extent of obedience was. It stated:

> Certainly, no one will deny that the object of the cleric's obedience to his bishop, promised in the act of ordination and sanctioned by positive canon law, must be limited to the obligation to lead a life consistent with priestly dignity and to the acceptance and exercise of the ministry according to legitimate ecclesiastical norms.[19]
>
> It is true that the bishop has the right and duty to investigate the capacity of his priests to obtain and exercise ecclesiastical offices; however, it must be excluded that this legitimate end can be achieved by using means that violate "the right of every person to defend his or her privacy" (c. 220). The bishop certainly has other legitimate and adequate means at his disposal, or the possibility of exercising prudence and seeking the advice of ecclesiastical persons of integrity and experience (not excluding, if necessary, the opinion

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[18] "Concilii Vaticani II doctrinam in Decretis *Christus Dominus* et *Presbyterorum ordinis* contentam si sequamur, liquido comperiemus ibidem notionem novam incardinationis instituti inveniri, idest totalis disponibilitatis, adeo ut sacerdotes dioecesani habeantur atque sint ordinis episcopalis cooperatores, attento quod Ecclesiae particulari incardinate omnino se dedicent illius servitio 'ad unam dominici gregis portionem pascendam' (*CD*, no. 28).

Incardinatio igitur cuiuslibet clerici iudicium praerequirit utilitatis in Ecclesiam, et hinc inde clericus, semel ordinatus, idoneus praesumitur ad officium vel munus ecclesiasticum accipiendum. Eiusmodi autem praesumptio cedit veritati […]

Exstante autem dubio de Rev.di X habilitate, esto psychica seu affectiva, obtinendi officium seu munus ecclesiasticum in sua dioecesi incardinationis, haud valuit dioecesanus Episcopus illi denegare auxilium vel materiale seu oeconomicum iuxta ipsius necessitate (c. 384), sed ante omnia dubium solvendum erat […]

Eiusmodi ius positiva lege canonica firmatum non potest condicioni ulli subponi nisi exsistentiae legitimi status clericalis necnon voluntati clerici ex oboedientia obeundi legitimam missionem canonicam" (*coram* Pompedda/2000, nn. 11-12).

[19] One notes with some surprise the lack of precision sometimes seen in these sentences. The *ponens* referred to a "cleric's obedience" – which would include both deacons and presbyters – as comprising leading a life of "priestly" dignity. Clearly, there are differences of what that would entail for a permanent deacon compared to a priest.

> of an expert on the acts), in order to obtain a reliable judgment on the capacity of a particular person to exercise a ministry or ecclesiastical office.[20]

Given that incardination grants rights to an incardinated priest, it was important to clarify what sort of unwillingness to be at the disposal of the bishop might constitute a hindrance to claiming rights of incardination. The limit of canonical obedience, as an ordination promise, is leading a priestly life and accepting the duties of ministry required by the bishop. The promise of obedience does not mean that a priest must do whatever his bishop says in any matter. In this case, the priest was not required, under obedience, to manifest intimate aspects of his psyche. The Signatura is pointing out that the legitimate discretion of a bishop to characterise behaviour of his priests is not without limits.

1.1.4 *coram* Cacciavillan/2006[21]

This case involved a priest who was required by his bishop to undergo a psychological evaluation as a condition for any further ecclesiastical appointment because of a doubt concerning his suitability for exercising priestly ministry. Furthermore, pending the evaluation, he was restricted from celebrating the liturgy publicly. The Congregation for Clergy decided in favour of the priest recurrent. The priest's bishop made recourse to the Signatura which ruled in favour of the bishop on the grounds that the Congregation for Clergy erroneously interpreted the impugned acts as penal in nature.

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[20] "Iamvero nemo infitias ibit obiectum oboedientiae clerici suo Episcopo in actu ordinationis promissae et lege positive canonica praeceptae coarctari debere intra ambitum vitae ducendae sacerdotali dignitati congruentis necnon ministerii iuxta normas legitimas ecclesiasticas acceptandi atque exercendi.

Sane utique iure atque officio obstringitur dioecesanus Episcopus inquirendi super habilitate suorum sacerdotum ad munera ecclesiastica obeunda atque exercenda: omnino tamen denegandum est eiusmodi legitimum finem consequendum esse mediis quae violant 'ius cuiusque personae ad propriam intimitatem tuendam' (c. 220). Quin insuper haud desunt et alia legitima et congruentia media quibus usus Episcopus, vel adhibita prudentia atque consilio proborum et vitae experientia praeditorum potissimum ex viris ecclesiasticis - non excluso, si casus ferat, voto periti super actis -, certum iudicium adipisci valet de subiecti particularis habilitate ad exercendum ministerium seu officium ecclesiasticum" (*coram* Pompedda/2000, no.13).

[21] STAS, definitive sentence *coram* Cacciavillan, 18 March 2006, in *DANIEL2*, 59-70. All sentences in this publication include English translations, which translations are used in this thesis.

The college of judges pointed out in its decision that the denial by competent ecclesiastical authority of appointment to an ecclesiastical office, or the revocation of the faculties to preach or hear confessions by the same, is in no way the imposition of a penalty but is, rather, a non-penal disciplinary decision (*decisio disciplinaris non poenalis*) that can be made due to "positive and probable doubt about the suitability of the cleric in the matter."[22] With this sentence, the Signatura is beginning to make the distinction that not every restriction is penal in nature.

1.1.5 *coram* Grocholewski/2007[23]

In this case, a retired priest admitted to committing sexual sins with an adult woman prior to his retirement. The bishop removed the priest's faculties, permitting him to celebrate mass privately, and to anoint family members only with explicit permission sought in each case. The priest made recourse and the Congregation for the Clergy ruled in his favour on the grounds that the bishop had illegitimately imposed penalties. The bishop made recourse to the Signatura that ruled in his favour.

This decision was a pivotal one because the college of judges considered whether or not individual restrictions could be imposed only in a penal manner. It decided to treat each of the restricted faculties individually. It decided that:

1. preaching could be restricted for a just cause according to c. 764;

2. the faculty to receive confessions can be revoked for a grave cause according to c. 974, §1;

[22] "ob dubium positivum et probabile circa clerici ad rem idoneitatem ferri potest" (*coram* Cacciavillan/2006, no. 8).

[23] STAS, definitive sentence *coram* Grocholewski, 28 April 2007, in *DANIEL1*, 415-439.

3. the faculty for any priest to administer the anointing of the sick requires a reasonable cause, as well as the presumed consent of the priest who has care of the soul, which consent can undoubtedly be denied for a just cause by the competent priest;

4. to assist at marriages, an inactive presbyter needs delegation which can be denied for a just and proportionate reason;

5. in the case at hand, the priest was not prohibited from celebrating the Eucharist *in toto* but was restricted from celebrating or concelebrating in a public place or *coram populo*.[24]

On this last point, regarding celebration of the Eucharist, the college gave a lengthy explanation of its reasoning. As the priest in question did not have a commendatory letter from his superior, was it necessary, the college asked, for the bishop to issue a norm so that priests lacking this letter were not to be admitted to the celebration of Mass by rectors of churches, the permission of whom is required not only by canon 903 but also by canon 561? The college refrained from answering its own question directly. Instead it pointed out that the Eucharist could be celebrated outside of a sacred space when necessity demands in a particular case (c. 932, §1). The bishop permitted this to the priest in question, albeit with the added restriction that the faithful could not be invited to the celebration. In any event, the college noted, the priest could, even with these restrictions, fulfill the exhortation, made in canon 904, to the frequent, if not daily, celebration of mass.

Nevertheless, the college opined that, these considerations notwithstanding, all the restrictions placed on the priest could still be characterised as a penalty. To delve further

[24] See *coram* Grocholewski/2007, no. 10. The jurisprudence of the lengthy summary which follows is found in this same paragraph of the sentence.

into the issue, the college noted again that, though the effect is the same, there is a true difference between removal from office and privation of office. The distinction is to be found in the final cause of each: for the former, it is the protection of the faithful; for the latter, it is the punishment of a delict. With this as a basis, the college went on to examine the motivating reasons, the final cause, and the procedure used in restricting priestly ministry. Because the bishop stressed in his pleadings that the motivating cause and the final cause was fear of, and avoiding, a civil lawsuit, and not, *in se*, the sexual sin of the priest, and because he, in no way, used a penal procedure to inflict the restrictions, the college reasoned that the restrictions were not penal in nature and ruled in favour of the bishop.

Interestingly, because the college was tasked with the specific question of whether or not the Congregation for Clergy erred in applying the law to this specific case, its ruling was on the very specific question of whether or not the Congregation erred in ruling that penal law was applied incorrectly. In fact, the decision of the Signatura really only says that the Congregation was incorrect to judge this case according to penal law. The decision of the college made no judgment on the legality *per se* of the individual restrictions. In other words, the Signatura did not rule on the *merit* of the restrictions but merely on the *nature* of the restrictions in this particular case, namely that the restrictions were not, in fact, penalties but merely administrative acts foreseen by the law. The enumerated restrictions were not *in se* to be automatically considered as penalties. For this reason, the college concluded its reasoning by stating that "the cause seems to be just and proportionate such that [the bishop] could revoke Fr. Christopher's faculties and restrict his exercise of the presbyteral ministry. Nevertheless, *whatever the truth is about this matter*, it is

sufficiently proven that the Congregation for the Clergy has erred in the substance of the decision insofar as it erroneously considered the bishop's decision to be a penal act, instead of a merely administrative, non-penal act."[25]

This ground-breaking case provided the test for determining whether or not restrictions are a penal or an administrative non-penal act. The three-fold criteria are:

1. the motivating cause;

2. the final cause;

3. the procedure used in reaching the decision.

This test, as we shall see, has become enshrined in jurisprudence of the Apostolic Signatura.

1.1.6 Decree of the Prefect/2008[26]

This case involved a bishop who removed a priest from the office of parochial vicar because he publicly scolded a deacon over a liturgical error, and as a consequence of not holding ecclesiastical office revoked his priestly faculties thus prohibiting any priestly ministry *coram populo*. In addition, the bishop imposed the penal remedy of a penance which involved a thirty-day retreat. When the priest made recourse, the Congregation for Clergy ruled that the removal from office was legitimate but that the prohibition of priestly ministry *coram populo* and the penal remedy were illicit. The bishop made recourse to the Signatura.

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[25] "causa iusta et proportionata haberi videtur ut ipse facultates Rev.di N. revocare eiusque exercitium ministerii presbyteralis restringere potuerit. Hac tamen de re quidquid est, satis constat Congregationem pro Clericis in decernendo erravisse, eo quod erronee decisionem Exc.mi […] tamquam actum poenalmem consideravit, loco actus mere administrative non poenalis" (*coram* Grocholewski/2007, no. 15).

[26] STAS, Decree of the Prefect in Congresso, 13 June 2008, in *DANIEL2*, 117-125.

The *congresso* of the Signatura, in examining the request for recourse, decided not to admit the case to study by a college of judges because canonical doctrine was clear that the Congregation had not erred and the bishop's request was without foundation. The canonical doctrine cited in the decree of rejection is important.

First, the Signatura pointed out that "a deputation of the Ordinary is in no way required in order to exercise faculties granted by the universal law itself."[27] Second, while it is true that presbyters exercise their ministry under the authority of bishops (c. 835, §2), the bishop's "power to direct the exercise of the *munus sanctificandi* of presbyters can by no means be equated with the power to remove that exercise, except according to the norm of law especially in what pertains to faculties granted by the universal law itself."[28] Third, the Signatura stated that, with regard to the canonical penance, doctrine was unclear. While penances can be substituted for penalties, or imposed in remitting a censure, or even to strengthen a penalty, the canon, which gives the Ordinary the faculty of adding a penance to his issuing a warning or rebuke (c. 1340, §3), leaves open the question of giving a penance apart from a delict. As such, the Signatura decided, the doctrine is unclear on this specific question because "doctrine holds that a canonical penance always presupposes a delict that was committed or at least attempted."[29] Since there was not even an attempted delict in the case at hand, as the bishop admitted in his pleadings, the *congresso* ruled that it was difficult to see how the Congregation had erred and rejected the request for recourse.

[27] "Nullo modo requiritur deputatio ex parte Ordinarii ad exercendas facultates ipsa lege universali concessas" (Decree of the Prefect/2008, no. 5).

[28] "Eius potestas moderandi exercitium muneris sanctificandi ex parte presbyterorum haudquaquam aequari potest cum potestate illud exercitium tollendi, nisi ad normam iuris, speciatim quod attinet ad facultates ipsa lege universali concessas" (ibid., no. 5).

[29] Ibid., no. 7.

Hence, we see the very important point that faculties granted to presbyters, indeed to any *sacerdos*, can be exercised without any additional need of permission or approval from the Ordinary. As Daniel points out "the priest stands in the Church as one called to teach, sanctify and govern the Lord's flock in communion and collaboration with the diocesan bishop and under his authority. This priestly character and mission mark the priest independently of the conferral of an office."[30] This is especially true for the celebration of the Eucharist and preaching. It includes, albeit with some restrictions of the law itself, the ability to anoint, to baptise, to assist at a marriage, to bless articles and people, and to conduct liturgies other than the Eucharist such as funerals, celebrations of the Liturgy of the Hours, or liturgies of the Word, among others. Furthermore, the ability of a competent authority to remove the exercise of those very faculties may only be done in accordance with the law. Most evidently, the infliction of a penalty would be a legitimate removal in conformity with the law. We will need to examine later what other means are available in the law.

1.1.7 Decree of the Prefect/2009[31]

This case involved a priest who was accused of actions which were characterised as sexual abuse of a minor committed when he was a seminarian. The CDF declared its incompetence for the case (he was not a cleric at the time of the alleged events) and the priest, whose priestly ministry *coram populo* was completely restricted, made recourse to the Congregation for the Clergy which decided in his favour. The bishop made recourse to the Signatura who rejected the case in *congresso* as being without foundation.

[30] DANIEL, "The Judicial Protection of Priestly Ministry," 253-254.

[31] STAS, Decree of the Prefect in Congresso, 30 May 2009, in *DANIEL2*, 127-133.

Given that the case was not penal in nature, and barring the declaration of an irregularity, the *congresso* ruled that the bishop's request was without foundation because "a prohibition to exercise any presbyteral ministry at all before the people, including faculties granted to presbyters by universal law, imposed by an administrative act outside of the penal context must be deemed illegitimate."[32]

There are two important things to note here. First, that it is always illegitimate to prohibit priestly ministry *coram populo in toto* outside of inflicting a penalty. In other words, that restriction may never be imposed outside the case of a proven delict. Second, and more important for our consideration, is the distinction made between priestly ministry and priestly ministry that requires a faculty granted *a iure*. Obviously, there is ministry that requires faculties granted *ab homine* such as those for hearing confessions. Clearly those can be revoked outside the penal sphere. But here the emphasis is on priestly ministry granted by the law itself, such as that for preaching (see c. 764) in contradistinction to priestly ministry for which no faculty is required. The Signatura does not specify exactly what it intends here, or to what specifically it is referring, but a distinction is clear. We will consider this question in Chapter Four.

1.1.8 *coram* Versaldi/2010[33]

In this unpublished case, a pastor's faculties for preaching were removed which the Signatura decided was illegitimate outside of removing him from the office of pastor. The

[32] "extra ambitum poenalem illegitima censenda est prohibitio per actum administrativum imposita exercendi quodvis ministerium presbyterale coram populo, inclusis facultatibus iure universali presbyteris concessis" (Decree of the Prefect/2009, no. 6).

[33] STAS, definitive sentence *coram* Versaldi, 18 November 2010, Prot. N. 42480/09 CA, unpublished, cited in DANIEL, "The Judicial Protection of Priestly Ministry," 261.

judges decreed that "once the faculty to preach had been revoked, the bishop had to remedy the situation, since a parish priest cannot remain for long without the faculty to preach."[34] Daniel notes that the removal alone of the faculty to preach for a pastor "was arguably an illegitimate decree *ex* c. 528, §1 since it deprived a pastor of a faculty that is integral to his office, and could only be removed by means of a penal process while he still held his office."[35] He continues that removing any individual faculty from a pastor requires the imposition of a penalty if he were to continue to hold the office.[36] One presumes that Daniel is referring to faculties granted *a iure* to a pastor, since those faculties are required to exercise the office properly.

1.1.9 Decree of the Secretary/2012[37]

This case involved a priest who, with permission of his bishop, was working in the military ordinariate. While in that role, the priest participated in the ordination rite of a non-Catholic minister by laying on of hands and receiving communion at the Lutheran ceremony. The auxiliary bishop of the military ordinary issued a decree removing the priest's endorsement to work in the ordinariate as well as the faculties granted to him. Furthermore, the decree forbade any public ministry within the diocese. The Congregation for Clergy ruled in favour of the military ordinary and the priest made recourse to the Signatura. The secretary decided not to accept the recourse for discussion in *congresso* –

[34] "Revocata facultate praedicandi, exc.mus episcopus rerum condicionem sanare debuit, cum diu haberi nequeat parochus sine facultate praedicandi" (DANIEL, "The Judicial Protection of Priestly Ministry," 262, note 89).

[35] Ibid., 261, note 89.

[36] Ibid., 262.

[37] STAS, Decree of the Secretary, 18 December 2012, in *DANIEL2*, 217-221.

in order to determine whether or not it should be studied by a college of judges – and rejected the recourse as without foundation.

The secretary ruled that since an ordinary may recall his priest legitimately working in another diocese for a just cause, so the hosting ordinary may expel a non-incardinated priest working in his diocese for a just cause.[38] What is interesting is that the issue of prohibited public ministry was not addressed. It is unclear from the secretary's decree itself whether or not that issue was part of the recourse.

1.1.10 *coram* Stankiewicz/2013[39]

This lengthy and complicated case involved a priest who was acquitted by the CDF regarding alleged delicts with a minor. The priest subsequently was denied sustenance and prohibited from exercising priestly ministry. Eventually, the priest made recourse to the Signatura who ruled in his favour on technical grounds.

For our purposes, the Signatura, noting that only in a penal conviction is all reasonable doubt of fact or law excluded, ruled that an acquittal, and notwithstanding that the matter is a *res iudicata*, does not preclude an ordinary from imposing penal remedies.[40]

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[38] See Decree of the Secretary/2012, 219.

[39] STAS, definitive sentence *coram* Stankiewicz, 20 June 2013, in *DANIEL2*, 144-178.

[40] See ibid., nn.7, 11. (no. 7: "Utique hac in sede locus non est disceptationi, utrum citata superius norma [c. 1348] sit contradictoria, quatenus de adhibendis poenalibus quoque remediis cavet contra eum qui 'ab accusation absolvitor, et exinde innocens declaratur' … Ea de causa reo ab accusatio absolute ob insufficientem delicti probationem media pastoralia et remedia ponalia ab Ordinario ad norman can. 1348 applicari possunt, quoties ex actis processus poenalis gravia emergant indicia, quale talem interventum urgent ad consulendum utilitati ipsius rei et bono publico.")

(no. 11: "Non tamen dubitari potest, quin praescriptum can. 1348 sinat Ordinario opportunas ferre provisiones, haud exclusis remediis poenalibus, proprie ac peculiariter post sententiam absolutoriam, etiasi haec in rem iudicatam transierit")

In ruling on the applicability of penal remedies to cases of an acquittal by sentence that has become a *res iudicata* as opposed to an acquittal that is not yet a *res iudicata*, the Signatura cited two interesting aphorisms in justification of its reasoning: "*ubi lex non distinguit nec nos distinguere debemus*" and "*ubi lex voluit dixit, ubi noluit, tacuit*." It is perplexing that such pithy sayings are used to justify contested points of canonical doctrine in sentences that have normative value. Granted this sentence was rendered prior to the

It reasoned that a not guilty verdict is necessary, for example, when the proof is not strong enough to achieve moral certainty. The not guilty verdict, therefore, does not mean *in se* a judgement of innocence. Hence, when there is suspicion that the acquitted may not, in fact, be innocent, the ordinary may make use of penal remedies even though the penal action has devolved into a *res iudicata.* Without ruling on the merit or content of the penal remedies, the Signatura nevertheless ruled against the bishop because the grounds he provided *ad rem* for imposing the severe remedies were insufficient.[41] As Daniel notes, "the mere fact of having been accused and not declared innocent does not render the priest unsuitable for all ministry."[42]

Second, the Signatura ruled that the bishop erred by threatening to remove sustenance to the priest. Noting the distinctions between remuneration, subject to fluctuation, which belongs to clerics who dedicate themselves to ecclesiastical ministry (see c. 280, §1), social assistance belonging to priests unable to minister because of age or infirmity (see c. 280, §2), and the support to be provided to priests labouring under penalty (see c. 1350, §1), the Signatura ruled that the latter two are not subject to privation except in the case of dismissal from the clerical state.[43]

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revision of Book VI of the Code in 2021, one wonders what would be made of the new c. 1321, §1 which declares anyone innocent until the contrary is proven. The law has spoken because it wishes now to distinguish that there are no stages of innocence? A not guilty verdict can no longer mean not proven guilty and therefore not innocent?

[41] See *coram* Stankiewicz/2013., no. 19. ("Ex hucusque relatis, igitur, clare apparet decretum impugnatum nullam parem ac legitmam rationem adduxisse ad grave praeceptum Rev.do Recurrenti imponendum. Patet ideo decretum impugnatum violase legelm in decernendo.")

[42] DANIEL, "The Judicial Protection of Priestly Ministry, 258.

[43] See *coram* Stankiewicz/2013, no. 20. ("Haec adsistentia assimilator sustentationi, de qua in can. 1350, §1, quae clericis omnibus competit et obnoxia non est privationibus, ne quidem poenalibus, except casu dimissionis e statu clericali…pro certo habendum est decretum impugnatum in comminatione privationis adsistentiae, de qua in cann. 281,§2 et 384, vel sustentationis, de qua in can. 1350, §1 … legem in decernendo violasse.)

Important for our study is commentary provided by the former secretary of the Signatura, Daneels, on this case and two later ones which we will analyse in turn. Daneels takes issue with the canon dealing with penal remedies, canon 1348, being used as a basis for imposing a complete restriction of priestly ministry because "the measures then possibly adopted by the Ordinary (admonitions, other pastoral means, penal remedies) evidently cannot in fact be equivalent to true penalties, even if they are presented as pastoral measures, all the more since c. 1348, as an ultimate measure, foresees penal remedies, which are not penalties."[44]

Daneels, continuing his analysis of *coram* Stankiewicz/2013, notes that:

> This definitive sentence defends the possibility of applying, according to c. 1348, pastoral means and penal remedies to an accused acquitted for insufficiency of proof, provided that the elements justifying it have emerged from the acts of the penal case. This holds even after a sentence has passed into a *res iudicata*. […] [*coram* Stankiewicz/2013] seems to imply that even non-penal administrative suspension could be imposed on one acquitted or at least not punished, provided that the proper motives appear from the acts and are pertinent to the case. But the sentence does not say, at least explicitly, that such suspension falls among the possible measures of c. 1348. The Apostolic Signatura clarifies the question [in later cases.][45]

As already noted, *coram* Stankiewicz/2013 did not rule on the merit of the actual restrictions placed upon the priest in this case. Rather, it correctly ruled that the motivating

[44] "Le misure allora eventualmente assunte dall'Ordinario (ammonizione, altri strumenti pastorali, rimedi penali) evidentemente non possono essere di fatto equivalenti a delle vere pene, anche se presentate come misure pastorali, tanto più che il c. 1348 come misura estrema prevede i rimedi penali, che non sono pene" (F. DANEELS, "Il riferimento al c. 1348 come asserita base legale per la sospensione amministrativa non penale nella giurisprudenza della Segnatura Apostolica," in H. VON WILHELM REES, H. KALB, C. NIEMAND (eds.), *Kanonist, Ordensmann und Gestalter: Festschrift zur Emeritierung von. Univ.-Prof. Mag. Theol. Dr. iur Dr. iur. can. Severin Johann Lederhilger OPraem*, Berlin, Duncker & Humblot, 2023, 295-296).

[45] "Questa sentenza definitiva difende la possibilità di applicate a norma del c. 1348 mezzi pastorali e rimedi penali al reo assolto per insufficienza di prova, qualora siano emersi dagli atti della causa penale degli elementi che lo giustifichino. Ciò vale anche dopo una decisione passata in giudicato. […] La sentenza […] sembra insinuare che anche la sospensione amministrativa non penale possa essere imposta al reo assolto o almeno non punito, qualora dagli atti risultino I dovuti motivi, pertinenti nel caso. Ma la sentenza non dice, almeno esplicitamente, che detta sospensione rientra tra le possibili misure, di cui al c. 1348. La Segnatura Apostolica chiarisce la questione […]"(ibid., 297-298). Daneels continues to explain this point using the later cases, which explanation we will discuss as each of those cases is considered here.

factors stated in the administrative decree imposing the penal remedy of a complete prohibition of priestly ministry *coram populo* were illegitimate in this particular case, either because they did not pertain to the penal case, or were found to be untrue. Daneels argues that, while the sentence was interpreted by some that a complete prohibition to exercising priestly ministry was compatible with canon 1348 and, therefore, constituted a legitimate penal remedy, a penal remedy, by its nature, cannot be equivalent, in content, to a penalty. Later jurisprudence of the Signatura clarifies this point, he maintains. To be clear, Daneels argues that penal remedies cannot be the equivalent of penalties in content.

At this point, a distinction needs to be made that perhaps will be a distinction without a difference. Daneels argues that a complete prohibition to exercising priestly ministry *coram populo* cannot constitute a penal remedy. Such a penal remedy is, in theory at least, distinct from a non-penal administrative act that prohibits priestly ministry *coram populo*. The prohibition *qua* penal remedy is illegitimate because it fails to fulfill the purposes and means of penal law. The prohibition *qua* administrative act of good governance, while the same in content and effect, is providing for the good of the community. This point is what this thesis is attempting to flesh out: is this a real distinction? Or merely a theoretical distinction without a difference?

1.1.11 *coram* Versaldi/2014[46]

The facts of this case involve the non-penal, grave restrictions of priestly ministry for an indefinite time. The restrictions were the result of prolonged, improper behaviour that did not constitute a delict.

[46] STAS, definitive sentence *coram* Versaldi, 24 June 2014, Prot. no. 47888/13 CA unpublished.

The Signatura ruled on the legitimacy of the decree without entering into the merits of the actual restrictions. The Congregation for the Clergy, upon initial recourse, had modified the decree of the bishop, it seems, to require the Ordinary to perform an annual review of the prohibition. The Signatura ruled that such annual review requires an assessment of whether or not the reasons for the original decree of restriction still obtain, for which the failure to perform said annual assessment renders the decree illegitimate.[47]

From this we see that administrative restrictions may not be perpetual but must be removed when the factors motiving the restriction are no longer present. Furthermore, any annual, or otherwise, review must include a proper assessment of the motivating reasons. Making a *pro forma* annual renewal of the administrative decree is not a way around avoiding perpetual restrictions.

1.1.12 *coram* Zvolensky/2016[48]

This case involved removing a parochial vicar from office and imposing restrictions on pastoral ministry, forbidding celebration of the Eucharist *coram populo* without explicit permission of the Ordinary, the prohibition to baptise, to assist at marriages, and the revocation of the faculty to preach. The motivating reason cited in the decree was unsuitability for exercising ministry. The actions were taken because of complaints regarding non-delictual, inappropriate behaviour with minors. Recourse was rejected by

[47] See G. MONTINI, *Massime* for STAS, definitive sentence c*oram* Versaldi, 24 June 2014, Prot. no. 47888/13 CA, no. 5 https://www.iuscangreg.it/stsa_decisione.php?id_decisione=258&lang=IT (17 November 2025). ("Lato praecepto quotannis examini casum recognoscendi haud obtemperat Ordinarius quoties in praesenti non aestimatur ratio quae olim, in priore scilicet decreto, inter causam et decisionem intercesserat. Decisio competentis Curiae Romanae Dicasterium quatenus hoc alterum Ordinarii decretum confirmat, eodem vitio pariter afficitur, hoc est defectu recognitionis praesentis melioris condicionis sacerdotis, quam ipsum Dicasterium praeceperat examinandam.")

[48] STAS, definitive sentence *coram* Zvolensky, 15 January 2016, in *IC*, 63 (2023), 803-813.

the Congregation for the Clergy. The Signatura admitted the recourse for study and ruled in favour of the priest.

The sentence rendered by the college of judges was based on technical issues rather than on the merits of the case. Nevertheless, if offers some guidance on restrictions placed upon priestly ministry. The bishop in the case decreed the priest's removal from the office of parochial vicar due to what he judged to be his unsuitability for the public exercise of ministry. This motivating reason was accepted by the college of judges as sufficient to justify the removal from an office freely conferred (see c. 193, §3.) More importantly, the Signatura noted that no other reasons – other than unsuitability for ministry – had been proffered by the bishop to justify the restrictions imposed on ministry. It decided that each restriction needed to be considered individually to see if a proportion existed between the restriction and the alleged unsuitability for ministry.[49]

With regard to the celebration of the Eucharist *coram populo*, the Signatura ruled that a proportionate reason was not present and cited the decision *coram Vallini/2008* which ruled that no mandate of the ordinary is necessary to exercise faculties granted by the law itself and that the power to moderate the exercise of the *munus sanctificandi* by priests does not mean that he can deprive them of that exercise except according to the law.[50] With regard to baptisms and weddings, the Signatura noted that the bishop did not counsel the priest to follow the law of the Church by obtaining permission of the proper

[49] See *coram* Zvolensky/2016, 809-810. ("Tam Exc.mus Episcopus quam Congregatio in decreto impugnato nullam causam pro impositione restrictionum indicaverunt praeter assertionem Rev.dum Recurrentem idoneitatem ad exercitium ministerii amisse.

Criterium proportionalitatis inter assertum defectum idoneitatis ad ministerium et restrictiones impositas nunc singillatim perpendendum est.")

[50] See ibid., 810.

pastor to perform the sacraments but instead prohibited him from requesting the required permission of the pastor. Because no reason was given for this restriction, it ruled that the required proportion was not observed. The Signatura did rule in favour of the bishop's revocation of the faculty to preach because of the demonstrated division the priest caused by his preaching and catechesis. It noted also that the faculty had been revoked previously. Therefore, a proportion existed and the revocation was legitimate.

This sentence is important for three reasons. First, it solidifies the authority of the repeated jurisprudence that affirms that the exercise of the *munus sanctificandi* by priests may not be removed by the ordinary except in conformity with the law. The ordinary's role as moderator of the liturgy means that his role in that regard is not without limits. Second, the jurisprudence is affirmed that a proportionate reason needs to be present in order to restrict the celebration of the Eucharist *coram populo*. We note, however, that how such proportion is calculated or assessed is not addressed so far by the jurisprudence that requires it. Third, the sentence affirms once again that a mandate is not required of the ordinary for a priest to exercise faculties granted by the law.

1.1.13 *coram* Stankiewicz/2016[51]

This case involves a priest, working outside his diocese of incardination, as a Catholic college chaplain, who was fired by the college for alleged inappropriate behaviour with adult alumni of the college that gained the attention of the press. The priest was prohibited from exercising any public ministry and allowed only to celebrate the Eucharist privately. He was ordered to undergo a psychological evaluation in order to restore his

[51] STAS, c*oram* Stankiewicz, 16 January 2016, in *Apollinaris*, 92 (2019), 356-362, English in *DANIEL3*, 297-313. All sentences in this publication include English translations, which translations are used in this thesis unless otherwise noted.

faculties. The priest made recourse to the Congregation for the Clergy who decided in favour of the bishop with respect to the restrictions on ministry but in favour of the priest in regard to the requirement to undergo an evaluation. The priest made recourse to the Signatura against the one part of the congregation's decree. The Signatura ruled in favour of the priest.

This sentence is another ground-breaking one. The college of judges began by noting the distinction that exists between the prohibition to exercise priestly ministry *coram populo* and the conferral of an office which requires a judgement by the competent authority of the suitability of the candidate. This was to counter the argument proffered by the Congregation for the Clergy that ministry could be restricted *ad cautelam* but only until such time as the necessary qualities for ministry were verified.[52] A distinction must also be made, the judges continued, between faculties to exercise priestly ministry granted by the law and those granted by competent authority. Again, the Signatura affirmed the repeated jurisprudence of *coram* Vallini/2008 that, even though a priest exercises the *munus sanctificandi* under the authority of the bishop, the bishop may not remove that exercise except according to the norm of law, especially with regard to faculties granted by the law itself. The sentence also reiterated, from the same jurisprudence, the fact that a priest in no way needs permission of the ordinary to use faculties granted by the law itself.[53] To impress the point further, the judges stated, quoting an article by Boccafola, a prelate auditor of the Roman Rota:

> In the face of such a broad administrative restriction of presbyteral ministry, one does not wrongly ask himself, "How is the permanent expulsion from active ministry – with the

[52] See *coram* Stankiewicz/2016, nn. 4-5.

[53] See ibid., no. 6.

> consequent prohibition to celebrate the Mass in public or to administer the Sacraments…[sic] – different from the situation of dismissal from the clerical state? The only apparent difference is the possibility to say Mass in private and to receive the sustenance of a cleric (c. 1350, §1)".[54]

The college next expounded on the *ratio* for the jurisprudence that requires a proportion to exist between restrictions imposed by competent authority and the reasons for their imposition. It stated that proportionality was required for a two-fold reason: first, to avoid grave ambiguity; second, to avoid arbitrary decisions by ecclesiastical authority. Hence, any administrative act that does not demonstrate a proportion is illegitimate and this by analogy with the long-standing penal jurisprudence that a penalty must be in proportion to the crime committed that had already been in the 1917 Code of Canon Law (see *CIC'17*, c. 2218, §1). For this reason, the Signatura ruled: "in virtue of this principle, any administrative decree must observe a fair proportion with its motives or causes, which express the recurrent party's prior behaviour."[55]

Having considered the facts of the case, the Signatura ruled that there was not proportion between the behaviour of the priest and the near total restrictions placed on his ministry in a non-penal administrative manner. Furthermore, this decision conformed to

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[54] "Coram tam ampla coarctatione administrativa ministerii presbyteralis haud immerito aliquis secum quaerit 'in cosa differisce l'allontanamento permanente dal ministero attivo – con l'annessa proibizione di celebrare la Messa in pubblico o di amministrare i Sacramenti […] – dalla figura della dimissione dallo stato clericale? L'unica differenza apparente è la possibilità di dire la Messa in privato e di ricevere il sostentamento di un chierico [c. 1350, § l]'" (ibid., no 7). The quotation used by the Signatura is from, as cited in the decision itself, K. BOCCAFOLA, "Le norme penali degli USA e la loro applicazione," in D. CITO (ed.), *Processo penale e tutela dei diritti nell'ordinamento canonico*, Pontificia Università della Santa Croce Monografie Giuridiche 28, Milan, Giuffrè Editore, 2005, 321.

[55] "Quam ob rem vi huius principii quodvis decretum administrativum aequam proportionem servare debet cum eius motivis seu causis, quae praecedentem rationem sese gerendi partis recurrentis exprimant" (*coram* Stankiewicz/2016, no. 8).

the prior jurisprudence of the Decree of the Prefect/2009, that a prohibition to exercise any presbyteral ministry at all before the people must be deemed illegitimate.[56]

Apart from the strong reaffirmation of the established jurisprudence that the competent authority may not restrict a priest's right to exercise the *munus sanctificandi* except in accord with the law, and that no permission is required to exercise faculties granted by the law, this sentence explains the reason why proportionality is required between motivating reasons and administrative decrees. If penal laws require strict interpretation and penalties must be appropriate for the conduct being punished, all the more should restrictions placed upon priests in non-penal matters be proportionate to the reason for the restriction.

Begus offers important considerations in his commentary on this case.[57] He states that the jurisprudence offered in this sentence means that the principle of proportionality has now been received into the canonical legal system through the jurisprudential development articulated with reference to administrative law by Stankiewicz.[58] It is now enshrined that the violation of the principle of proportionality results in the illegitimacy of the administrative act.[59] In fact:

> every measure adopted must be correlated to the underlying circumstances that constitute its motivation and must necessarily comply with a series of limits associated with the principle of proportionality whereby an administrative act must utilise measures that are appropriate and necessary to achieve the intended purposes, yet at the same time not be excessively or unnecessarily burdensome for the person to whom the decree is directed.[60]

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[56] See *coram* Stankiewicz/2016, no. 10 and quoting *Decree of the Prefect/2009* cited above at 3.7.

[57] See C. BEGUS, "Principio di proporzionalità e diritto amministrativo canonico: Indizi giurisprudenziali," in *Apollinaris,* 92 (2019), 371-382.

[58] See ibid., 372.

[59] See ibid.

[60] "ogni misura adottata va correlate con la situazione sottostante che ne costituisce il presupposto e inevitabilmente deve rispettare una serie di limiti associate al principio di proporzionalità, per cui l'atto

Begus continues his analysis of the importance of this jurisprudence by pointing out that the principle of proportionality, far from being a nebulous quotient, actually entails "the need for rigorous analysis that unfolds through several stages accompanied by a series of logically sequential verifications forming a precise evaluative process."[61] The stages, he posits, are:

1. the suitability of the administrative act: first, verifying whether the means chosen are suitable to achieve the intended purpose and whether or not the means show a *reasonable connection* to the aim;
2. the necessity of the administrative act: verifying that, from among the various means available, the *least burdensome* one has been chosen;
3. proportion in the strict sense: verifying whether or not the administrative act will prove to be too onerous or even intolerable to the person, causing a violation of his juridical situation.[62]

He concludes by stating "Thus, the administrative measure may interfere with the juridical sphere of the person only to the extent that the general interest of the community itself, which that act pursues or seeks to attain, justifies such interference. In other words, what is sought is a true balancing among all the rights and protected juridical situations at stake,

amministrativo è chiamato disporre misure idonee e necessarie per raggiungere le finalità che ci si prefiggono, ma allo stesso temo non eccessivamente o inutilmente onerose per il soggetto destinatario del provvedimento" (BEGUS, "Principio di proporzionalità," 373).

[61] "l'esigenza di una stringente analisi che si sviluppa in diversi passaggi e che si accompagna ad alcune verifiche logicamente susseguentisi in un preciso percorso" (BEGUS, "Principio di proporzionalità," 374).

[62] See ibid.

in order to reach a solution that ensures equilibrium and the safeguarding of all legitimate interests involved."[63]

Begus's analysis is crucial to understanding the role of non-penal administrative measures. Such measures are meant to address situations that warrant attention as part of good governance. The principle of proportionality ensures that arbitrariness does not enter into decision making. The most important issue to address, from this perspective, is ensuring that the administrative act used to deal with the situation is directly related to the purpose to which it is directed. While the principle of proportionality does not negate competent authority's proper discretion, it does place limits on it and subjects the proper exercise of discretion to judicial review.[64]

1.1.14 *coram* Versaldi/2017[65]

This case involved a priest who was accused of sexual crimes against the sixth commandment that eventually were found to be false – no criminal or ecclesiastical penal processes were initiated. The accusations garnered a great deal of negative coverage in the press and of public outcry against the priest, his demonstrated innocence notwithstanding. The priest agreed to resign his office as pastor after which the bishop imposed severe administrative non-penal restrictions on his ministry to the extent that he was permitted to celebrate the Eucharist only in his private chapel and could take on no public function in

[63] "Il provvedimento, quindi può andare a interferire con la sfera giuridica del soggetto in modo tanto rilevante quanto lo sia l'interesse generale della communità stessa, che con quell'atto si persegue o si tenta di raggiungere. In altri termini si tratta di cercare un vero bilanciamento tra tutti i diritti e le situazioni giuridiche tutelate che vengono in considerazione per trovare una soluzione che garantisca equilibrio e salvaguardia di tutto quanto è in gioco" (BEGUS, "Principio di proporzionalità," 374).

[64] See ibid., 374-376.

[65] STAS, definitive sentence *coram* Versaldi, 29 November 2017, in *IC*, 60 (2020), 843-852, English in *DANIEL3*, 345-358.

the diocese, even prohibiting public appearances unrelated to priestly ministry such as singing in a choir or being custodian for a church. The Signatura, by mandate of the Supreme Pontiff, was tasked with examining the case and ruled in favour of the priest.

Apart from the fact that the Signatura examined the case on the grounds that there must be proportion between the circumstances and the restrictions imposed, the college of judges made judicial review of the discretion exercised by the bishop in choosing the restrictions imposed on the priest.

The priest had agreed to abstain from public ministry following his resignation as pastor. He failed to abide by the agreement in some way that resulted in public outcry. The bishop imposed further severe restrictions. He stated three motivating reasons for them: the serious nature of the accusations made against the priest, the character of the priest presented a fear of recidivism and hence scandal, and the loud public outcry against him.[66] With regard to the accusations, the priest admitted some imprudence in years past which he would not commit at present. He also admitted to not abiding completely to the agreement freely made with the bishop to abstain from public priestly ministry. The Signatura refrained from considering the initial agreement made by the priest to resign from office and abstain from public ministry. It looked instead to the subsequent restrictions, which it compared to imprisonment (*usque fere ad reclusionem*.)[67]

It began examining the proportion by considering the bishop's motivating reasons that the college found insufficient. The resignation as pastor and agreement not to exercise priestly ministry publicly did not imply a prohibition later on or elsewhere (it is not clear

[66] See *coram* Versaldi/2017, no. 5.

[67] See ibid., no. 6.

from the sentence when, where, or what type of ministry was performed). Furthermore, the fear of recidivism was found to be unfounded as the priest had admitted that behaviour in the past is unacceptable today for which he repented. Moreover, the accusations were false, meaning there could be no true fear of recidivism. Finally, with regard to the public outcry, the Signatura ruled that fear of negative opinion is not a sufficient reason for such severe restrictions. It questioned the role of a bishop with regard to defending his priest who has been falsely accused, and the duty of the bishop to form the conscience of his flock with regard to a false accusation, stating quite strongly:

> There is no one who does not see how the Most Excellent Bishop's involvement left the priest defenseless and made no provision for restoring his good reputation, thereby fostering increasingly serious opposition, even if this was not his intention. This condition of the priest became still worse (whatever the case may be about Reverend X's appearance) when all the pastors were warned not to invite Reverend X, thereby making it difficult to restore his good reputation.[68]

As a result, the college of judges ruled that they were morally certain that the required proportion between acts and decrees was not present, thus making the restrictions illegitimate.

Rodrígues-Ocaña provides, in his commentary on the case, an explanation of how the Signatura, using the previously mentioned test for proportion outlined by Begus, performed a judicial review of the discretion utilised by the bishop.[69] Given that the priest, after his exoneration of the accusations, failed to abide by the agreement not to perform public ministry and that he himself, it seems, admitted publicly past imprudence which led

[68] "Nemo est qui non videat quo modo interventus Exc.mi Episcopi sacerdotem absque defensione reliquit, eius bonam famam reparandam haud curavit, hoc modo praeter suam voluntatem oppositioni ingravescenti favens. Quae sacerdotis condicio peior adhuc facta est (quidquid est de Rev.di X colore) cum omnes parochi certiores moniti sint ne Rev.dus X invitarent, bonam eiusdem famam hoc modo adhuc difficilius reparandam reddendo" (*coram* Versaldi/2017, no. 7).

[69] R. RODRÍGUES-OCAÑA, "El control judicial del principio de proporcionalidad en los actos administrativos," in *IC*, 60 (2020), 853-867.

to further outcry in the public and the media, Rodrígues-Ocaña states that, in the first stage of the test, the motivating reason for further restrictions on the priest, in the abstract, was just, namely the avoidance of scandal.[70] It is in the second stage of the test, that of necessity, that it fails. The means chosen by the bishop to achieve his end are not appropriate in the sense that he had chosen from among the different legal instruments offered by the Legislator, not those that least affect the rights of the priest, but those that constitute an overreach.[71] The test failed also in the third stage, that of strict proportionality, both because the initial agreement about ministry did not imply a future prohibition, and because scandal and fear of recidivism are insufficient in light of the acquittal of all charges, and because fear of negative public opinion is an illegitimate reason. In fact, the bishop had a duty to form the conscience of the faithful with regard to the priest, whom he left not only unprotected, but whose condition he worsened by the administrative measures and the notice received by all the parishes.[72]

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[70] See RODRÍGUES-OCAÑA, "El control judicial del principio de proporcionalidad," 863. ("La finalidad de las medidas dictadas por el obispo que siguieron a esas primeras, cuando el párroco había sido exculpado, considerada en abstracto es legítima, se quiere evitar o poner fin al escándalo […].")

[71] See ibid., 864. ("Siendo el fin legítimo, sin embargo, los medios que emplea el obispo, a saber 'primero y principalmente, el Rvdo. X. no puede realizar ninguna acción litúrgica fuera de su capilla privada ni puede ejercer ningún oficio en las mismas acciones litúrgicas, es más, tampoco ningún encargo relacionado con los oficios públicos y las peregrinaciones dentro de los límites de la diócesis N. Estas prohibiciones, a juicio del Excmo. Obispo, incluirían también "todas las concelebraciones y las funciones de organista y cantor en las acciones litúrgicas"' (n. 4) no son adecuados en el sentido de haber escogido entre los diferentes instrumentos jurídicos que ofrece el legislador, no los que menos afecten a los derechos del sacerdote, sino los que suponen una extralimitación […]")

[72] See ibid., 864. ("Por último, no se respetó el principio de proporcionalidad en sentido estricto, los medios que emplea el obispo no están justificados porque: el abandono del oficio parroquial pactado con el obispo «no implicó necesariamente la prohibición de ejercer el ministerio sacerdotal más tarde o en otro lugar» (n. 7); el excesivo escándalo o el peligro de reincidencia son insuficientes «teniendo en cuenta la absolución de las acusaciones» (ibíd.); el miedo a una opinión pública contraria no es razón equitativa y legítima (cfr. ibíd.); es más el obispo tenía el deber de formar la conciencia de sus fieles hacia el sacerdote inocente que no solo dejó desprotegido, sin reparar su buena fama, sino que con sus medidas administrativas y la notificación que de estas recibieron todos los párrocos, empeoró su condición (cfr. ibíd.)").

While one may not agree with Rodrígues-Ocaña's analysis of how the sentence fits into the stages of the test, and because the judges did not explicitly provide an outline of the test, it is clear, nevertheless, that the test for proportionality failed, and failed gravely. It is interesting to note that the restrictions were so severe that the judges compared them to confinement. Further, they made an important distinction that some of the restrictions did *not* pertain to priestly ministry. Singing in a choir, or cleaning a church, when done by a priest, does not make those tasks thereby priestly ministry. This is an important consideration when we consider what restrictions are placed on a priest and for what reason. Is it priestly ministry that is being restricted? Or rather the person himself? This surely must fit into the test for proportion. Finally, the ruling of the Signatura points out that negative publicity is insufficient for restricting priestly ministry. In fact, in the face of such negative opinion, a bishop has a duty to form the conscience of the faithful with regard to repentance, forgiveness, and the evil of slander.

1.1.15 *coram* Burke/2017[73]

The facts of this unpublished case are unknown; however, Montini has summarised the jurisprudence. The following points are important for our study.

First, citing *coram* Zvolensky/2016, the Signatura reaffirmed the necessity of employing the criterion of proportionality when it comes to a question of a general prohibition to exercising priestly ministry. Furthermore, each faculty revoked must be considered according to the criterion, especially for those granted by the law. Failing to do so is an error *in decernendo*. The college of judges asserted once again that a bishop cannot deprive a priest of the exercise of the sanctifying office except according to the law. The

[73] STAS, definitive sentence *coram* Burke, 30 November 2017, Prot. no. 51606/16 CA, unpublished.

assertion that loss or denial of office constitutes just cause for the restriction of faculties contradicts the settled jurisprudence of the Signatura.

Second, the college addressed the situation of the necessary review of the administrative prohibition to exercise priestly ministry. The judges ruled that such review needs to occur at least annually, and that failure to do so would contradict canon 1349 on perpetual penalties. Furthermore, to be legitimate, the re-evaluation of whether or not to keep the restriction in place must ensure that the just proportion between the cause and the restriction of the priest, who, at one time, demonstrated imprudence in his conduct, without ever having committed a delict, but whose behaviour has now changed (which change cannot be disregarded) still obtains. To confirm such a decree of restriction without this necessary reconsideration is an error *in decernendo*.

1.1.16 *coram* Mamberti/2017[74]

This unpublished case concerns our study on one point. It involves the legitimacy of a requirement, imposed by the competent authority by means of penal precept, to undergo a psychological evaluation. Such a requirement cannot be imposed merely by invoking the right and duty of vigilance incumbent upon every ordinary towards his priests. Citing *coram* Pompedda/2000, and *coram* Cacciavillan/2006, the college affirmed its jurisprudence that a diocesan bishop is required to enquire into the suitability of his priests for the conferral of office but such an end can never be obtained by means which violate the privacy of the priest (see c. 220). The college ruled that this jurisprudence is all the more compelling when it concerns a cleric – innocent of any delict – who is prohibited

[74] STAS, definitive sentence *coram* Mamberti, 30 November 2017, Prot. no. 50763/15 CA, unpublished.

from exercising fully the priestly ministry entrusted to him by sacramental ordination. It is interesting to note that the Signatura states that priestly ministry is entrusted to a priest by sacramental ordination.

1.1.17 *coram* Stankiewicz/2018[75]

This unpublished case reaffirmed the settled jurisprudence that the necessary proportion between cause and the restriction of priestly ministry requires an individual evaluation of each faculty, especially with regard to faculties granted by the law. It reaffirmed as well that the role of the bishop in regulating the *munus sanctificandi* in no way entails the ability to deprive priests of that exercise except in conformity with the law. The sentence cited both the Decree of the Prefect/2008, and the Decree of the Prefect/2009 in this regard. Finally, the college ruled that in this case (involving the grave harm coming to the diocese on account of the priest's unlawful behaviour (*rationem gravis damni dioecesi obvenientis ex improbo agendi modo recurrentis*)), the reason given to justify the near total prohibition on the public celebration of the Eucharist did not meet the test of proportionality. The judges stated:

> But the Bishop [. . .] has taken away the faculty of celebrating the Eucharistic sacrifice 'publicly', which is granted to priests by universal law. [. . .] In this case [. . .], it is not a matter of the obligation to request a license to celebrate the Eucharist in a church from its rector or from another legitimate superior, as mentioned in c. 561, but of the prohibition of requesting it because of the inhibition of the right to celebrate the Eucharistic Sacrifice before the people. [. . .] But in the case of the rev. recurrent, the withdrawal or reduction of the right to celebrate the Eucharist publicly to very rare occasions granted individually by the local Ordinary, with the principle of proportionality in relation to its cause indicated in the contested decree of the Congregation, turns out to be incompatible in every respect, since it is a matter of a faculty that by law concerns all priests.[76]

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[75] STAS, definitive sentence *coram* Stankiewicz, 25 April 2018, Prot. no. 52364/18 CA, unpublished.

[76] "Sed exc.mus episcopus [...] ademit facultatem celebrandi Eucharistiae sacrificium 'publicly', quae ipso iure universali presbyteris conceditur. [...] Hac in causa . . . , non agitur de obligatione petendi licentiam celebrandi Eucharistiam in ecclesia ab eius rectore vel ab alio legitimo superiore, de qua in c. 561, sed de prohibitione petendi eam propter inhibitionem iuris sacrificium Eucharisticum coram populo celebrandi. [...] Sed in causa rev.dum recurrentem respiciente, detractio vel reductio iuris celebrandi publice

While the exact reason is unknown, the jurisprudence makes clear that even seriously bad behaviour that has consequences for the diocese does not justify the prohibition of public celebration of the Eucharist.

1.1.18 *coram* Stankiewicz/2019[77]

This sentence of the Signatura is perhaps the most enlightening exposition of the limits and parameters of what the judges themselves called "a new institution emerging in the life of the Church."[78] It merits careful analysis. The case involves a priest who was accused of sexual abuse of a minor that allegedly occurred while he himself was still a minor. After several years and several interventions of various dicasteries of the Holy See, including an extrajudicial penal process after which the priest was acquitted on the basis that there was insufficient proof, the bishop, citing canon 1348, prohibited the priest all celebration or concelebration of the Eucharist with people without explicit permission of the bishop or his vicar general, forbade him to wear clerical attire, or to present himself as a priest, and prohibited him from obtaining commendatory letters regarding any priestly faculties. All of these restrictions were to be reviewed annually. The bishop cited, as his motivating reason for these grave restrictions, the need to protect the common good, the

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Eucharistiam ad rarissimas occasiones a loci Ordinario singillatim concessas, cum principio proportionis quoad eius causam in impugnato Congregationis decreto indicatam, omni ex parte incompatibilis evadit, cum de facultate ipso iure ad omnes presbyteros spectante agatur" (*coram* Stankiewicz/2018, nn. 14-15 quoted in DANIEL, "The Judicial Protection of Priestly Ministry," 265, note 97).

[77] STAS, definitive sentence *coram* Stankiewicz, 26 January 2019, in *IC*, 63 (2023), 381-400, English in *DANIEL3*, 385-412.

[78] "emergentis in vita ecclesiali novi instituti" (ibid., no. 12, my translation). Daniel translates the phrase as "a new institute in ecclesial life." This author prefers the emphasis on the institute as emerging, being developed, and defined which Daniel's translation does not seem to imply. What exactly is the new institution remains unclear. On the one hand, the immediate reference is to administrative prohibitions to exercising, or restrictions on the exercise of, the power of orders but, on the other hand, the judges had already referred to the legitimacy of administrative removal of faculties.

notoriety of the case, and the unsuitability of the priest to exercise an ecclesiastical office. After the Congregation for the Clergy admonished the bishop to respect the presumption of innocence of the recurrent priest, and for the overly generic reasons cited as motivating the decree, the bishop issued a new decree with the same prohibitions but added that the reason for the prohibitions, in addition to safeguarding the common good, was the priest's involvement in a financial settlement detrimental to the diocese, as well as the aforementioned accusations involving a minor from years earlier. The Congregation for the Clergy confirmed the decree; recourse was made by the priest to the Signatura who ruled in favour of the priest.[79]

Before examining important distinctions the judges made between penalties and the administrative restriction of faculties, we will examine the actual decision on the facts of the case. Their analysis of the motivating reasons as a test for the required proportionality demonstrate a noteworthy development of the jurisprudence.

The college of judges began its examination of the motivating reasons by reviewing the detrimental financial settlement to the diocese caused by the recurrent's behaviour. The diocese, and other entities under diocesan control, entered into a financial settlement out of court with the priest's accuser. The Signatura pointed out that the settlement, which admitted no liability on the part of the diocese and which was formalised without the participation of the priest in question, offered no evidence that could have probative force in the allegations made against the priest and the ensuing restrictions. In other words, the diocese cannot use against the priest the fact that it chose to settle rather than argue the case in court and perhaps be exonerated of any financial liability. The priest had no say in the

[79] See *coram* Stankiewicz/2019, nn. 3-5.

matter but was being held accountable for the decision. The settlement could not be used canonically to justify such severe administrative restrictions neither with regard to the truth of the accusation nor with regard to the financial loss of the diocese.

The college next examined the second reason proffered by the bishop, namely, that the priest engaged in unbecoming and suspicious conduct with minors. Prescinding from a consideration of the merit of the extrajudicial penal process previously carried out with regard to the alleged delict, the judges noted that an acquittal in that case was required because there was insufficient proof. They cited the CDF's decision that pointed out that the two witnesses in the case provided no testimony, and provided neither a deposition nor a sworn affidavit. As a result, the CDF considered the accusations unsubstantiated, insufficient to prove the priest's guilt. The accusations are not, of themselves, sufficient to prove the assertions without any evidentiary proof. With regard to a second allegation, the CDF ruled that, at most, the behaviour could be classified as a frustrated delict and the priest had been imprudent. In considering the weight of this behaviour with regard to the proportion necessary for restricting the exercise of the power of order, the Signatura pointed out that the mere assertions of the bishop that the priest was guilty of unbecoming and suspicious behaviour could not stand on his word alone. The priest's behaviour had been irreproachable from that point on. Moreover, the judges noted, "administrative prohibitions are not imposed in order to punish delicts but to prevent the dangers that the unworthy exercise of priestly ministry can cause among the faithful."[80]

[80] "Ceterum, prohibitiones administrativae non irrogantur ad punienda delicta, sed ad praecavenda pericula quae indignum exercitium ministerii sacerdotalis apud fideles provocare potest" (*coram* Stankiewicz/2019, no. 13).

The bishop's third reason examined by the college of judges was the negative public reputation of the priest. Even though he enjoyed the presumption of innocence, the priest was prohibited from exercising priestly ministry for fear of contrary public opinion. Citing the jurisprudence of *coram* Versaldi/2017, the judges pointed out that public opinion, which can be used in bad faith to harm another, neither provides sufficient proof to accusations "nor does it swell to the level of a legitimate reason to impose an administrative prohibition to exercise the sacred ministry."[81] They went on:

> On the contrary, as the Very Reverend Promoter of Justice rightly notes, yielding to a hostile public opinion leads to several errors beyond the illegitimacy of the act and the injustice. It possibly inflicts grave damages both to the good reputation of the priest himself by leading to the conclusion of his culpability based on the imposition of grave prohibitions to exercise the sacred ministry, and to the canonical discipline by simply treating priestly ministry the same as any social activity.[82]

Having decided that none of the three reasons was legitimate, the college of judges ruled that an error *in decernendo* had been made.

Interspersed among its reasoning of the motivating factors present in the case, the Signatura offered several important points that are helpful for our study. The points help to flesh out the purpose, the content, and the limits of administrative restrictions on exercising priestly ministry.

The judges pointed out that grave administrative prohibitions placed upon a priest, even after acquittal in a penal process, belie an equivalence being made between faculties granted by law and those granted by sacred ordination. Furthermore, when all faculties are

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[81] "neque gradum legitimae causae ad irrogandam prohibitionem administrativam exercitii ministerii sacri assurgit" (*coram* Stankiewicz/2019, no 14).

[82] "E contra, hostili opinioni publicae cessio, ut merito notat Rev.mus Promotor Iustitiae, praeter illegitimitatem actus et iniustitiam, in plures errores inducit, gravia damna forte inferentes sive bonae famae ipsius sacerdotis, deducendo eius culpabilitatem ex irrogatis gravibus prohibitionibus exercitii sacri ministerii, sive disciplinae canonicae propter nudam aequiparationem ministerii sacerdotalis cuilibet activitati sociali" (ibid., no. 14).

revoked, the prohibitions belie an equivalence between a penal process and an administrative decree which cannot be distinguished from a penal decree.[83] In other words, any administrative restriction of priestly ministry must account for the substantial difference that exists between faculties granted by ordination, by law, and *ab homine*.

The judges also admitted that the universal law does not deal with the administrative prohibition of the exercise of priestly ministry, other than through the provisions of precautionary restrictions outlined for penal processes in canon 1722, or the presence of impediments to exercising sacred orders found in canon 1044. Administrative prohibitions to perform all, or only some, acts of the power of order, therefore, must consider not only the existing canonical institutions of precautionary measures and impediments to exercising orders, but also the jurisprudence and praxis of the Roman curia (see c. 19) for which it cites the aforementioned, new institution emerging in the life of the Church.[84] From this it is clear that administrative discretion in prohibiting the exercise of the power of orders wholly, or in part, is not unfettered.

The judges continued in this vein:

> Indeed, in this regard, as the Very Reverend Promoter of Justice correctly notes, the reasons that support the provisions of canon 1722 are to be compared to the reasons from which administrative provisions originate; likewise, the reasons that are reinforced by penalties

[83] See *coram* Stankiewicz/2019, nn. 11-12. ("Interdum tamen obvenit quod Ordinarius in hisce rerum adiunctis in locum medii pastoralis vel remedii poenalis, scilicet monitionis vel correptionis [cfr. can. 1339 §§ 1-2], presbytero impune dimisso irrogat per viam provisionis administrativae graves prohibitiones vel privationes, poenis expiatoriis aequivalentes, quae eum ad instar delinquentis afficiunt aut in perpetuum aut in tempus praefinitum aut in tempus indeterminatum [cfr. can. 1336 § 1]. Sed hoc procedendi modo, admittitur aequivalentia inter facultates pro quibus ius explicite cavet de earum revocatione, et facultates quae ex iure ordinationi sacrae conectuntur, atque oblviscitur aequivalentiae inter processum poenalem, vi cuius omnes facultates adimi possunt, et provisionem administrativam, quae si omnes concernit facultates, a decreto poenali haud distinguitur.")

[84] As we will see later, there are, in fact, more administrative means within the *CIC/83* to limit the exercise of the power of order, such as canon 701 that prohibits a dismissed religious cleric from exercising orders until such time as he has found a benevolent bishop.

> are to be compared with the reasons employed for administrative provisions, although reasons that differ by far do not carry the same effects
>
> Furthermore, based on the principle of legality, a fair proportion must also be observed when the Ordinary imposes administrative prohibitions. This proportion is not only to be weighed according to the precepts of jurisprudence in the individual case so that the reason is proportionate to the prohibition. *But it is also to be evaluated in relation to the mind of the Legislator* so that the reasons stated by him in the law with their effects do not have just any proportion in relation to the reasons for the administrative prohibition [Emphasis added].
>
> In fact, from this point of view, as the Reverend Promoter of Justice rightly points out, the causes permitted by the provisions of can. 1722 must be compared with the causes that give rise to the administrative provisions; likewise, the causes that are protected by penalties must be compared with the causes adduced in the administrative provisions, so that it does not happen that widely different causes produce the same effects.
>
> Moreover, also in virtue of the principle of legality, an equitable proportion must be kept in the administrative prohibitions to be imposed by the Ordinary. This proportion, according to the dictates of jurisprudence, must be measured not only in the case, so that the cause is proportionate to the prohibition, *but also in relation to the mind of the Legislator*, so that it does not happen that the causes established by him in law, with their effects, do not bear any proportion to the causes for an administrative prohibition. [Emphasis added.][85]

Two very important considerations are given here. First, motivating reasons for the administrative non-penal restriction of priestly ministry cannot supersede the reasons that justify restrictions in the face of delictual behaviour. In other words, while it is established that a priest cannot completely be restricted in his ministry for non-delictual behaviour, at the same time, partial restrictions must be considered carefully in the light of whether or not a particular restriction is really reserved, in the mind of the supreme Legislator, for delictual behaviour. For example, if the delict of concubinage does not require an obligatory dismissal from the clerical state, then it stands to reason that a mere sin against the sixth commandment of the decalogue committed by a priest cannot justify a complete

[85] "Enimvero, sub hoc respectu, ut recte notat Rev.mus Promotor Iustitiae, causae quae provisiones ex c. 1722 sinunt, comparandae sunt causis quae originem dent provisionibus administrativis; pariter causae quae poenis muniuntur comparandae sunt causis adhibitis in provisionibus administrativis, ne causae longiore differentes pares pariant effectus.

Praeterea, ex principio legalitatis etiam aequa proportio servari debet in prohibitionibus administrativis ab Ordinario irrogandis. Haec proportio iuxta dictamina iurisprudentiae mensuranda est non solum in casu, adeo ut causa sit prohibitioni proportionata, sed dimetienda est quoque relate ad mentem Legislatoris, ne causae ab ipso in iure statutae cum earum effectibus, ulla proportione gaudeant relate ad causas pro administrativa prohibitio" (*coram* Stankiewicz/2019, no. 12).

administrative non-penal prohibition of the exercise of priestly ministry. That is what is meant by the existence of proportion between the cause and the mind of the Legislator. We will return to this last point later in chapter four. It is an important parameter to the due exercise of discretion by competent authority that needs to be explored further.

A further point made by the judges is that, while any faculty regarding priestly ministry may be revoked by administrative decree for a just and proportionate cause, that withdrawal is not at the mere discretion of the competent authority.[86] In other words, the restriction must be logically and rationally connected to the cause. In this specific case, the judges noted that while the Ordinary may promulgate particular law reserving to himself the permission needed by deacons, and priests who are not pastors, to administer baptism, he may so restrict a particular priest only with a just cause. For example, if a priest did not follow diocesan policies on the handling of money in the parish, it would be arbitrary and capricious of competent authority to deal with that issue by the denial of the permission to baptise.

Finally, with regard to the celebration of the Eucharist *coram populo*, the judges pointed out that the law does not provide for a prohibition against this except as a precautionary measure during a penal process (see c. 1722). The judges stated that:

> The universal law does not provide for a prohibition to the public celebration of Holy Mass, that is, one before the people, except for the prohibition of public participation in the Most Holy Eucharist during the course of the penal process (c. 1722). Nor does the prescript of canon 900, §2 anticipate that impediments to a licit celebration are established by canon law or because a letter of recommendation has not been issued. Therefore, the question posed concerning the legitimacy of this prohibition can be resolved according to the disposition of the following precept of this Supreme Tribunal's jurisprudence: "A prohibition to exercise any presbyteral ministry at all before the people, including faculties granted to presbyters by universal law, imposed by an administrative act outside of the penal context must be deemed illegitimate."

[86] See *coram* Stankiewicz/2019, no. 15.

> [s]ince, however, universal law does not provide for a prohibition of the public celebration of the Holy Mass, that is, celebration before the people, except for the prohibition of public participation in the Most Holy Eucharist for the duration of the penal process (can. 1722), nor does the provision of can. 900, §2 foresee impediments to licit celebration as established by canon law, or grounds for letters of commendation not to be issued, the question raised concerning the legitimacy of this prohibition [of the public celebration of the Eucharist] can be resolved according to the mind of the following pronouncement of the jurisprudence of this Supreme Tribunal of the Apostolic Signatura according to which *'outside the penal sphere, a prohibition imposed by an administrative act on the exercise of any priestly ministry before the people, including the faculties granted to priests by universal law, is to be considered illegitimate.'*[87]

As we will see, the jurisprudence will develop on this very point.

1.1.19 *coram* Burke/2019[88]

The facts of this unpublished case were outlined by Daneels in his aforementioned article on the misuse of canon 1348.[89] A priest, decades after the events, was accused of sins against the sixth commandment with a minor girl, sins which were determined later to have constituted, at the time of the alleged events, neither a delict nor a civil crime. He resigned his office as pastor, a restriction was imposed about residency, and he was prohibited from celebrating the Eucharist *coram populo*. Several interventions of dicasteries of the Holy See ensued. A decree was subsequently issued that completely restricted the exercise of priestly ministry citing canon 1348 and the *Essential Norms* of the USCCB. Recourse against these restrictions was eventually made to the Signatura.

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[87] "Cum vero lex universalis non caveat de prohibitione publicae celebrationis Sanctae Missae, seu coram populo, nisi de vetito publicae participationis sanctissimae Eucharistiae pro tempore durationis processus poenalis (c. 1722), neque praescriptum can. 900 § 2 impedimenta praevideat ad licitam celebrationem lege canonica statuta, vel ad litteras commendatitias non edendas, quaestio proposita de legitimitate huius prohibitionis definiri potest ad mentem sequentis dictaminis iurisprudentiae H.S.T., iuxta quod *'extra ambitum poenalem illegitima censenda est prohibitio, per actum administrativum imposita, exercendi quodvis ministerium presbyterale coram populo, inclusis facultatibus iure universali presbyteris concessis.'* [Emphasis added.] (cfr. decretum coram Burke, 30 maii 2009; sententia definitiva coram Mamberti, 16 ianuarii 2016)" (*coram* Stankiewicz/2019, no. 15). The judges quoted from *coram* Mamberti/2016 which quoted *coram* Burke/2009.

[88] STAS, defintive sentence *coram* Burke, 8 October 2019, Prot. no. 51677/16 CA, unpublished cited in DANEELS, "Il riferimento al c. 1348."

[89] DANEELS, "Il riferimento al c. 1348," 298.

Daneels points out two very important considerations regarding the use of canon 1348 as a justification for the complete restriction of the exercise of sacred orders. Because the alleged actions were not delicts, and hence their veracity unproven, the Signatura pointed out first, that the mere credibility of the alleged actions was not a sufficient justification for the restrictions imposed. Second, canon 1348, allowing the competent authority to impose penal remedies when the situation warrants, does not allow, however, for such "restrictions" to be imposed because they are far from the admonitions and other means of pastoral solicitude mentioned in the canon. The college of judges cited *coram* Stankiewicz/2019 as affirmation of this fact. Daneels states: "the total or almost total administrative suspension from the exercise of priestly ministry in no way falls among the measures permitted by canon 1348."[90]

Daneels also points out that, while canon 1348 could not be used in this case because the allegations of abuse were unproven and even though canon 1348 demands a requisite acquittal or non-imposition of a penalty at the conclusion of a penal process, "it does not seem to be excluded that in a case in which a penal process is not possible, canon 1348 might be invoked by analogy, provided that there are just reasons and that the measures imposed remain within the scope of those foreseen therein."[91]

Montini, in his *massime* for the case, provides two other important points made by the college of judges in the sentence. First, the judgement of legitimate proportion in the administrative restriction of faculties is reserved to the Apostolic Signatura.[92] This is an

[90] "la totale o quasi totale sospensione amministrativa dall'esercizio del ministero sacerdotale non rientra per niente tra le misure permesse dal c. 1348" (DANEELS, "Il riferimento al c. 1348," 299).

[91] Ibid., 300.

explicit statement of its ability to subject the discretion of the competent authority to judicial review. Second, if the illegitimacy of the prohibitions has been established due to the lack of proportion between the causes and the decree, the legitimacy of the same prohibitions based on fear of scandal also necessarily fails. In other words, fear of *admiratio* among the faithful cannot justify, on its own, the imposition of restrictions.[93]

1.1.20 Decree of the Congresso/2019[94]

This unpublished decree cited by Daniel points out that the administrative restriction of priestly ministry in a specific context or for a temporary reason, as we saw in *coram* Fagiolo/1993, is "connected […] with avoiding the danger of scandal and with protecting the sanctity of the sacrament of holy orders so that, once those dangers have ceased, it can in itself be revoked."[95] The decree for this case reinforces the notion that ministerial restrictions must be temporary and must be connected to an objective, identifiable circumstance.

[92] See G. MONTINI, *Massime* for STAS, Defintive sentence *coram* Burke, 8 October 2019, Prot. no. 52041/16 CA, no. 5, https://www.iuscangreg.it/stsa_decisione.php?id_decisione=380&lang=IT (14 November 2025). ("Il giudizio di questa legittima proporzione è riservato alla Segnatura Apostolica.")

[93] See ibid., no. 7. ("Una volta che sia stata stabilita l'illegittimità delle proibizioni per mancata proporzione tra le cause e il decreto, cade necessariamente anche la legittimità delle medesime proibizioni in ragione dello scandalo temuto.)

[94] STAS, Decree of the Congresso, 14 November 2019, Prot. N. 51822/16 CA, unpublished, cited by DANIEL, "The Judicial Protection of Priestly Ministry," 256.

[95] "Pro comperto etiam habito quod ratio motiva una cum causa finali Exc.mi episcopi decisioni apparet conexa non cum voluntate puniendi, sed cum vitando periculo scandali et cum sacramenti sacri ordinis sanctitate tuenda ut cessatis illis periculis per se revocari possit […]" (Decree of the Congresso/2019, quoted in DANIEL, "The Judicial Protection of Priestly Ministry," 256). The translation is Daniel's.

1.1.21 *coram* Versaldi/2020[96]

While this unpublished case is not directly pertinent to our study, it provides some jurisprudence that will help shape our consideration of the relationship between a priest and his diocesan bishop. The sentence points out that no error *in decernendo* occurs when a priest is provided, according to the custom of the diocese and in conformity with canon 281, §1, with room and board in a parish such as is provided for priests suffering from illness or old age. Having worked in another diocese and returning to his home diocese, the priest has no right to any financial support beyond what is customary in his home diocese regardless if more is provided in the diocese from which he returned.

1.1.22 *coram* Daneels/2021[97]

This sentence reiterated well-established canonical doctrine that perpetual penalties cannot be imposed by administrative penal decree but only by a judicial sentence. In this case, the college pointed out that "removal" from office as a penalty for a crime is, in reality, a "deprivation" which, as a perpetual penalty, can be imposed by means of a penal judgement, but not at all by means of an administrative penal procedure.[98]

1.1.23 *coram* Burke/2021[99]

Montini provides three *massime* of some importance from the sentence. They are:

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[96] STAS, Defintive sentence *coram* Versaldi, 25 June 2020, Prot. N. 52362/16 CA, unpublished.

[97] STAS, definitive sentence *coram* Daneels, 26 March 2021, Prot. N. 54067/18 CA, unpublished.

[98] See G. MONTINI, *Massime* for STAS, Defintive sentence *coram* Daneels, 12 March 2021, Prot. no. 54067/18 CA, no. 3, https://www.iuscangreg.it/stsa_decisione.php?id_decisione=391&lang=IT (14 November 2025). ("La rimozione dall'ufficio imposta come pena per un delitto tramite un decreto penale è in realtà una privazione, la quale, come pena perpetua, può essere imposta con un giudizio penale, ma non assolutamente attraverso una procedura penale amministrativa.)

[99] STAS, definitive sentence *coram Burke*, 26 March 2021, Prot. no. 51822/16 CA, unpublished.

> 1. According to the jurisprudence of the Apostolic Signatura, a prohibition from exercising the ministry may be imposed on a cleric, even if there is no crime, for a just and proportionate cause and as long as the cause lasts […].
>
> 2. Scandal arises not only from a crime committed, but also from an unworthy way of acting (in the case, the numerous complaints prove the just and proportionate cause between the danger of scandal and the impugned decisions).
>
> 3. A cleric who has been declared unfit (*inhabilis*) for ministry in any way by the ordinary is entitled to social security like any other unfit (*inhabilis*) diocesan cleric.[100]

The second *massim* perhaps contradicts the earlier jurisprudence of *coram* Versaldi/2017 that posited that public outcry does not justify administrative restrictions on priestly ministry. It is often unclear in the jurisprudence what is meant by "scandal." Is it scandal in the theological sense of leading others into sin? Or is more akin to public outcry, or disturbance among the people? Furthermore, is it the public in general? Or is it more properly upright and responsible parishioners, as mentioned in canon 1741, 3°?

Note should also be made that Montini has chosen a specific canonical term for the third *massim*, namely "*habilis*" which is often placed in contradistinction to "*capax*." The latter refers to a quality which disqualifies, for example, only a baptised male, not a female, is *capax* for ordination; the former refers to the quality of being unsuitable or improper, for example, an habitually intoxicated and unchaste male is not *habilis* for ordination.

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[100] "1. Secondo la giurisprudenza della Segnatura Apostolica si può imporre a un chierico una proibizione di esercitare il ministero, anche senza che ci sia delitto, per una giusta e proporzionata causa e finché la medesima causa perdura […].

2. Lo scandalo nasce non solo da un delitto commesso, ma anche da un modo indegno di comportarsi (nel caso le moltissime denunce comprovano la causa giusta e proporzionata tra il pericolo di scandalo e le decisioni impugnate).

3. Il chierico dichiarato in qualsiasi modo dall'Ordinario inabile al ministero, ha diritto alla previdenza come qualsiasi chierico diocesano inabile," (G. MONTINI, *Massime* for STAS, definitive sentence *coram Burke*, 26 March 2021, Prot. no. 51822/16 CA, https://www.iuscangreg.it/stsa_decisione.php?id_decisione=396&lang=IT [14 November 2025]).

1.1.24 *coram* Sandri/2021[101]

This sentence contains an important consideration on the rights of a priest. Montini gives the *massim*:

> The jurisprudence of the Apostolic Signatura does not recognise a cleric as having the right to conferral of an ecclesiastical office merely because he possesses the faculties of holy orders, but reserves to the bishop the power to assess the appropriateness of such a conferral, having regard to the good of souls […] provided that any aspect of arbitrariness is absent, there is no violation of the law by the fact that the bishop did not assign any office to the appellant.[102]

Here again the Signatura reminds that the due discretion afforded a bishop or any competent authority cannot admit of arbitrariness. There must be reasons grounded in the law for making administrative decisions. That point notwithstanding, the Signatura, even though it can make judicial review of the discretion of the competent authority, is reluctant to do so. In this case, as Montini points out, the bishop was "invited" to consider lifting at least some of the restrictions that he had imposed on priestly ministry.[103]

[101] STAS, definitive sentence *coram* Sandri, 26 March 2021, Prot. no. 52535/17 CA, unpublished. See Attività della Segnatura Apostolica 2021 at https://www.vatican.va/content/dam/romancuria/segnatura-apostolica/statistiche/segnatura-apostolica-statistica_2021.pdf (14 November 2025).

[102] "La giurisprudenza della Segnatura Apostolica non riconosce ad un chierico il diritto al conferimento di un ufficio ecclesiastico per il solo fatto che lo stesso chierico possiede le facoltà dell'ordine sacro, ma riserva al vescovo la potestà di valutare l'opportunità di un tale conferimento, avuto riguardo al bene delle anime [… purché manchi qualsiasi aspetto di arbitrarietà, non si dà violazione della legge per il fatto che il vescovo non abbia assegnato alcun ufficio al ricorrente" (G. MONTINI, *Massime* for definitive sentence *coram* Sandri, 26 March 2021, Prot. no. 52535/17 CA, no. 2, https://www.iuscangreg.it/stsa_decisione.php?id_decisione=395&lang=IT 14 [November 2025]).

[103] G. MONTINI, *Massime* for definitive sentence *coram* Sandri, 26 March 2021, no. 3. ("Anche se l'oggetto della causa è ristretto solamente alla negazione del conferimento di un ufficio, si rivolge di nuovo al vescovo l'invito, già rivoltogli dal competente Dicastero della Curia Romana, circa l'opportunità di revocare almeno in parte la proibizione imposta al ricorrente di esercitare le facoltà sacerdotali.")

1.1.25 *coram* Mamberti/2021[104]

Once again, Daneels provides the facts for this unpublished case.[105]A priest was accused of sexual abuse of a minor which he denied. Both the civil authorities and the CDF determined that a penal process could not held as the alleged female victim was psychologically unstable. Within a year of the first accusation, the priest was accused of sexual activity with an adult woman to which the priest admitted, along with other sexual acts with consenting women. Once again, a penalty could not be applied. Until this time, the priest had agreed to refrain from exercising his priestly ministry *coram populo*. At this point he resigned his office. Over the next two years, various decrees and precepts were imposed on the priest, with recourse being made to Clergy who eventually amended the decree of the bishop to include canon 1348 as a basis for the administrative restrictions to exercising priestly ministry. Recourse was eventually made to the Signatura which ruled in favour of the priest on technical grounds.

As Daneels points out, the Signatura ruled that canon 1348 could not be used to justify the complete restriction of priestly ministry but it granted that other reasons could be present to justify the decree. It began by stating that there was nothing illegitimate about removing the priest's faculties for preaching and hearing confessions. It did object, however, to revoking priestly faculties granted by universal law. The judges deemed that there was insufficient proportion between the priest's condition and the restriction that he could not celebrate the Eucharist *coram populo* without the express permission of the

[104] STAS, definitive sentence *coram* Mamberti, 3 December 2021, Prot. no. 53788/18 CA, unpublished.

[105] DANEELS, "Il riferimento al c. 1348," 300-301.

bishop, who did not appear to be disposed ever to give such permission.[106] Daneels points out, "the invocation of canon 1348 as a legal basis for the imposition of non-penal administrative suspension is, according to the jurisprudence of the Apostolic Signatura, entirely improper."[107]

Specifically, with regard to the celebration of the Eucharist *coram populo* the judges decreed that "There is no doubt about the fruits of the private celebration of the Eucharistic Sacrifice, but the question in this case is the general prohibition of any public celebration. For Canon 906 does not deal with the prohibition of public celebration, but only with the circumstances in which a celebration without the presence of the faithful is to be considered legitimate."[108] The judges are pointing out that the canon which allows the Eucharist without the presence of a member of the faithful is not a justification for requiring a priest to do so.

1.1.26 *coram* Mamberti-2/2021[109]

This is a highly publicised case involving a priest who was accused of sexual abuse of a minor. The bishop canonically removed the priest as pastor, and imposed restrictions on his priestly ministry. Recourse was made eventually to the Apostolic Signatura which

[106] See DANEELS, "Il riferimento al c. 1348," 301.

[107] "l'invocazione del c. 1348 come base legale per l'imposizione di una sospensione amministrativa non penale è secondo la giurisprudenza della Segnatura Apostolica del tutto impropria" (ibid., 302).

[108] "Circa fructus etiam celebrationis privatae eucharistici sacrificii nullum exstat dubium, sed quaestio in casu est prohibitio generalis cuiuscumque celebrationis publicae. Can. 906 enim minime de prohibitione celebrationis publicae agit, sed solummodo de circumstantiis, in quibus celebratio sine praesentia fidelium legitima consideranda est" (*coram* Mamberti/2021, no. 4 quoted in DANIEL, "The Judicial Protection of Priestly Ministry," 263, note 92).

[109] STAS, definitive sentence *coram* Mamberti, 3 December 2021, in *IE*, 36 (2024), 671-681. The judges decided a second case on the same day with Mamberti being the *ponens* of both. To distinguish the cases, I have added the numeral 2 after Mamberti's name in the short form of the second sentence.

ruled that the removal as pastor was illegitimate and the priest was still the canonical pastor of his parish. During this period of recourse, however, the Dicastery for the Doctrine of the Faith (hereafter DDF) authorised a penal process against the priest, who had made hierarchic recourse against the decision. Pending the outcome of that recourse against the decision of the penal process, the priest is still restricted in his priestly ministry.[110]

The sentence makes an important distinction with regard to administrative measures, in this case with regard to removing a pastor. A delict is only indirectly the cause for removing a pastor, if the crime renders the pastor's ministry in the parish harmful or ineffective. Hence, the pastor may not be removed because of the delict *in se* but only because of its effects. A delict is directly the cause of privation of the office of pastor as a penalty.[111] Furthermore, the judges noted that, the removal of a pastor merely on the basis of a credible accusation is actually the imposition of a penalty without the requisite penal process and is, therefore, illegitimate.[112]

1.1.27 *coram* Daneels/2021[113]

This unpublished case reaffirms jurisprudence of the Signatura. Montini summarises the points in this way:

> 2. The almost entirely restricted exercise of all priestly faculties, especially if one adds to this the prohibition to wear the clerical habit, comes very close to the penalty of dismissal from the clerical state, which is in fact a penalty that can only be imposed for very serious crimes defined in law […]

[110] The details of the case are found in a statement published, with the approval of the Dicastery for the Clergy, by the bishop in the local diocesan newspaper including the Latin text of Clergy's decision. See D. FELTON, "Update regarding Father William C. Graham," in *The Northern Cross*, vol. 2, no. 5 (2024), 10.

[111] *coram* Mamberti-2/2021, no. 10.

[112] See bid., no. 13.

[113] STAS, definitive sentence *coram* Daneels, 14 December 2021, Prot. no. 55056/20 CA, unpublished.

> 3. The protection of minors is undoubtedly of the utmost importance and must be dealt with by lawful means and in a proportionate manner. Scandal must certainly be avoided, as long as it is well-founded and not pharisaical or the result of an over-provoked sensitivity. In this it is the duty of the bishops to form the right conscience of the faithful.
>
> 4. On the basis of these two principles, there can be a fair relationship or proportion between non-delinquent acts, i.e. between imprudence, and the restriction of only the exercise of the sacred ministry directed to children.[114]

While giving a concrete example of a type of administrative restriction that could be proportionate to non-delictual activity, the judges, nonetheless, reaffirm that the complete restriction of exercising the power of orders is akin to the penalty of dismissal from the clerical state, as asserted in *coram* Stankiewicz/2016.[115]

1.1.28 *coram* Daneels/2022[116]

A priest who was denied reinstatement to the full exercise of sacred ministry had made recourse to the Signatura on the grounds that the prohibition of the exercise of any ministry *coram populo* is illegitimate. The Signatura ruled that it is not a complete prohibition when the priest is allowed to celebrate the sacraments for family occasions or when he is allowed to concelebrate the liturgy when invited by his brother priests because his family and confrères are part of the People of God.[117]

Montini's summary does not provide details on the exact nature of the restriction, for example, whether or not those celebrations of the sacraments, or concelebration, had to

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[114] G. MONTINI, *Massime* for STAS, definitive sentence *coram* Daneels, 14 December 2021, Prot. no. 55056/20 CA, nn. 2-4, https://www.iuscangreg.it/stsa_decisione.php?id_decisione=402&lang=IT (14 November 2025).

[115] See section 1.1.13 above.

[116] STAS, definitive sentence *coram* Daneels, 28 October 2022, Prot. no. 53090/17 CA, unpublished.

[117] See G. MONTINI, *Massime* for STAS, definitive sentence *coram* Daneels, 28 October 2022, Prot. no. 53090/17 CA, nos 2-3, https://www.iuscangreg.it/stsa_decisione.php?id_decisione=411&lang=IT (15 November 2025).

take place privately, in a church, or otherwise. If the Signatura is making a distinction between *coram populo* or not, one could ask, based on this decision, if permission to celebrate the Eucharist in the presence of one minister privately, i.e., in a suitable place outside of a church, constitutes *coram populo*?

1.1.29 *coram* Hendriks/2023[118]

This case concerns the types of payment or stipend a priest receives. For our study, the Signatura clarifies that there are three types of stipends: subsistence (cf. can. 1350, § 1 and can. 384), *la previdenza* or social welfare (cf. can. 281, § 2) and remuneration (cf. can. 281, § 1).[119] Interestingly, the judges ruled that the imposition of a penalty does not cancel the right of a priest to subsistence and social welfare, while an infirm, an elderly, or a priest otherwise unable to exercise ministry is entitled to social welfare. We will examine this question later in our study of the relationship of a priest to his bishop. Perhaps the most important point of this sentence, summarised by Montini, is the ruling that:

> a cleric cannot be forced to engage in secular activities, since canon 286 only refers to a licence, which may be graciously granted by the ecclesiastical authority to a cleric who requests it, allowing him to engage in business and commercial activities; in truth, this canon does not deal with the precept of imposing an activity on a cleric to be exercised in civil society.[120]

[118] STAS, definitive sentence *coram* Hendriks, 6 February 2023, Prot. no. 54523/19 CA, unpublished.

[119] See G. MONTINI, *Massime* for STAS, definitive sentence *coram* Hendriks, 6 February 2023, Prot. no. 54523/19 CA, no. 1, https://www.iuscangreg.it/stsa_decisione.php?id_decisione=429&lang=IT (15 November 2025).

[120] "Il chierico non può essere costretto ad esercitare un'attività secolare, dal momento che nel can. 286 si fa solo cenno alla licenza, che dall'autorità ecclesiastica possa essere benignamente concessa ad un chierico che la richiede, con la quale licenza si permette l'attività affaristica e commerciale; in questo canone in vero non si tratta del precetto di imporre ad un chierico una attività da esercitare nella società civile" (MONTINI, *Massime* for STAS, definitive sentence *coram* Hendriks, 6 February 2023, no. 5.

A priest who has been removed from the sacred ministry, whether by penalty or non-penal administrative restriction, cannot, according to the jurisprudence, be forced to engage in secular work in order to provide for his economic situation.

1.1.30 *coram* Migliavacca/2023[121]

In Montini's summary of this decision, we are able to glean that a transitional deacon was not ordained priest because of sexual activity he committed while still a teenager. It seems that administrative restrictions were placed upon the deacon as well as a penal precept. The Signatura ruled according to Montini's summary:

> 2. The Ordinary may legitimately request that a cleric keep him informed of his place of residence. […]
>
> 4. There is a violation of the law *in decernendo* if the diocesan bishop prohibits a deacon from living and working in any diocesan or parish institution because of behaviour that, according to the legitimate statutes of that particular Church, does not constitute a crime in the canonical or secular forum (in the case where the sexual acts took place between the appellant, who was not yet 16 years old, and his even younger brothers).
>
> 5. There is a violation of the law *in decernendo* if indeterminate penalties are imposed by penal precept ("with just punishment," "with proportionate punishment," "with due punishment.")[122]

This sentence seems to be a contradiction in the jurisprudence regarding non-penal administrative restrictions. This ruling seems to suggest that deacons cannot be prohibited from living and working in any ecclesiastical institution for non-delictual behaviour

[121] STAS, definitive sentence *coram* Migliavacca, 16 November 2023, Prot. no. 54619/19 CA, unpublished.

[122] "2. L'Ordinario può chiedere legittimamente che un chierico lo tenga informato del luogo della sua dimora. […] 4. Si ha violazione della legge in decernendo se il vescovo diocesano proibisca ad un diacono di abitare e prestare la sua opera presso qualsiasi istituto diocesano o parrocchiale per un modo di comportarsi che secondo i legittimi statuti di quella Chiesa particolare non costituisce un delitto nel foro canonico e nel foro secolare (nel caso gli atti sessuali avvennero tra il ricorrente non ancora sedicenne e i suoi fratelli ancora più piccoli). 5. Si ha violazione della legge in decernendo se con precetto penale sono comminate pene indeterminate ('con giusta pena', 'con pena proporzionata', 'con la debita pena')" (G. MONTINI, "*Massime* for STAS, definitive sentence *coram* Migliavacca, 16 November," nn. 2, 4-5, https://www.iuscangreg.it/stsa_decisione.php?id_decisione=429&lang=IT [15 November 2025]).

without making any other distinctions or clarifications. Does this apply only to deacons who, like priests, have the faculty to preach, may baptise and witness marriages? Caution demands that we do not read too much into a mere summary of the judgment. If, and when, the decision is published, we will be better able to understand its meaning.

It is worth noting, however, that the judges ruled that a penal precept is illegitimate if it does not contain a specific penalty. Indeterminate penalties, such as the ones highlighted there, are insufficient.

1.1.31 *coram* Sandri/2024[123]

This is an unpublished case cited by Daniel. He gives no details of the case but provides an important citation from the decision regarding the authority of bishops to reserve to themselves the authority to permit or deny a priest the ability to celebrate Mass in a church. The judges decreed:

> The archbishop has restored to the rev. X the right to public celebration of the Eucharist only in extraordinary circumstances and with written permission obtained on a case-by-case basis [. . .]. This restriction is an exception to the general obligation of priests, according to canon 561, to obtain permission from the rector of the church before celebrating the Eucharist. The most excellent archbishop has deprived the rev. X of the aforementioned faculty of requesting, in accordance with the law, permission from the rectors of the church even though this concerns a permission which is to be granted in accordance with canon 903.[124]

Because the rector of a church is to admit a priest to the celebration of the Eucharist, even without a letter of introduction from his ordinary (see c. 903), it is against the norm of law

[123] STAS, definitive sentence *coram* Sandri, 27 June 2024, Prot. N. 55648/21 CA, unpublished, cited in DANIEL, "The Judicial Protection of Priestly Ministry," 264.

[124] "Archiepiscopus N rev.do X ius ad publicam eucharistiae celebrationem tantum in circumstantiis extraordinariis et singillatim obtenta licentia scripta Ordinarii loci restituit [. . .]. Haec restrictio exsulat ab obligatione generali sacerdotum ad normam can. 561 licentiam rectoris ecclesiae ante Eucharistiae celebrationem petendi [. . .]. exc.mus archiepiscopus rev.do X facultatem praefatam licentiam a rectoribus ecclesiae ad normam iuris petendi abstulit, quamquam agatur de licentia, quae ad normam can. 903 concedenda est" (*coram* Sandri/2024, no.4, quoted in DANIEL, "The Judicial Protection of Priestly Ministry," 264, note 97).

to refuse a priest permission to celebrate. Hence, the judges are indirectly affirming that an ordinary "is not competent to reserve to himself the authority to permit a priest to celebrate Mass in a church."[125]

1.2 The Settled Jurisprudence

We began this chapter with a short consideration of the binding authority of the jurisprudence of the Holy See. Whether or not jurisprudence of the Apostolic Signatura with regard to administrative law actually can create binding norms is left to others to explore and debate. The purpose for including the point is simply to highlight that jurisprudence certainly carries great authority, even binding authority if it is the basis for declaring illegitimate certain discretionary, administrative actions of the competent ecclesiastical authority. Our aim in considering numerous decisions of the Signatura is to glean a set of principles or rules that competent authorities should consider incorporating into their decision making if they do not want to have their decisions overturned in hierarchic recourse. Specifically, for our study, it is important to see how these principles or rules factor into the legitimacy or not of restricting a priest's ability to celebrate the Eucharist *coram populo*.

What follows is a list of those rules.

1. There is a difference between penalties, and restrictions on the use of faculties made by administrative act. To restrict the use of a faculty is not always, but can be, a penalty.
2. The nature of the restriction – penal vs. administrative – is determined by examining:

[125] DANIEL, "The Judicial Protection of Priestly Ministry," 264.

i. the motivating cause;

ii. the final cause;

iii. the procedure used to impose the restriction.

3. An administrative act that restricts the use of a faculty must always make a distinction between faculties granted *ab homine* and faculties granted *a iure*. This is because the use of faculties granted *a iure* in no way require permission or approbation of the competent authority.
4. Faculties granted *a iure* to office holders may not be restricted administratively as long as the cleric holds office because he needs the faculties to properly perform the office.
5. Faculties, indeed the exercise of the power of orders, may be restricted as long as there is a proportion between the restriction and the motivating cause of imposing the restriction, and only for as long as the cause perdures. Furthermore, each restriction must be considered individually to see if it meets the test of proportionality. Moreover, a regular review (at least annually) must take place to see if the cause is perduring.
6. Restrictions may not be imposed to punish behaviour but are imposed to ensure the proper functioning of office or ministry for the good of the community.
7. The test for proportionality entails:
    i. an analysis of whether or not the restriction chosen is suitable to achieve the intended purpose of the restriction, and whether or not it shows a reasonable connection to the aim and is in accord with the mind of the supreme Legislator,

ii. a determination of whether or not the restriction chosen is the least burdensome available,

iii. a verification of whether or not the restriction will be intolerable to the person or causing a violation of his juridical situation.

Furthermore, the Apostolic Signatura is the judge of whether or not an administrative restriction meets the test of proportionality or not, thereby performing a judicial review of the due discretion of the competent authority.

8. The competent authority's role in moderating the *munus sanctificandi* does not mean that he may take away completely its exercise, except in accord with the law. Furthermore, simply because a role is carried out by a priest does not make that function priestly ministry: priests can carry out ministry that is carried out equally by laity.
9. It is always illegitimate to prohibit completely the celebration of the Eucharist *coram populo*.
10. The ordinary is not competent to reserve to himself the granting of permission or no to celebrate the Eucharist in a church or oratory.
11. Each of the following is not a reason alone, *in se*, to impose restrictions on ministry
    i. loss or denial of office,
    ii. financial damage to the diocese or other institution,
    iii. the fear of scandal,
    iv. public outcry or *admiratio.*
12. The total prohibition of priestly ministry is never a legitimate penal remedy.

CHAPTER ONE: JURISPRUDENCE OF THE APOSTOLIC SIGNATURA

Having surveyed the state of the jurisprudence, we will next look at the relationship that exists between a diocesan priest and his bishop of incardination in order to explore the role and parameters of priestly ministry.

CHAPTER TWO:

THE SECULAR PRIEST IN RELATION TO HIS BISHOP

2.1 The Notion of Presbyter in *CIC/83*

The Code begins by distinguishing two groups of people that exist by divine institution among the people of God: sacred ministers and everyone else, called laity (see c. 207, §1). The canon further specifies that sacred ministers are known in the law as clerics.[1] It further specifies that among clerics and laity are those who are consecrated to God in their own special way, but whose state does not belong to the hierarchical structure of the Church (see c. 207, §2).

Canon 266, §1 states that a person becomes a cleric, and a sacred minister, through the reception of the diaconate. Canon 1008 further elucidates that, by divine institution, the rite of ordination marks a member of the faithful with an indelible character that constitutes him as a sacred minister. The orders are the episcopate, the presbyterate, and the diaconate (c. 1009, §1). Finally, canon 1024 states that only a baptized male receives the sacrament of holy orders validly. Hence, a presbyter is a baptized male who, through reception of the diaconate was constituted a sacred minister and cleric, forming part of the hierarchical

[1] Only the distinction between sacred minister and laity is of divine institution and not the equivalence of sacred minister with cleric. Ecclesiastical law specifies that one becomes a cleric by being ordained a deacon (see c. 266, §1). That the two states are not necessarily equivalent is shown in c. 290 which specifies that ordination never becomes invalid but an ordained man can lose the clerical state. Similarly, the *CIC/17* stipulated that one became a cleric by reception of what was known as the minor order of first tonsure (see. *CIC/17*, c. 108, §1). It is ordination that makes one a sacred minister. Ecclesiastical law determines the status of cleric. See R. KASLYN, Commentary on c. 207, in *CLSA Comm2*, 252.

structure of the Church and who, by means of a subsequent rite of ordination, was inserted into the second order of sacred ministers. What we need to examine is the role of a presbyter in the hierarchy of the Church.

2.1.1 The Presbyter in the Hierarchy

Part II of Book II of the Code is entitled The Hierarchic Constitution of the Church. It is divided into two sections: the supreme authority of the Church (cc. 330-367), and particular churches and their groupings (cc. 368-572). The first section deals with the Roman Pontiff and the college of bishops who both are able to exercise supreme authority in the Church. The section includes canons on the cardinals of the Holy Roman Church, the synod of bishops, papal legates, and the Roman curia, all of whom assist the Roman Pontiff in his governance. The second section, on particular churches, begins by stating that a particular church, in the first instance, is a diocese (see c. 368), which is a portion of the people of God entrusted to a bishop to be shepherded "*with the cooperation of the presbyterium*" (c. 369) [emphasis added].[2] The section continues by elaborating on the role of bishops in general, diocesan bishops specifically**,** and the various organs and offices of diocesan governance. The section concludes, not with a discussion of presbyters, as one might expect, but rather with the specific ecclesiastical offices of pastor, parochial vicar, vicar forane, rector, and chaplain, all of which can be held only by a priest.[3]

[2] This thesis considers only secular priests, often called diocesan priests, who are incardinated in a diocese under the authority of its bishop. Priests, who by special consecration, vow, or membership in some ecclesiastically recognised group are incardinated into a public juridical person other than a diocese, for example a religious order, are not included in this study. Accordingly, my use of *presbyterium* is used in the strict sense of the priests incardinated in a particular Church and not in the broader sense of priests, incardinated or not, religious or other, who may be ministering in a particular Church.

[3] To be appointed validly, pastors (see c. 521, §1) and parochial vicars (see c. 546) must be in the sacred order of the presbyterate. A vicar forane (see c. 553, §1), rector (see c. 556), or a chaplain (see c. 564) must be a *sacerdos*. In other words, a bishop, such as an auxiliary bishop, or a priest could be appointed to the office of vicar forane, rector, or chaplain. The wording of the canons for pastors and parochial vicars,

Canon 207, §2 clarifies that special consecration of the laity or clerics does not belong to the hierarchical constitution of the Church. Presbyters, *qua* presbyters, are part of the hierarchy. Therefore, it seems odd that only particular offices held by presbyters are considered in Book II, Part II of the Code. Is it because the Supreme Legislator assumes that a presbyter will be given an office such as pastor or chaplain? Analogously, titular bishops are given specific offices. That can happen by appointment of the Supreme Pontiff, for example to an office in the Roman curia, or by appointment required *a iure*, for example, auxiliary bishops and coadjutor bishops must be appointed at least to the office of episcopal vicar, if not vicar general (see c. 406, §2).[4] While the *CIC/83* does not contain a canon that requires that a priest be appointed to an ecclesiastical office, canon 371, §1 of the *CCEO/90* specifies that a priest has a right to receive from his eparch a certain office, ministry**,** or function.[5] If a Latin rite priest does not have a right to an office but forms part of the hierarchy of the Church, what is his role *qua* priest?

2.1.2 The Priest Carries out the One Ministry of Christ

Lumen gentium elaborates on the role of priests when it teaches:

> Christ, whom the Father sanctified and sent into the word, has through his apostles made their successors, the bishops, share in his consecration and his mission; and these have *legitimately handed on the office of their ministry in varying degrees to various subjects in the Church. In this way the divinely instituted ecclesiastical ministry is exercised in*

when specifying the presbyterate for validity, might suggest that the Supreme Legislator does not see a bishop, whether diocesan or titular, holding either of those offices. While it is true that a bishop, having been ordained as deacon remains a deacon, his episcopal ordination, even though it indelibly marks him anew of the same priestly office, surpasses that of the priesthood such that he is no longer also a priest in the same way that he remains a deacon.

[4] A retired bishop would no longer hold any office (see c. 184).

[5] See R. BONA, The Right to Ministry, Remuneration and Support of Unassignable Incardinated Presbyters: A Canonical Analysis, JCD thesis, Washington, DC, The Catholic University of America, 2019, 283-286 for a discussion of whether or not canon 371, §1 of the *CCEO/90* is a parallel place (see c. 17) for understanding the *CIC/83* in this regard. Bona believes that it is. We will return to this question later in this chapter. All references to canons in the *CCEO/90* will be cited by the abbreviation *CCEO/90* followed by the canon number.

> *different orders by those who right from ancient time are called bishops, priests, and deacons*. Although they do not possess the highest honour of the pontificate and depend on the bishops for the exercise of their power, priests nevertheless are united with them in priestly honour, and *by virtue of the sacrament of order they are consecrated* […] as true priests of the new testament, to preach the gospel and nourish the faithful and *celebrate divine worship. In their own degree of ministry they share in the office of Christ the one mediator and proclaim the divine word to all people. But it is above all in the eucharistic worship or synaxis that they exercise their sacred function* […] According to their share of authority they exercise the office of Christ and head, they gather together the family of God. [emphasis added][6]

The ministry carried out by priests is the very same as that of Christ which was entrusted to the apostles. That ministry was legitimately shared with others in various degrees of participation, firstly with bishops as successors of the apostles but also with priests as their co-workers. As *Presbyterorum ordinis* states: "As they fulfil within their own measure of responsibility the role of Christ the head and the shepherd, priests gather the family of God in the name of the bishop into one fellowship inspired for one purpose, and lead them in the Spirit through Christ to God the Father. Spiritual power is given to priests to carry out his ministry, as for their other duties: it is given for the development of the body."[7] The spiritual power bestowed upon priests by ordination is given so that they might gather people to build up the Church. All of that is done under the authority and guidance of the bishop. If bishops need priests to fulfill their ministry, and priests depend on bishops for the exercise of their share of that same ministry, what is the relationship of priest to bishop?

2.2 The Priest in Relation to His Bishop

Canon 369, taken verbatim from the Second Vatican Council's decree on the pastoral office of bishops in the church, *Christus Dominus*, defines a diocese as "a portion

[6] SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church *Lumen gentium*, 21 November 1954 (=*LG*), no. 28, in *AAS*, 57 (1965), 33-34, English translation in TANNER, vol. 2, 872-873.

[7] SECOND VATICAN COUNCIL, Decree on the Ministry and Life of Priests *Presbyterorum ordinis* 7 December 1965 (=*PO*), no. 6, in *AAS* 58 (1966), 999, English translation in TANNER, vol. 2, 1049.

of the people of God which is entrusted to a bishop for him to shepherd with the cooperation of the *presbyterium*, so that, by adhering to its pastor and gathered by him in the Holy Spirit through the gospel and the Eucharist, it constitutes a particular church in which the one, holy, catholic, and apostolic Church of Christ is truly present and operative."[8]

Bishops shepherd the people entrusted to them with the cooperation of the *presbyterium*, or college of priests. Before looking specifically at the details of the relationship between priest and bishop, we need to understand how a priest becomes the co-worker of the bishop, how he becomes a member of the *presbyterium*. While it resembles the relationship of a bishop to the college of bishops, there are important differences. We will look first at membership in the college of bishops.

2.2.1 Membership in the College of Bishops

A bishop is a member of the college of bishops "by virtue of sacramental consecration and hierarchical communion with the head and members of the college [...]" (c. 336). It is not ordination alone that constitutes a bishop as a member of the college because he may be a validly ordained bishop but may not be in communion with the Church. Hence, membership requires hierarchic communion as well as ordination.

The Fathers of the Second Vatican Council discussed the need for bishops to have a canonical mission that provides the necessary hierarchic communion. *Lumen gentium* taught that:

> bishops, as successors of the apostles, receive from the Lord […] the mission to teach all nations and to preach the gospel to every creature […] To carry out this mission Christ the Lord promised the apostles the Holy Spirit and on the day of Pentecost he sent him from heaven […]
>
> The canonical mission of bishops can come into being by means of lawful customs which have not been revoked by the supreme and universal power of the Church, or by

[8] See SECOND VATICAN COUNCIL, Decree Concerning the Pastoral Office of Bishops in the Church *Christus Dominus*, 28 October 1965 (=*CD*), no. 11, in *AAS* 57 (1965), 678, English translation in TANNER, vol. 2, 924.

> means of laws made by that same authority or recognised by it, or directly by the successor of Peter himself; and if the latter opposed the appointment or refuses apostolic communion, the bishop cannot be admitted to office.[9]

Canonical mission, a requirement of membership in the college of bishops, is, according to *Lumen gentium*, directly granted by the successor of Peter. That grant can happen in a variety of ways, whether by custom, by law, or by the personal choice of the Supreme Pontiff. What is important to note is that all of them depend on the Supreme Pontiff for the efficacy of the grant.

The notion of canonical mission was best clarified by the explanatory note appended to *Lumen gentium* which states:

> In the [episcopal] *consecration* there is given an *ontological* participation in the *sacred* functions, as is undoubtedly clear from tradition, including liturgical tradition. The word *functions* is used deliberately, and not *powers*, because the latter word could be understood of power *all ready for action*. But to have such power ready for action there has to be added, through hierarchical authority, the *canonical* or *juridical determination*. This determination can *consist* in the granting of a particular office or in the assignment of subjects, and it is given in accordance with *rules* approved by the supreme authority. A further rule of this kind is required *by the nature of the case* because it is a question of functions which have to be exercised *by a plurality of subjects* cooperating hierarchically by the will of Christ. [Emphasis added.][10]

Hence, the mission received from, or acknowledged by, the supreme authority of the Church is the sign of the necessary hierarchic communion that must exist among the members of the college of bishops with its head.

The explanatory note further clarified the nature of the college of bishops in relation to its head by stating:

> The Supreme Pontiff, as supreme pastor of the church, can exercise his power at all times as he thinks best, as is required by his very function. The college, however, while always in existence, does not for that reason permanently act by *strictly* collegial action, as is clear from the Church's tradition […] Everywhere it is clear that it is a question of *union* of the bishops *with their head*, and it is never a question of the bishops acting *independently* of

[9] *LG*, no 24, in *AAS*, 57 (1965), 29, TANNER, vol. 2, 868.

[10] *LG*, *Nota explicativa praevia*, no. 2, in *AAS*, 57 (1965), 73, TANNER, vol. 2, 899. The *AAS* attributes the note to the authorship of Pericles Felici, Secretary General of the council.

> the pope […] N.B. Without hierarchical communion the sacramental-ontological function, which is to be distinguished from the canonico-juridical aspect, *cannot* be exercised. [Emphasis in original.][11]

The council taught that receiving the sacrament of ordination does not, in itself, place a bishop in hierarchic communion with the Supreme Pontiff. That communion exists because it is given by the Pontiff to him by means of the canonical mission. In practical terms, that means choosing a man for the office of bishop and assigning him as a diocesan or titular bishop. Membership in the college of bishops requires both episcopal ordination and the granting of canonical mission that is dependent upon the Supreme Pontiff. Even though the appointment of a bishop is almost always tied to the granting of an office, such as a diocesan bishop or as an auxiliary, it is not always so. Appointees to offices within the Roman curia are often elevated to the episcopate as an honour commensurate with the office to which they have been appointed. Technically, they are appointed to a non-existent, titular diocese; however, they have none of the faculties of a diocesan bishop as we shall see. Furthermore, a retired bishop remains a member of the college of bishops as long as he has not broken communion with the Supreme Pontiff and the college, for example by the delicts of apostasy, heresy**,** or schism (see cc. 751, 1364).

2.2.2 Membership in the *Presbyterium*

Having seen how a bishop is made a member of the college of bishops, we need to examine how a priest is incorporated into the *presbyterium* of his diocese. While an act of the Supreme Pontiff constitutes canonical mission for a bishop, it is incardination that is the efficient cause of membership in the *presbyterium* of the priest's diocese.

[11] *LG*, *Nota explicativa praevia*, no. 4, in *AAS*, 57 (1965), 74-75, TANNER, vol. 2, 899-900.

2.2.2.1 Canonical Mission of a Presbyter

We have already seen how the Code is silent on the role of a priest, *qua* priest, in terms of his hierarchic relation to the Church. The Code does stipulate that he receives "the mission and capacity to act in the person of Christ the Head" (c. 1009, §3). In addition, he, as a cleric, is required to "be incardinated either in a particular church or personal prelature, or in an institute of consecrated life or society endowed with this faculty, or also in a public clerical association that has obtained his faculty from the Apostolic See, in a way that unattached or transient clerics are not allowed at all." (c. 265). As we have seen, a bishop has sacred power through his episcopal ordination but requires canonical mission to exercise it. Canonical mission is also required for a priest.

A priest cannot exercise the sacred power with which he was endowed at his presbyteral ordination without a bond of incardination that serves as his canonical mission. Bona points out that canonical mission is an oft-forgotten requirement.[12] The council applied the same notion of canonical mission to priests in *Presbyterorum ordinis*. It states that "by the sacred ordination and mission they receive from bishops, priests are promoted to the service of Christ the teacher, priest**,** and king whose ministry they share" (*PO*, 1).[13] Bona outlines the few times the concept of canonical mission was mentioned after the council, noting that the *CIC/83* makes no mention of it. He argues that canonical mission for priests is not conferred by ordination (clearly, as the council taught) or by incardination.[14] Bona's argument, that incardination does not constitute canonical mission,

[12] See BONA, The Right to Ministry, 270. I am indebted to BONA, The Right to Ministry, 269-274 for his analysis and research on "canonical mission."

[13] *PO*, no. 1, in *AAS* 58 (1966), 991, TANNER, vol. 2, 1043.

[14] See BONA, The Right to Ministry, 274.

fails because he bases it on canonical doctrine of the *CIC/17* that saw canonical mission as the assignment of an office.[15] His careful analysis of conciliar and post-conciliar documents notwithstanding, documents that clearly indicate a new understanding of sacred power and hierarchical communion, Bona concludes that "the conferring of the canonical mission is included in the granting of a specific assignment for a presbyter."[16]

The interpretation of canonical mission put forward by Arrieta seems much more in line with conciliar teaching.[17] *Presbyterorum ordinis* taught that "the bishops' office of service was delegated to priests in a subordinate capacity, men ordained into the presbyteral order to be collaborators with the episcopal order in carrying out the apostolic mission entrusted to them by Christ."[18] Furthermore, *Lumen gentium* taught that priests "as prudent cooperators of the episcopal order […] are called to the service of the people of God and constitute along with the bishop one *presbyterium* though destined to different duties."[19] Le Tourneau expresses it well when he states:

> Therefore, incardination is an act of incorporation into a community and a presbyterate. Its primary content is a relationship of service between a cleric and a hierarchical structure of the Church, whether territorial or personal. This no longer involves – as it previously had been understood – a simple subjection to the bishop. It involves incorporation, properly

[15] See BONA, The Right to Ministry, 270.

[16] Ibid., 274. As Bona argues well in his thesis, "assignment" is not the equivalent of an ecclesiastical office. This author agrees fully with Bona's point and his thorough research and reasoning on that specific question. Hence, canonical mission does not mean, for Bona, that a bishop must give an office to a priest, but there must be some conferral of an assignment, function, ministry apart from ordination. It is that conferral which constitutes "canonical mission" in Bona's opinion. It is on that specific point that this author disagrees with Bona. Even though, as we shall argue, bishops must give an assignment, *that* assignment is *not* the canonical mission.

[17] See J. ARRIETA, *Governance Structures within the Catholic Church*, Gratianus Series, Montreal, Wilson & Lafleur Ltd., 2000, 9-15.

[18] *PO*, no. 2, in *AAS* 58 (1966), 992, TANNER, vol. 2, 1043.

[19] *LG*, no. 28, in *AAS* 57 (1965), 35, TANNER, vol. 2, 873.

> speaking, into the particular church or other hierarchical pastoral structure, for the purpose of service, and through its service, of also rendering service to the universal Church.[20]

Arrieta points out that ordination, apart from the personal ontological change that occurs in the man ordained, "involves a formal *deputation* of the subject, a canonical mission to carry out the respective ministry in the ecclesial society, a mandate to dispatch the pastoral ministry of the degree received for the good of the people of God."[21] He is referring to all three grades of ordination.

Arrieta explains that for the ministry or function of each grade, its *missio canonica*, is a process that commences with the reception of the sacrament. He writes:

> Sacred ordination establishes the basic profile and permanent nature of the juridical position of the sacred ministers, and determines the ministerial services to be carried out for the ecclesial society. From a sacramental perspective, such ministries possess a universal dimension due to the fact that ordination has an absolute character and is conferred in relation to the entire ecclesial community. From a juridical perspective, much of their content is indeterminate and the ministerial duty properly arises when the necessary services are determined *in relation to an actual community*. In the case of deacons and priests, this occurs with incardination, wherein a proper juridical relationship is created (c. 266, §1) […].
>
> In the case of the episcopate, on the other hand, the ministerial relationship is not determined by incardination. For bishops, […] only upon incorporation into the college does the bishop receive those rights and duties relating to the universal Church which form part of the episcopal function. [Emphasis added.][22]

Clearly, communion between priest and bishop, and between bishop and pope, require the event of ordination. Ordination alone, while valid, does not, in itself, bring about the necessary communion. That comes with the canonical mission which happens at a different moment in time. For a bishop, that occurs when the Supreme Pontiff chooses a man for ordination as bishop, or accepts his nomination[23], among different ways that

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[20] D. LE TOURNEAU, Commentary on canon 265, in *Exegetical Comm*, vol. II/1, 300-301.

[21] ARRIETA, *Governance Structures*, 13.

[22] Ibid., 14.

[23] There are a small number of Latin Rite dioceses, mainly in Europe, for example the Diocese of Basel in Germany, in which cathedral chapters nominate their bishop for acceptance by the Supreme Pontiff

canonical mission may occur for a bishop as we noted earlier from *Lumen gentium*, no. 24. Canonical mission occurs because the Supreme Pontiff has assigned a man a particular community, even a titular one, as simultaneously it will be for the whole Church as a member of the college. For a priest, his connection to an actual community, which is the essence of canonical mission, occurs not as a choice in a moment of time, nor as a direct conferral, but as a process of discernment, as it were, over the course of the candidate's training as we shall now explore.

2.2.2.2 Suitability for Ordination

Canon 1025 outlines the prerequisites for the licit ordination of a man to the priesthood. Most significantly, paragraph one requires, among other things, that the candidate "is endowed in the judgment of his own bishop or that of the competent major superior with the necessary qualities" (see c. 1008). Paragraph two further stipulates that the bishop has judged that the candidate is "useful for the ministry of the Church" (c. 1008, §2). Superficial reflection might suggest that the two requisites of the canon are the same. That is not the case. The requirement of proper qualities, for example, an ability to speak publicly, knowledge of theology, an upright moral life, among others qualities, pertain to the ordinand himself. The requirement of usefulness for ministry pertains to the diocese. Several scenarios are possible. A diocese may have a surplus of seminarians for whom there are no ecclesiastical offices, ministries, or even finances available. It could also happen that there is a need for priests in a diocese, but a particular man is not endowed with the qualities needed for the ministry. Hence, to proceed licitly to ordination, the bishop

(see https://www.bistum-basel.ch/ueber-uns/domkapitel [7 September 2026]). The Holy See announced a provisional agreement with the People's Republic of China regulating the appointment of bishops in China, the provisions of which remain confidential (see FRANCIS, *nuntius Ad catholicos Sinenses adque Ecclesiam universalem*, 26 September 2018 in *AAS*, 110 [2018], 1456-1464).

must judge firstly that the man is suitable, and secondly that there is a place for him in the diocese. When all the other prerequisites outlined in canon 1025 are fulfilled and the two judgements of the bishop have been made, a man is licitly ordained a priest.

2.2.2.3 Usefulness to the Diocese

The usefulness to the diocese is an important consideration because by ordination to the diaconate a man is incardinated into a diocese (see c. 266, §1) and, by subsequent ordination as priest is made a member of the *presbyterium*. "Usefulness" is important for another reason: by incardination, the bishop is simultaneously granting canonical mission to the transitional deacon, *qua* future priest, precisely because he has a right to be ordained priest. A man ordained to the transitional diaconate has a right to be ordained a priest unless there is a canonical cause to deny ordination (see c. 1030). As such, the decision on his usefulness for the diocese as a priest is, for all intents and purposes, made simultaneously with the decision to ordain him deacon. Obviously, further requirements of priestly ordination outlined in the Code (see cc. 1025-1036), such as completion of studies, must be met before proceeding to priestly ordination. Only a canonical cause, such as the presence of an impediment to receiving orders (see cc. 1040-1042), a penalty (see cc. 1331-1333, 1336), or the decision of the deacon not to be ordained (see c. 1038) could prevent ordination to the priesthood.[24]

For a priest, the communion necessary for entrance into the college of presbyters (*presbyterium*) occurs when the bishop makes the decision that the deacon has fulfilled

[24] While it is possible to hypothesise that a man labouring under an undeclared, *latae sententiae* penalty may legitimately ask for the sacrament of ordination because he is not required to reveal his conscience and the prohibition of receiving the sacraments suspended in virtue of c. 1335, §2, the ordination would, nevertheless, be illicit for certain crimes enumerated in c. 1041, nn. 2-4, 5, and c. 1042 which constitute an impediment to receiving orders.

all the requirements and is, therefore, ready to be ordained priest. But the actual union cannot take place until completion of the ordination ceremony itself, until the man is made a priest. In the same way, the canonical mission of a bishop is not active until he is actually ordained bishop. While Bona argues that this argument is difficult to reconcile with the teaching, already quoted, from *Presbyterorum ordinis* that a priest is promoted to the service of Christ by the ordination and canonical mission he received from the bishop, it seems to this author perfectly in accord with it. Bona holds that canonical mission occurs after ordination. This author argues that it is completed at ordination.

By the incardination and subsequent ordination to the priesthood, a man is brought into communion with his bishop, forming a *presbyterium* which has as its goal to aid and assist the bishop in his role as vicar of Christ in the diocese. Just as a bishop, regardless of any particular assignment, or even if retired, is assigned the task of care for the universal Church as a member of the college of bishops, exercising with its head the ministry entrusted to the apostles so, too, an incardinated priest, regardless of any particular task assigned to him, or even if incapacitated, is a member of the *presbyterium* with the care of his particular diocese.

Having been made a member of the *presbyterium* by incardination and priestly ordination, what, then, is a priest allowed to do? How may he exercise the order of priest simply on the basis of his ordination and membership in the *presbyterium*? How does he co-work with his bishop?

2.3 The Exercise of Sacred Orders

We have noted that the Code describes the role of bishops in general but does not do so for priests. While most titular bishops are appointed to an office simultaneously with

their nomination as bishop, some are not.[25] Furthermore, retired bishops do not hold office. Nevertheless, all bishops, members of the college by canonical mission, are attached to the universal Church, and have a role to play in the threefold *munera* of governing, sanctifying and teaching. That ministry is also entrusted to priests in a subordinate way because they share in the very same one priesthood of Christ. What is the role of a bishop and priest in that ministry apart from any office or assignment?

2.3.1 Faculties

Before examining how priests exercise the three-fold *munera* of Christ's priesthood, it is necessary to examine the notion of faculty. Even though a *sacerdos* receives the sacred power necessary to engage in the governing, teaching**,** and sanctifying of the Church, that power may not be used at will or indiscriminately. Good governance of the Church requires that the various rights and duties of sacred ministers and laity be coordinated in order to promote the common good (see c. 223). "In view of the common good, ecclesiastical authority can direct the exercise of rights which are proper to the Christian faithful" (c. 223, §2).

The term faculty is not defined in the Code, but it is used frequently. For example, priests have the faculty to preach (see c. 764), and cardinals have the faculty to hear confessions everywhere (see c. 967, §1). Huels defines faculty as "any power or authorization necessary to perform an act lawfully."[26] He adds further that it is an authorization to perform acts

[25] As a recent example, the Secretary of the Dicastery for the Doctrine of the Faith was nominated on 29 July 2024 to the episcopate with a titular see merely as an honour without the grant of a new office. See the daily bulletin of the Vatican Press Office for that day https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2024/07/29/0590/01205.html, (6 December 2025).

[26] J. HUELS, *Empowerment for Ministry: A Complete Manual on Diocesan Faculties for Priests, Deacons, and Lay Ministers*, New York NY/Mahwah NJ, Paulist Press, 2003, 4. Huels adds that the term "faculty" need not be used in the law for a power or authorization to be a faculty. For example, when the code speaks of a lay person being "permitted" to preach in c. 766, Huels says that this is the same as a faculty.

in the name of the Church.[27] Faculties given by hierarchical superiors cannot be refused and must be used on behalf of the community for which it was granted.[28] Finally, Huels distinguishes faculties as either "authorizations" or a "grant of power of governance."[29] As we will see, for priests, faculties for the *munus* of governing are grants of the power of governance. Those for the *munera* of teaching and sanctifying are mostly authorizations to use the power of order given at ordination.

Huels provides an excellent analysis of faculties and states that their purpose, at least those granted to priests, is "to empower persons for ministry and administration within the diocese. Faculties are a juridical means to link the bishop, who is responsible for overseeing all ministries in the local church, and those who collaborate with him in the ministry."[30] In other words, they are the means by which the bishop directs the ministry of his co-workers. Faculties, as we saw in the jurisprudence of the Signatura, are distinguished according to their source: granted by law, or by man. Huels makes a further distinction among faculties granted by law that is not seen in the Signatura's jurisprudence.[31] He says that faculties granted by law are "granted at ordination, by provision of an office, or apart

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See ibid. Viana defines faculty similarly: "the ability to act in a licit or juridically efficacious manner," (A. VIANA, Commentary on c. 132, in *Exegetical Comm*, vol. 1, 835).

[27] See HUELS, *Empowerment for Ministry*, 11.

[28] See ibid., 14. How much more must faculties granted *a iure* at ordination be used for the good of the community?

[29] ibid., 15.

[30] ibid., 21.

[31] See Figure 1, below at 2.3.1.4.

from an office."[32] This further distinction is important for the purposes of this study, especially with regard to faculties granted at ordination.

2.3.1.1 Faculties Granted by Law at Ordination

Faculties granted by law at ordination "are so closely connected with the cleric's order that the Church determines that every deacon, presbyter, or bishop is to have them from ordination […] Moreover, the bishop cannot restrict or remove faculties granted at ordination, unless permitted by the law, for example, with respect to preaching" (c.74).[33]

By ordination, every cleric is given by God the sacred power of the particular order and is authorized by the Church to carry out certain acts in its name. These faculties, also known as the "power of order**,**" are further divided by Huels into "the power of order of divine law and the power of order of the ecclesiastical law."[34] This is another crucial distinction.

2.3.1.1.1 Powers of Order of Divine Law

Huels states:

> Very few powers of order are of the divine law. They are the power to celebrate the sacraments of confirmation, the Eucharist, penance, possibly anointing of the sick (a disputed question), and holy orders. All other powers of order are powers of the ecclesiastical law, that is, the Church itself determines that certain powers (which rightly may be called "faculties") are appropriate to the order of deacon, presbyter**,** or bishop and that these faculties are granted at ordination.[35]

[32] HUELS, *Empowerment for Ministry*, 22.

[33] Ibid.

[34] Ibid., 23.

[35] Ibid., 23.

Powers of order of divine law, according to Huels, are not faculties in the strict sense because they are "God-given powers that come to the cleric by ordination."[36] "One does not speak of the 'faculty' of a priest to celebrate the Eucharist, since this is a divine law power of order, not a faculty of ecclesiastical law."[37] Two of the powers of order require a true faculty to exercise the power: confirmation and penance. Those faculties are granted *a iure* or by delegation for bishops and priests as we shall see. Hence, even divine powers of order can be regulated by the Supreme Pontiff, but the restrictions are few. Even the Roman Pontiff is said to have the faculty to hear confessions (see c. 967, §1), presumably as a consequence of the power of the keys granted to Peter and his successors.

2.3.1.1.2 *Powers of Order of Ecclesiastical Law*

Faculties granted by law at ordination, what Huels also calls powers of order of ecclesiastical law, are those authorizations that allow clerics to perform numerous liturgical rites. Any cleric, for example, may carry out funeral rites, bless objects, preside at the liturgy of the hours. Bishops may hear confessions anywhere (see c. 967, §1). None of those functions require a specific faculty. They, as true faculties, are granted by the law in virtue of ordination itself.

2.3.1.2 Faculties Granted by Law by Office

Many times, the holder of a particular office enjoys a faculty to perform some act or duty. The faculty is granted by the law itself in virtue of holding the particular office. For example, a diocesan bishop may ordain his transitional deacons as priests (see c. 1016). Pastors receive the faculty to hear confessions (se c. 968, §1). Like faculties granted at

[36] HUELS, *Empowerment for Ministry*, 28.

[37] Ibid..

ordination, a bishop may not remove faculties granted *a iure* to an office holder except according to the law. Huels argues that if the bishop wanted to restrict faculties of office (except for preaching [see c. 764] and hearing confessions [see cc. 974, §1; 975[38]]**)**, he would "have to remove the person from office or transfer him to another office" if not by means of a legitimately inflicted penalty.[39]

2.3.1.3 Faculties Granted by Law Apart from Office

While these faculties are not numerous, they do exist in the Code. For example, in danger of death, any priest may absolve a penitent in danger of death (see c. 976). In the same circumstance, a pastor has the faculty to dispense from impediments to marriage (see c. 1079, §1). While being pastor is a condition of receiving the faculty by law, it is the verified circumstance of danger of death that triggers the granting of the faculty, not the office itself.

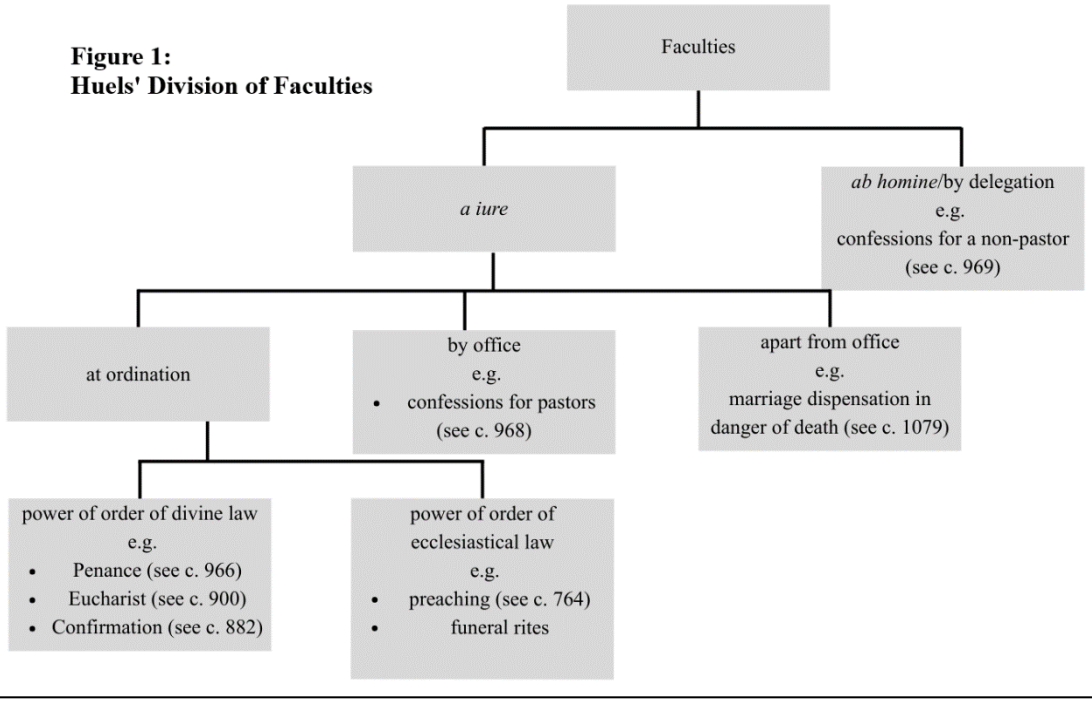
2.3.1.4 Faculties Granted *ab homine* (by Delegation)

Many of the faculties we associate with priesthood, especially for what pertains to the power of governance, are faculties granted *ab homine*. Priests who are not pastors can be delegated by the local ordinary to hear confessions, or to witness marriages. The local ordinary may also delegate to his chancellor the faculty to grant dispensations. Some faculties may be revoked by decision of the one who granted them (see c. 142, §1). Others, like the habitual faculty to hear confessions, require a grave cause (see c. 974, §1).

[38] Revocation of the faculty to hear confessions granted *a iure* by office is possible because it is specifically mentioned in c. 975 that refers back to the grant of that faculty. A reading of c. 974, §1 alone could lead one to conclude that only faculties granted *ab homine* could be revoked.

[39] HUELS, *Empowerment for Ministry*, 24-25.

Figure 1:
Huels' Division of Faculties



2.3.1.5 A Final Consideration Regarding Faculties

We have already noted that being ordained a *sacerdos* and being a cleric are not necessarily equal. One can lose the clerical state (see c. 290). Having lost the clerical state, the now-lay man nevertheless remains, sacramentally, a *sacerdos* who is prohibited from exercising the power of orders. The Code provides one exception, perhaps two.

Any *sacerdos* validly and licitly absolves any penitent in danger of death from all sins and censures even if a *sacerdos* with faculties is present (see c. 976). Any validly ordained *sacerdos* regardless of his status in Church, regardless of whether he has or has ever had the faculty to hear confessions, validly and licitly absolves in this case. Loza points out that any priest who so absolves is supplied with the necessary faculty by the

law.[40] He also argues that a validly ordained, non-Catholic priest validly and licitly absolves in this circumstance.[41]

If that is correct, then it can be argued that the same is true for anointing of the sick. Canon 1003 states that *every sacerdos* (*omnis* […] *sacerdos*) validly administers the anointing of the sick. Apart from pastors, the canon stipulates that *any* other *sacerdos* (*quilibet alius sacerdos*), with the at least presumed permission of the pastor, can administer the sacrament licitly for *any* reasonable cause. It is difficult to imagine that any pastor would not give permission readily to any priest to anoint in danger of death. Danger of death is certainly a reasonable cause. Given the supreme law of the Church, namely the salvation of souls (see c. 1752), the law sees that assisting someone through the passage of death is required by charity and is a necessity that requires him to anoint (see c. 1003, §3).

2.3.1.6 Section Conclusion

To summarize, at ordination, clerics are given the divine power to perform certain acts related to the three-fold ministry of Christ handed down to the apostles and their successors. Most of the sacred power of orders is regulated by the supreme authority of the Church through faculties. Faculties are authorizations to make use of the sacred power received. Those faculties are granted either by law – in virtue of ordination itself, through assumption of an office, or apart from an office – or by grant *ab homine*. In this thesis, we are looking particularly at the authorization to celebrate the Eucharist. To narrow our focus,

[40] F. LOZA, Commentary on c. 976, in *Exegetical Comm*, vol. III/1, 796. Other commentators are silent on the supply of the faculty. The faculty is not supplied because of error or fact (see c. 144) because even if the penitent knows that the priest is no longer a cleric, or does not have faculties for confessions, with full knowledge, he is licitly and validly absolved by any priest. This is another example of a faculty granted *a iure* apart from office.

[41] Ibid., 796.

we will now examine specifically what faculties are granted to bishops and priests by law at ordination. Enumerating these faculties helps to identify the unique role of the priest in relation to his bishop, and to the diocese in which he ministers. Comparing and contrasting the faculties granted to priests and bishops also sheds light on the specific role of priests. We will examine the faculties granted at ordination to each order with respect to the three *munera*. First, however, we will examine briefly a distinction among the order of bishops, that is not present in the order of priests, to see if and how that distinction helps to identify better the nature of the priesthood.

2.3.2 Diocesan and Titular Bishops

We have already noted that the Code only enumerates how bishops exercise their three-fold function *with respect to diocesan bishops*. According to canon 376 there are two types of bishops. "Bishops to whom the care of some diocese is entrusted are called *diocesan*; others are called *titular*" (c. 376). Titular bishops include those who hold the offices of coadjutor or of auxiliary bishop. All of the customary things we associate with bishops and their authority are enumerated in Book II, Part II, Section II, Chapter II, article 2 concerning diocesan bishop. The offices of coadjutor and auxiliary, a sub-species of titulars, are enumerated in article 3. This part of the Code is silent on the ministry of all other titular bishops, such as officials of the Roman curia, apostolic nuncios, or retired bishops.[42] Thus, while every bishop receives the function of governing by episcopal consecration, a titular bishop does not therefore have the authority to legislate, to exercise

[42] A retired diocesan bishop, no longer holding that office, becomes a "titular" bishop. The code stipulates that he retains the title of "emeritus" (see c. 402, §1), but he has lost all the faculties granted to a diocesan bishop. The offices of the curia and nuncios are treated in the section dealing with the supreme authority. As such, titular bishops only have the faculties of law which we are not discussing.

executive power, or to act as judge, *qua* bishop. That role belongs to a diocesan bishop (see c. 391). Auxiliaries and coadjutors participate in the three-fold function by their communion with the college of bishops, and with the diocesan bishop by their required role of, at least, episcopal vicar (see c. 406, §2).[43] Other titular bishops do the same by participation in the college of bishops when the college acts as a college. They also exercise it through any office which is entrusted to them. That is true, at least with regard to the *munus* of governing but not with regard to the *munera* of teaching. Those *munera* may be exercised outside the acting college, and irrespective of any office as we shall see.

2.3.3 The *Munus* of Governing

The power of governance is divided into judicial, legislative**,** and executive power (c. 135, §1). Executive power is either ordinary, that is, attached to an office, or it is delegated (c. 131, §1). Hence, executive power of governance cannot be exercised by any *sacerdos* merely because of hierarchic communion *qua sacerdos*. The exception is that *sacerdotes* who are bishops have a right to attend and vote in an ecumenical council (c. 339, §1)**,** or to participate when the college exercises its supreme power in another way (c. 337, §2).

Specifically, the Code states that legislative power, apart from the Supreme Legislator, is exercised personally by diocesan bishops, and those equivalent to him (cc. 391, 381, §2) and cannot be delegated (c. 135, §2). Hence**,** office is required to exercise legislative power with the exception of the binding decrees of an ecumenical council (c.

[43] Because auxiliary and coadjutor bishops must be appointed at least to the office of episcopal vicar (if not vicar general) (see c. 406, §2), they become, by appointment to that office, local ordinaries (see c. 134, §2). The roles and prerogatives they have as local ordinary are present directly because of office, and only indirectly because of episcopal ordination.

341). Judicial power is possessed by judges (c. 135, §3) who, in the first instance**,** is the diocesan bishop (c. 1419, §1). The diocesan bishop is to appoint at least one other person with ordinary judicial power (cc. 1420-1421). The power of governance, apart from bishops in an ecumenical council, is not able to be exercised by any *sacerdos* merely on the basis of membership in the college or *presbyterium*.

2.3.4 The *Munus* of Teaching

In certain circumstances, the Supreme Pontiff, as well as the college of bishops**,** teach infallibly (c. 749). Bishops themselves are authentic teachers of the faith (c. 753). The Code states that "it is proper for presbyters, who are co-workers of the bishops, to proclaim the gospel of God" (c. 757). Preaching, which is one form of proclaiming the gospel (c. 762)**,** may be done by any *sacerdos* with the following provisos:

1. bishops have the right (*ius*) to preach everywhere unless the local bishop has expressly forbidden it (c. 763);
2. priests have the faculty (*facultate*) to preach everywhere with at least the presumed permission of the rector of the church unless particular law requires express permission, and in the case of preaching to religious in their churches, the actual permission of the superior (c. 764).

The priest's faculty to preach may be restricted or removed by the competent ordinary (c. 764)**.** While the Code uses two concepts – right and faculty – to describe the ability of a *sacerdos* to preach, in practice there is not a substantial difference in the *ratio* of the law.[44] A *sacerdos* is called to preach and may do so anywhere. Because a priest's duty is

[44] See J. CORIDEN, Commentary on c. 764 in *CLSA Comm2*, 926. As we saw earlier from Huels, it is not clear that the "*ius*" is anything more than a faculty since it can be denied by a local bishop. A true right normally cannot be denied. It can be lost, or restricted, but not denied.

subordinate to that of a bishop, and because he personally is not an authentic teacher, his ability is more easily restricted than that of a bishop.

A note should be made that the canon expressly mentions "competent ordinary" as the one with the ability to restrict or remove a priest's faculty to preach. It is not merely the priest's bishop of incardination who may remove the faculty, but any ordinary of any diocese or religious order. Hence the priest incardinated in diocese A who has been invited to preach a homily in diocese B may be denied permission to do so by any ordinary in diocese B. The question arises, however, if the bishop of incardination removes the faculty to preach, does that prohibition extend outside the diocese?[45] It is this author's opinion that it does not because the faculty is granted by the law and is meant to be universal. The ordinary of the diocese of incardination only has authority within his diocese. Furthermore, unlike habitual faculties for confession, which are both universally extended and revoked by law (see cc. 967, §2 and 974, §2), the revocation of the faculty for preaching has no such proviso in the law. Certainly canon 17 regarding parallel places, the mind of the Supreme Legislator (namely, that priests have the faculty to preach everywhere), as well as a strict interpretation of the restriction of rights (c. 18), would suggest that the revocation or restriction of the faculty to preach would extend only to the jurisdiction of a particular diocese, even for that of incardination. Furthermore, canon 36 dictates that singular administrative acts that restrict the rights of a person are to be interpreted strictly. At the very least, these considerations give rise to a doubt of law. We will return to this point, as it is an important consideration of who a priest is.

[45] Fuentes argues that when the faculty to preach is revoked by the ordinary of incardination it is revoked completely. See J. FUENTES, Commentary on c. 764 in *Exegetical Comm*, vol. III/1, 83. Other authors are silent on the issue.

Preaching is a species of teaching. A sub-species of preaching is the homily. It is the only type of preaching that the Code specifies. Homilies are the pre-eminent form of preaching and form part of the liturgy itself (c 764, §1). They are reserved to bishops, priests, and deacons. Since homilies form part of the liturgy (note that the Code does not specify Eucharistic liturgies), we must assume that homilies given at wedding or funeral services are reserved to a *sacerdos* or deacon. Preaching a mission or retreat outside of a liturgy of any kind may also be done in a church or oratory by a layperson with permission (c. 766).

Catechesis is another species of the *munus* of teaching. While it is a "proper and grave duty especially of pastors of souls" to catechise (c. 773), "solicitude for catechesis belongs to all members of the church" (c. 774, §1). The Code does not specify particular activities for the various members; it does say that a pastor "is to use the help of clerics attached to his parish" (c. 776). Hence priests are able to catechise without any sort of deputation or faculty.

We have seen, so far, that with the *munus* of governing, priests, *qua* priests, need some sort of office or delegation to exercise it. While the law gives priests the faculty to preach, many exercises of the office of teaching associated particularly with priests do not need an intervention of the competent ecclesiastical authority for their exercise[46]. We need still to consider the office of sanctifying.

[46] Two functions of teaching that do require a mandate or permission of the competent ecclesiastical authority are teaching (see cc. 805, 812, 818) and publishing (see cc. 823, 824, 827, 828, 831).

2.3.5 The *Munus* of Sanctifying

Priests do not participate in the exercise of executive power apart from their membership in the local *presbyterium* and the grant of a faculty or office. They, and titular bishops, may exercise the *munus* of teaching according to the norm of law. Just as titular bishops are granted broader freedom than priests in exercising their power of order when it comes to governing and teaching, the same is true for the *munus* of sanctifying.

Titular bishops, apart from any office they hold, may:

1. hear confessions anywhere unless the diocesan bishop has denied it (see c. 967, §1);
2. celebrate the Eucharist (see c. 900, §2);
3. ordain a bishop (see cc.1012-1013) but not a priest or deacon (see c. 1015).[47]

Titulars, merely *qua* titular, may not:

1. assist at a marriage (see c. 1108, §1);
2. baptise;[48]
3. anoint (see 1003, §2);
4. administer confirmation.[49]

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[47] This is another argument in favour of ascribing canonical mission for priests to incardination and ordination. A bishop can not ordain a priest without a mandate precisely because it involves canonical mission that is not his to give, *qua* bishop.

[48] While canon 861 §1 states that a bishop is an ordinary minister of baptism, no one is permitted to baptise outside of his territory without the required permission (see 862). A titular bishop, who is not an auxiliary or a coadjutor, does not have a territory to which he belongs, except for domicile. Domicile is not the referenced territory in canon 862 because it pertains particularly to pastors baptising outside the territory their parishes, or diocesan bishops baptising outside of their diocese. So, while the vast majority of titular bishops, as auxiliaries and coadjutors, may baptise freely that is so because of office and not because of ordination. If this interpretation is correct, then retired bishops, whether diocesan or titular, would also not be able to baptise freely.

[49] A bishop is an ordinary minister of confirmation (see c. 882). It is for the diocesan bishop to administer confirmation personally, or to ensure that another bishop does so. Moreover, no bishop may administer confirmation outside of his territory without permission (see 886 §2). A titular bishop, *qua* titular,

Priests may celebrate the Eucharist. It is the only power of order that does not have any restrictions in terms of required permissions or faculties. Like bishops, a priest, with a faculty or proper permission, may carry out all the other sacraments. That is because, even though there is a difference in the fullness of apostolic ministry between bishops and priests, there is no difference in the sacramental power of order.[50] "No function of worship can be considered to be by divine law the exclusive work of a bishop, and therefore it cannot be said that there is a difference between the episcopate and the presbyterate in terms of participation in the power of order, but only in its exercise."[51] Ghirlanda includes ordination as well.[52] He states "One can conclude that the provision of c. 1012 concerning the bishop as the minister of sacred ordination is of ecclesiastical law and not divine law."[53] At ordination, priests receive the fullness of sanctifying power, but its use is regulated by the supreme authority of the church, just as it is for bishops, *qua* bishop.

The role of the priest as part of the *presbyterium* is that of a co-worker who was ordained to continue the work of teaching and sanctifying, not on his own but under the

may not administer confirmation because he is not a diocesan bishop, and has no territory. He confirms licitly only by the request of a diocesan bishop. This applies to auxiliaries and coadjutors.

[50] Ghirlanda states "Tra i vescovi e i presbiteri, allora, c'è una differenza di pienezza del *munus ministerii apostolici*, ma non della postetà sacramentale di ordine" (G. GHIRLANDA, *Il sacramento dell'ordine e la vita dei chierici: (Cann. 1008-1054; 232-297)*, 2nd ed., Rome, Edizioni Studium, 2024, 45).

[51] Perlasca writes "[N]essuna funzione di culto possa essere considerata per diritto divino di esclusivo esercizio del vescovo, e che pertanto non si possa affermare che tra episcopato e presbiterato ci sia differenza a livello di partecipazione alla potestà di ordine ma solo nell'esercizio di essa" (A. PERLASCA, Commentary on c. 1012, in *QDE codice commentato*, 849).

[52] See GHIRLANDA, *Il sacramento dell'ordine*, 37-40; 59-65. Ghirlanda cites the historical precedents of bishops being ordained by presbyters with a pontifical mandate, including the Patriarch of Constantinople. See L. CHIAPPETTA, *Il codice di diritto canonico: commento giuridico-pastorale*, F. CATOZZELLA et al. (eds.), 3rd ed., vol. 2, Bologna, Edizione Dehoniane, 2011, 227 where he states that it is still an open question whether or not a bishop is the only ordinary minister of ordination.

[53] "si può concludere che la disposizione del c. 1012 circa il vescovo come ministro della sacra ordinazione è di diritto ecclesiastico e non di diritto divino" (GHIRLANDA, *Il sacramento dell'ordine*, 65).

leadership of the diocesan bishop in union with his confrères in the diocese. The same is true of the office of sanctifying; it is exercised under the leadership and direction of the bishop. While the fulness of that role may best be expressed in the appointment of a priest to the office of pastor, much in the same way the fullness of the episcopal order is best manifested as a diocesan bishop, there nevertheless remains a role for a priest, *qua* priest.

2.3.5.1 Other Acts of Divine Worship

Part II of Book IV of the Code deals with other acts of divine worship that include sacramentals, the liturgy of the hours, ecclesiastical funerals, vows, oaths. Part III deals with sacred places. Some of these items require the power of orders; some do not. Sacramentals are administered by "a cleric who has been provided with the requisite power" (c. 1168). Some sacramentals, however, may be administered by lay persons, according to the norm of the liturgical books or to the judgement of the local ordinary. Hence, a priest, *qua* priest, may perform any sacramental permitted to lay persons, or any sacramental not reserved to someone with a distinct authorization, in the same way that consecrations and dedications are reserved to bishops or priests with a special grant (see c. 1169, §1). Any priest can impart blessings except those reserved to the Roman Pontiff or bishops (c. 1169, §2). No permission of any type is required to fulfill the liturgy of the hours except publicly in a non-parochial church which requires permission of the rector (see c. 561).[54] Funeral rites, whether a service or a Mass, are properly conducted by the pastor of the deceased (see c. 530 6°); however, with his permission, any *sacerdos* may perform the rites. A *sacerdos* without special mandate has no authority to dispense, remit,

[54] By analogy, it would seem that permission would be required from the pastor to do the same in his parish church.

or commute vows or oaths (see cc. 1196, 1203). Most of the acts of sanctifying, outside of the sacraments, do not require any faculty or authorization to perform them.

2.3.5.2 Section Conclusion

Because priests and bishops share the same priesthood of Christ and mission handed on to the apostles, their ability to carry out the *munera* of governing, teaching, and sanctifying is not vastly different. The sacramental grace received at episcopal ordination gives the fullness of the priesthood such that the bishop governs and teaches authentically in virtue of his ordination, graces not bestowed upon a priest at his ordination. The power of sanctifying is given in its fullness to both priests and bishops; however, priests can exercise only as the supreme authority allows, but also in subordination to their diocesan bishops. Given their shared priesthood and union of mission, we will examine how the exercise of orders is carried out by priests in subordination to bishops.

2.4 The Nature of the Bond Between the Diocesan Bishop and His Priests

Canon 384 states:

> With special solicitude, a diocesan bishop is to attend to presbyters and listen to them as assistants and counselors. He is to protect their rights and take care that they correctly fulfill the obligations proper to their state and that the means and institutions which they need to foster spiritual and intellectual life are available to them. He also is to take care that provision is made for their decent support and social assistance, according to the norm of law.

This canon gives concrete expression to the notion that priests are co-workers with the bishop. They are the ones who advise him and assist him in the ministry of Christ entrusted to him as successor of the apostles. Damizia qualifies priests as "the instruments of His [Christ's] apostolic work."[55] Hera outlines that the bishop has three duties with respect to

[55] G. DAMIZIA, Commentary on c. 384, in P. PINTO (ed.), *Commento al codice di diritto canonico*, 2nd ed., Studium Romanae Rotae: Corpus iuris canonici, vol. 1, Vatican City, Libreria editrice Vaticana, 2001, 235.

his priests: defending their rights, providing the means for their continued spiritual and intellectual formation, and providing them with the means to meet their material needs.[56] Renken characterizes the role of the bishop "as the source of care, challenge, and support of priests in exercising their rights and fulfilling their obligations."[57] Ghirlanda says that the canon establishes a close relationship between the bishop's duty to protect the rights of his priests and his concern that they fulfill the obligations of their state.[58]

It is noteworthy that the canon specifies priests, in contradistinction to clerics in general or to deacons in particular. Priests, specifically, are his assistants and counsellors. This notion of priests being helpers and counselors is rooted in the decree *Presbyterorum ordinis* of the Second Vatican Council.[59] It teaches that priests have received, albeit to a lesser degree, the very same office and ministry of the successors of the apostles such that they, priests, are "to be collaborators with the episcopal order in carrying out the apostolic mission entrusted to them by Christ. As it is joined to the episcopal order, the priesthood shares in the authority with which Christ himself constitutes, sanctifies, and rules his body."[60] The priesthood of the presbyter is the very same as that of the bishop. It stems from the very priesthood of Christ in whose name, and by whose authority, they act. While priests are subordinate, they do not possess a different priesthood than that of bishops. They have a different level of authority even if, as we saw, they have the very same sacred power

[56] See A. DE LA HERA, Commentary on c. 384, in *Exegetical Comm*, vol. II/1, 791.

[57] J. RENKEN, Commentary on c. 384, in *CLSA Comm2*, 522.

[58] See G. GHIRLANDA, "Doveri e diritti implicati nei casi di abusi sessuali perpetrati da chierici," in *La Civiltà Cattolica*, 3646 (2002), 348.

[59] See *PO*, no. 7, in *AAS*, 58 (1966), 1001, TANNER, vol. 2, 1051.

[60] Ibid., no. 2, in *AAS*, 58 (1966), 992, TANNER, vol. 2, 1043-1044.

by ordination. This is true of all three *munera*. Priests have the power to govern; they need delegation to exercise it. They can teach, but not infallibly or with the same authority as bishops. They have the power to perform all acts of sanctifying; they need authorisation to carry out many of them.

The *Directory on the Pastoral Ministry of Bishops* states:

> In exercising his ministry, the bishop relates to his priests not merely as a ruler towards his subjects, but rather as a father and a friend. He should devote himself wholeheartedly to creating a climate of affection and trust such that his priests may respond with a convinced, pleasing, and firm obedience […] The Bishop should encourage a spirit of initiative among his priests, avoiding anything that might lead them to understand obedience in a passive and irresponsible manner. He should ensure that each gives his best and does so generously, placing his own capacities in the service of God and of the Church, with the mature freedom of the sons of God.[61]

The directory points out that the relationship between a diocesan bishop and his priests should be one of trust and friendship such that obedience comes naturally. Furthermore, bishops are not commanders of his priests; rather, priests are to take their own initiative in the ministry, working in tandem with the diocesan bishop in the pastoral ministry entrusted to them. This is an important consideration.

Priests are not employees of diocesan bishops. In fact, as we have seen, they are incardinated into a diocese. They are not attached to a bishop. The bishop, of course, is the head of the diocese. Priests are not his possessions; rather, they are part of the structure through which the bishop fulfills his ministry. Hervada's analysis of the constitutional structure of the Church is helpful in understanding this nuance.[62]

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[61] CONGREGATION FOR BISHOPS, Directory for the pastoral ministry of bishops *Apostolorum successores*, Vatican City, Libreria editrice Vaticana, 2004, 84-85.

[62] See J. HERVADA, *Diritto costituzionale canonico*, G. LO CASTRO (trans.), Milan, Giuffrè Editore, 1989, 192-194.

Hervada argues that there are specific ministries and offices that assist a bishop in his role, not all of which require the sacrament of holy orders. These functionaries are akin to staff whose role in their position is not based on the reception of orders but on a technical ability or capacity. A judge would be an example. At the same time, some offices and ministries require that the holder have received the sacrament of holy orders, for example a vicar general. The priest, *qua* priest, *qua* member of the *presbyterium*, is not staff but an indispensable part of a diocese: a diocese cannot exist without priests any more than it can exist without a bishop. A diocesan bishop, after taking possession of his diocese can not dismiss priests incardinated in the diocese. They pertain to the diocese. Priests may fulfill various offices and staffing roles at his discretion but that is not the fundamental role of a priest in relation to his bishop.

Priests are an indispensable part of the constitution of the Church but in their own right, not as mere functionaries of the diocesan bishop. Priests are an integral part of how Christ's mission is carried out in the world. Even though they represent the bishop to the smaller local community, they do so with the power and authority of Christ and the mandate of the bishop. All of this is summarised succinctly in canon 1008 that states that those who have received the sacrament of holy orders "are thus consecrated and deputed so that, each according to his own grade, they may serve the people of God by a new and specific title. (c. 1008). Hence, neither the diocesan bishop nor the priest is to act alone. Given this interdependence of bishop and priest, we will examine the responsibilities and duties of the diocesan bishop toward his priests, before examining those of a priest toward his bishop.

2.4.1 The Obligation of the Diocesan Bishop to Ensure Fulfilment of Priestly Obligations

One of the obligations outlined in c. 384 is that the diocesan bishop is to ensure that his priests fulfill their obligations. As the directory on the ministry of bishops pointed out, one of those obligations is obedience. At both diaconal and priestly ordination, a man makes a promise of respect and obedience to his diocesan bishop and successors.[63] A pious and unnuanced understanding of this promise of obedience is often characterized by the maxim that a priest "must obey in all things but sin." It denotes an absolute obedience to the whims of the bishop. An example would be that of St. John the Dwarf who was told to water a dead tree daily.[64] In reality, the maxim is a misrepresentation of the principle of St. Alphonsus Ligouri that it is never sinful to obey a superior's command to do something which is not itself sinful.[65] The fact that it is not sinful to obey is not the same thing as it is required to obey. This understanding of obedience in relation to priests is simply not the understanding of the Church and leads to a mentality that priests are merely staff or functionaries of their bishop. As an antidote to the modern influence of that understanding, the Pontifical Council for Legislative Texts issued a document on the obedience priests owe to bishops and a bishop's responsibility for his priests. It states:

> The relationship between the diocesan bishop and his priests, arising from ordination and incardination, cannot be compared to the subordination that exists within civil society in the relationship between employer and employee [. . .] this bond of subordination between

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[63] See *Pontificale Romanum ex decreto sacrosancti oecumenici concilii Vaticani II renovatum auctoritate Pauli PP. VI editum Ioannis Pauli PP. II cura recognitum*: *de ordinatione episcopi, presbyterorum et diaconorum,* 3rd ed., Vatican City, Libreria editrice Vaticana, 2011, no. 89, 135.

[64] ANON., *The Sayings of the Desert Fathers: The Alphabetical Collection*, B. WARD (trans.), London, A.R. Mowbray & Co. Ltd., 1975, 73.

[65] See A. LIGUORI, *The School of Christian Perfection*, C. WARREN (trans.), Boston, Mission Church Press, 1912, 71.

> priests and the bishop is *limited to the exercise of their own ministry*, which priests must carry out in hierarchical communion with their bishop. The diocesan priest, however, is not a mere passive executor of the orders received from the bishop. *He enjoys legitimate initiative and proper autonomy.*
>
> Specifically, ministerial obedience is a hierarchical obedience, limited to the provisions the priest must follow in the performance of his office and not comparable to the type of obedience exercised between an employer and an employee. *The service the priest performs in the diocese is tied to a stable and lasting commitment he has assumed, not with the physical person of the bishop, but with the diocese through incardination.* It is therefore not an employment relationship easily terminated at the discretion of the "boss." The bishop cannot, unlike an employer in civil matters, "terminate" the priest unless specific conditions are met that are beyond the bishop's discretion but are established by law (see cases of suspension from office or dismissal from the clerical state). *The priest does not "work" for the bishop*.[66] [Emphasis added.]

The priest enjoys proper autonomy, both in his personal life and his ministry. His obedience extends to his office and his state of life. He is not a mere employee of the diocesan bishop. For that reason, a bishop cannot simply dismiss his priest, who is bound, not to him personally but to the diocese. The bishop can, of course, reassign the particular office or ministry given to the priest, but even within that sphere, the priest enjoys the autonomy that belongs to the particular task.

The diocesan bishop, for his part, is required to ensure that his priests are fulfilling their obligations. He is to provide for their material and spiritual support. Indeed, in the words of *Presbyterorum ordinis*, the diocesan bishop's "chief and most serious

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[66] "Il rapporto tra vescovo diocesano e presbiteri, scaturito dall'ordinazione e dall'incardinazione, non può essere paragonato alla subordinazione che esiste nell'ambito della società civile nel rapporto tra datore di lavoro e lavoratore dipendente […] tale vincolo di subordinazione tra i presbiteri e il vescovo è limitato all'ambito dell'esercizio del ministero proprio che i presbiteri devono svolgere in comunione gerarchica con il proprio Vescovo. Il presbitero diocesano, però, non è un mero esecutore passivo degli ordini ricevuti dal Vescovo. Egli infatti gode di una legittima iniziativa e di una giusta autonomia.

Per quanto riguarda, in concreto, l'obbedienza ministeriale, essa è una obbedienza gerarchica, limitata all'ambito delle disposizioni che il presbitero deve eseguire nell'espletamento del proprio ufficio e che non è assimilabile al tipo di obbedienza che si realizza tra un datore di lavoro ed un proprio dipendente. Il servizio che il presbitero svolge nella diocesi è legato ad un coinvolgimento stabile e duraturo che egli ha assunto, non con la persona fisica del vescovo, ma con la diocesi per mezzo della incardinazione. Non è pertanto un rapporto di lavoro facilmente rescindibile a giudizio del 'padrone'. Il vescovo non può, come invece il datore di lavoro in campo civile, "esonerare" il presbitero se non al verificarsi di precise condizioni che non dipendono dalla discrezionalità del vescovo ma che sono stabilite dalla legge (cf. i casi di sospensione dall'ufficio o di dimissione dallo stato clericale). Il presbitero non 'lavora' per il Vescovo" (PCLT, Note *Elementi per configurare l'ambito di responsabilità canonica del Vescovo diocesano nei riguardi dei presbiteri incardinati nella propria diocesi e che esercitano nella medesima il loro ministero*, February 12, 2004, no. 2, in *Comm*, 36 [2004], 34).

responsibility is the holiness of their priests."[67] The note from Legislative Texts outlines the responsibility of diocesan bishops as:

1. the duties towards priests as outlined in c. 384 while maintaining that those duties do "not constitute a general duty of vigilance over their entire life";
2. the duty to provide to a priest an office or ministry, while recognising that such provision does not constitute a right[68] of the priest, and the bishop must ensure that the priest is faithful in carrying out his duties;
3. the duty to protect the rights of his priests especially with regard to financial sustenance, vacation, and ongoing formation;
4. the duty to recall the obligation of priests to observe perfect and perpetual continence, and to behave with due prudence in relations with persons.[69]

All of this clearly indicates that even though a priest is subordinate to a bishop in carrying out his ministry, he is not bound to the whim of his superior. As this thesis is concerned with non-penal restrictions placed on priestly ministry, the motivation of those restrictions will be important because they will need to fit within the framework of this relationship of obedience and duty between a priest and his diocesan bishop. So, for example, a bishop could not forbid a priest to drive a red car, or restrict his ministry for disobeying that directive. The choice of a car and its colour does not fall within the purview of the priest's obedience to his bishop, nor of the bishop's duty of care.

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[67] *PO*, no. 7, in *AAS* 57 (1966), 1002, TANNER, vol. 2, 1051.

[68] As we saw in the jurisprudence of the Signatura, it is oft repeated that priests do not have a right to an office. The PCLT repeats this idea here as well. We shall look at this in more depth later in this chapter.

[69] See PCLT, Elementi per configurare l'ambito di responsabilità, no. 3, in *Comm*, 36 (2004), 35-36.

One final important consideration is the obligation or not of a bishop to assign a priest a particular task. Given what we have already discussed regarding a priest's ability to minister *qua* priest in virtue of incardination, can he simply be left to operate within that undefined ambit of being able to celebrate the Eucharist, preach, perform other sacraments with permission of a pastor, and bless people and objects? Or is there an obligation to assign him some office, ministry**,** or function as exists in the *Code of Canons of the Eastern Churches* (see *CCEO/90*, c. 371 §1)?

2.4.2 The Obligations of a Priest Toward His Diocesan Bishop

Clerics are "bound to undertake and fulfill faithfully a function (*munus*) which their ordinary entrusted to them" (c. 274, §2). This duty is rooted in the promise of obedience made by the priest at ordination. That promise is highlighted in the previous canon that requires clerics, "bound by a special obligation to show reverence and obedience to the Supreme Pontiff and their own ordinary" (c. 273). As already noted, unlike the *CCEO/90*, *CIC/83* ~~code~~ does not grant a priest the right to be assigned to an ecclesiastical office (see *CCEO/90*, c. 371, §1). But an office is not the only type of ecclesiastical ministry as the Eastern code makes clear. Canon 371, §2 of the *CCEO/90* states "Clerics must accept and faithfully carry out every office, ministry**,** or function committed to them by the competent authority." According to the *CCEO/90* besides offices, there are ministries and functions.

Canon 274, §2 uses the term *munus* which has been translated variously as function, *fonction*, or *incarico*, among others.[70] This is in contradistinction to the previous paragraph of the same canon which treats specifically of ecclesiastical offices (*officia*) that can only

[70] The word *munus* in canon 274, §2 is translated in the unofficial translations of the *CIC* on the Vatican website as function in English, as *fonction* in French, as *incarico* in Italian, as *Aufgabe* in German, as *cargos* in Portuguese, and as *tarea* in Spanish. https://www.vatican.va/archive/cdc/index.htm (18 August 2023).

be obtained by clerics if they require the power of orders, or the power of governance (c. 274, §1). Hence, the Code outlines the general rule that only clerics can obtain offices for which the power of orders, or the power of ecclesiastical governance, is required and then obliges clerics to faithfully fulfill whatever *munus* is given to them. So, while it is true that an individual priest does not have a right to hold office and its concomitant ordinary power, he is expected to fulfill the task assigned by the bishop. This raises an important question. Is the diocesan bishop obliged to assign a *munus* to his priests? Does an incardinated priest have a right to an assignment?

Many approved authors agree that a priest has a right to an assignment.[71] "It should not be forgotten that, while c. 274 §2 formalizes one of the duties of the clergy, it recognizes at the same time – although it does so implicitly – one of their most radical rights: to have their bishop entrust a concrete mission, an ecclesiastical ministry, to them".[72] A decision of the Congregation for the Clergy confirms this is the praxis of the Holy See when it informed a bishop, "once ordained or incardinated, a priest is '*idoneous*' for ministry and thus dependent upon the diocese for an assignment and sustenance."[73] Bona provides a

[71] See Rodríguez-Ocaña who states "Aunque en el derecho latino no está formalizado, podemos sostener la existencia en el clérigo de un derecho subjetivo a obtener un oficio y a ejercitar el ministerio," in R. RODRÍGUEZ-OCAÑA, "Limitaciones al ejercicio del ministerio tras sentencia absolutoria," in *IC*, 63 (2003), 403-404. See A. MIGLIAVACCA, Commentary on c. 274, in *QDE codice commentato*, 287; J. LYNCH, Commentary on c. 274, in *CLSA Comm2*, 374. See also GHIRLANDA, *Il sacramento del' ordine*, 351-351 where he characterises the right as the right to seek from the ordinary some office, function, or work.

[72] J. DE OTADUY, Commentary on c. 274, in *Exegetical Comm*, II/I, 330.

[73] CONGREGATION FOR THE CLERGY, letter, 8 February 2008, prot. no. 2004-1282, quoted in S. DOKTORCZYK, *Persistent Disobedience to Church Authority: History, Analysis, and Application of Canon 1371, 2°*, Tesi Gregoriana, Serie diritto canonico, no. 185, Rome, Editrice Pontificia Università Gregoriana, 2016, 191.

magisterial argument that priests do have a right to an assignment.[74] We will examine his argument.

2.4.2.1 The Right to Some Office, Ministry, or Function

Bona begins by distinguishing the meaning of "ministry" in its broad and restricted senses. In its broadest sense, ministry constitutes the whole life of a priest. Because of the ontological change that occurs with priestly ordination, a man becomes an *alter Christus*, who "cannot look upon himself as a bachelor whose job is to work for the Church […] His purpose in life is now completely enmeshed in his new identity. As a result, he is ministering wherever he is (i.e. he takes the special mark of consecration with him everywhere)".[75] Canonically speaking, ministry in its more restricted meaning is the particular function (*munus*) entrusted by a bishop to his priest, which may or may not be an office. Hence the question to be asked is whether a priest has a right to demand from his bishop the "entrusting of a *munus*."[76]

Bona points out that, during the drafting of the 1983 code, one of the schemas contained a provision for this right.[77] While it didn't survive, various congregations continued to use the expression "right to ministry." Commentators on the newly promulgated code offered differing opinions on the right that Bona divides into three groups of thought.[78] The first argues against the right based on the deliberate omission of

[74] See BONA, The Right to Ministry, 267-295.

[75] BONA, The Right to Ministry, 269.

[76] Ibid., 275.

[77] For what follows, see ibid., 275 ff.

[78] Bona provides an excellent survey of individual commentators with citations to their works. See ibid., 275-283.

mention of the right. A second group argues that the right is implicitly contained in the Code mainly as a deduction of the obligation contained in c. 274, §2 already discussed. A further argument of this group is that the right is included in the acts of ordination and incardination. If priests are co-workers of the bishops, "then it is logical that they have the right to have their bishop entrust them with some mission, that is, some office or ministry."[79] The third group argues a middle ground that there is an "expectation in the law that they [priests] will be able to minister."[80]

In 2004, the previously mentioned *Note* of the Pontifical Council for Legislative Texts attempted to settle the question but, in Bona's opinion, left the question open when it stated that "the diocesan bishop should provide for their [office or ministry] conferral."[81] The *Note* is indecisive because if a bishop "should" confer a ministry, does a priest, therefore, have a right to one? To solve the dilemma, Bona argues that *CCEO/90* c. 371, §1 is a valid parallel place, according to c. 19, to look for guidance in answering the question.[82] It, as we saw, grants priests the right to receive a "certain office, ministry, or *munus* to be exercised in the service of the Church (*CCEO/90*, c. 371, §1)." Bona concludes that, despite canonists still being divided today on the issue, "the right to ministry for a presbyter does exist."[83] Its existence, Bona argues, is rooted not in the recommendation to

[79] BONA, The Right to Ministry, 280

[80] Ibid., 281 quoting B. DALY, "Removal of the Faculties of a Priest by a Diocesan Bishop," in *The Canonist*, 8 (2017), 96.

[81] Ibid., 282 quoting PCLT, "Note *Elementi per configurare*."

[82] Bona provides a detailed and cogent argument for using the *CCEO/90* as a parallel place. See BONA, The Right to Ministry, 283-286.

[83] Ibid., 293.

the bishop to entrust a *munus* to his priests, nor in incardination, but in ordination itself.[84]

Ordination as priest

> completely reorients one's life. The presbyter is no longer living for himself, but for the Church who has put a permanent claim on him through the indelible mark of priesthood […] Thus, the right of ministry flows from his new life in Christ. Furthermore, this foundation for the right to a *munus* is not a mere functional element of the clerical state, but rather a radical and inner transformation through ordination, which by its nature affects the whole person of the presbyter.[85]

2.5 Conclusion

A presbyter shares with his bishop the very same priesthood of Christ. He shares also in the ministry handed on to the apostles albeit in a subordinate way. He is the co-worker of the bishop in fulfilling that ministry. While he makes a promise to obey his bishop, a priest nevertheless enjoys autonomy in his ministry and his personal life. While there is no strict right of a priest to be assigned an ecclesiastical office, he was ordained because he is judged suitable for the diocese. Above all, his sacramental configuration to Christ in ordination is to sanctify and to preach the Gospel, making the bishop present to the faithful in the diocese in which the priest is incardinated. Therefore, it is difficult to deny that a diocesan bishop is obliged to assign some work to his co-workers. Much of the ministry carried out by a priest is subject to the discretion of the diocesan bishop, but not all of it.

If it was necessary for the Holy See to remind us that priests are not employees of a bishop, perhaps another analogy is more fitting. It is often said that a bishop marries a diocese. If we can use that analogy, then priests would be his step-children. They are part of the package of marrying the bride. As a new father, he has authority over his children,

[84] See BONA, The Right to Ministry, 293-295.

[85] Ibid., 294.

but he must live and work with them, and must care for them. The children are expected to obey their parents, to work with them for the sake of the family, the diocese. As we gleaned from some of the decisions of the Signatura, there can be a tendency in the pressures placed upon the Church, to seek expedient answers. Treating priests as though they are expendable parts of the Church, with no real autonomy**,** is far from the ideal.

This thesis is concerned with restrictions placed upon a priest's ministry in non-penal circumstances. We are looking specifically at the restriction of celebrating Mass. Having seen that a priest is not a functionary of the bishop but is, rather, a constituent part of the diocese, his ministry is not inconsequential or easily dismissed. With a more accurate understanding of the priesthood, especially in relation to bishops, we can look now to the law on celebrating the Eucharist. This will involve tracing its roots in history as well as examining the process of developing the current law found in the *CIC/83*. From there, in the final chapter, we will be able to consider how the jurisprudence applies to the law as it is.

CHAPTER THREE:

THE CANON LAW ON THE CELEBRATION OF THE EUCHARIST

In chapter one we saw how the jurisprudence of the Apostolic Signatura established the parameters of administrative, non-penal restrictions on priestly ministry. They may be placed only with due proportion to the cause and only for as long as the cause perdures. In chapter two we examined the nature of priestly ministry especially as it relates to the relationship between a priest and his diocesan bishop. We saw that they exercise the same priesthood of Christ but with priests ministering under the authority of bishops who are direct successors of the apostles. Given the centrality of celebrating Mass in the ministry of a *sacerdos*, we will now examine the parameters set by the canon on the celebration of the Eucharist.

3.1 The Valid Celebration of the Eucharist

Canon 900, §1 states that the sacrament of the Eucharist is confected validly in the person of Christ only by a *sacerdos* who is validly ordained. It is worth noting that *any* validly ordained bishop or priest, whether Catholic or not, celebrates validly. Since the Church recognises the validity of apostolic succession even outside visible communion with the Catholic Church, it follows that those who are ordained validly within that apostolic succession have the divine power of order to confect the sacrament of the Eucharist. The canon adds the qualifier "in the person of Christ" to indicate that it is the one and same sacrifice that Christ offered and handed on to his apostles and their

successors. Montini notes that it is strange that the qualifier is not "in the person of Christ as head" as it is the traditional way of speaking of *sacerdotes* acting in the Lord's name *qua sacerdotes*.[1] In any event, the Eucharist is celebrated validly only by bishops and priests, whether in communion with the Church or not.

This is also true in the case of a validly ordained *sacerdos* who lost the clerical state. As a man now in the lay state, if he were to celebrate the ritual of the sacrament of the Eucharist properly, the sacrament would in fact be confected, truly and validly. Such a ritual, however, would be gravely illicit.

3.2 The Licit Celebration of the Eucharist

Canon 900, §2 outlines the requirements for the licit celebration of the Eucharist. It sets out two conditions: first, that the provisions of the law that follow the canon are fulfilled; second, that the *sacerdos* is not impeded by canonical law (*lege canonica*) from confecting the sacrament. While these two conditions actually involve a long list of requirements, it needs to be noted that *nothing* else makes the celebration of the Eucharist illicit.

Moreover, the second condition specifically stipulates that ecclesiastical laws are what impede the celebration, not any other legitimate, canonical institute such as a decree. The Legislator is being clear. Only a properly promulgated law (c. 7) can impede the licit celebration of Mass. The adjective *canonica* is used only three times in the Code to modify the noun *lex*. The first is in canon 26 specifying the length of time for a custom that is "beyond a canonical law (*praeter legem canonicam*)" to acquire the force of law. The

[1] G. MONTINI, "Il sacerdote ministro della valida e della lecita celebrazione dell'Eucaristia," in *QDE*, 7 (1994), 400, note 6.

second time is in canon 1399 which specifies that the violation of a "canonical law (*canonicae legis*) to which a penalty is not attached may be punished with a penalty. The third time is in canon 900, §2. Each of these uses is in contradistinction to the more expansive expression "ius" such as found in canon 24 that speaks of "*ius canonicum*." The Latin term *lex* refers to a law, precept, regulation or rule.[2]

Canon 903, addressing a priest who seeks to celebrate Mass in a church not his own (presumably outside of his diocese, but the canon does not specify this), stipulates that he is to be admitted if he shows a letter of introduction (*litteras commendatitias*) from his ordinary issued within the last year. Such a letter would attest to the valid ordination of the priest and the fact that he is not barred by law from celebrating. While such a letter is certainly valuable,[3] it is not necessary for the licit celebration of Mass, as the same canon permits the rector of a church to admit even an unknown priest, provided that it can be "judged prudently that he is not impeded from celebrating" (c. 903).

3.2.1 Fulfilling the Required Canons

The laws that need to be observed according to canon 902, §2 are those in the rest of Chapter 1 of Book IV. We will outline briefly those laws that affect the liceity of the celebration.

A priest may concelebrate the Eucharist with another *sacerdos* (c. 902) but not with *sacerdotes* not in full communion with the Church, or with ministers of other ecclesial communities (c. 908). In the same vein, allowing deacons or lay persons to say prayers or

[2] See LEWIS, C., and SHORT, C., *A Latin Dictionary*, Oxford, Clarendon Press, 1879, 1055.

[3] See E. MIRAGOLI, "Il *celebret*," in *QDE*, 7 (1994), 435-442 for a discussion of the modern value of such documentation, especially because it is so easy and common for priests to travel to different parts of the world.

perform actions that are proper to the celebrating *sacerdos* renders the celebration illicit (c. 907). Celebrating Mass more than once a day, except when the law permits it (for example, on the Solemnity of the Nativity of the Lord[4]) or, without permission of the local ordinary, in the case of a shortage of priests, is illicit (c. 905). Lacking a just and reasonable cause, a priest celebrates the Eucharist illicitly without the presence of at least one member of the faithful (c. 906). Being in a state of grave sin renders the celebration illicit unless there is a grave reason to do so and there is no possibility to confess beforehand (c. 916). Failing to abstain for at least one hour from any food or drink, excepting water and medicine (c. 919, §1) and excepting licit bination or trination (c. 919, §2) renders the Mass illicit. It could be argued that elderly or infirm *sacerdotes* celebrate licitly even without fasting for one hour (c. 919, §3). Celebrating the Eucharist outside of the Easter season, without having received Holy Communion at least once during the Easter season, renders the celebration illicit, unless there is a just cause (see c. 920). The Eucharist must be celebrated with unleavened bread, and wine mixed with a little water (cc. 924, 926). In fact, this requirement could affect the very validity of the celebration as bread and wine form the matter of the sacrament.[5] Consecrating bread or wine without the other renders the celebration illicit, if not invalid (c. 927).[6] Mass is illicit if celebrated according to liturgical texts that have not been legitimately approved (c. 928). Mass would be illicit if the

[4] *Missale romanum: ex decreto sacrosancti oecumenici concilii Vaticani II instauratum, auctoritate Pauli PP. VI promulgatum Ioannis Pauli PP. II cura recognitum*, 3rd ed., Vatican City, Libreria editrice Vaticana, 2002, 155. [Hereafter *Roman Missal* 2002]

[5] Liceity alone could be affected if the priest failed to add water to the wine. Failure to use wheaten bread and wine made *de germine vitis* would render the Mass invalid.

[6] *CIC/83* uses the term "*nefas est*, that is, it is ungodly, when referring to this case. It is the strongest condemnation used in the code.

celebrating priest did not wear the vestments required by the rubrics (c. 929).[7] To be licit, Mass must be celebrated only on those days and times allowed by liturgical norms (c. 931).[8] Outside a sacred space because of necessity, Mass is licit only if celebrated in a decent space on a table with a cloth and corporal (c.932).[9] It is licit to celebrate the Eucharist in a place of worship of some Church or ecclesial community not in full communion with the Catholic Church only with a just cause and the express permission of the local ordinary, and as long as there would be no scandal (c. 933).[10]

The above provisions excepting those of fasting and being in a state of grace, all seek to regulate the ritual rather than the minister. The second condition of c. 900 for liceity, of not being impeded by law, refers specifically to the minister himself.

3.2.2 Not Impeded by Law

Canon 900 does not specify which canons impede the celebration of the Eucharist. A survey of the Code and other binding norms is necessary. Not only is it necessary to enumerate in what instances the law prohibits *sacerdotes* from celebrating the Eucharist, it is necessary to explore the *ratio* for the prohibition. Such prohibitions are not mere caprice of the Supreme Legislator, rather they seek to protect some good. The reasons inherent in

[7] The rubrics, as found in the *Institutio generalis missalis romani* require the following to be worn: an alb, cincture, amice (unless the alb completely covers the ordinary clothing at the neck), stole, and chasuble. See *Institutio generalis missalis romani*, nn. 336-337 in *Roman Missal* 2002, 71, 75.

[8] For example, the eucharist may not be celebrated on Good Friday, and the Easter Vigil must be celebrated after sundown. See *Roman Missal* 2002, 313, 337.

[9] For a discussion of the requirements of a suitable place, see G. BRUGNOTTO, "La celebrazione eucaristica venga compiuta nel luogo sacro (c. 932, §1)," in *QDE*, 9 (1996), 476-482.

[10] An interesting hypothetical arises with regard to churches, for example in the United Kingdom, that were blessed or dedicated as sacred spaces before the Reformation and that now are controlled by the Anglican communion. Is the express permission of the local ordinary required to celebrate Mass in one such church? The same could be asked of ancient churches now in possession of the Orthodox.

codified prohibitions will serve to understand and delineate possible administrative prohibitions. We will now examine how the law may impede the licit celebration of Mass. As we will see, some prohibitions are imposed by the law itself; some are imposed by administrative acts of an ordinary, expressly envisioned by the law, according to his discretion.

3.2.2.1 Impeded by Law: Penalties

One of the easiest prohibitions of the law to identify is the penalty. Canon 1312, §1 identifies two penalties: medicinal penalties, also called censures; and expiatory penalties. The purpose of inflicting or declaring a penalty has as its goal the good of the community and of each of the members of the faithful and in particular the restoration of justice, the reform of the offender, and the reparation of scandal (see c. 1311, §2). Each of the two types of penalties, however, emphasises certain goals over others.

3.2.2.1.1 Censures

Censures have as their primary goal, the reform of the offender.[11] Remission of the censure cannot be denied to one who has withdrawn from contumacy (c. 1358, §1). Part of that withdrawal from contumacy may require some act to repair harm and restore justice (see c. 1361, §4) but once contumacy has ceased the censure, with its concomitant prohibitions, must be lifted. The censures are excommunication (c.1331), interdict (c. 1332), and suspension (c. 1333).[12]

[11] J. RENKEN, *The Penal Law of the Roman Catholic Church: Substantive Law*, Ottawa, Faculty of Canon Law, Saint Paul University, 2024, 136-137.

[12] Censures may be incurred *latae sententiae* and later declared, or inflicted, by a penal process. For our purposes, how the penalty is in place is irrelevant. It is the presence of the penalty itself that matters.

3.2.2.1.1.1 Excommunication

Excommunication is considered the most severe penal sanction as it affects juridical communion with the Church and deprives the person of its spiritual goods.[13] An excommunicated person is prohibited, among other things, "from celebrating the Sacrifice of the Eucharist and the other sacraments" (c. 1331, §1). Even though any member of the faithful may incur this censure, this particular prohibition applies only to *sacerdotes*. It does not mean that the *sacerdos* may not attend a celebration of the Eucharist as this specific prohibition pertains only to ministerial acts.[14] Indeed any excommunicated person is required to participate in Mass on holy days as enumerated in canon 1247. Hence, we may conclude that while this particular prohibition completely prohibits the celebration of Mass (even in private), it does not prohibit presence in a church. There are only ten delicts that specify excommunication as the determinate penalty.[15] Excommunication not only deprives the offender from the spiritual goods of the Church but, in the case of a priest

[13] See Z. SUCHECKI, *Le sanzioni penali nella Chiesa: parte I, i delitti el le sanzione penali in genere (cann. 1311-1363)*, Vatican City, Libreria editrice Vaticana, 1999, 102. For a succinct explanation of excommunication and its effects, see RENKEN, *The Penal Law*, 138, especially note 11.

[14] See RENKEN, *The Penal Law*, 140, note 17.

[15] The ten delicts that specify the determinate censure of excommunication are:
i. apostasy, heresy or schism (c. 1364, §1);
ii. physical force against the Roman Pontiff (c. 1370, §1);
iii. the attempt to confer holy orders on, or receive as, a woman (c. 1379, §3);
iv. throwing away, or retaining for sacrilegious purpose, the sacred species (c. 1382, §1);
v. absolution of an accomplice in a sin against the sixth commandment (c. 1384);
vi. direct violation of the sacramental seal (c. 1386, §1);
vii. violation of the secret of confession by an interpreter, or by one with knowledge of sin through confession (c. 1386, §2);
viii. a bishop who consecrates someone a bishop without pontifical mandate, and the one who receives the consecration from him (c. 1387);
ix. homicide of Roman Pontiff, a bishop, a cleric, a religious or member of the Christian faithful (c. 1397, §1);
x. one who procures a completed abortion (c. 1397, §2).

prohibited from celebrating Mass, the faithful are also deprived indirectly. Such a prohibition is, therefore, reserved for the most serious offences.

3.2.2.1.1.2 Interdict

Interdict binds a person to only some of the prohibitions of an excommunication, namely participating in or receiving the sacraments, sacramentals or liturgical rites (c. 1332, §1). Hence, a priest under interdict is prohibited from celebrating the Eucharist. The Code enumerates seven delicts that incur the censure of interdict.[16] One of them does not apply to clerics (see c. 1394, §2).

3.2.2.1.1.3 Suspension[17]

The censure of suspension has, as part of its effects, the prohibition of all or some acts of the power of orders (see c. 1333, §1, 1°). A *sacerdos* labouring under the censure of suspension may, or may not, be prohibited from celebrating Mass. The suspension could also be a partial prohibition of the celebration of Mass, the permutations of that are vast but could include the prohibition *coram populo*. There are eleven delicts that may incur a suspension, some of that are delicts that incur an interdict for those who are not clerics.[18]

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[16] The seven delicts that may incur the censure of interdict are:

i. use of physical force against a bishop (c. 1370, §2);

ii. publicly inciting animosity or hatred toward the Apostolic See or an ordinary because of some ecclesiastical act or function, or provoking disobedience against them (c. 1373);

iii. promoting or directing an association that plots against the Church (c. 1374);

iv. attempting the liturgical action of the Eucharistic sacrifice by one who is not a *sacerdos*, or one who, though unable to give sacramental absolution validly, attempts to impart it or who hears sacramental confession (c. 1379, §1);

v. celebrating or receiving a sacrament through simony (c. 1380);

vi. falsely denouncing to an ecclesiastical superior a confessor for the delict of solicitation in the confessional (c. 1390);

vii. attempted marriage, even civilly, by a religious in perpetual vows who is not a cleric (c. 1394, §2).

[17] For a scholarly discussion of the term "suspension" and its various non-penal uses in the code, see U. RHODE, "La sospensione imposta di carrattere non penale," in *Periodica*, 109 (2020), 273-312.

[18] The eleven delicts that may incur a suspension when committed by a cleric are:

3.2.2.1.1.4 Indeterminate Censures

There are seven delicts contained in the Code that may incur a censure, whether excommunication, interdict, or suspension.[19] If committed by a *sacerdos*, any of them could result in a prohibition of the celebration of Mass, whether total or partial in the case of a suspension.

i. use of physical force against a bishop (c. 1370, §2);
ii. attempting the liturgical action of the Eucharistic sacrifice by one who is not a *sacerdos*, or one who, though unable to give sacramental absolution validly, attempts to impart it or who hears sacramental confession (c. 1379, §1);
iii. deliberately administering a sacrament to one prohibited from receiving it (c. 1379, §4);
iv. celebrating or receiving a sacrament through simony (c. 1380);
v. solicitation by a *sacerdos*, in the act, on the occasion, or under the pretext of confession of a penitent to sin against the sixth commandment (c. 1385)
vi. being ordained by a bishop who did not have proper dimissorial letters, or who is not his subject (c. 1388, §1);
vii. being ordained while voluntarily concealing the fact of labouring under a censure or irregularity (c. 1388, §2);
viii. a cleric falsely denouncing to an ecclesiastical superior a confessor for the delict of solicitation in the confessional (c. 1390);
ix. a cleric voluntarily and illegitimately abandoning the sacred ministry for six consecutive months with the intention of withdrawing himself from the competent authority of the Church (c. 1392);
x. a cleric attempting marriage, even civilly (c. 1394, §1);
xi. a cleric living in concubinage, or persisting scandalously in a sin against the sixth commandment of the Decalogue (c. 1395, §1).

[19] The seven delicts that may incur an indeterminate censure are:
i. failure to retract, after admonishment by the Apostolic See or the ordinary, either the act of teaching a doctrine condemned by the Roman Pontiff or an ecumenical council, or the obstinate rejection of definitive teaching (c.1365);
ii. making recourse against an act of the Roman Pontiff to an ecumenical council or to the college of bishops (c. 1366);
iii. parents or guardians handing over their children for baptism or education in a non-Catholic religion (c. 1367);
iv. disobedience to a legitimate precept or prohibition after a warning (c. 1371, §1);
v. failure to execute an executory sentence or executory penal decree (c. 1371, §5);
vi. illegitimate profiteering from mass offerings (c. 1383);
vii. illegitimate performance of a priestly function or another sacred ministry (*sacerdotale munus vel aliud sacrum ministerium*) (c. 1389).

3.2.2.1.2 Expiatory Penalties

Expiatory penalties tend directly to the restoration of the violated order of things while not prescinding from the reform of the offender.[20] Canon1336 outlines the various orders, prohibition, privations and dismissals that can be inflicted as an expiatory penalty. One such prohibition pertinent to this study is the prohibition "against placing all or some acts of the power of orders (c. 1333, §3, 3°). Hence any of the delicts listed in the Code that call for an expiatory penalty that might include a complete or partial prohibition to celebrate Mass.

3.2.2.1.3 Subsection Conclusion

Thus far, we have considered one of the ways a *sacerdos* could be prohibited by law from celebrating the Eucharist, namely labouring under a penalty. Not every penalty prohibits the celebration, but many do, as we have considered. While censures are reserved for especially serious delicts, we can note that most of the delicts that could result in a penalty prohibiting the celebration of Mass deal with protecting life, doctrine, and the sacraments. There are few delicts involving sexual sin that incur a censure – attempted marriage and concubinage standing out because they are public repudiations of the obligation of celibacy. The sexual abuse of minors does not constitute a delict that must result in a penalty that prohibits the celebration of the Eucharist.

[20] See SUCHECKI, *Le sanzioni penali nella Chiesa*, 105. De Paolis argues strongly that even expiatory penalties seek the reform of the offender because the restoration of order requires such reform. He states: "Il delinquente ripara nella misura in cui si converte; si emende nella misura in cui è disposto a riparare il male fatto. La riparazione può seguire in modo eminente solo là dove c'è un cuore contrite, pronto quindi ad espiare" (V. DE PAOLIS, "La punizione dei delitti in genere [cc. 1311-1312]," in V. DE PAOLIS and D. CITO [eds], *Le sanzione nella Chiesa: commento al codice di diritto canonico libro VI*, Manuali 8, Vatican City, Urbaniana University Press, 2000, 123).

Moreover, it is important to note that if a cleric is labouring under an undeclared *latae sententiae* censure that prohibits the celebration of sacraments or sacramentals, then the prohibition is suspended whenever a member of the faithful requests, for a just cause, a sacrament or a sacramental according to canon 1335, §2. Note that it is not necessary that the penalty be occult; it must simply be undeclared.[21]

A similar suspension of the prohibition to exercise orders obtains when an undeclared censure is not notorious, if observing the prohibition would place the offender in danger of grave scandal or infamy (c. 1352, §2). In other words, if the delict and its undeclared penalty are occult, or at least not notorious, then the censure does not have to be observed if doing so will cause scandal, or involve the offender having to reveal his conscience. An example will help.

A priest knowingly violates the seal of confession and is, therefore, *ipso iure* excommunicated. He is scheduled to celebrate a funeral or wedding Mass the next day but is unable to have the censure remitted in the internal forum before then. The penalty is unknown to everyone. If he were to admit that he could not celebrate the Mass because of a penalty, people could be scandalised and he would be subject to infamy for having his sin become public. The law allows him to celebrate the scheduled Mass in order to prevent scandal and to safeguard the reputation even of a guilty priest. These are the provisions of the law in the wake of serious crimes. These provisions will need to be considered later when non-penal restrictions on the celebration of Mass are considered.

[21] See PCLT, declaration *Circa la celebrazione dei sacramenti da parte dei sacerdoti che hanno attenta o il matrimonio*, in *Comm*, 29 (1997), 17-18 that declares that requesting sacraments from clerics who have attempted marriage is never a just cause. Presumably this is because such clerics have abandoned the ministry which fact is known to those who may unjustly request a sacrament from them. Hence, it is the abandonment of ministry, and not the penalty with its concomitant irregularity, that prohibits the celebration of any sacrament or sacramental in this case.

There are other prohibitions of law that we will now consider. We will proceed with impediments to exercising holy orders.

3.2.2.2 Impeded by Law: Impediments to Exercising Holy Orders

Certain actions and conditions render a cleric unable (*inhabiles*) to exercise sacred orders already received. Not all of the actions or conditions require guilt or willingness of, in our case, the *sacerdos*. The mere existence of the condition, or the mere commission of the act suffices to render him unable to exercise his power of orders. The inability is either perpetual, in that case it is called an irregularity, or it is simple, in that case it is called an impediment (c. 1040). The irregularities and impediments are listed in canon 1044. That list is a finite list, that is, there are no other irregularities or impediments to exercising orders (c. 1040). There are, in addition, irregularities and impediments to receiving orders, even further orders if already ordained; however, these are pertinent to this study only indirectly as the canons on irregularities and impediments to exercising orders refer back to the canons on receiving orders.

There are six scenarios in which a *sacerdos* is irregular for the exercise of orders received.[22] All but one of them involve the commission of a delict.[23] The one involves being ordained while labouring under an irregularity to receiving orders, even unknowingly. In this scenario, if, and when, the irregularity to receiving orders present at

[22] Canon 1044, §1, 1°-3° lists the irregularities as:

i. the illegitimate reception of orders while affected by an irregularity to receive them;

ii. the commission of the delict of apostasy, heresy, or schism if the delict is public;

iii. the commission of the delict of attempted marriage, even civilly, by a cleric or a religious who has made a public, perpetual vow of chastity;

iv. the commission of the delict of homicide, or of the completed procurement of an abortion, including in the latter case those who positively cooperated in the act;

v. the commission of the delict of the mutilation of another person;

vi. the violation of c. 1371, §2 by placing an act of orders of *sacerdotes* by a *sacerdos* while labouring under a any declared or imposed penalty that prohibits said act of orders (c. 1371, §2), or placing an illegitimate act of episcopal orders by one not an *episcopus* (c. 1389).

It is important to note that only these specific delictual acts incur the irregularity to exercising orders. Even if other acts or circumstances are included in the canon delineating the delict, it is only these specific ones that constitute the irregularity. For example, the canon on the delict involving mutilation includes gravely wounding and kidnapping as delictual activity; however, those actions, serious as they are, do not incur the irregularity to exercising orders. Likewise, the irregularity of placing an act of orders while prohibited by any declared or imposed penalty requires that a penalty already be in place before the act of orders is committed. Therefore, a priest who attempts to absolve sin in a sacramental confession while not having the faculty to do so, commits a delict (c. 1379, §1 2°). The commission of that delict does not incur the irregularity. The irregularity would obtain only if he attempted any act of orders *after* a penalty prohibiting the exercise of orders had been declared or imposed on him.

Precision is necessary because laws that restrict rights are to be interpreted strictly (c. 18). Hence, the irregularity to exercising orders refers back to the irregularity to receiving orders that is more general. The irregularity to receiving orders is incurred when someone places an act of sacerdotal orders when one of two conditions is met: not being in the required order (for example a deacon attempting to celebrate Mass), or placing the sacerdotal act while in the correct order but while labouring under a declared or imposed penalty that prohibits the exercise of that order. Therefore, not just any penalty, but one which specifically prohibits the exercise of the order is required. The irregularity for exercising orders is much narrower as it requires the commission of a delict that involves an act of orders in one of the two conditions. The delict of c. 1389 for placing an illegitimate act of orders does not automatically incur an irregularity to exercising orders, but only the delict of one placing the order while not in the order as required by c. 1041, 6°.

[23] See R. KASLYN, "The Sacrament of Orders: Irregularities and Impediments – an Overview," in *J* 62 (2002), 181 where he states: "Canon 1044, on the other hand, refers to the exercise of orders already received; in other words, a more serious situation is envisioned; and therefore a delict is required in these cases." Incitti goes even further by suggesting that the irregularity is incurred only if a penalty for the required delict has been imposed or declared. See G. INCITTI, *Il sacramento dell'ordine nel codice di diritto canonico: il ministero dalla formazione all'esercizio*, 2nd ed., Manuali Diritto Strumenti di Studio e Ricerca 63, Rome, Urbaniana University Press, 2021, 199. ("Con un unico rinvio al canone 1041, 3°-6° vengono cumulativamente considerate situazioni di irregolarità all'esercizio degli ordini per coloro i quali e già proibito tale esercizio in virtu di una dichiarazione o imposizione di un a pena.") This is difficult to reconcile with canon 1045 stating that ignorance of the irregularity does not excuse from it.

the time of ordination comes to light, the *sacerdos* immediately must refrain from exercising any orders received. The idea is not that the person is guilty of anything. Rather it is the circumstance or condition that renders him unable to exercise his sacred orders. In the same vein, even if the penalties for the delicts necessary to incur the irregularity are remitted, the condition of having committed the delict remains as does the irregularity. The remission of the penalty does not remove the irregularity.

The impediments to exercising sacred orders are only two in number. The first is incurred by a person who has received orders illegitimately while prevented by an impediment to receiving orders (c. 1044, §2, 1°).[24] In this case, a lay man, deacon, or priest should not have been ordained because there was present an impediment to receiving orders. Whether the lay man, deacon, or priest knew of the existence of the impediment to receiving orders, is irrelevant. The fact that he was ordained with the impediment in place results in the further impediment to exercising the orders received.[25]

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[24] The impediments to receiving orders (c. 1042) are:

i. a man who has a wife, unless he is legitimately destined to the permanent diaconate;
ii. a person who exercises an office or administration forbidden to clerics according to canons 285 and 286;
iii. a neophyte unless the ordinary judges him to be proven.

[25] There appears to be an error in the wording of the code in c. 1388, §2. It delineates the delict of one who proceeds to ordination while under some censure or irregularity (*irregularitas*) voluntarily concealed. Such a person is *ipso facto* suspended from the order received "in addition to what is established in c. 1044, §2, 1°." Canon 1044, §2, 1° refers to simple impediments specifically, not irregularities, and not impediments generally. The penal canon 1388 is suggesting that in this case a *latae sententiae* suspension is inflicted as well as *what is established* in canon 1044, §2, 1°. What is established in that canon is a simple impediment for one who proceeds to ordination while bound by a simple impediment (*not* an irregularity – which is the scenario of canon 1388, §2). *Nothing* is established by canon 1044, §2, 1° in the case of an irregularity outlined in canon 1388, §2. A strict reading of the canon is required by canon 18. In fact, one who proceeds to ordination while bound by an irregularity whether knowingly/voluntarily (required by c. 1388) or *not* (see c. 1045) incurs an irregularity (c. 1044, §1, 1°). Is canon 1388 trying to punish the wilful proceeding to ordination while labouring under an irregularity? If so, then canon 1388 should read "while under some censure or irregularity." If it is trying to punish the wilful proceeding to ordination while labouring under an irregularity or an impediment, then canon 1388 should read "while under some censure or impediment to receiving orders," as the term impediment is inclusive of irregularities (perpetual impediments) and simple impediments (see c. 1040). One further consideration needs to be made. Is the Supreme Legislator attempting to create the expiatory penalty of a simple impediment for the delict of

The second impediment to exercising orders obtains when a person is affected by *amentia* or some other psychic illness mentioned in canon 1041, 1° until the ordinary, after consulting an expert, permits the exercise of the order. This is the only impediment that would seemingly need to be declared for it to obtain. A psychic illness of such gravity likely would render the subject himself incapable of recognising or acknowledging the impediment on his own. All of the other impediments and irregularities bind the subject in conscience to observe the impediment when he becomes aware of it.[26] With this impediment, given that it can cease only by declaration of the ordinary, it follows that its presence must be verified by declaration of the same.[27]

One important consideration to note in this impediment is the reference to *amentia* or some other psychic illness mentioned in the irregularity to receiving orders (c. 1041, 1°). First it is important to note that *amentia* in one already ordained is only a simple impediment but is an irregularity that would prevent further ordination. The import of this is that prohibiting the exercise of sacred orders is a very serious restriction, invoked in only the most serious circumstances. To put it bluntly, a priest who suffers, for example, from periods of being *non compos mentis* is not perpetually prohibited from exercising his

voluntarily proceeding to ordination while knowingly bound by an irregularity? There is no reason to mention the presence of the impediment in the penal canon because it applies *ipso facto*. Is the mention of it suggesting that the concomitant irregularity is now a penalty when the circumstance of "knowing wilfulness" is present? It would mean that irregularity, *qua* expiatory penalty, could only be remitted like any other *latae sententiae* expiatory penalty, rather than, as with impediments, by means of a dispensation (see c. 1047).

[26] An interesting question arises in the case of an irregularity to exercising orders that requires the commission of a delict. Is the subject exempted from observing an occult irregularity when observing it would cause scandal or subject him to infamy as is the case with undeclared, *latae sententiae* censures? One presumes yes, in light of canons 19 and 1352, §2.

[27] It is difficult to see how an ordinary could dispense from this impediment (c. 1047, §4).

priestly orders; although, unless dispensed, he is canonically irregular, or perpetually impeded, for ordination as a bishop.

As noted earlier, this impediment was used to remove clerics from ministry based on the idea that homosexual activity was a sign of the type of psychic infirmity referenced in the canon. Whether or not same-sex attraction is a psychic infirmity belongs to the field of medicine and psychology. What is clear, however, is that this canon has been poorly translated into English subjecting it to poor interpretation and praxis. The "other psychic illness" (*aliusve psychicae infirmitatis*) is not simply any other psychic illness. Rather, a study of the Latin text and the *iter* of its formation clearly demonstrate, as do translations in other languages, that the other psychic illness envisioned by the canon is one that is directly related to, and is as serious as, *amentia*.[28]

3.2.2.3 Impeded by Law: Loss of the Clerical State

Canon 292 states that a cleric who loses the clerical state "is prohibited from exercising the power of orders." The canon makes an exception that he may absolve any person who is in danger of death, according to the prescript of canon 976. Hence, a lay man *sacerdos* may never celebrate the Eucharist licitly.

3.2.2.4 Impeded by Law: A Dismissed Non-Secular Cleric

After being legitimately dismissed, a religious cleric, a cleric member of a secular institute, and a cleric member of a society of apostolic life are all prohibited from exercising sacred orders until he finds a bishop who will receive him into the diocese, or at least permit

[28] See S. MACDONALD, What are We to Do? The Error of the "Broad Interpretation" (Canons 1044, §2, 2° and 1041, 1°), JCL Thesis, Rome, Pontificia Università Gregoriana, 2001, 41-43, and Tables 1A, 2A; See G. PISANIELLO, Misure disciplinari nei confronti di chierici con disturbi psichici, JCD thesis, Rome, Pontificia Universitas Antonianum, 2014, 184.

him the exercise of sacred orders (see cc. 701, 729, 746). Since deacons and priests who are not religious, or do not belong to some other society or institute, exercise their ministry only under the authority of the diocesan bishop, and a *vagus* cleric is not allowed, any such priest may not celebrate the Eucharist.[29]

3.2.2.5 Impeded by Law: Challenging the Validity of Sacred Ordination

Canon 1709, §2 states that after the *libellus* challenging the validity of the sacred ordination of a cleric has been sent to the competent dicastery of the Holy See,[30] the cleric is "forbidden to exercise orders by the law itself." The reason for this prohibition is obvious: if the orders are indeed invalid, then every precaution must be taken to prevent the celebration of invalid sacraments or sacramentals. Presumably, the prohibition would cease if the invalidity was not proven. Punderson notes that the dicastery would then have to decide whether or not to recommend to the Holy Father a dispensation from the obligations of sacred ordination.[31]

3.2.2.6 Impeded by Law: Discretionary Grant of the Law

While all the above prohibitions are granted by the law itself, there are situations in which the law allows, even suggests, that a *sacerdos* be prohibited from celebrating Mass. The discretion is expressly granted by the law to the ordinary. It is for him to decide whether or not the prohibition should be placed. There are four instances of this type of prohibition, the last of which has great bearing on this thesis.

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[29] This prohibition against celebrating Mass applies only to ex-religious priests (and, one assumes *mutatis mutandis* to priest ex-members of a secular institute or society of apostolic life) because a religious who is ordained a bishop is no longer subject in obedience to the religious superiors but only to the Roman Pontiff (c.705).

[30] Since the promulgation of *Praedicate Evangelium*, the competent body to handle cases challenging the validity of sacred ordination is the Roman Rota. See *PE* art. 200, §3.

[31] J. PUNDERSON, Commentary on c. 1709, in *Exegetical Comm*, vol. IV/2, 1951.

3.2.2.6.1 Precautionary Penal Measures

Canon 1722 stipulates that the ordinary can exclude a person accused of a delict from "the sacred ministry or from some office and ecclesiastical function, can impose or forbid residence in some place or territory, or even can prohibit public participation in the Most Holy Eucharist."[32] The ordinary may do this only if the following conditions are met: "after having heard the promoter of justice and cited the accused" (c. 1722). Furthermore, this may take place "at any stage of the process" (c. 1722). The import of this final condition is that a judicial process must already have been initiated before invoking the provisions of canon 1722. While the wording of the canon suggests that these measures may be invoked only for a judicial penal process, some authors, curial documents and praxis consider that they may be invoked also for an extra-judicial penal process (c. 1720) but only once it has begun.[33] These restrictions may not be placed merely upon notification of a possible delict, except in the case of delicts reserved to the Dicastery for the Doctrine of the Faith.[34] The reason for that is because the restrictions serve any of three goals related

[32] Much has been written on these precautionary measures. See G. MONTINI, "Provvedimenti cautelare urgenti nel caso di accuse odiose nei confronti di ministry sacri. Nota sui canoni 1044 e 1722," in *QDE*, 12 (1999), 191-204, and J. BEAL, "Administrative Leave: Canon 1722 Revisited," in *StC*, 27 (1993), 293-320.

[33] See DICASTERY FOR LEGISLATIVE TEXTS, *Penal Sanctions in the Church: User Guide for Book VI of the Code of Canon Law*, Vatican City, 2023, no. 206, 201 at https://www.delegumtextibus.va/content/dam/testilegislativi/TESTI%20NORMATIVI/Testi%20Norm%20CIC/Libro%20VI/LibroVIsussidio/Penal%20sanctions%20User%20guide.pdf (26 February 2026) [Hereafter *Penal Sanctions User Guide*]. See also BEAL, "Administrative Leave," 310; For the contrary view, see C. GULLO, "Le ragioni della tutela giudiziale," in D. CITO (ed.), *Processo penale*, 153; V. DE PAOLIS, "Il processo penale amministrativo," in Z. SUCHECKI (ed.), *Il processo penale canonico*, Facoltà di Diritto Canonico Quaderni di Apollinaris, Rome, Lateran University Press, 2003, 216.

[34] In the case of reserved delicts, the prohibitions of c. 1722 may be imposed even before a penal process begins, that is, even upon notice of a possible delict. See DDF, *Normae de delictis Congregationi pro Doctrina Fidei reservatis*, 11 October 2021, art. 10, §2 in *AAS*, 114 (2022), 117. Furthermore, in the case of delicts reserved to the DDF, in addition to the ordinary, a presiding judge of a tribunal, having heard the promoter of justice, may also impose precautionary restrictions enumerated in c. 1722. See ibid., art. 15 in *AAS*, 114 (2022), 119. Pavanello argues that the ability to invoke c. 1722 at the start of the preliminary investigation should be extended to *all* cases. See P. PAVANELLO, "L'adozione delle misure cautelari nel

to the process: "to prevent scandals, to protect the freedom of the witnesses, and to protect the course of justice" (c. 1722). Any of the reasons suffices to invoke the restrictions.[35] These restrictions must be revoked when the cause ceases, and they end by the law itself when the penal process ceases (c. 1722).[36]

3.2.2.6.2 Curial Norms for Special Procedures

One final prohibition exists in the law. The *Procedural Norms Regarding the Dispensation of Priests from Celibacy* state that the ordinary, when he has decided to proceed with instructing a priest's petition for such a dispensation, "is to prohibit the petitioner from the exercise of Orders *ad cautelam* (as a precautionary measure) unless he judges that their exercise is really necessary to protect the reputation of the priest or to foster the good of the community. (art. 4)."[37]

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corso dell'indagine previa," in D. SALVATORI, R. PALOMBI, and A. CATTA (eds.), *Diritto penale canonico: dottrina, prassi e giurisprudenza della curia romana*, Annales Doctrinae et Iurisprudentiae Canonicae, XV, Vatican City, Libreria editrice Vaticana, 2023, 322.

[35] The *CIC/17* stipulated the same measures in three distinct canons the content of which has been consolidated into this one canon (see *CIC/17* cc. 1956-1958). The only notable difference is that imposition or prohibition of residence in a particular place or territory could be invoked only to protect the course of justice and the freedom of witnesses and that such decree could be issued by the judge (see *CIC/17* c. 1957). In the current canon, only the ordinary can issue such a decree.

[36] Whenever one of the three goods that the restrictions are protecting is no longer in danger, then the restrictions must be revoked by the ordinary. The precautions cease *ipso iure* at the conclusion of any penal process. This is true as well when the penal judicial process is abated or renounced (see cc. 1522, 1525).

[37] SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, Norms D*e modo procedendi in examine et resolutione petitionum quae dispensationem a caelibatu respiciunt*, in *AAS*, 72 (1980), 1136-1137, English at https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19801014_dispensa-celibato_en.html (22 January 2025). The norms were appended to a letter of the same congregation to all local ordinaries and moderators of religious institutes. See SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, letter *Per litteras*, 14 October 1980, in *AAS*, 72 (1980), 1132-1135. While the norms were published by what is now the Dicastery for the Doctrine of the Faith, competence for these cases, with the norms remaining intact, now falls to the Dicastery for the Clergy, according to *PE*, art. 116, §2. See B. AUSTIN, "Canon 291 and the 1980 *Normae procedurales*, Art. 4: *Suspnesio ad cautelam* for Priests Requesting 'Laicization,'" in *Roman Replies and Advisory Opinions*, 2020, 106-107 for an analysis of the legal status of the norms which Austin states are not true laws but are "independent general administrative norms."

These norms issued in 1980, while still in force now, were issued at a time when such a dispensation was granted because it was determined that the priest was not free in being ordained, or was improperly prepared. It was very much connected historically to a petition to declare an ordination invalid.[38] Therefore, the precautionary measure of forbidding the exercise of sacred orders was related to a concern about validity of the sacraments.[39] In context of the present, it stands to reason that a priest seeking to cease ministering as a priest would not be opposed to such a restriction as a logical consequence.

Since the publication of the norms, the dispensation is now considered for cases of priests who have abandoned ministry, have attempted civil marriage, or have engaged in some other illicit behaviour. In such cases, while the formality of the restriction must still be placed, its *ratio* is less demanding. That being said, it is worth noting that if the petitioning priest's reputation could be harmed by the prohibition, then the ordinary is free not to impose it. The celebration of the Eucharist and the priest's reputation are more important than any precaution should warrant.

3.2.2.6.3 The Elderly and Infirm

Canon 930 allows an elderly or infirm priest to celebrate the Eucharist while seated but not "*coram populo*" without permission of the ordinary (c. 930, §1). While not a complete prohibition, it is a substantial one that limits the priest to celebrating without even the presence of one member of the faithful. The fact that the priest would not be able to carry out some of the gestures required by Mass, such as bowing and genuflecting, might

[38] See E. LOHSE, "The Origin and Nature of the Suspension *ad cautelam* of Article 4 of the 1980 *normae procedurales* for Dispensations from Celibacy," in *Periodica*, 94 (2005), 647-680, especially 648, passim.

[39] See ibid., 94.

cause wonderment among the faithful. For that reason, if he is unable to stand, the priest must celebrate privately, unless the ordinary allows otherwise.[40]

3.2.2.6.4 Required Permission

The law stipulates that a priest licitly celebrates Mass in a church only with permission of the rector (c. 903). Without that permission, he is impeded by law from celebrating. Specifically, with regard to parish churches, Pagé asserts that the rector of the church (*rector ecclesiae*) mentioned in canon 903 applies equally to pastors even though canon 556 says rectors are those in charge of non-parochial churches.[41] This seems a valid position given that no mention is made specifically about permission for celebrating Mass in parochial churches.

Permission is required from the rector for a church that is neither parochial, capitular, or connected to a religious community or society of apostolic life (cc. 556, 561). Bishops have permission of the Supreme Legislator for their own private chapels (c. 1227). Permission of the local ordinary is required for the celebration of Mass in private chapels that do not belong to bishops (c. 1228). This last permission seems to be a general permission. Once granted, it would seem that permission of the owner of the private chapel, including from a bishop for his own chapel, would be required. The Code is silent on churches that are parochial, capitular, or connected to a religious community or society of apostolic life, and on oratories, but presumably permission would be required from the

[40] See E. DE LEÓN, Commentary on c. 930, in *Exegetical Comm*, vol. III/1, 652-653.

[41] See R. PAGÉ, Commentary on c. 556, in *Exegetical Comm*, vol. II/2, 1406. Erdö concurs with Pagé's argument, although he says that tacit, rather than explicit, permission suffices. See P. ERDÖ, Commentary on c. 903, in *Exegetical Comm*, vol. III/1, 585. Other commentaries are silent on this issue.

competent ecclesiastical authority, as suggested above by Pagé. Cemeteries would seem to fall into this last category as well.[42]

3.2.3 Summary of the Valid and Licit Celebration of the Eucharist

So far, we have considered that only a validly ordained *sacerdos* validly celebrates the Eucharist. The liceity of such a celebration is restricted only by the provision of canon law. Those restrictions imposed by the law itself total five: penalties, impediments to exercising orders, loss of the clerical state, being a non-secular *sacerdos* dismissed from his institute, being a *sacerdos* challenging the validity of ordination. Restrictions allowed by the law at the discretion of the ordinary or rector total four: seeking a dispensation from celibacy, penal precautionary measures, being unable to stand for Mass, permission of the rector. The law is clear: any validly ordained *sacerdos* celebrates licitly if he does not fall into one of the nine circumstances listed above. In addition, he celebrates licitly as long as he follows the other prescriptions about time, place, and the other canons regarding various rubrics that we considered.

According to canon 17, the canons on the valid and licit celebration of the Eucharist must be understood "in accord with the proper meaning of the words considered in their text and context." That suggests that outside of the conditions just considered, every celebration of the Eucharist is valid and licit. Before moving on to consider how to reconcile that thesis with common praxis and the jurisprudence of the Apostolic Signatura,

[42] Cemeteries are sacred places (see c. 1205) even if not specifically designated for divine worship. Nevertheless, c. 932, §1 specifies that the Eucharist is to be celebrated in a sacred place without further specification that it must be a sacred place designated for divine worship, such as a church (c.1214), an oratory (c.1223), or a private chapel (c. 1226). Hence, Mass may be celebrated licitly in a cemetery, with at least the presumed permission of the competent ecclesiastical authority.

we need to consider more closely an issue considered earlier, namely, the required permission of the rector in order to licitly celebrate Mass.

3.3 The Required Permission for the Licit Celebration of the Eucharist

The question being examined in this thesis is whether or not permission can be denied by the ordinary outside of the nine conditions, or even if the permission of the rector can be changed to permission of the ordinary. Can the local ordinary impose other requirements such as a "letter of suitability"? Such letters attest to much more than whether or not a subject is labouring under some penalty or irregularity. They outline a priest's moral and psychological history. In these last decades, in the wake of the sex abuse crisis, such letters are almost universally required in the English-speaking world. Moreover, it is not only necessary to present such a letter, but it must be presented to the office of the ordinary beforehand and must be issued, not merely within the last year, but *ad occasum*. To determine if such practices are licit, we need to delve further into the requirement of the rector's permission.

The duty of the rector in deciding whether or not to admit a *sacerdos* to the celebration of the Eucharist is the duty to determine whether or not the *sacerdos* is impeded by law, that is, whether any of the above-named nine conditions apply. The rector does not have discretion whether to admit or not on any other condition, save the various canons on time and place for celebration.[43] Canon 903 states that a *sacerdos* is to be permitted to

[43] Canon 902, for example, says that a *sacerdos* may not celebrate the Eucharist individually while a concelebrated Mass is taking place in the same church or oratory. It also stipulates that a *sacerdos* is completely free to celebrate individually, which would suggest that a celebrant is not required to admit another priest as a concelebrant. Clearly, a *sacerdos* seeking permission to celebrate the Eucharist must be reasonable in his request and be willing to accede to the needs of the place where he is making the request.

celebrate (*ad celebrandum admittatur*). The *sacerdos* is to be permitted to celebrate as long as one of three conditions can be met:

i. he is known to the rector;

ii. he provides a letter of introduction from his ordinary or superior issued within the last year;[44]

iii. it can be judged prudently that he is not impeded from celebrating.[45]

Modern widespread praxis outlined above seems to contradict the intent of the canon favouring admitting even an unknown priest to the celebration of Mass. We will now examine some of the *fontes* of canon 903, beginning with *CIC/17*, in order to bring to light the *ratio* of the law

3.3.1 The Codex iuris canonici 1917

The immediate font of canon 903 is found in canon 804 of *Codex Iuris Canonici 1917* that states:

> c. 804 §1. A priest from outside the church in which he wishes to celebrate, showing an authentic and currently valid letter of commendation from his own Ordinary if he is secular, or from his Superior if he is religious, or from the Sacred Congregation of the Oriental Church if he is of an oriental rite, is to be admitted to the celebration of Mass unless in the meantime it is shown that he committed some deed that would require him to be prevented from the celebration of Mass.
>
> §2. If he lacks these letters but the rector of the church is quite convinced of his worthiness, he can be admitted to celebrate; but if he is unknown to the rector he can be admitted once or twice, provided though, that he is dressed in clerical garb, he received no title in virtue of celebrating in the church, and he signs his name, office, and diocese in a special book.

[44] The purpose of the letter, or prudent judgement, is to verify that the *sacerdos* is not impeded by law from the celebration. If he is known to the rector that fact would already be known. The other two conditions apply when the *sacerdos* is unknown. But even in that case, he is to be admitted.

[45] Impeded from celebrating clearly refers to the impediments of law of canon 900, §2.

> §3. Special rules on this matter, consistent with the prescriptions of these canons, that are given by the local ordinary, are to be observed by all, even exempt religious, unless it concerns permitting a religious to celebrate in the church of his religious [institute].[46]

There is a marked difference between the canons of the two codes. Before examining *CIC/17* c. 804, and then comparing it with c. 903, we will look first at the fonts for the old c. 804 given by Pietro Gasparri, compiler of the *CIC/17*. Gasparri listed the fonts in four groups: those from the *Corpus iuris canonici*, the Council of Trent, papal writings, and Roman curia documents. The fonts of *CIC/17*, c. 804 include references from all four groups.[47] We will begin by examining them in Gasparri's order beginning with the *Corpus iuris canonici.*

3.3.2 *Corpus iuris canonici* and Its Antecedents

The first reference in the *Corpus iuris canonici* is found in part one of Gratian's *Concordantia discordantium canonum* in distinction seventy-one, canon seven (D. 71, c.

[46] "*CIC/17*, c. 804, § l. Sacerdos extraneus ecclesiae in qua celebrare postulat, exhibens authenticas et adhuc validas litteras commendatitias sui Ordinarii, si sit saecularis, vel sui Superioris, si religiosus, vel Sacrae Congregationis pro Ecclesia Orientali, si sit ritus orientalis, ad Missae celebrationem admittatur, nisi interim aliquid eum commisisse constet, cur a Missae celebratione repelli debeat.

§ 2. Si iis litteris careat, sed rectori ecclesiae de eius probitate apprime constet, poterit admitti; si vero rectori sit ignotus, admitti adhuc potest semel vel bis, dummodo, ecclesiastica veste indutus, nihil ex celebratione ab ecclesia in qua litat, quovis titulo, percipiat, et nomen, officium suamque dioecesim in peculiari libro signet.

§3 Peculiares hac de re normae, salvis huius canonis praescriptis, ab Ordinario loci datae, servandae sunt ab omnibus, etiam religiosis exemptis, nisi agatur de admittendis ad celebrandum religiosis in ecclesia suae religionis" (*Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papæ XV auctoritate promulgatus*, Typis polyglottis Vaticanis, 1917, English translation in E.N. PETERS [ed.], *The 1917 Pio-Benedictine Code of Canon Law*, San Francisco, CA, Ignatius Press, 2001). All references to the canons of the 1917 Code will be styled "*CIC/17*, c." for canon and "*CIC/17*, cc." for canons, followed by the canon number(s).

[47] The fonts for *CIC'17*, c. 804 §1 are found in footnote 2: "C. 7, D. LXXI; Conc. Trident., sess. XXII, de observandis et evitandis in celebratione missae; sess. XXIII, de ref., c. 16; Benedictus XIV, const. *Ad militantis*, 30 mart. 1742, §6; ep. encycl. *Apostolicum ministerium*,'30 maii 1753, §6; ep. encycl. 'Quam grave,' 2 aug. 1757, §12; S.C.S. Off., 11 aug. 1649; S. C. Ep. et Reg., Comen., 27 oct. 1593; Feltren., 15 febr.1595; S.C. de Prop. Fide, litt. encycl. 20 apr. 1873."

Those of c. 804 §2 are found in footnote 3: "C. 3, X, de clericis peregrinis, I, 22".

7). The second refers to chapter three of title twenty-two of book one of the *Liber extra* (X 1, 22, c. 3). We will examine them in order.

The first reference, found in the 1582 *Editio romana* of Gratian's Decretal, states, "No foreign cleric or reader shall be permitted anywhere to minister outside his own diocese without commendatory letters from his own bishop.*"*[48] Friedburg's edition of the Decretal differs only in the reversal of two words from the version found in the *Editio romana* of 1582.[49] Friedberg has "*suam civitatem*" whereas the *Editio romana* has "*civitatem suam*." Friedburg also cites minor spelling variances found in different manuscripts of Gratian's *Decretal*, namely "*extraneum clericum et lectores*" and "*numquam*" that differ from the *Editio romana*'s "*extraneo clerici et lectori*" and its "*nusquam*."[50] None of the variants poses any difficulty in understanding the canon.

The source that Gratian cites for this passage is canon thirteen of the Ecumenical Council of Chalcedon held in 451. Chalcedon was the fourth ecumenical council, convened by the Emperor Marcian with Leo I reluctantly sending legates.[51] The council defined the two natures of Christ in one person. It also issued 27 disciplinary canons, the thirteenth of which we are considering. The most important of the ancient Greek collections of the

[48] "Extraneo clerico et lectori extra civitatem suam sine commendatitiis litteris proprii episcopi nusquam penitus liceat ministrare*."* D. 71, c. 7, *Corpus juris canonici emendatum et notis illustratum, Gregorii XIII, pont. Max, iussu editum*, Rome: In aedibus Populi Romani, 1582, https://digital.library.ucla.edu/catalog/ark:/21198/zz0014rx6c?cv=299 (26 February 2026).

[49] See D. 71, c. 7, *Corpus iuris canonici*, E. FRIEDBERG, (ed.), 2nd ed., 2 vols, Leipzig: B.Tauchnitz, 1879, Reprint, Graz: Akademische Druck- u. Verlagsanstalt, 1959, 259 at https://archive.org/details/CorpusIurisCanoniciIAemiliusFriedberg1959/Corpus%20Iuris%20Canonici%20I%20%5BAemilius%20Friedberg%201959%5D/page/n181/mode/2up (29 April 2026).

[50] See ibid., notes 54 and 55.

[51] See R. BUTTERWORTH, "Council of Chalcedon 451: Introduction," in TANNER, vol. 1, 75-76.

canons of the Council of Chalcedon is that compiled by John Scholasticus in his *Concordia canonum* in the middle of the sixth century.[52] He cites canon 13 thus, "Foreign clerics and readers without letters of commendation from their own bishop are absolutely forbidden to serve in another city."[53] The Latin text received in the West was that of Dionysius Exiguus[54] who cites the canon as, "*Peregrinos clericos et lectores in alia civitate praeter commendaticias litteras sui episcopi nusquam penitus ministrare debere.*"[55] The ancient texts differ slightly from those found in the *Editio romana* and Friedburg. Before noting the differences, it is useful to consider some items that the versions share.

Only foreign clerics are required to have a commendatory letter. The implication seems to be that clerics of the city, or diocese do not need such a letter, presumably because they would have been known to the local clergy. The intent of the canon is that foreign clerics who left the church to which they were assigned, without a commendatory letter, were not allowed to minister outside their city because they were unknown. Commendatory, or systatic, letters were formal and weighty letters of recommendation given, some assert, to clerics who had been excommunicated or who were under suspicion

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[52] See A. FORTESCUE, "John Scholasticus," in *The New Catholic Encyclopedia*, 2nd ed., Washington DC, The Catholic University of America, vol. 7, 915-916; N. TANNER, "Church Councils," in *The Cambridge History of Medieval Canon Law*, A. WINROTH, and J. WEI (eds.), Cambridge, Cambridge University Press, 2022, 195-96.

[53] "Ξένους κληρικοὺς καὶ ἀναγνώστας ἐν ἑτέρᾳ πόλει δίχα συστατικῶν γραμμάτων τοῦ ἰδίου ἐπισκόπου μηδὲ ὅλως μηδαμοῦ λειτουργεῖν." COUNCIL OF CHALCEDON, c. 13 in TANNER, vol. 1, 93. The English translation is Tanner's.

[54] See BUTTERWORTH, "Council of Chalcedon 451: Introduction," in TANNER, vol. 1, 76, note 4, and TANNER, "Church Councils," 195-96. See R. PRICE and M. GADDIS (eds.), *The Acts of the Council of Chalcedon*, Translated Texts for Historians 45, Liverpool, Liverpool University Press, 2005, vol. 1, 83-85, https://www-liverpooluniversitypress-co-uk.proxy.bib.uottawa.ca/doi/epdf/10.3828/9780853230397 (3 February 2026), for the most recent scholarly opinion on the extant Latin text.

[55] COUNCIL OF CHALCEDON, c. 13 in TANNER, vol. 1, 93.

and for whom their good standing needed to be guaranteed.[56] Given that wandering (*acephalous*) clergy were quite common until the Council of Trent, it is easy to see why commendatory letters were required.[57] Innocent IV in his *Apparatus in quinque libros Decretalium* explains the nature of commendatory letters.[58] They are letters that commend the life and morals of the bearer as well as the sacred orders that he has.[59]

It was less a question of a cleric going to a foreign city for a finite period than it pertained to a cleric who was looking for a benevolent bishop to receive him into the diocese – a cleric, perhaps, who had been on the wrong side of theological debates settled at the council. The mention of lectors is also noteworthy.[60] They played an important role

[56] See PRICE and GADDIS, *The Acts of the Council of Chalcedon*, vol 3, 98, note 26, https://www-liverpooluniversitypress-co-uk.proxy.bib.uottawa.ca/doi/epdf/10.3828/9780853230397 (29 April 2026), and, for a fuller explanation, W. BRIGHT, *Notes on the Canons of the First Four General Councils*, Oxford, Clarendon Press, 1882, 162-164, https://archive.org/details/notesonthecanons00briguoft/page/n173/mode/2up?ref=ol&view=theater (29 April 2026).

[57] For a summary of the problem of acephalous clergy, see A. OBEL, The Agreement for Temporary Service of a Diocesan Priest Outside His Diocese of Incardination According to Canon 271 of the 1983 Code of Canon Law, JCD Thesis, Ottawa, Saint Paul University, 2017, 18-27, https://ruor.uottawa.ca/bitstream/10393/36717/1/Obel_Andrew_Kinarah_2017_Thesis.pdf (3 February 2026).

[58] INNOCENT IV, *Apparatus in quinque libros Decretalium*, 1570, at folio 113, 176 at https://web.colby.edu/canonlaw/files/2025/04/Innocent-IV-Apparatus-in-quinque-librorum-Decretalium.pdf (26 February 2026).

[59] See ibid. ("Commendatiae dicuntur, per quas commendatur de vita & moribus, exprimuntur etiam ordines ibi quos habet […]")

[60] Richard Price notes that the inclusion of lectors as if they were not part of the clergy was odd, and he states that the oddity led, in later collections, to changing the word "lectors" to "unknown". See PRICE and GADDIS, *The Acts of the Council of Chalcedon*, vol. 3, 98, note 28, https://www-liverpooluniversitypress-co-uk.proxy.bib.uottawa.ca/doi/epdf/10.3828/9780853230397 (3 February 2026). William Bright also finds the variant ἀγνώστους (unknown) to be more credible than the original ἀναγνώστας (reader, or slave trained to read) for the same reason that it seems to place a reader outside of the clerical state. See BRIGHT, *Notes on the Canons*, 167, https://archive.org/details/notesonthecanons00briguoft/page/n177/mode/2up?ref=ol&view=theater (3 February 2026).

in the early Church. They were educated people who, not only read scripture publicly, but often commented on it as well.[61] Lectors performed a common public ministry.

According to the *Glossa ordinaria* of the 1582 *Editio romana*, Gratian cited canon 13 of the Council of Chalcedon using three sources, namely the twelfth century collection *Polycarpus*, the *Collectio canonum* of Anselm of Lucca, and the *Libri decretorum* of Burchardus Wormatiensis.[62] We will examine the last of these, from Burchardus. The citation to Chalcedon is found in Book Two, chapter 139 of his *Libri decretorum*: "Foreign clerics and lectors are absolutely forbidden to exercise any ministry in another city unless they present letters of commendation from their own bishop."[63]

Gratian's three citations of Chalcedon's canon 13 vary slightly in words and spelling, but not in meaning. The intent of the law is clear that clerics are emphatically (*ὅλως*, *nusquam penitus*) forbidden to perform religious services unless they have a specific and weighty letter of recommendation from their bishop in order that excommunicates not deceive or harm the faithful. The concern for excommunicated clerics who may lead the faithful astray with heterodox theology explains the concern for lectors being included since they also catechised people.

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[61] On the role of lector see BRIGHT, *Notes on the Canons*, 167-68 https://archive.org/details/notesonthecanons00briguoft/page/n177/mode/2up?ref=ol&view=theater (3 February 2026).

[62] D. 71, c. 7, *Corpus juris canonici emendatum et notis illustratum, Gregorii XIII, pont. max, iussu editum*, col. 465, https://digital.library.ucla.edu/catalog/ark:/21198/zz0014rx6c (3 February 2026).

[63] "Peregrinos clericos et lectores, in alia civitate, praeter commendatitias litteras sui episcopi, nusquam penitus ministrare debere" (BURCHARD OF WORMS, *Ecclesiae Episcopi Decretorum Libri Viginti ex Conciliis et Orthodoxorum Patrum Decretis, Tum Etiam Diversarum Nationum Synodis, Ceu Loci Communes Congesti, in Quibus Totum Ecclesiasticum Munus Luculenta Brevitate et Veteres Ecclesiarum Observationes Complectitur*, in J. MIGNE [ed.], *Patrologiae cursus completes*, Series Latina, Paris, J.P. Migne, 1844–1865, vol. 140, column 648 at https://www-proquest-com.proxy.bib.uottawa.ca/docview/2684143447/Z600150463/1?accountid=14701&docview_hit_text=peregrinos [29 April 2026]).

The second reference to the *Corpus iuris canonici* cited by c. 804 of the 1917 Code is to the *Liber extra* X 1, 22, c. 3. Addressing the situation of unknown clerics wishing to celebrate Mass, this font cites a letter from Innocent III responding to a query of the Patriarch of Jerusalem regarding clerics who are unknown arriving in Jerusalem and celebrating Mass. It states:

> Whether you ought to permit those clerics who come to the parts of Jerusalem without letters of commendation to celebrate divine services, when most of them, whose canonical ordination is not established, presume to celebrate as soon as they arrive, without seeking permission? We, commending to you in the Lord your solicitude concerning the first article, answer that, unless it has been legitimately established to you, either by letters or by witnesses, concerning the canonical ordination of those who are entirely unknown, you ought not to permit them to celebrate in your parishes; but if perchance any of them should wish to celebrate privately out of devotion, you may allow it.[64]

The issue under consideration is whether or not the pilgrim wishing to celebrate is ordained or not. Joannes Andreae comments that an unknown person may be permitted to celebrate in secret since there is no danger of deceiving the people if it turns out he is not ordained.[65] The concern of the Church in Jerusalem was not about orthodoxy but about the influx of people, the crusades having begun a half-century before Innocent's letter.

3.3.3 The Council of Trent

Gasparri lists two fonts from the Council of Trent. The first is to the decree *On the Things to be Observed and Avoided in Celebrating Mass* from the twenty-second session

[64] "Utrum clericos illos, qui ad partes Hierosolymitanas sine commendatitiis literis veniunt, permittere debeas celebrare divina, quum plerique illorum, de quorum canonica ordinatione non constat, statim ut veniunt, praesumunt, non expetita licentia, celebrare? Nos autem tuam in Domino sollicitudinem commendantes super primo articulo Respondemus, quod, nisi legitime tibi constiterit, sive per literas sive per testes, de illorum ordinatione canonica, qui penitus sunt ignoti, non debes ipsos permittere in tuis plebibus celebrare; sed si forsitan eorum aliqui secreto ex devotione celebrare voluerint, poteris sustinere" (X 1, 22, c. 3, *Corpus juris canonici emendatum et notis illustratum, Gregorii XIII, pont. max, iussu editum*, column 310 at https://digital.library.ucla.edu/catalog/ark:/21198/zz0014rx7w [29 April 2026]).

[65] J. ANDREAE, gloss s.v. Tuae fraternitatis ad X 1, 22, c. 3, in *Corpus juris canonici emendatum et notis illustratum, Gregorii XIII, pont. max, iussu editum*, column 310, at https://digital.library.ucla.edu/catalog/ark:/21198/zz0014rx7w (29 April 2026).

of the council held on 17 September 1562.[66] The second is to canon 16 issued at the twenty-third session on 15 July 1563.[67]

The decree of the first font concerned trafficking in Masses and superstitious practices. With regard to the priest, the council encouraged bishops to publish a decree prohibiting "a wandering and unknown priest" from celebrating Mass.[68] Anyone whose guilt is notorious and public must not be allowed to serve at the altar or take part in divine worship. The council also encouraged bishop to forbid the celebration of Mass in private houses, or anywhere outside of churches and oratories.[69]

The canon that Gasparri lists as the second font declared that a priest who deserts his post without the bishop's consent, is to be banned from the sacred ministry. Furthermore, a bishop is not to allow a wandering cleric to celebrate the liturgy or administer the sacraments without a commendatory letter from the cleric's own bishop.[70]

Both fonts are concerned about wandering priests. It is not clear whether the abuse being rooted out is the danger that an unknown wandering priest might spread heresy, or whether the council sought to prevent an irregular or suspended priest from celebrating. In either case, it is clear that a commendatory letter was to be required of an unknown priest.

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[66] See COUNCIL OF TRENT, decree *de Observandis et vitandi in celebratione missarum*, 17 September 1562, in TANNER, vol. 2, 736-737.

[67] See COUNCIL OF TRENT, decree *Super reformatione*, 15 July 1563, can. 16, in TANNER, vol. 2, 749-750.

[68] "vago et ignoto sacerdoti" (COUNCIL OF TRENT, decree *De observandis et vitandi in celebratione missarum*, in TANNER, vol. 2, 736).

[69] See ibid., 736-737.

[70] See COUNCIL OF TRENT, decree *Super reformatione*, 15 July 1563, can. 16 in TANNER, vol. 2, 750.

3.3.4 Papal and Curial Fonts

Gasparri lists three documents of Pope Benedict XIV as fonts of *CIC/17*, canon 804. In addition, he includes four curial documents.

3.3.4.1 Benedict XIV

The first reference to Benedict XIV is to his apostolic constitution *Ad militantis*, no. 6 of 30 March 1742. The document was a significant canonical document, strengthening the authority of bishops and regulating ecclesiastical trials and appeals. Paragraph six refers to the requirement of a bishop, during a visitation, to adhere to the above-mentioned decree of the twenty second session of the Council of Trent regarding the worthy and dignified celebration of the liturgy and wandering clergy.[71]

The second reference is to Benedict's papal bull *Apostolicum ministerium*, no 6. This bull was drawn up to address a situation in England. During Queen Elizabeth I's persecution of Catholics, religious priests received their faculties for confession through their superiors by papal privilege, rather than through a special envoy stationed in England with governance over secular priests. This was an anomalous situation. Benedict XIV, by this bull, required religious to follow the regulations of the council of Trent and receive their faculties through the vicar apostolic. Paragraph six specifies that religious, when they arrive in a territory for their missionary work, cannot exercise their sacred orders until they have presented letters to the apostolic vicar testifying that the religious priest is not bound by any suspension or irregularity. This is true, as well, wherever they are outside the diocese of their ordination, even in churches of their own congregation.[72]

[71] BENEDICT XIV, apostolic constitution *Ad militantis*, 30 March 1742, no. 6, in *Fontes*, vol. 1, no. 326, 724.

The final document of Benedict XIV, cited by Gasparri as a font, is the encyclical letter *Quam grave* of 2 August 1757 addressing the sacrilege of non-ordained men attempting to celebrate Mass. Paragraph 12, specifically cited by Gasparri, requires secular priests wishing to celebrate Mass in the church belonging to religious to present letters of their ordinaries to the bishop of the diocese where the religious church is located.[73]

3.3.4.2 Documents of the Roman Curia

A decree of the Sacred Congregation of the Holy Office, dated 11 August 1649, required religious superiors to allow wandering (*vagos*) or travelling (*pellegrinos*) priests to celebrate mass in their churches only if they were able to provide letters from their superiors testifying to their assignment and presbyteral ordination. In the case of secular priests, a letter from the vicar general or his bishop was required.[74]

A response from the Sacred Congregation for Bishops and Regulars to the bishop of Como, Italy dated 27 October 1593 concerned the danger of heresy being spread among the simple faithful when priests or friars are allowed to celebrate Mass and preach without providing testimonial letters of their superiors. The bishop was ordered to instruct, under threat of appropriate penalties, parish priests and vicars not to allow any visiting priest to say Mass, preach, beg for alms, or teach without first having shown testimonial letters from his superior.[75]

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[72] See BENEDICT XIV, bull *Apostolicum ministerium*, 30 May 1753, no. 6, in *Fontes*, vol. 2, no. 425, 392-393.

[73] See BENEDICT XIV, encyclical letter *Quam grave*, 2 August 1757, in *Fontes*, vol. 2, no. 443, 549-554.

[74] See SACRED CONGREGATION OF THE HOLY OFFICE, decree *De missa celebrandi a vagis*, 11 August 1649, in *ASS*, 24 (1891), 701.

[75] See SACRED CONGREGATION FOR BISHOPS AND RELIGIOUS, *Comen.*, 27 October 1593, in *Fontes*, vol. 4, no. 1496, 649.

A reply of the same congregation to the bishop of Feltre, Italy in 1595 similarly advised him to require that archpriests, parish priests, and vicars forane, under pain of penalty, ensure that no unknown, foreign priest, especially religious, be allowed to celebrate in their churches if he has not shown a letter from his superior proving his identity and testifying that he is without canonical impediment. Part of the concern was that foreign religious might be collecting alms that the local priests deserved. The congregation did specify that mendicant regulars cannot be so prohibited from collecting alms.[76]

The Sacred Congregation for the Propagation of the Faith, in a 1873 circular letter, expressed its concern that news had been received by them more than once that priests are easily received into dioceses of mission churches without bringing letters of recommendation, even transferring dioceses without them. The congregation reminded the letter's recipients of the ancient and prudent counsel that wandering and unknown clerics should only be received after clear proof of their life, ministry, and place of abode. The fear is that such wandering clergy are criminals, irregular, fugitives, or exiles. The letter went on to refer to the above-cited decree of the Council of Trent, and pointed out that more recent councils, such as the Council of Baltimore, had also placed prudent safeguards in this regard. In response, the congregation absolutely commanded bishops of mission territory to require clerics and priests from foreign dioceses to produce letters of recommendation from their own bishops and not to receive such priests otherwise.[77]

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[76] See SACRED CONGREGATION FOR BISHOPS AND RELIGIOUS, *Feltren*., 5 February 1595, in *Fontes*, vol. 4, no. 1532, 665.

[77] SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, Encyclical letter, 20 April 1873, in *Fontes*, vol. 7, no. 4884, 456-457.

3.3.3.4.3 Sub-Section Conclusion

The fonts of *CIC/17* canon 804 show that while a priest, outside of his church who requested to say Mass, needed to demonstrate that he was in fact ordained a priest and was not labouring under any penalty or irregularity, the law favoured him to being allowed to celebrate. The Council of Chalcedon legislated the absolute need for a travelling priest to manifest a commendatory letter from his superior. Much later, Innocent III mitigated the requirement by allowing bishops to permit the celebration in private of travelling priests who could not prove their status as priests or their freedom from penalties or irregularities. The Council of Trent restored the earlier rigour by requiring the presentation of a commendatory letter from a superior. With the promulgation of the *CIC/17* the requirements were much mitigated again as we shall now see.

3.3.3.5 Exegesis of *CIC/17* c. 804

CIC/17 c. 804 outlines four scenarios of a travelling priest asking to celebrate Mass in a church not his own:

i. he presents a commendatory letter from his superior that is valid and authentic *and* it is shown that he has not committed, since the letter was issued, some deed, that would require him to be prevented from the celebration of Mass;

ii. he presents a commendatory letter from his superior that is valid and authentic, *but* it is known that he *has committed*, since the letter was issued, some deed that requires him to be prohibited from the celebration of Mass;

iii. he lacks a commendatory letter, *and* is *known* to the rector who is quite convinced of his worthiness to celebrate;

iv. he lacks a commendatory letter, is dressed in ecclesiastical garb, will receive no title from the church in question in virtue of his celebration, and will sign his name, office, and diocese in a special book, *but* is *unknown* to the rector (see *CIC/17* c. 804, §§ 1-2).

The first scenario stipulates that the travelling priest is to be admitted to the celebration of Mass.[78] The second scenario stipulates that he must be denied permission by the rector to celebrate. The third scenario gives the rector discretion to admit the priest or not. The fourth scenario gives the rector discretion to admit the priest to celebrate Mass one or two times.[79]

With regard to the first scenario, commentators on *CIC/17* seem unanimous that the priest must be admitted to celebrate.[80] Wernz and Vidal, citing Gasparri, state that a priest

[78] Cappello comments that this canon applies only to priests from outside the diocese. See F. CAPPELLO, *Tractatus canonico-moralis de sacramentis*, 5th ed., vol. 1, Rome, Marietti, 1947-1961, no. 699, 656.

[79] Conn points out that a priest in this scenario was to receive no title (stipend) for the celebration of Mass out of an abundance of caution for the integrity of Mass offerings. See J. CONN, "Canon 903 and Other Restrictions on Ministerial Mobility," in *CLSA Proceedings*, 78 (2016), 79.

[80] See A. VERMEESCH, and I. CREUSEN, *Epitome iuris canonici cum commentariis: ad scholas et ad usum privatum*, 7th ed., vol. 2, Mechelen/ Rome, H. Dessain, 1954, no. 76, 42. ("*Codex vult ut sacerdos admittatur*.") See A. CANCE, *Le code de droit canonique: commentaire succinct et practique*, R. NAZ (ed.) vol. 2, Paris, Librairie Lecoffre, 1934, 256. ("*doit admettre à la celebration*") See C. DE CLERCQ, *Traité de Droit Canonique*, vol. 2, Paris, Letouzey et Ané, 1947-1949, no. 97, 88. ("*un droit strict*") See S. WOYWOD, and C. SMITH, *A Practical Commentary on the Code of Canon Law: by Stanislaus Woywod*, *Revised by Callistus Smith.* revised and enlarged edition of combined vols. I and II, New York, Joseph F. Wagner, Inc., 1957, no. 699, 424. ("shall be admitted") See M. DA CORONATA, *Institutiones iuris canonici ad usum utriusque cleri et scholarum de sacramentis: tractatus canonicus*, Turin/Rome, Marietti, 1943, no. 194, 147. ("*non etiam admitti potest* […] *sed etiam admitti debet seu ius habet*") See J. ABBO, and J. HANNAN, *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church*, rev. ed., vol. 1, St. Louis, MO/London, Herder Book Co., 1957, 797. ("he cannot be refused permission") See E. REGATILLO, *Ius sacramentarium*, vol. 1, Santander, Sal Terrae, 1945, no. 107, 61. ("*admittatur*") See F. CLAEYS BOUUAERT, *De sacramentis*, 2nd ed., Manualis iuris canonici, vol. 2, Ghent/Liège, 1935, no. 78, 74. ("*admittendus sit*")

from outside the diocese, who has a letter of permission from his own ordinary, cannot be refused permission.[81] He goes on to say that this opinion is not even contradicted by a 1826 response of the Sacred Congregation of Cardinals that did allow a bishop to prohibit visiting priests from celebrating because, in that case, unique circumstances dictated it and the decision was not given as a general principle.[82] Cappello is the strongest in his opinion. He states**:** "The term 'admittatur' signifies that a priest who presents the aforementioned letters not only may be admitted to celebrate Mass, but *must* be admitted: the matter concerns a right (*de iure*)."[83] Coronata, Vermeesch, and Clercq concur that it is a right.[84] No discretion existed for the rector of the church in this scenario. He must be prohibited because it is known that he is impeded by law, the letter of commendation notwithstanding.

The second scenario is the only one in which the rector must prohibit the visiting priest from celebrating Mass. Cance states it succinctly: "The rector of a church must admit

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[81] F. WERNZ, and P. VIDAL, *Ius canonicum*, vol. 1 Rome, Gregorian University, 1934, no. 72, 82. The citation to Gasparri is to P. GASPARRI, *Tractatus canonicus sanctissima Eucharistia*, vol. 1, Paris, Delhomme et Briguet, 1897, no. 373. Gasparri states, "Quaerimus utrum episcopus possit, necne, recusare permissionem celebrandi in sua ecclesia vel in sua dioecesi sacerdoti extraneo ignoto vel noto quie legitimas habet proprii ordinarii litteras commendatitias. respondemus episcopum id per se non posse; nam sacerdos dispositus et nullo impedimento detenus, ex sua ordinatione habet ius ad missae celebrationem, quam ecclesia jubet aut suadet, proinde episcopus eamdem impedire non debet." Vermeersch and Creusen stipulate that "the canon, however, concerns occasional celebration […] For no rector of a church is compelled to admit priests who wish to celebrate in his church in a stable and ongoing manner." ("Agitur autem in canone de celebration accidentali . . . Nullus enim ecclesiae rector sacerdotem qui modo stabili celebrare in ipsius ecclesia velit, admittere cogitur.") VERMEESCH and CREUSEN, *Epitome iuris canonici*, no.76, 42.

[82] See SACRED CONGREGATION OF CARDINALS, response, 26 August 1826, in C. LINGEN, and P. REUSS (eds.), *Causae selectae in S. Congregatione Cardinalium Concilii Tridentini Concilii Tridentini interpretum propositae per summaria precum ab anno 1823 usque ad annum 1869*, 879 at https://books.google.ca/books?id=FkkIMpZY7BQC&printsec=frontcover&source=gbs_book_other_versions_r&redir_esc=y#v=onepage&q&f=false (28 January 2026).

[83] "*Vox 'admittatur' significat quod sacerdos praefatas litteras exhibens, non solum potest admitti ad Missam celebrandam, sed* debet*: agitur quippe de iure* [emphasis in original]" (CAPPELLO, *Tractatus canonico-moralis de sacramentis*, no. 699, 655).

[84] See CORONATA, *Institutiones iuris canonici*, 147. He uses the word "*ius*." See VERMESCH, no. 76, 42. He uses the expression "*ius admissionis*." See CLERCQ, *Traité de droit canonique*, 88. He uses the word "*droit*."

to the celebration of Mass all foreign priests who present an authentic and still valid *celebret* from his ordinary . . . there is no exception except for the case in which it is certain that the priest, after the issuance of the celebret, conducted himself in such manner that he must be refused to celebrate."[85]

Coronata specifies that to prohibit a priest in this scenario it is not sufficient that there is any suspicion of a committed delict, "rather it is absolutely required that grave guilt be established, and indeed by means of proofs, excluding, clearly, the use of information obtained from confession*."*[86]

The third and fourth scenarios, concerning a visiting priest without a commendatory letter from his ordinary, either known or unknown, do not require the rector to admit a priest to the celebration of Mass. The discretion belongs to him in either case. The only difference is that in the case of an unknown priest allowed to celebrate, he must have presented himself in clerical garb, not received any title for the celebration of Mass and have signed his name, office, and diocese in a special book kept at the church. As we have seen, neither of these scenarios concerns permitting the habitual celebration of Mass. Indeed, in the fourth scenario of an unknown priest, he may be admitted to the celebration one or two times, according to the canon.[87]

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[85] "Le recteur d'une église doit admettre à la célébration de la sainte Messe tout prêtre étranger qui se présente avec un *celebret authentique* et *encoure valide* de son Ordinaire . . .il n'y a d'exception que pour le cas où il est certain que le prêtre, depuis la concession du *celebret*, s'est conduit de telle manière qu'on doit s'opposer à ce qu'il dise la Messe" (CANCE, *Le code de droit canonique*, vol. 2, 256).

[86] "non sufficit quaelibet suspicio delicti comissi, sed requiritur praecise ut de gravi culpa constet, et quidem per probationes, excluso, ut patet, usu notitiae habitae ex confessione" (CORONATA, *Institutiones iuris canonici*, 147).

[87] Regatillo interprets one or two times to mean not a strict or numerical sense, but as meaning on a few occasions. See REGATILLO, *Ius sacramentarium*, 61.

Finally, canon 804, §3 provided that the local ordinary could enact particular rules, consistent with the prescriptions of the canons on this matter that must be observed. Commentators were very clear on what this meant. In many respects, this particular question is the crux of this thesis: the authority of an ordinary to regulate or restrict the norm that a *sacerdos* licitly celebrates Mass who is not prohibited by law. Clearly, the *CIC/17* expressly allowed a local authority to enact norms. It behoves us to examine, in detail, what the commentators taught on this matter.

3.3.3.5.1 Exegesis of CIC/17 c. 804, §3

Before considering commentary on this provision of the former code, it is worth noting that the whole canon applies only to priests who are seeking to celebrate Mass outside of the church to which they are assigned. The *CIC/17* is silent on the mere licit celebration of the Eucharist with regard to a priest's external forum qualifications in his own church or diocese. Clearly penalties and irregularities elaborated elsewhere in the former code could prohibit him. But even that is not expressly stated in this part of the code. Nor is there mention of norms that an ordinary could set. If, as we saw, a commendatory letter testifying to priestly ordination and freedom from penalties or irregularities gave a travelling priest the right to celebrate Mass, it follows, as a corollary, that those same three external forum qualifications gave a priest the right to celebrate in his own church. No other external forum qualification could be required of all priests by an ordinary. Certainly, no personal restrictions could be imposed.

Returning to the case of travelling priests, commentators who elaborated on the authority of the local ordinary were generally of the same opinion that such authority was limited. What is clear, as we shall see, is that a local ordinary could not reserve to himself

the giving of permission that the code granted to rectors. As a general consideration, Cappello noted that norms issued by the ordinary that ran contrary to the prescriptions of the canon were null and void (*sunt nullae et irritate*) because they were against the common law (*ius commune*.)[88] He did concede that in some particular and wholly extraordinary case, apart from a special faculty obtained from the Holy See, the ordinary may forbid a particular priest *without a commendatory letter* from celebrating mass.[89] It could only apply to a particular case. It is important to note the ordinary could not prohibit a priest with a commendatory letter.

Cappello went on to suggest examples of norms that would and would not be in conformity with the prescriptions of *CIC/17* c. 804. He states:

> Therefore, a bishop cannot order that only those priests be admitted to the celebration of Mass who possess letters of recommendation; still less can he order that only those be admitted who present letters previously reviewed by the diocesan curia. On the contrary, however, the local ordinary may establish that letters of recommendation be submitted as soon as possible to prior review by the diocesan curia; that a priest lacking letters of recommendation be admitted to celebrate only for a few days; and that the ordinary be informed of such priests who are without letters of recommendation.[90]

Vermeesch gave the opinion that a bishop could not abolish the right of admission that would pertain to a travelling priest with a commendatory letter.[91] Abbo and Hannon concur with that opinion and go further to say that a bishop cannot make the granting of permission

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[88] See CAPPELLO, *Tractatus canonico-moralis de sacramentis*, no. 699, 656.

[89] See ibid. ("In casu aliquo particulari et omnino extraordinarii, aut ex speciali facultate a S. Sede obtenta, Ordinarius potest prohibere ne sacerdos admittatur ad celebrandum *sine litteris commendatitiis.*" [Emphasis in original])

[90] "Quare episcopus praecipere nequit ut ii tantum sacerdotes ad missa celebrationem admittantur, qui habeant litteras commendatitias; et eo minus ut ii solum admittantur, qui praeseferant litteras praevie recognitas a curia dioecesana. Dum e contra loci ordinarius statuere valet, ut litterae commendatitiae quamprimum praeviae recognitioni curiae dioecesanae subiiciantur, ut sacerdos carens litteris commendatitiis nonnisi ad paucos dies admittatur ad celebrandum, ut ordinarius certior fiat de huiusmodi sacerdotibus litteris commendatitiis carentibus" (Ibid.).

[91] See VERMEESCH and CREUSEN, *Epitome iuris canonicio*, no. 76, 42.

"dependant on letters issued by his own curia."[92] Coronata and Jone go as far to say that an ordinary cannot require a travelling priest to have his commendatory letter approved by the local curia.[93] Wernz and Vidal seem to be the only ones who posit the ability of a bishop to enact a norm prohibiting travelling priests from celebrating unless their commendatory letters have been examined and approved by himself or his vicar general.[94] At the same time, they recognise that such a diocesan regulation may give rise to just complaint (*iustis querelis*).[95]

The *CIC/17* clearly established the right of a *sacerdos* to celebrate Mass licitly as long as he was validly ordained *sacerdos*, and was free of any penalty or irregularity that prohibited its celebration. The first code went further in establishing that right to extend beyond the boundaries of his diocese as long as the *sacerdos* brought a valid and authentic commendatory letter from his bishop. Even without that letter, discretion to admit him to the celebration of Mass was given to the rector of the church. The law itself limited the ordinary to regulate particular aspects of such arrangements as long as they did not contradict the provisions granted by the law itself.

One last step remains before proceeding to consider the *ius vigens* on this matter, and that is to examine the revision of the law before its promulgation in 1983.

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[92] ABBO and HANNON, *The Sacred Canons*, 797.

[93] See CORONATA, *Institutiones iuris canonici*, 147, and H. JONE, *Commentarium in codicem iuris canonici*, vol. 2, Paderborn, Libraria F. Schöningh, 1954, 58.

[94] See WERNZ and VIDAL, *Ius canonicum*, vol. 1, no.72, 81. Wernz and Vidal cite the fonts previously discussed from the Council of Trent and Benedict XIV.

[95] Ibid., no. 72, 81-82.

3.3.3.6 The Revision of the Code

The canons in question were discussed by the study *coetus* on the sacraments twice, first in December 1970 and again in May 1971.[96] Suggestions were made about making vocabulary more precise in the initial draft of canons. Minor changes were agreed upon and the canons were published in the first schema of 1975. The two pertinent canons for our study were numbered 62 and 64. They read:

> 62. §1 *Minister aptus, qui in persona Christi sacrificium Eucharisticum conficiat, est solus sacerdos valide ordinatus.*
> §2 *Licite Eucharistiam celebret sacerdos lege canonica non impeditus, servatis praescriptis canonum qui sequuntur.*

and

> 64. §1 *Sacerdos ad celebrandum admittatur etiamsi rectori ecclesiae sit ignotus, dummodo aut litteras commendatitias sui Ordinarii exhibeat, aut alio modo ipsi rectori de eius probitate satis constet.*
> §2. *Integrum est loci Ordinario hac de re normas magis de terminatas edere, ab omnibus sacerdotibus servandas, etiam a sodalibus instituti exempti, nisi agatur de iisdem admittendis ad celebrandum in ecclesiis aut oratoriis proprii instituti*.[97]

A subsequent meeting of the *coetus* was held in April 1978.[98] After a long discussion, technical vocabulary changes were made to the first paragraph of the proposed canon 62.[99] The second paragraph was acceptable to all and remained unchanged. The proposed canon 64 underwent a major revision. The first item discussed was whether or not it was necessary to reference commendatory letters issued by moderators of institutes

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[96] See PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, acts of *Coetus studiorum "de sacramentis*," Session VI, in *Comm*, 31 (1999), 116 and ID., acts of *Coetus studiorum "de sacramentis*," Session VII, in *Comm*, 31 (1999), 189.

[97] PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, *Schema documenti pontificii quo disciplina canonica de sacramentis recognoscitur: reservatum*, Vatican City, Typis polyglottis Vaticanis, 1975, 33-34.

[98] See PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, acts of *Coetus studiorum "de sacramentis*" *series altera*, Session VI, in *Comm*, 13 (1981), 224.

[99] For the discussions and changes made by the *coetus* outlined here, see ibid., 238-240.

of consecrated life as well as a time period for the validity of the letter required by the canon. It was decided to add reference to superiors. The *coetus* decided to change the words "*alio modo . . . constet*" to "*aut prudenter existimari possit eundem a celebratione non esse impeditum*." With regard to paragraph two of proposed canon 64, two of the consultors did not see the necessity to include it because "the bishop can always issue a determination on this matter."[100] A vote was taken: four voted for the suppression of paragraph 2; three voted against. The paragraph was suppressed.

This suppression of the paragraph regarding an ordinary's ability to enact norms regarding visiting priests seeking to celebrate Mass does not mean that the doctrine of *CIC/17* in this regard is abolished, nor does it mean that it has changed. If the ordinary issues norms in this regard, they must still be in accord with the law.

The 1980 *schema* of the revised code changed the numbering of the canons. For the two canons under consideration, they appeared in the *schema* as:

> c. 854 §1 *Minister qui in persona Christi sacramentum Eucharistiae conficere valet est solus sacerdos valide ordinatus*.
>
> § 2 *Licite Eucharistiam celebrat sacerdos lege canonica non impeditus, servatis praescriptis canonum qui sequuntur*.

and

> c. 856 *Sacerdos ad celebrandum admittatur etiamsi rectori ecclesiae sit ignotus, dummodo aut litteras commendatitias sui Ordinarii vel sui superioris, saltem intra annum datas, exhibeat, aut prudenter existimari possit eundem a celebratione non esse impeditum*.

One of the suggestions made during the consultation for the 1980 *schema* was that the fulness of the priesthood of bishops should be expressed in proposed c. 854, §1. The

[100] "*quia episcopus potest semper determinationem hac de re edicere*" (PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, acts of *Coetus studiorum "de sacramentis*" *series altera*, Session VI, in *Comm*, 13 (1981), 240).

commission fathers replied that this idea was sufficiently covered elsewhere in the *schema*.[101] It was suggested also that proposed canon 64, § 2 of the 1975 *schema* be restored. That paragraph, as we saw, allowed ordinaries to enact norms regarding the celebration of Mass by visiting priests. The commission fathers replied that it was not necessary to restore the paragraph because "the ordinary can always issue norms in order better to determine the prescription of the canon."[102] We see again that the drafters of the Code envisioned that an ordinary could issue norms to better regulate the provisions of the canon. At no time is it suggested that such norms could contradict or contravene the prescriptions of the Code itself.

The last stage of the revision of the Code was the final *schema* of 1982. Once again, the numbering of the proposed canons changed. In this last *schema*, the canons appeared as:

> c. 899 §1 *Minister, qui in persona Christi sacramentum Eucharistiae conficere valet, est solus sacerdos valide ordinatus.*
> §2 *Licite Eucharistiam celebrat sacerdos lege canonica non impeditus, servatis praescriptis canonum qui sequuntur.*
>
> and
>
> c. 902 *Sacerdos ad celebrandum admittatur etiamsi rectori ecclesiae sit ignotus, dummodo aut litteras commendatitias sui ordinarii vel sui superioris, saltem intra annum datas, exhibeat, aut prudenter existimari possit eundem a celebratione non esse impeditum.*

The 1982 *schema* was examined by Pope John Paul II with a group of cardinals. No further changes were made to the canons and they were promulgated on 25 January 1983 in the

[101] See PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, *Relatio complectens synthesim animadversionum ab em.mis atque exc.mis patribus commissionis ad novissimum schema codicis iuris canonici exhibitarum, cum responsionibus a secretaria et consultoribus datis: patribus commissionibus stricte reservata*, Vatican City, Typis polyglottis Vaticanis, 1981, 211.

[102] "*Ordinarius normas edicere semper potest ad melius determinandum praescriptum canonis*" (PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, *Relatio complectens,* 212).

CIC/83 as canons 900 and 903. As we can see, the canons under consideration remain virtually unchanged in substance from the *CIC/17*. Even though the paragraph regarding the ability of an ordinary to enact norms regarding a visiting priest requesting to celebrate Mass was dropped, the doctrine remains implicitly in the very canons,[103] but explicitly in canon 223, §2 that allows ecclesiastical authority to regulate the exercise of rights.[104]

3.3.3.7 The ius vigens

Commentaries on the current code offer little information beyond the wording of the canons in discussing the licit celebration of the Eucharist. Marzoa,[105] Erdö,[106] Chiapetta,[107] Fabio,[108] Huels,[109] Montini,[110] and Woestman[111] identify the "not impeded by canon law" of canon 900 as meaning that a validly ordained *sacerdos* licitly celebrates the Eucharist if he is not labouring under an impediment or irregularity to exercising orders,

[103] One could argue, in virtue of c. 13, §2, 2° that a travelling priest is not bound by particular norms issued for a territory in which he has neither domicile nor quasi-domicile. Any such norms would be binding on rectors of churches but not on the visiting priest.

[104] The PCLT issued an explanatory note clarifying that the canon grants the authority to regulate rights by means of law and not for individual cases. Hence, the diocesan bishop may certainly enact binding laws for his territory that may restrict, but not deny, the exercise of rights to certain times, conditions or circumstances. See PCLT, explanatory note *Applicazione del can. 223 § 2 CIC*, 8 December 2010, in *Comm*, 44 (2010), 280-281.

[105] See A. MARZOA, Commentary on Canon 900, in J. ARRIETA (ed.), *Codice di diritto canonico e leggi complentari commentato*, 9th ed., Pontificia Università della Santa Croce Testi Legislativi 5, Rome, Coletti a San Pietro, 2025, 614.

[106] See P. ERDÖ, Commentary on Canon 900, in *Exegetical Comm*, vol. III/1, 577.

[107] See L CHIAPPETTA, *Il codice di diritto canonico: commento giuridico-pastorale*, F. CATOZZELLA et al. (eds.), 3rd ed., vol. 2, Bologna, Edizione Dehoniane, 138.

[108] See F. FABIO, Commentary on Canon 900, in QUADERNI DI DIRITTO ECCLESIALE (eds.), *Codice di diritto canonico commentato*, 6th ed., Milan, Ancora editrice, 2022, 777.

[109] See J. HUELS, Commentary on Canon 900, in *CLSA Comm2*, 1097.

[110] See G. MONTINI, "Il sacerdote ministro," in *QDE*, 7 (1994), 408-411.

[111] See W. WOESTMAN, *Sacraments: Initiation, Penance, Anointing of the Sick: Commentary on Canons 840-1007*, 3rd ed., Ottawa, Faculty of Canon Law Saint Paul University, 2004, 106.

or under a penalty that forbids the celebration of Mass. Fabio and Montini alone include the cases of challenging the validity of ordination, seeking a dispensation from celibacy, a dismissed religious cleric, loss of the clerical state, and the refusal of incardination of a consecrated cleric who has left his institute.[112] Woestman is the lone commentator who adds that precautionary penal measures of canon 1722 also apply.[113] Montini adds that a diocesan bishop may prohibit the celebration of Mass "only by means of a diocesan penal law, a penal precept, or in any case a diocesan law."[114] All of this refers to an absolute prohibition to celebrating the Eucharist.

Woestman provides a distinction that must be considered. He goes so far as to suggest that an ordinary may in certain circumstances, and indeed is "obliged for the welfare of the Church to restrict the priest's right to celebrate the Eucharist publicly."[115] This is not an absolute prohibition, but a restriction of the right to celebrate Mass.[116] Such a restriction, he admits, "is not mentioned explicitly in the Code."[117] While he states that a priest has a right to celebrate the Eucharist,[118] he justifies an ordinary's authority to restrict that right in the bishop's role as moderator, promoter, and guardian of the entire liturgical

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[112] See FABIO, Commentary on Canon 900, 777.

[113] See W. WOESTMAN, "Restricting the Right to Celebrate the Eucharist," in *StC*, 29 (1995), 173.

[114] "*solo attraverso una legge penale diocesana, un precetto penale o communque una lege diocesana*." G. MONTINI, "Il sacerdote ministro," 411.

[115] WOESTMAN, "Restricting the Right," 175. He affirms this also in his later commentary: see WOESTMAN, *Sacraments: Initiation*, 106.

[116] For a discussion of a priest's right to celebrate Mass alone, or his right to concelebrate, see R. PAOLA, Il diritto del sacerdote a celebrare l'eucaristia, JCD Thesis, Rome, Pontificia Universitas Antonianum, 2013.

[117] WOESTMAN, "Restricting the Right," 173.

[118] See ibid., 174.

life in the Church entrusted to his care (see c. 835, §1.)[119] Woestman also cites the authority of an ordinary to regulate the exercise of rights in the Church found in canon 223, §2.[120] When the particular circumstances of the priest mean that his public celebration of Mass would be counter-productive, that is, disruptive of the unity of the people of God or injurious to the body of Christ, then there is an obligation, for so long as the circumstances exist, to restrict the priest's right to celebrate publicly.[121]

While we will return to this idea that an ordinary may restrict the right to celebrate Mass, for now, it suffices to point out that the wording of the canon says that canon law alone can prohibit completely the exercise of the right. Montini provides useful insight in this regard:

> Indeed, it is evident from the very literal wording of c. 900, §2 that there is no intention to restrict the priest's right (and the power) to celebrate the Eucharist, except in the cases established by (penal) canon law and through its procedures. The Code adopts the same normative choice with regard to the right of the faithful to Holy Communion: "Any baptized person not prohibited by law can and must be admitted to holy communion *(qui a iure non prohibetur)* (c. 912.)" Thus, it is not necessary to prove that a priest may celebrate, but rather that he may not.[122]

In support of his argument, Montini points out that, in the early draft of the canons considered by the *coetus* preparing a *schema* of *CIC/83*, the only impeding factor to the licit celebration of Mass was a canonical penalty.[123] "The definitive text will then refer

[119] See ibid., 173.

[120] See ibid., 175.

[121] See WOESTMAN, "Restricting the Right," 175.

[122] "È evidente infatti dalla stessa impostazione letterale del c. 900, §2 che non si intende restringere il diritto (e il potere) di celebrare l'Eucaristia da parte del sacerdote, sono nei casi stabiliti dalla legge (penale) canonica e per il tramite della medesima. La medesima scelta normativa il codice pone in atto per il diritto dei fedeli alla comunione: 'Ogni battezzato può e deve essere ammesso alla sacra comunione, a meno che non ne abbia avuto proibizione dal diritto (*qui a iure non prohibetur*)" (c. 912.) In tal modo non è da provare che un sacerdote possa celebrare, ma piuttosto che non lo possa" (MONTINI, "Il sacerdote ministro," 411).

[123] Ibid., 411, note 32.

more generally to canon law, providing for the possibility of measures that are merely disciplinary (and not necessarily penal) in this area, with the proviso that there be an explicit provision of law in such a case."[124] As we saw, these would include the precautionary penal provisions of c. 1722, the request for a dispensation from celibacy, a dismissed religious cleric who had not found a benevolent bishop, among the others noted previously.

Given Montini's argument, it is difficult to accept Woestman's view on two counts. First, Woestman posits something *praeter legem*. The wording of canon 900 is clear that impeded by canon law is what determines liceity or not. Woestman admits that his position that an ordinary has the authority to restrict severely a priest's right is not in the law. Second, Woestman's argument that canon 223 provides the justification for the restriction of rights has clearly been corrected by the PCLT. The coordination and regulation of rights refers not to providing for individuals but for communities. As Montini points out, a diocesan bishop certainly has the authority to enact particular law that could affect the rights of priests, but that possibility is within the law.

What also needs to be pointed out is that commentaries are silent on who exactly needs permission of the rector of a church to celebrate Mass. Do priests of the diocese need his permission? While it is difficult to see the need for a local priest to produce a commendatory letter to a neighbouring pastor, it does stand to reason that a priest should have permission from the one in charge of the church to conduct a ceremony such as Mass in his church. But even then, he is to be admitted. The law clearly favours allowing priests

[124] "Il testo definitivo farà poi riferimento in modo più generale alla *legge canonica*, prevedendo la possibilità di provvedimenti anche solo disciplinari (e non necessariamente penali) in tale ambito, con la cautela che una espressa previsione di legge vi sia nel caso" (MONTINI, "Il sacerdote ministro," 411, note 32).

to celebrate Mass. As we saw, *CIC/17*, and certainly its fonts, stipulated that foreign or travelling priests needed permission. They needed to prove their ordination status and freedom from penalty because they were unknown. The reason for the precautions in place is not so much because a priest needs permission to celebrate Mass but rather to ensure its validity and liceity.

3.4 Conclusion

We began this chapter by examining what the *CIC/83* stipulates for the valid and licit celebration of Mass. Valid ordination as a *sacerdos* is all that is required for the validity of Mass. The Code stipulates that a *sacerdos* celebrates Mass licitly as long as he is not impeded by canon law, and as long as he follows the succeeding canons in the Code. We saw that there are five situations in canon law that impede a priest from celebrating the Eucharist licitly. There are an additional four places where canon law grants ordinaries or rectors the discretion to prohibit or restrict the celebration of Mass in defined circumstances.

As we can see, the main concern expressed in these sources is the need to verify that an unknown priest is, in fact, ordained priest, and is not labouring under some penalty, irregularity, or other canonical impediment before allowing him to celebrate Mass. We saw that Innocent III allowed unknown priests to celebrate Mass privately in Jerusalem, even without commendatory letters. The fact that they might not be ordained priests was not a reason to prohibit them from celebrating on a few occasions. We saw also that bishops were instructed to place the burden of verifying a priest's status upon the local clergy: it was not something the bishop himself had to do. Unlike today, priests travelling to other dioceses probably did not do so as tourists. Travel involved significant effort and time.

Therefore, a priest arriving in a place where he was unknown was likely to be there for more than a few days, and was seeking to do more than concelebrate a Mass out of personal devotion. The idea was that only serious crimes for which the priest was being punished could prohibit him from celebrating Mass.

Personal sin is not a reason to prohibit a priest from celebrating Mass. Commentators on the *CIC/17* acknowledged as much as well. The current canon 916 stipulates that a person conscious of grave sin may celebrate the Eucharist if there is no opportunity to confess and there is a grave reason to do so.[125] Hence, the commission of mortal sin does not bar a priest from celebrating the Eucharist. Furthermore, penalties inflicted for the commission of a delict – which is always also a grave sin – do not necessarily involve a prohibition or restriction on the celebration of Mass.

A careful reading of the Code indicates that a priest licitly celebrates Mass unless very well-defined situations prohibit him from doing so. Current praxis in many dioceses, and jurisprudence of the Apostolic Signatura, suggest that a priest's right to celebrate the Eucharist can be restricted or prohibited under much broader circumstances not outlined in the law. In the next chapter, we will see if, and how, these divergent views can be reconciled.

[125] See canon 916. This is outlined, as well, in *CIC/17*, c. 807.

CHAPTER FOUR

THE LEGITIMACY OF RESTRICTING THE CELEBRATION OF THE EUCHARIST *CORAM POPULO*

Introduction

The subject of this thesis is the non-penal restriction to celebrating the Eucharist. In the first chapter, we considered the jurisprudence of the Apostolic Signatura with regard to non-penal, administrative restrictions of priestly ministry. The settled jurisprudence of several decades is clear that the competent ecclesiastical authority has the authority to restrict faculties for exercising the power of orders for a just and proportionate cause for as long as that motivating cause perdures. Specifically, the jurisprudence points out that a *complete* non-penal, administrative prohibition of celebrating the Eucharist *coram populo* is illegitimate.

In chapter two, we considered what presbyteral ministry is in relation to the authority of a diocesan bishop. The teaching of the Church is clear that both bishops and priests share in the very same priesthood of Christ with the distinction that presbyters exercise their ministry under the authority of a diocesan bishop. A priest, in virtue of his sacramental character, has a dignity of his own. He is a co-worker of the bishop, not as an employee, but as a constitutive element of the diocese that a bishop governs.

In chapter three, we looked at the law of the Latin Rite with regard to the minister, and the licit celebration, of the Eucharist. Any *sacerdos*, not prohibited by law, licitly celebrates the Eucharist. Studying the fonts of the canons dealing with any permissions that might be required, we saw that an emphasis has always been placed on allowing a priest to celebrate the Eucharist even in the face of doubt about his sacerdotal state or worthiness. History of the law demonstrated that a diocesan bishop had very limited authority when it came to prohibiting or restricting the celebration of Mass by a validly ordained priest. Indeed, the current letter of the law suggests the same.

This chapter will consider the seeming, if not real, contradiction that exists between the promulgated law and the praxis supported by the authoritative, but not binding, jurisprudence of the Apostolic Signatura. It will argue that there is never a just and proportionate reason to restrict the celebration of the Eucharist *coram populo*, and that such a restriction imposed by a diocesan bishop is both *ultra vires* and *contra legem*.

4.1 The New Emerging Institute

As we saw in chapter one, the Apostolic Signatura developed its jurisprudence on the nature, purpose, and legitimacy of what it eventually termed "a new institution emerging in the life of the Church."[1] That expression by the Signatura should give us pause because it affirms the fact that the emerging institution is not explicitly mentioned in the *CIC/83*. For that reason, the Signatura has wended its way through the thickets of the law to arrive at a firm but still developing jurisprudence. While it is authoritative, jurisprudence is not law. Questions may be raised legitimately about it. To delve further into the subject, it is necessary to make some distinctions and clarifications in terminology.

[1] *coram* Stankiewicz/2019, no. 12.

4.1.1 Nature of the Emerging Institute

The so-called emerging institute deals with administrative acts, not laws and their promulgation, not judicial sentences. It deals with singular acts placed in virtue of executive power.[2] The administrative acts that became subject to review by the Signatura were ones by which priestly ministry was restricted, often with the same effect as penalties. Not being penalties but nevertheless repeatedly judged legitimate by the Signatura, they appeared as a so-called new emerging institution. These non-penal restrictions are placed for scenarios involving the infraction of law for which penalties cannot be applied, or in which true penal laws are not involved. One of the first distinctions made by the Signatura was that they differ from penalties. *Coram* Fagiolo/1993 distinguished penalties from these singular administrative acts by pointing out that the species of the act (penal or not) is found in the procedure used and its intended purpose.[3] As was noted earlier, this sentence posited the existence of a difference between penalty and non-penal restriction but posited the existence of non-penal restriction simply by authority with no foundational legal reasoning. There is, in many ways, an urgent need to provide the legal foundations for the existence of non-penal restrictions, especially a restriction of the power of orders, and specifically the celebration of the Eucharist *coram populo* that is the specific issue addressed by this thesis.

[2] Reilley offers a comprehensive analysis of canonical opinions on this issue, pointing out that some authors argue that such acts do not necessarily require the author of the act to hold executive power. See REILLEY, *Non-Penal Disciplinary Measures*, 36-47.

[3] See *Coram* Fagiolo/1993, 1.1.1.

4.1.2 The Rationale for the Existence of the Emerging Institute

As we saw in chapter three, there are clearly defined situations for which the Code allows for an administrative act to restrict the power of orders, such as the precautionary measures imposed during a penal process (c. 1722). Rhode correctly asks whether the fact that there is no specific provision for a non-penal restriction of ministry in other indeterminate situations constitutes a *lacuna legis* and "whether it is possible and legitimate to impose a non-penal suspension outside of these specific and well-defined situations?"[4] Kirby outlines some of the erroneous justifications that have been used in cases of hierarchic recourse against such acts brought before the Dicastery for the Clergy, and ultimately to the Apostolic Signatura.[5] According to him, two canons have been used to justify such restrictions, namely canons 223, §2 and 835, §2.

Coram Grocholewski/2007 judged that canon 223, §2 in giving ordinaries the authority to regulate the exercise of the rights of the faithful does not give ordinaries the authority to restrict the ministry of singular clerics in specific circumstances. Rather, the intent of the canon is that the ordinary regulate the exercise of rights through norms and laws. This jurisprudence was affirmed by the PCLT in its previously mentioned explanatory note on the application of the canon in question.[6]

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[4] U. RHODE, "La sospensione imposta di carattere non penale," in *Periodica*, 109 (2020), 292-293. Rhode is using the term suspension, not in the sense of a censure, but in the broader sense of prohibiting the exercise of holy orders.

[5] See S. KIRBY, "Limitazione delle facoltà ministeriali," in D. SALVATORI, R. PALOMBI, and A. CATTA (eds.), *Diritto penale canonico: dottrina, prassi e giurisprudenza della curia romana*, Annales Doctrinae et Iurisprudentiae Canonicae, XV, Vatican City, Libreria editrice Vaticana, 2023, 568-569.

[6] See above 3.3.3.6; V. DE PAOLIS, "Incardinazioni anomale," in L. NAVARRO (ed.), *L'istituto dell'incardinazione: natura e prospettive*, Pontificia Università della Santa Croce Monografie Giuridiche 29, Milan, Giuffrè Editore, 2006, 372.

The second canon used as a justification for placing these acts, according to Kirby, is canon 835, §2. This canon, after stating that bishops are the directors, promoters and guardians of the liturgical life in the churches entrusted to their care, goes on to state that priests are Christ's ministers under the authority of the bishop. Many used the phrase "under the authority of the bishop" to justify ministerial restrictions. Kirby points out that two recent sentences of the Signatura affirm that the authority of the bishop to moderate the *munus sanctificandi* of priests does not include the authority to prohibit completely the exercise of orders in circumstances not foreseen in the Code. Kirby goes on to explain that the better rationale for these non-penal restrictions is to be found in the jurisprudence of the Signatura. What Kirby and many others fail to consider is the question just posed: what *is* the actual legal foundation for placing non-penal restrictions on priestly ministry?

The jurisprudence subsequent to *coram* Fagiolo/1993 is the Apostolic Signatura's attempt to clarify, differentiate, and regulate these acts that look like penalties and that may have the same effect as penalties, but are not penalties. To describe their limits is not an answer to the pertinent question. Those limits, perhaps reasoned with impressive legal acumen, are legitimate only if that which they are describing and limiting is legitimate. Furthermore, it must be recalled that the jurisprudence of the Signatura is limited in scope as explained below.

4.2 Limits of the Jurisprudence in Defining the Institute

One of the difficulties for the Signatura in addressing the legitimacy of the singular administrative acts in question is the fact that the Signatura may rule only on the legitimacy of an impugned act, not on its merit.[7] In other words, it is not tasked with evaluating the

[7] See *PE*, art. 197, § 1 in *AAS*, 114 (2022), 439-440. ("Signatura Apostolica, utpote tribunal administrativum curiae romanae, cognoscit recursus adversus actus administrativos singulares sive a

reasoning of the person placing the act. It can judge only whether the correct procedure was followed in placing an administrative act, or whether a pertinent law was applied in a correct way.[8] The Signatura is unable to determine if a particular law is pertinent to a non-penal restriction precisely because no such law exists. *Coram* Fagiolo/1993 authoritatively posited the existence of the non-penal restrictions being considered because they were not imposed by a penal process and because the administrative act, *qua* act of executive power**,** was placed correctly according to the norm of law. The very merit of the act was not considered nor was it pointed out that institutions of the law exist that could be used to address the situations subject to these restrictions. Subsequently began a decades long attempt to make distinctions about restrictions of faculties granted *ab homine* versus *a iure*, about complete versus partial restrictions, among so many other distinctions outlined in chapter one. None of the jurisprudence examined whether the bishop chose the correct means of addressing the situation, or whether he enjoyed the authority to restrict ministry outside cases envisioned by the law, but rather only if the act met the canonical requirements of procedure and self-declared jurisprudential limits. *Coram* Fagiolo/1993 did not provide the canonical justification for what would later be termed "the new institution emerging in the Church;" rather, the turnus accepted the "new institution" as a legitimate whereas I am arguing that the "new institution" is an illegitimate use of the law.

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dicasteriis et a Secretaria Status latos sive ab ipsis probatos, quoties contendatur an actus impugnatus legem aliquam in decernendo vel in procedendo violaverit.") See E. BAURA, "Analisi del sistema canonico di giustizia amministrativa," in E. BAURA and J. CANOSA (eds.), *La giustizia nell'attività amministrativa della Chiesa: il contenzioso amministrativo*, Milan, Giuffrè, 2006, 7. ("per '*error iuris*' non si poteva qui intendere un vizio della ragione dell'autore dell'atto, bensì il fatto che un atto risultasse contrario ad una legge *sive in procedendo sive in decernendo*.")

[8] See BAURA, "Analisi del sistema canonico di giustizia amministrativa," 8**.** ("il merito che viene escluso dalla competenza della Segnatura non è il merito della causa ma il merito dell'atto amministrativo, vale a dire la valutazione della sua opportunità.")

In the decades since, canonists have ignored the fundamental question, arguing, instead, about what to call the non-penal restrictions and how to apply the parameters dictated by the jurisprudence. To put this in perspective, an historical note is necessary.

4.2.1 A Brief Historical Note

It seems trite to say that the so-called "sexual abuse crisis" has had, and continues to have, a huge impact on the Church. As mentioned already, even before the crisis exploded in the North American press at the beginning of the century, the ugly sin of sexual abuse of minors by clerics had already surfaced in parts of the world, especially the United States and Canada. A derogation to penal law regarding the age of minors was granted in the 1994 to the episcopal conference of the United States.[9] Immense pressure has since been brought to bear on the Church to demonstrate that it is prepared to deal swiftly and decisively with these crimes. The decision *coram* Grocholewski/2007 was rendered at the height of the crisis. For that reason, one can understand a curious statement in that judgement that seems to give an unedifying reason for allowing non-penal restrictions, namely financial loss.

Coram Grocholewski/2005 ruled that a bishop legitimately restricted the ministry of a priest because of the threat of a financial lawsuit against the diocese. Acknowledging the injustice of the civil jurisprudence that held a diocesan bishop to the civil legal doctrine of *respondeat superior*, the Signatura nevertheless ruled that the secular jurisprudence is a fact. They stated: "We already explained above the perplexity regarding the jurisprudence

[9] SECRETARIAT OF STATE, *Rescriptum ex audientia* Derogations from the Code of Canon Law Concerning Offenses against the Sixth Commandment Committed by a Cleric with a Minor, 25 April 1994, in WOESTMAN, *Ecclesiastical Sanctions*, 270. The derogation changed the delict of 1395, §2 to include minors up to the age of 18**,** for a period of five years.

of the civil tribunals on this matter, but the Church lives in the world."[10] Stated plainly, the Signatura, acknowledging the unfair standards to which the Church was being held by the civil courts, ruled that avoiding the consequences of that injustice was a justification for placing an impugned ecclesiastical act whose very foundations had been the subject of dispute for years. It is clear that the pressure being put upon bishops, and the threat of lawsuits, played very much into the reality being judged by the Signatura. Bishops strenuously argued for complete control over their priests as a safeguard from the onslaught of the crisis. We can see how the jurisprudence attempted to regulate what was clearly an undefined aspect of episcopal authority.

It is also important to note the historical reality that many of the cases of sexual abuse, true delicts, remained unknown, or at least occult long after they occurred. By the time they became known, they most often were bound by prescription precluding the imposition of canonical penalties. For that reason, as well as for expediency, bishops began to restrict ministry through these non-penal administrative acts.[11] As time progressed, their legitimacy approved by the jurisprudence of the Signatura, these non-penal restrictions are now used for almost any illicit, non-delictual, behaviour. They are now classified as disciplinary sanctions in contradistinction to penal sanctions.

[10] "Supra iam exposuimus perplexitatem circa iurisprudentiam tribunalium civilium […] [sic] in re, sed Ecclesia vivit in mundo" (*coram* Grocholewski/2007, no. 12, 434-435).

[11] See BEAL, "Administrative Leave," 316-317 where he states, already in 1993, "Nor can one dismiss the looming threat of civil liability the Church itself may face because of the misconduct of its ministers. However, civil liability cannot be the only concern of Church authorities […] Fear that failure to distance a cleric physically from his parish […] will result in massive outrage in the parish and potential liability for the diocese is unreasonable *if* Church authorities respond to the accusation reasonably and responsibly [emphasis in original]." The fear of civil liability was still being used over ten years later, prompting the comments of the judges in *coram* Grocholewski/2005.

4.3 Sanctions in General

Part of the difficulty of the issue is with terminology. What is clear from the jurisprudence is that administrative acts restricting the ministry of priests are *not* penalties. While penalties are a species of the genus sanction, in common parlance, "sanctions" are seen as a less severe type of "penalty." Perhaps it is best to say that penalties are the severe form of punishment; sanctions, the less severe form. The import of that distinction is that both sanctions and penalties are punishments. Hence, if administrative restrictions on ministry are not "penalties," then they must be "sanctions," Because they are not "penal," they are the less severe sounding "disciplinary."

Sanchís frames the point well when he states:

> Although it is not always easy to define the boundaries of different legal concepts and institutions, it can be said that, in principle, canon law should distinguish between the criminal offence (a delict in the true and proper sense of the word) and the disciplinary offence, and, consequently, also distinguish between the sanction of a criminal nature and the sanction of a disciplinary nature, to be applied according to the respective nature of the unlawful conduct.[12]

4.3.1 Sanction Versus Penalty

One of the arguments made by canonists to justify the notion and legitimacy of canonical sanction, in contradistinction to canonical penalty, is that they are comparable to the distinction found in civil law between crimes and lesser offences.[13] Most people are

[12] "Benché non sia sempre facile stabilire i contorni dei diversi concetti e istituti giuridici, si può affermare che, in linea di massima, il diritto canonico dovrebbe distinguere tra l'illecito penale (il delitto in senso vero e proprio) e l'illecito disciplinare, e, di conseguenza, distinguere anche tra la sanzione di natura penale e la sanzione di natura disciplinare da applicare a seconda della rispettiva natura del comportamento illecito." (J. SANCHÍS, *La legge penale e il precetto penale*, Ateneo Romano della Santa Croce Monografie Giuridiche, vol. 7, Milan, Giuffrè Editore, 1993, 7).

[13] It is worth pointing out that some authors argue that a systematic treatment of sanctions modeled after the civil system is not possible, or even suitable, for the Church. See E. BAURA, "La legge propria della Segnatura Apostolica: le sanzioni disciplinari, i ricorsi gerarchici, le dichiarazioni di nullità del matrimonio" (P. BONNET and C. GULLO [eds.], *La* lex propria *del S.T. della Segnatura Apostolica*, Studi Giuridici LXXXIX, Vatican City, Libreria editrice Vaticana, 2010, 340-341). Erdö is even stronger when he states: "[W]e can note that the fundamental difference between civil society and the mystery of the Church [...] does not make it possible to circumscribe administrative law as an autonomous juridical sector in the canonical

aware of the distinction between penal and disciplinary sanctions in civil law. When a person exceeds the speed limit on a highway and receives a fine for doing so, it is understood that such a sanction is a minor one, not constituting a crime. It is different from being incarcerated for murder after a trial and having a permanent criminal record.

4.3.1.1 Sanction Versus Penalty: Is There a Difference?

Baura identifies a problem with the distinction between civil penalties and lesser offences, namely, that it is only a formal distinction. He states:

> Ultimately, however, it does not seem possible to identify a substantial difference, since, from a substantive perspective, we are still dealing with a sanction, that is, a deprivation of a legal right, coercively imposed on a subject for the purpose of remedying social harm. If anything, in some cases, the functional purpose of the administrative sanction, which allows the sanction to be imposed even without imputability, could constitute a substantial difference, but it would not be present in all cases.[14]

Even though there are differences between penalties and sanctions – in who governs their imposition, in their severity, and in the remedies available to contest them – they remain a privation, a punishment, a sanction, severe or otherwise. The same is true for the distinction in canon law between penalties and sanctions. They both restrict rights or deprive someone of a good. They both are placed for the purpose of remedying social harm – their final cause can be the same. The formal differences lie in the method of imposition –

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order and does not allow it to be elaborated from the perspective specific to experts of state administrative law" (P. ERDÖ, "Il diritto amministrativo canonico: disciplina giuridica autonoma?" in A. SZUROMI (ed.), *Il quindicesimo anniversario dell'Istituto di Diritto Canonico "ad instar facultatis" dell'Università Cattolica Pázmány Péter*, Budapest, Szent Istuán Társulat, 2011, 25 cited in J. LLOBELL, "Due Process and the 'Administrativization' of the Canonical Penal Procedure," B. AUSTIN [trans.], in *StC*, 57 [2023], 176). The translation is that of Austin as provided in his translation of Llobell's article.

[14] "ma alla fin fine non sembra possibile individuare un divario di carattere sostanziale, poiché sotto il profilo sostanziale si è pur sempre davanti ad una sanzione, cioè ad una privazione di un bene giuridico, imposta coattivamente ad un soggetto allo scopo di rimediare un danno sociale; semmai, in alcuni casi, la finalità funzionale della sanzione amministrativa che consente la sanzione anche senza imputabilità potrebbe costituire una differenza sostanziale, ma non sarebbe presente in tutte le fattispecie" (BAURA, "La legge propria della Segnatura Apostolica," 340).

administrative act versus penal process[15] – the presence or not of imputability, and the effect they have on the status of the person sanctioned.

4.3.1.2 Sanction Versus Penalty: The Doctrine of Legality

A second issue with respect to the distinction between sanctions and penalties concerns the doctrine of legality. Whereas in civil law both the infractions and punishments for disciplinary sanctions, often a monetary penalty for the infraction of a specified law, are explicitly enumerated in the law, in canon law they are not so enumerated explicitly, even indeterminately. Canon 221, §3 guarantees that the faithful have the right not to be punished with canonical penalties except according to the norm of law. It is referring specifically to penalties as found in Book VI of the Code. The doctrine of legality provides similar guarantees to the faithful regarding administrative acts, such as the imposition of sanctions.

Miras states that the doctrine seeks to prevent arbitrariness in the law and may be summarised as "the submission of ecclesiastical authority to the law."[16] The exercise of executive power must be subject, not only to divine law but also to the positive rules established in the Church. Concretely, according to Miras, this signifies that:

1. the authority of the administration must be exercised within the scope of implementation defined by the nature and proper ends of the Church [...];

2. in this sphere, it [authority] must be exercised while respecting the exclusive competencies of the legislative and judicial organs [...];

[15] Strictly speaking the difference is not between administrative and judicial because penalties can be applied administratively after an extra-judicial penal process according to canon 1720. While it is an administrative act and not a judicial sentence, the administrative imposition of a penalty is couched in the protections and procedures of penal law. Hence, even their efficient cause can be the same. The formal difference identified here is the more general penal versus non-penal.

[16] "la sottomissione dell'autorità ecclesiastica alla legge" (J. MIRAS, "Lezione II – il principio di legalità e l'amministrazione ecclesiastica," in J. MIRAS, J. CANOSA, and E. BAURA [eds.], *Compendio di diritto amministrativo canonico*, 2nd ed., Pontificia Università della Santa Croce Facoltà di Diritto Canonico Subsidia Canonica 4, Rome, EDUSC, 2009, 66).

3. within its own sphere of competence, the administration must operate while respecting the fundamental rights of the faithful and the legitimate autonomy of lower entities [...];

4. since the law entrusts it with certain specific ends and assigns it means determined by the law, the administration is also obliged to exercise each of the powers recognised or granted in accordance with the law [...].[17]

With regard to sanctions, the doctrine of legality means that the competent authority must respect the rights of those over whom it has the power to act and must utilise the means granted by the law to achieve the proper ends of the authority. Miras identifies two extremes in understanding the doctrine of legality. The first is that authority is subject to the law merely negatively. Administrative authority may place acts as long as those acts do not contradict the law. The law is seen as a mere exterior limit to the freedom of the administrative authority. The other extreme posits that authority is subject to the law positively. In this view, authority may act only when the law explicitly authorises the act. The law is seen as a pre-condition for administrative activity. As Miras points out, neither of these extremes is an adequate understanding of legality. Aspects of each will form a balanced view in the exercise of executive power.[18] While authorities exercising executive power have a certain discretion, the principle of legality properly understood, prevents arbitrariness when exercising it. The discretion "must operate within parameters clearly defined by the law."[19] The law sets a general parameter to the exercise of executive power

[17] "1. la potestà dell'amministrazione deve essere esercitata *nell'ambito di attuazione delimitato dalla natura e dai fini propri della Chiesa* [...]; 2. in questo ambito [administrative law], essa deve essere esercitate *rispettando le competenze esclusive degli organi legislative e giudiziali* [...]; 3. all' interno della sua propria sfera di competenza, l'amministrazione deve operare *rispettando i diritti fondamentali dei fedeli e la legittima autonomia delle entità inferiori* [...]; 4. dal momento che il diritto le affida alcuni fini propri e le assegna dei mezzi da esso determinati, l'amministrazione è inoltre obbligata ad esercitare ciascuna delle potestà riconosciute o concesse *in conformità al diritto* [...] [emphasis in original]" (MIRAS, "Lezione II, 67).

[18] Ibid., 68-69.

[19] "discrezionalità che deve muoversi entro parametri ben delimitati dalla lege" (A. INTERGUGLIELMI, *I decreti singolare nell'esercizio della potestà amministrativa della chiesa particolare:*

in canon 19. The canon requires that when the law is lacking for a particular situation, it must be resolved, except in penal cases, by using laws in similar matters, the jurisprudence and practice of the Roman Curia, the common and constant opinion of learned persons, and general principles applied with canonical equity. It is important to note that discretion is severely limited in penal matters precisely because they restrict rights. Discretion in the use of disciplinary sanctions must, in virtue of canon 19 and using penal law as a parallel place, must therefore be exercised very narrowly.

4.3.1.3 Subsection Conclusion

We can see the difficulties in identifying the nature of the newly emerging institute. They are not penalties, but they are restrictions placed by executive power. The use of executive power by competent ecclesiastical authority is governed by a more limited discretion both because such restrictions are only formally different from penalties and because of the doctrine of legality. One final consideration needs to be made. Some authors demonstrate that disciplinary sanctions, analogous to civil ones, do exist in the Church and are clearly enumerated in the law. How do the newly emerging sanctions relate to the clearly defined ones, especially with regard to the doctrine of legality?

studio giuridico-pratico sulla potestà amministrativa del vescovo diocesano con schemi di decreto, Studi Giuridici XCV, Vatican City, Libreria editrice Vaticana, 2012, 51).

4.3.2 Disciplinary Sanctions

Several authors have written on the existence of disciplinary sanctions explicitly mentioned in the law.[20] Examples are to be found in the Code itself: the dismissal or forced exclaustration of a religious (see cc. 686, §3; 694-697, 703), and the suspension, removal, or fining of tribunal ministers (see cc. 1457, 1470, §2; 1487-1488). Perhaps the one example most pertinent to our study would be the impediments and irregularities to exercising sacred orders, with the exception of the one based on psychic infirmity (see c. 1044).[21] All of these examples involve culpable behaviour on the part of the person sanctioned. The sanctions pertaining to tribunal officials, however, raise some questions. Canon 1457, §1 states that competent authority can punish with fitting penalties (*congruis poenis*) judges who violate certain duties of their office. Paragraph two of the same canon stipulates that ministers and personnel of a tribunal are subject to those same sanctions (*iisdem sanctionibus*) if they fail in their respective office. It adds that the judge can punish (*punire potest*) them. In addition, canon 1470, §2 allows a judge to call to task with appropriate penalties (*congruis poenis*) those present at a trial who are gravely lacking in

[20] See E. BAURA, "Atto amministrativo e limitazione del diritti," in J. ARRIETA (ed.), *Discrezionalità e discernimento nel governo della Chiesa*, Istituto di diritto canonico San Pio X Studi 8, Venice, Marcianum Press, 2008, 205-210. See J. CANOSA, "Il procedimento amministrativo disciplinare previsto in alcuni regolamenti vigenti nella curia romana," in D. CITO (ed.), *Processo penale e tutela dei diritti nell'ordinamento canonico*, Pontificia Università della Santa Croce Monografie Giuridiche 28, Milan, Giuffrè Editore, 2005, 437-440. Canosa details the administrative process for imposing disciplinary sanctions found in four sets of norms outside of the code, name norms governing the Vatican publishing house, Vatican television, Vatican radio and the Roman curia. See J. MIRAS, "Lezione IV – Note sull' attività contrattuale e sanzionatoria dell'amministrazione ecclesiastica," in J. MIRAS, J. CANOSA, and E. BAURA (eds.), *Compendio di diritto amministrativo canonico*, 140-141.

[21] The irregularities and impediments to exercising orders listed as sanctions do not need a singular administrative act to be placed for them to obtain as they are incurred upon commission of the proscribed behaviour; however, an administrative act is required to declare them. One of the irregularities and one of the impediments listed does not *necessarily* involve culpable behaviour, namely being ordained illegitimately because bound by an *unknown* impediment or irregularity. It would be a true sanction if the ordinand knowingly allowed himself to be ordained while so bound (see c. 1388, §2).

the respect and obedience due the tribunal. We need to recall that the faithful have a right not to be punished with canonical penalties except according to the norm of law (c. 221, §3). These canons are a minefield of interpretation.

First, the canons use the word "penalty" with respect to those guilty of the enumerated actions. But penalties are inflicted for violations of penal law.[22] The list of the offending behaviours of canon 1457, §1 and 1470, §2 were not explicitly included in Book VI.[23] Hence, what does it mean that violators of the norm can be punished with penalties? Are canons 1457, §1 and 1470, §2 to be considered penal norms outside of Book VI where delicts are enumerated? Or are they a type of "sanction," considered non-penal? Certainly canon 1457, §2 describing the fitting penalties of paragraph one as sanctions suggests that they are. What does it mean that the judge can punish all of them? Punish them with canonical penalties (in accord with c. 221, §3)? Or punish them with mere non-penal sanctions? Standard commentaries are generally silent on these questions.[24] Newer commentaries classify the canon as penal dealing with delicts and canonical penalties.[25]

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[22] We will prescind from considering canon 1399 that, in the case of grave scandal and an urgent need to repair scandal, can be used to punish an external violation of a divine or canon law. Canon 1457 does not include those conditions as a requisite for inflicting punishment.

[23] Papale cites the discussion of the study group (*Comm*, 10 [1978], 255) where it was decided that rather than a simple referral to penal canons it was best to outline the specific acts. See C. PAPALE, *I processi: commenti ai canoni 1400-1670 del codice di diritto canonico*, Manuale diritto strumenti di studio e ricerca, 49, Vatican City, Urbaniana University Press, 2017, 100.

[24] Bonnet concentrates on outlining the pastoral duty of a judge to the service of truth. See P. BONNET, Commentary on Canon 1457, in *Exegetical Comm*, vol. IV/1, 883-884. Wrenn makes no commentary on the canon at all. See L. WRENN, Commentary on Canon 1457, in *CLSA Comm2*, 1637-1638. Calvo states the penalties "or coercive measures" [yet another new term] are left to a more administrative procedure than a judicial one. See J. CALVO, Commentary on Canon 1457, in *CCLA4*, 1165. Pinto characterises the offenses (*sanzioni, reati*) as penal in nature. See P. PINTO, *I processi nel codice di diritto canonico: commento sistematico al lib. VII*, Vatican City, Libreria editrice Vaticana, 1993, 165.

[25] Montini classifies the first paragraph of the canon as a penal norm outlining four delicts. The second paragraph he classifies as disciplinary sanctions (*sanzione disciplinari*). The third paragraph pertains to canon 128 and the obligation to repair damages. See G. MONTINI, Commentary on Canon 1457, in *QDE* (eds.), *Codice di diritto canonico commentato*, 6th ed., Milan, Ancora editrice, 2022, 1207-1208. Papale

The questions can now be answered satisfactorily thanks to the instruction *Dignitas connubii*.

In 2005, the PCLT issued an instruction, *Dignitas connubii*, dealing with how tribunals are to handle marriage nullity cases.[26] The instruction stipulates that "[j]udges and other ministers of the tribunal who commit an offense against the office entrusted to them are to be punished in accordance with the law (cf. cc. 1386; 1389; 1391; 1457; 1470, §2)."[27] Including the offences delineated in canons 1457 and 1470 with delicts from Book VI strengthens the argument that the behaviour identified in those two canons is to be punished like other delicts. While the instruction is not law, it is an authoritative mandate to carry out the law as explained (see c. 34). The five punishable behaviours listed in canon 1457 and 1470 are:

1. the refusal to judge a case legitimately introduced;
2. the taking, or judgement, of a case while lacking competency;
3. the violation of secrecy;
4. inflicting damage on the litigants out of malice or grave negligence;
5. the grave lack of respect and obedience due to the tribunal by those present at trial.

considers this as a penal canon outlining true delicts. See PAPALE, *I processi*, 100-102. Arroba Conde is the most definitive. He states that the canon establishes true canonical penalties (*vere pene canoniche*) that are inflicted for true delicts (*vere delitti*) imputable according to the norms of penal law, citing canon 1321. See M. ARROBA-CONDE, *Diritto processo canonico*, 7th ed., Rome, EDIURCLA, 2020, 348.

[26] PCLT, Instruction to be Observed by Diocesan and Interdiocesan Tribunals in Handling Causes of the Nullity of Marriage *Dignitas connubii*, 25 January 2005, in *Comm*, 37 (2005), 11-92, English in PCLT, *Dignitas connubii:* Instruction to be Observed by Diocesan and Interdiocesan Tribunals in Handling Causes of the Nullity of Marriage, Vatican City, Libreria editrice Vaticana, 2005.

[27] Ibid., no. 75, English in ibid., 75.

Canon 1378 of the revised Book VI, as did canon 1389 of the original Book VI, includes those *facti species* as punishable with a true canonical penalty. Second, what is to be made of the use of the word sanction (*sanctio*) in canon 1457, §2? It is one of two times that it is used outside of Book VI.[28] Book VI itself is entitled "Penal Sanctions in the Church." This is a change from the originally promulgated version of "Sanctions in the Church." The equivalent section in the *CCEO/90* uses the same title as the revised *CIC/83*. One will have to wait until the preparatory documents for the revision of Book VI are published to discover whether or not the new use of the expression penal sanctions in its title was the result of a desire to affirm a distinction between penal and disciplinary sanctions. An example of a disciplinary sanction found outside of the Code sheds some light.

Baura cites the explicit mention of "disciplinary sanctions" in the revised *lex propria* of the Apostolic Signatura.[29] In 2008, Pope Benedict XVI issued a *motu proprio* promulgating the norms that govern the work of the Signatura.[30] Title two of chapter five of the *lex propria* is entitled "Disciplinary Sanctions" (*De sanctionibus disciplinaribus*). The articles of that chapter do not use the term sanctions. Instead they use "*animadvertendum videatur*"[31] and "*actio disciplinaris instituatur*."[32] The English version

[28] The other time is in canon 96 which refers to baptised persons being in full communion with the Church unless a legitimately issued sanction stands in the way (*nisi obstet lata legitima sanctio*.)

[29] See BAURA, "La legge propria della Segnatura Apostolica," 337-359.

[30] See BENEDICT XVI, Apostolic Letter given *motu proprio* By Which the *Lex propria* of the Supreme Tribunal of the Apostolic Signatura is Promulgated *Antiqua ordinatione*, 21 June 2008, in *AAS*, 100 (2008), 513-538, English in *DANIEL2*, 9-56. Minor terminological modifications to the norms were made by Pope Francis to bring them into conformity with *Praedicate Evangelium*. See FRANCIS, Apostolic Letter given *motu proprio* by Which the *Lex propria* of the Supreme Tribunal of the Apostolic Signatura of 21 June 2008 is Modified *Munus tribunalis*, 28 February 2024, in *AAS*, 116 (2024), 407-410. Hereafter *Lex propria STAS*.

[31] *Lex propria STAS*, art. 113, §1.

[32] Ibid., art. 113, §2.

found on the website of the Holy See translates the expressions as "objections" and "disciplinary action is instituted" respectively.[33] Daniel translates them as "correction" and "disciplinary action is instituted" respectively.[34] Daniel's translation as "correction" is probably a more accurate portrayal of the intent of the article. Both translations use the generic term "disciplinary action." Hence, when it is seen that the actions, or lack thereof, by a minister of a tribunal need addressing, or correcting, provision must be made that may include a disciplinary action, whether that be penal (penal process) or administrative (removal from office, precept). In this regard, we may see the illicit behaviour of tribunal officials enumerated above, as well as that of the *lex propria*, as being subject to penalties or disciplinary sanction according to their gravity, and the discretion of the competent authority. In any case, they highlight the difficulty of positing the clear existence of "disciplinary sanctions." This leads us to a final distinction among sanctions based on the presence of culpability or not.

4.3.2.1 Disciplinary Sanctions or Merely Administrative Acts

It is the word "sanction" that is the fulcrum in the difficulty of defining the new emerging institute. Reilley states that "[s]anctions are actions by the ecclesiastical administrative authority that deprive an individual or group of some juridic good in response to some illicit action or situation in view of the good functioning of the public ecclesiastical administration. *Non-penal sanctions do not presuppose culpability or malice* [emphasis added]."[35] The presence or not of culpability is of significant consequence.

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[33] *Lex propria STAS*., art. 113.

[34] *DANIEL2*, 52.

[35] REILLEY, *Non-Penal Disciplinary Measures*, 68.

A diocesan bishop enjoys broad discretion in the use of his executive power. Some administrative acts outlined in the Code to be placed by the bishop limit the ministry of a priest. According to the definition above, they are sanctions because they are the administrative privation of some juridical good. Examples of such acts are: the removal of a pastor (cc. 1740-1747), the removal of the faculty to preach (c. 764), and the removal of an habitual faculty for hearing confessions (c. 974, §1). The difficulty posed by calling those actions sanctions is that they can be placed because of, or irrespective of, culpability on the part of the priest. In either case, they are placed for the good functioning of the public ecclesiastical administration. The point is that the *ratio* of the acts envisioned by the law is only the good ordering of the community for which culpability is never required. They could, of course, be imposed because a bishop wishes to punish the priest for culpable behaviour but that motivation is only in his mind. It is in no way indicated by the issued act. Retribution is not the purpose of singular administrative acts outside of an extrajudicial penal process. Retribution ought not to motivate such administrative acts; however, such a real, hidden motivation, not expressed in the words of the decree, would be an arbitrary act of governance.

The acts envisioned by the law are not always the result of illicit behaviour. A pastor may be transferred because his unique abilities are needed in a different parish. It would be a stretch to classify this as a "restriction." A confessor who is hard of hearing and speaks with a loud voice in the confessional could have his faculty removed because the seal of confession needs to be protected. A priest with a terrible stutter could have his faculty for preaching revoked because his preaching is a burden on the community. The previously mentioned declaration of an impediment to exercising orders for one affected by *amentia*

would also be included here. Included also would be the precautionary measures of c. 1722 that could completely restrict the ministry of a priest during a penal process that requires only an allegation of delictual behaviour. All of these are, *stricte dictu*, sanctions, according to Reilley's definition, because they involve a privation of a juridic good. But none of them involves culpability on the part of the priest. It is truly improper to call such administrative acts "sanctions." Rather, they are administrative acts of good governance outlined in, and specifically allowed by, the Code.

At the same time, a pastor could be removed from office because of an habitual failure to carry out his duties. A confessor who berates penitents and gives harsh penances could have his faculty for hearing confessions removed. A priest who regularly preached excessively long homilies laced with vulgar language could have his faculty for preaching removed. All such restrictions would be for illicit behaviour and could be classified as disciplinary sanctions, even though removing from office or removing faculties would all be acts of good governance. The difference between these and other acts of the new emerging institute is that these acts *are* enumerated in the Code, envisioned by the supreme Legislator. To use a maxim from the jurisprudence of the Signatura, "*ubi lex voluit dixit, ubi noluit, tacuit*,"[36] When the Legislator willed to allow a disciplinary sanction, he spoke; where he did not want, he remained silent.

Moreover, the codified acts are less exposed to the charge of arbitrariness. It is true that a bishop could be arbitrary in his choice of person on whom to place the act, or in deciding whether or not the illicit behaviour warranted a sanction, but the act itself is not open to question. Reilley posits that the distinction between administrative and disciplinary

[36] *coram* Stankiewicz/2013, no. 11.

acts is of small practical importance because they both "accomplish the necessary and vital task of correcting and hopefully preventing disorder within the Church.[37] As we saw, however, not all are correcting behaviour. Furthermore, the moral implications of culpability certainly matter for the priest.

We may conclude that there are three types of administrative acts under consideration: disciplinary sanctions enumerated in the law requiring culpable, illicit behaviour (e.g. fines for delinquent tribunal behaviour); administrative acts enumerated in the Code that do not require, but may involve, culpable behaviour (e.g. the restriction of faculties for preaching or confession, or removal from office); and the so-called disciplinary sanctions not enumerated in the Code (e.g. the new emerging institute). Acknowledging that authors disagree on the reality or not of administrative law as a field of law, and of administrative sanctions as an institution of law, we can, nevertheless, exclude from further analysis the first two types of administrative acts. Those two types are clearly delineated in the law. While their application may be subject to review by competent authority, there is no question that they are legitimate administrative acts.

The third type of administrative act, the so-called disciplinary sanction not clearly enumerated in the Code, is a true administrative act in the sense that it fulfills the requirements of the law *qua* administrative act. Even if one were to hold the extreme negative view of the doctrine of legality (that any act not explicitly forbidden by law is legitimate), one can still question the legitimacy of restricting a priest's right to celebrating Mass *coram populo*. The merit of such a restriction may be examined by analysing the mind of the supreme Legislator as expressed in the Code, and by measuring the act in terms

[37] REILLEY, *Non-Penal Disciplinary Sanctions*, 46.

of proportionality and the other criteria of the Signatura's jurisprudence. We shall consider first the mind of the Legislator and second whether or not such a restriction is proportionate to any cause.

4.4 The Mind of the Supreme Legislator as Found in the Code

We have already, in chapter three, examined the code with regard to the minister of the Eucharist. Any *sacerdos* not impeded by canonical law celebrates the Eucharist licitly (c. 900, §2). The meaning of the canon is clear from the text and context (c. 17). *Sacerdotes* almost always celebrate Mass licitly. The provisions of law that impede the celebration of the Eucharist were also examined in Chapter Three. They are:

1. the impediments to exercising orders (c. 1044);
2. a declared or inflicted penalty (cc. 1331-1333, 1336);
3. two of the four precautionary measures of canon 1722;
4. the prohibition to celebrating the Eucharist in the case of challenging the validity of ordination (c. 1709, §2);
5. the prohibition to celebrating the Eucharist in the case of petitioning for a dispensation from celibacy and priestly obligations;
6. the prohibition to celebrating the Eucharist in the case of a dismissed religious who has not found a benevolent bishop (c. 701).

All of these scenarios prohibit completely the celebration of the Eucharist, or can in the case of penalties that allow for a partial restriction. Two other scenarios prohibit the celebration of Mass merely *coram populo*. They are:

1. an elderly or infirm priest unable to stand for the celebration (c. 930, §1);
2. one of the four precautionary measures of c. 1722.

This distinction of *coram populo* is significant.

4.4.1 The Significance of *coram populo*

Canon 906 stipulates that a priest is required to celebrate the Eucharist in the presence of at least one member of the faithful except for a just and reasonable cause.[38] A just and reasonable cause for celebrating alone is the wish to fulfil the exhortation of canon 904 by which priests are to celebrate frequently because the work of redemption is exercised by the celebration. The canon reminds us that even when celebrating alone, Mass is an act of Christ and the Church.[39] It remains true, however, that celebrating Mass "alone" is not the norm.[40] Moreover, the presumption of the law is that Mass is celebrated in a sacred space, on a dedicated or blessed altar (c. 932), that is to say that Mass is normally celebrated on the altar of a church, oratory, or chapel. It is clear that the mind of the Legislator is that a priest celebrates in a public place in the presence of the faithful.

The only reference in the Code to the distinction "*coram populo*" is canon 930. It permits an elderly or infirm priest to celebrate Mass while seated "*non tamen coram*

[38] Because priests are members of the faithful, a concelebration of two priests with no laity present fulfills the requirement of the canon.

[39] See PAUL VI, Encyclical Letter *Mysterium fidei*, 3 September 1965, in *AAS*, 57 (1965), 761, English in KARLEN, C. (ed.), *The Papal Encyclicals*, Wilmington, McGrath Publishing, 1981, vol. 5, 169. ("Quaelibet enim Missa, etsi a sacerdote privatim celebratur, privata tamen non est, sed actus Christi et Ecclesiae").

[40] Huels says that the mere preference or convenience of the priest is an insufficient reason for celebrating alone. See J. HUELS, *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry*, 5th ed., Gratianus Series, Montreal, Wilson & Lafleur, 2016, 105. For a contrary view, directly challenging Huel's argument, see V. WOO, "The Celebration of Daily Mass with No Faithful Present after Vatican II," in *J*, 80 (2024), 82. Another author argues that the *ordo* for the celebration of Mass specifically separates the roles of priest and congregation, with neither taking the role of the other precisely to answer the call of Vatican II's *Sacrosanctum concilium*'s call for the true, active participation of all. See A. VAN BERKUM, "An Act of Christ and the Church: The Order of Mass with the Participation of Only One or No Minister," in *J*, 80 (2024), 104-116. One author points out that some priests "feel awkward celebrating Mass alone. They sense that it turns a public liturgy into a private devotion or that it fosters clericalism by excluding the faithful. Celebrating alone may also feel illogical given that a typical Mass calls for a variety of ministers, as well as an assembly of the faithful" (P. TURNER, "Celebrating Mass Alone: What Does the Priest Do When No People Have Gathered?" in *The Priest*, vol. 81, no. 1 [2025], 15).

populo." An exception is granted if the bishop permits public celebration. This prohibition seems to prohibit even the presence of one member of the faithful, but in fact it does not. Paragraph two of the same canon explicitly allows a blind or otherwise infirm priest to celebrate with the assistance of another priest, deacon, or even a properly instructed layperson. While the intent of the paragraph is to allow a blind or infirm priest to use any approved text of the Mass, the permission is granted equally to merely infirm but sighted priests to use any text with the assistance of another person. The merely infirm priest of paragraph two is the same subject as the first paragraph. The infirm priest who may use the assistance of a layperson in virtue of paragraph two includes the sitting infirm priest of paragraph one. The point is that a priest who needs to sit during Mass and is, therefore, prohibited from celebrating *coram populo* may, in virtue of paragraph two, also make use of another priest, deacon, or properly instructed lay person. The law never requires a priest to celebrate absolutely alone.

Canon 930 continues by specifically stating that "the liturgical laws are to be followed." Hence, it must be noted that the law still requires the infirm priest, who needs to sit for Mass, to celebrate in a sacred space on a blessed or dedicated altar. The prohibition against celebrating *coram populo* regards only the presence of more than an assistant. The prohibition *coram populo* does *not* mean an exemption from following all of the liturgical laws in the Code or in the ritual books.

The only other place in the Code that stipulates a criterion regarding before whom a priest may celebrate Mass is canon 1722, and here it is only indirectly. As we saw in chapter three, this canon allows that an ordinary "can exclude the accused from the sacred ministry [...] or even can prohibit public participation in the Most Holy Eucharist (*publicam*

participationem prohibere) (c. 1722).” Exclusion from sacred ministry would entail a total prohibition from exercising orders, including the complete prohibition of celebrating Mass. The prohibition of public participation in the Most Holy Eucharist prohibits even *attendance* at a Mass celebrated *coram populo*.[41] If a priest is prohibited from participating in Mass by mere attendance in the congregation, it follows that he is equally prohibited from celebrating that Mass. Hence, this is indirectly a prohibition of celebrating Mass *coram populo* because he is not prohibited from private celebration or from acting as an assistant or concelebrant at another infirm priest’s private Mass. We can see why the Code says that an ordinary may impose *even* (*etiam*) this prohibition. It is a more severe prohibition than the penalty of excommunication that merely prohibits an active role in the celebration of the Eucharist (*in celebrationibus ullam partem activam habere*) (c. 1331, §1, 4°).[42] It is reserved for the most serious of cases where the course of justice or prevention of scandal are particularly at play.

[41] See G. MONTINI, “Provvedimenti cautelari,” 201. (“I provvedimenti previsti dal canone [1722] sono diversi. Possono riguardare l’attività propria del chierico, oppure la sua persona fisica o la sua attività di fedele. […] Per quanto attiene alla sua attività di fedele si prevede la proibizione di partecipare pubblicamente alla messa.”) Montini could be interpreted as suggesting that only clerics are subject to the provisions of this canon when he specifies that the provisions could apply to his proper activity as a cleric or to his activity as a member of the faithful. The reader must remember that the article refers specifically to sacred ministers. In fact, *any* member of the faithful is subject to the provisions of canon 1722. See M. MOSCONI, Commentary on Canon 1722, in *QDE codice commentato*, 1389. Mosconi is one of the few other commentators who notes that the prohibition of public participation at Mass is a very severe restriction, superseding that of an excommunication. Most do not address the question possibly because they think this would only apply to clerics and, therefore, it is referring to the celebration of Mass. But the celebration of Mass is addressed in the first restriction of excluding a cleric from the exercise of orders. This participation at Mass is evidently distinct. It is more severe than an excommunication because that penalty merely forbids ministerial participation at Mass (c. 1331, §1, 1°-5°). As Coppola points out, a total prohibition of attending Mass, public or private, as found in the *CIC/17* was not accepted into the *CIC/83*. See R. COPPOLA, Commentary on Canon 1722, in *Exegetical Comm*, vol. IV/2, 2018.

[42] It needs to be remembered that canons 1722 and 1331 are applicable to lay people as well as clerics. Hence, when it speaks of public participation, or having an active role, in the Eucharist it is not addressing only clerics but also lay people who would, by canon 1722, be forbidden from attending a public Mass and who would, by canon 1331, be prohibited, not from attending Mass but from being, for example a lector or extraordinary minister of Holy Communion. Therefore, the prohibitions of canon 1772 are quite

Calling to mind that these are not penal measures (that is, they are *not* penalties but administrative acts concerning penal matters), the ordinary is not required to impose them. This discretion is objective and not merely subjective. That is to say that the ordinary has an obligation to evaluate whether or not the purposes listed in canon 1722 truly need to be addressed making the imposition of the precautionary measures necessary. There may, in fact, be cases for which the measures are not necessary.[43] The objective discretion at play is in the analysis of necessity, and in the choice of which measures to place, if they are needed.[44] From the fact that precautionary measures must be revoked once the cause or the process ceases, we can see that the Legislator is loath to restrict the exercise of orders even in this case. Given that the list of restrictions in canon 1722 is taxative,[45] it should be argued that the measures must be imposed as described, without variation, such that only a complete prohibition of the exercise of orders may be imposed, not a partial prohibition.[46] It is clear that the law sees the celebration of Mass *coram populo* as normative, even if it allows exceptions. When the law impedes the celebration of Mass, in all circumstances save one, it imposes a total prohibition on celebrating Mass. Furthermore, it almost always

severe. Hence, they are protected by the requirements of prior consultation, and revocation *ipso iure* when the process ends or when the cause ceases.

[43] See WOESTMAN, *Ecclesiastical Sanctions*, 175.

[44] See PAVANELLO, "L'adozione delle misure cautelare," 327.

[45] See MOSCONI, Commentary on c. 1722, 1389; PIGHIN, *Il nuovo sistema penale*, 593; PAVANELLO, "L'adozione delle misure cautelare," 327, M. VISIOLI, "I provvedimenti cautelari:annotazioni pratiche," in *QDE*, 32 (2022), 475; J. BEAL, "Administrative Leave," 311; DDF, *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics* (Version 2.0) 5 June 2022, no. 59, in *AAS*, 114 (2022), 913, English at https://www.vatican.va/roman_curia/congregations/cfaith/ddf/rc_ddf_doc_20220605_vademecum-casi-abuso-2.0_en.html (9 March 2026).

[46] Commentaries are silent on the question. See VISIOLI, "I provvedimenti cautelari," 475; PAVANELLO, "L'adozione delle misure cautelare," 321-328.

involves penal issues. This is affirmed, as we saw, by the jurisprudence of the Signatura in *coram* Stankiewicz/2019 that ruled universal law does not provide for a prohibition of Mass *coram populo* except through penal precautionary measures.[47] The mind of the Legislator is clear that to restrict the celebration of Mass *coram populo* outside the case of an elderly priest unable to stand, or an imposed or declared penalty, is illegitimate. To completely prohibit the celebration of Mass outside of the strictures placed by universal law outlined above is also illegitimate.

4.4.2 A Parallel Place

According to canon 17, parallel places in the law are a means of understanding the proper meaning of the law. In our case, we are not looking at the wording of a particular law but rather the meaning or legitimacy of a canonically undefined act – the restriction by administrative means of the faculty to celebrate Mass granted by the law.[48] We have seen already how the Signatura explicitly stated that a difference must be made between faculties granted *ab homine* and those granted *a iure*. The former are subject to more discretion than the latter. Nevertheless, in trying to assess the legitimacy of this undefined act, it will be helpful to examine a parallel place that sheds light on our subject.

We have already seen that the precautionary measures of canon 1722 may be invoked only after a penal process – judicial or extrajudicial – has begun, except for cases of reserved delicts for which they may be invoked upon opening the preliminary

[47] See *coram* Stankiewicz/2019, above 1.1.18. With respect to the esteemed judge, he failed to mention the provision of canon 930 regarding an infirm priest unable to celebrate Mass standing.

[48] This thesis is considering the very specific restriction of the celebration of the Eucharist *coram populo*. For ease, the words Eucharist and Mass, celebrate and say, will be used interchangeably. The qualification *coram populo* is to be understood even when the phrase is not used, unless it is clearly evident otherwise from the context.

investigation. The exception for reserved delicts was made law by Pope Francis when he granted a rescript *ex audientia* to the Prefect of the then-Congregation for the Doctrine of the Faith revising the applicable norms in 2021.[49] Canon 1722, when pertaining to all other delicts, remains unchanged even after the promulgation of the revised Book VI. Precautionary restrictions may only be placed after the penal process has begun. The supreme Legislator did not see fit to change the law.

The PCLT in its *Penal Sanctions User Guide* offers a contrary view when it states:

> However, the obligatory prescription of some of the measures listed by can. 1336 can be adopted by the Authority for other purposes: sometimes, in fact, even without the presence of a specific delict, the ecclesiastical Authority deems it necessary to impose some of these measures of a disciplinary, non-penal nature, in order to correct certain conduct (cf. 191).[50]

In that statement of the PCLT, we have approbation of imposing by administrative act restrictions and privations enumerated in the canon on expiatory penalties as "disciplinary sanctions." The *Penal Sanctions User Guide* is approving what we have been calling the new emerging institute. Paragraph 191 in the same document, the paragraph referenced in the above citation, suggests that certain restrictions may be placed by competent ecclesiastical authority during a preliminary investigation conducted upon notice of a possible delict. The Dicastery stresses that these restrictions are *not* the precautionary measures outlined in canon 1722 but may be necessary until such time as canon 1722 can be invoked, or a decision is made not to proceed with a penal process. At that point the restrictions *must* be revoked. New restrictions based on canon 1722 can be imposed if a

[49] See CONGREGATION FOR THE DOCTRINE OF THE FAITH, rescript *ex audientia* 11 October 2021, in *AAS*, 114 (2022), 113 and ID., *Norms for Delicts Reserved to the CDF*, art. 10, §2, 117.

[50] DICASTERY FOR LEGISLATIVE TEXTS, *Penal Sanctions User Guide*, no. 49, 64.

penal process is initiated. No new restrictions would be imposed if a penal process did not start.[51]

A few observations need to be made. First, such restrictions are penal in the broad sense of the term, in the same way that the administratively-placed restrictions of canon 1722 are not penalties but administrative measures. The Dicastery is suggesting that similar restrictions may be placed for any occasion including during a preliminary investigation. Second, the Dicastery stipulates that the content of the restrictions "must correspond to the type of delict being investigated [...] prohibiting confessions to minors, for example, would not be the most appropriate measure in an investigation of an economic matter."[52] Third, the document in question is not law, nor does it have normative authority as stated in its introductory pages.[53] It is on the level of any canonical opinion. Finally, the Dicastery states that they are only formally different from the precautionary restrictions of canon 1722.[54]

With due respect to the authority that published the document, the argument made by the *Penal Sanctions User Guide* is really one of semantics: restrictions placed during the preliminary investigation are not the precautionary measures of canon 1722, even though they are the same in motivation, content, and effect. Because they are not the

[51] DICASTERY FOR LEGISLATIVE TEXTS, *Penal Sanctions User Guide*, no. 191, 186-187.

[52] Ibid., no. 191, 186-187.

[53] See two different references in ibid., 6-7. "As the revision work progressed, the features of this explanatory document were defined: *it would not have any normative character* - in the sense of adding new norms to those already promulgated - and would be intended primarily for non-law 'experts', as a User Guide [emphasis added]," and "Thus, following the general norms of canon law and by analogy with other documents on the subject cited in the text, this third part has been drafted, which is considered useful for Ordinaries. *This third part, of course, has no binding value* other than that of the norms under discussion [emphasis added]."

[54] See ibid, no. 191, 186.

precautionary measures of canon 1722, they must be removed when the penal process begins and the restrictions of canon 1722 substituted in their place. The Supreme Legislator chose to allow non-penal, administrative restrictions to be placed only after a penal process has begun even after legislating a change of mind with regard to reserved delicts. The mind of the Legislator is clear: non-penal, administrative restrictions, one of which is more severe than the censure of excommunication, may only be placed in matters involving delicts after the process has begun, with a difference in timing for delicts reserved to the DDF. The reason is two-fold: with the legal presumption of innocence (c. 1321, § 1), everyone has the right not to have his or her reputation harmed illegitimately (c. 220). A *doubt* concerning reputation may arise only after the preliminary investigation has been completed and the accused has been cited. It is only at that point that an accusation obtains legal status. The Supreme Legislator has chosen to allow placing restrictions earlier in the case of reserved delicts because of their special gravity. He has determined that the risk to reputational harm is proportionate to the gravity of a still unexamined accusation. One notes, at the same time, that the Supreme Legislator has not allowed, even for reserved delicts, that restrictions may be placed upon receiving notice of a delict. The preliminary investigation must be formally initiated before the restrictions can be placed in those cases. Given that the mind of the Legislator is explicitly clear in this regard, it is difficult to sustain the validity of the canonical argument placed by the unidentified author/s of the PCLT's *Penal Sanctions User Guide*. If the Legislator is so precise regarding the timing of restrictions after a formal accusation, how can it be rationally and logically argued that the same restrictions, albeit with a different name – disciplinary sanction rather than precautionary measure – may be placed earlier, or for non-delictual situations?

Moreover, despite the claim of the *Penal Sanctions User Guide* cited above, by the same logic, no legislative approbation has been given to imposing restrictions equal in content to the expiatory penalties of canon 1336 in non-delictual cases apart from the restrictions explicitly mentioned in the law. This is true *a fortiori* for cases that do not involve delicts precisely because the Legislator is so precise and explicit in the law he promulgated. It can be, and needs to be, stated clearly: the mind of the Legislator as expressed in canons 900, 1722 of *CIC/83* and article 10, §2 of the *Norms for Delicts Reserved to the DDF* is clear that the faculty granted *a iure* at ordination to celebrate the Eucharist may not be restricted apart from explicitly enumerated situations in the law.

The argument made to justify the possibility of restricting ministry is that the Legislator could not envision every particular circumstance. Therefore, it is argued, there are times when the competent ecclesiastical authority needs to address situations, especially for illicit behaviour, not envisioned explicitly by the law. Before considering what options are available to competent ecclesiastical authority in situations that call for illicit behaviour to be addressed, we will consider first the question of whether or not restricting the right to celebrate Mass is ever a proportionate response.

4.5 The Proportionality of Restricting Mass

The firmest and most-settled aspect of the jurisprudence of the Apostolic Signatura allows for a partial restriction of any power of order under two conditions: the cause of the restriction is proportionate to the level of restriction, and the motivating cause perdures. Each of the conditions merits further consideration.

4.5.1 Legitimate Cause of the Restriction

The first condition requires the existence of a cause, and not any a cause but a legitimate one. A diocesan bishop, in virtue of his having all the power necessary to govern his diocese (c. 381, §1) or in virtue of his being a director and guardian of the entire liturgical life of his diocese (c. 835, §1), is not free to restrict a priest from celebrating Mass for any reason whatsoever but only in accord with the law. He cannot legislate, for example, that red-haired priests are prohibited from celebrating Mass on Sunday mornings, let alone forbid an individual redhead from doing so by a singular administrative act. The diocesan bishop must have a legitimate reason to restrict an individual. He enjoys discretion in his decisions but it is not unfettered. The Signatura made this point explicitly when it ruled in *coram* Stankiewicz/2019 that "proportion, according to the dictates of jurisprudence, must be measured not only in the case, so that the cause is proportionate to the prohibition, *but also in relation to the mind of the Legislator*, so that it does not happen that the causes established by him in law, with their effects, do not bear any proportion to the causes for an administrative prohibition [emphasis added]."[55] The decision must not only be *ad rem* to the cause (prohibiting Mass because of red hair), it must also be proportionate (removing the faculty to preach for an overly-long homily on one occasion). If the decision must be pertinent and proportionate to the cause, then the law favours the unrestricted faculty or act as it is allowed and framed by the law. The onus is on the cause and its severity to justify restricting the favoured act. The act, in this case the celebration of Mass *coram populo*, does not need to justify itself. Not only must the cause be legitimate *in se*, having red hair

[55] "Haec proportio iuxta dictamina iurisprudentiae mensuranda est non solum in casu, adeo ut causa sit prohibitioni proportionata, sed dimetienda est quoque relate ad mentem Legislatoris, ne causae ab ipso in iure statutae cum earum effectibus, ulla proportione gaudeant relate ad causas pro administrativa prohibitione" (*coram* Stankiewicz/2019, no. 12).

is not a legitimate cause, but it must match the gravity of forbidding a priest to celebrate publicly. It is immediately clear that these are really considerations of merit and not truly considerations of applying the correct law (or what the Signatura considers as *in decernendo*). The Signatura resolves the issue of its not having authority to judge merit, that is the legitimacy of the cause, by speaking of proportionality. We will return to this issue later.

4.5.2 Perduring Cause

The second condition of the Signatura's jurisprudence is temporal. When the cause ceases, the restriction must be lifted. Hence, the restriction cannot be perpetual by its nature or by imposition. In other words, if the cause is something that *in se* cannot cease, then the restriction is illegitimate because it is perpetual. To continue with the grossly exaggerated example: If having naturally red hair, even *if* the colour of hair was a legitimate cause, is the cause of a restriction on celebrating Mass, that restriction is perpetual because the condition of red hair cannot be changed. More to reality, if the cause of the restriction to celebrating Mass is the presence of an accusation of sexual abuse of minor from decades ago but only recently made public, the historical fact of the accusation cannot cease. The restriction in this case is perpetual. By the standard of the jurisprudence, it is illegitimate.

Furthermore, the restriction must be placed for a determinate or indeterminate time. If the restriction is placed for a determined period, for example one year, the jurisprudence would suggest that this is legitimate. If the restriction is imposed for an indeterminate period, then the specific motivating cause must be enumerated so that its perduring presence can be verified. The seeming safeguard against perpetuity placed by the Signatura's jurisprudence does not *in se* make even a proportionate restriction legitimate.

Perpetual restrictions were deemed illegitimate by the Signatura because they seemed too close to the nature of a penalty. We must recall that the whole thrust of the jurisprudence began by resolving the question of whether or not administrative restrictions were in fact nothing other than penalties applied illegitimately. The solution found by the jurisprudence was that administrative restrictions could not be perpetual. The restriction could remain in place only as long as the cause perdured. But what if the competent ecclesiastical authority forgot or failed subsequently to verify the presence of the cause? There was no remedy available for the one restricted. The jurisprudence found a solution by requiring the ecclesiastical authority to perform a review at set intervals, even suggesting yearly ones.[56] But what if the review was perfunctory leading to an automatic renewal of the restriction? The Signatura found a solution by requiring ecclesiastical authority to perform a true review.[57] One can see the futility of solving the predicament. There is no way of ensuring that an honest review takes place, let alone a method of measuring the existence or not of the cause. Furthermore, a determinate time of more than one year seems overly burdensome for a non-penal restriction. A one-year determinate period denies justice because there is no real possibility of recourse.

If the priest feels aggrieved that a restriction is renewed after a one-year period, he has the right to make hierarchic recourse to the appropriate dicastery of the Holy See, and subsequently to seek a judicial review by the Signatura if necessary. While the norms of the Holy See dictate that a decision on a request for recourse must be given within three

[56] See *coram* Burke/2017, above 1.1.15; KIRBY, 572.

[57] See *coram* Versaldi/2014, above 1.1.11.

months,[58] experience teaches that it takes the better part of a year for that to happen, at which point, even if relief is granted, the restriction is soon to be or already expired. Moreover, any subsequent recourse to the Signatura is futile because they will be unable to judge a restriction that has expired.

An administratively placed restriction on the free exercise of rights, that is to say faculties granted by the law, for which there is *de facto* no recourse, cannot be judged legitimate. To state that is not to deny the discretion that ecclesiastical authority has in governing but it is to claim that the discretion must be evaluated in the true light of the law. It is insufficient to justify administrative restrictions by the mere fact that they are not perpetual. As was suggested, the real issue is with the legitimacy of the cause. Is there ever a cause that is grave enough to prohibit the celebration of Mass *coram populo*?

4.5.3 Proportionality

As we saw in chapter two, a priest shares in the very same priesthood of Jesus Christ that has been handed down by apostolic succession. Being distinct from bishops and working under their authority, priests nevertheless enjoy a dignity and purpose proper to them in their grade of holy orders. They are not employees of the diocesan bishop but rather a constitutive part of the diocese that he governs. We saw that priests share with titular bishops almost to the same extent the faculties to exercise orders, most of which are granted by law. The exception is for the sacrament of penance for which priests, but not bishops, always need to be granted a faculty outside of ordination itself, except in the case of a penitent in danger of death (see c. 976). Another of those faculties, for preaching, can be

[58] See LEO XIV, *motu proprio Regolamento generale della curia romana*, 23 November 2025, art. 42, https://www.vatican.va/content/leo-xiv/it/motu_proprio/documents/20251123-regolamento-generale-curia-romana.html (13 March 2026).

restricted for priests as they can for titular bishops. As the Signatura ruled in the Decree of the Prefect/2008, "a deputation of the ordinary is in no way required in order to exercise faculties granted by the universal law itself."[59] When the prevalent mindset is that a priest depends on the permission of his bishop to exercise ministry, then the importance of the above considerations is lost. What role, then, does the celebration of Mass play in the life and mission of a priest?

As we saw, *Lumen gentium* taught that "it is above all in the eucharistic worship or synaxis that they [*presbyteri*] exercise their sacred function" (*LG* 21). More than in any other function, the celebration of the Eucharist expresses the purpose for which the second degree of the sacrament of orders exists. According to Pope John Paul II, "The Eucharist is the principal and central *raison d'être* of the sacrament of the priesthood, which effectively came into being at the moment of the institution of the Eucharist, and together with it. […] In a certain way we derive from it and exist for it."[60] The celebration of Mass expresses a priest's very being and his supernatural priestly nature. Without exaggeration, the faculty to celebrate the Eucharist granted *a iure* at ordination is a priest's birthright. Furthermore, priests have the right to "worship God according to the prescripts of their own rite" (c. 214). That means he has a right to celebrate Mass on an altar in a sacred space with members of the Christian faithful present (cc. 906, 932). As a priest at Mass, he, "unless excused for a just reason, should usually exercise the function proper to [his]

[59] Decree of the Prefect/2008, no. 5.

[60] "Ipsa [Eucharistia] videlicet princeps summaque ratio est cur omnino sit sacerdotii Sacramentum, quod nempe ortum simul sit instituta Eucharistia unaque cum ea […] Certo etiam pacto exsistimus 'ex ea' et 'pro ea'" (JOHN PAUL II, apostolic letter *Dominicae cenae*, 24 February 1980, no. 2, in *AAS*, 72 [1980], 115, English in *Origins*, vol. 9, no. 41 [1980], 655).

order"[61] for it is unfitting "except in rare and exceptional cases and with reasonable cause, for [him] to participate at Mass, as regards to externals, in the manner of the lay faithful."[62]

For that reason, a priest is encouraged to celebrate daily even if the norm of celebrating *coram populo* is not possible (c. 904). His devotion is also considered justification for not celebrating in a sacred space or on a blessed altar. In looking at the proportionality of a cause to the magnitude of restricting a priest's right to celebrate Mass *coram populo*, it may be helpful to make some comparisons.

The Code recognises the right of the faithful to "promote or sustain apostolic action even by their own undertakings, according to their own state and condition" (c. 216). That right pertains to both clergy and laity. If a lay person praying the rosary outside of an abortion clinic caused negative publicity for the Church, does the discretionary executive power of the bishop allow him to place the indeterminate disciplinary sanction of forbidding the lay person to pray outside of the clinic? Would the bishop be able to prohibit the priest, dressed in cassock, ferraiolo, and saturno who participated in an outdoor summer fete with the neighbouring SSPX community and whose picture went viral on Tiktok from doing it again? To make a provocative but nonetheless valuable comparison, supernaturally speaking, can we not say that the celebration of Mass is to a priest what, naturally speaking, conjugal rights are to marriage (c. 1135)?

Conjugal rights are part of natural law in the same way that the right to celebrate the Eucharist belongs to divine law. Christ did not will the existence of a sacrament whose

[61] *Institutio generalis missalis romani,* no. 114 in *Roman Missal* 2002, 44.

[62] CONGREGATION FOR DIVINE WORSHIP AND DISCIPLINE OF THE SACRAMENTS, Instruction *Redemptionis sacramentum* on Certain Matters to be Observed or to be Avoided Regarding the Most Holy Eucharist, 25 March 2004, no. 128 in *AAS*, 96 (2004), 585. 549-601

purpose was contingent on mere human discretion any more than he created the natural union of husband and wife the purpose of which could be set aside. In marriage, the grievous sin of infidelity can render conjugal rights null (c. 1152, §§ 1-2) in the same way that particular delicts can render a priest irregular for the exercise of his orders. Just as the Church can decree or permit a husband and wife to give up their common life (cc. 1152, §3; 1153), so the Church can prohibit a priest from exercising orders in specific circumstances or for certain delicts (c. 1044). The Church cannot, however, forbid a husband or wife from claiming their conjugal rights as part of their governance of the Church. This is a bold comparison and no analogy is without its limits; however, the boldness is necessary for us to see how the events of the last decades in the Church have clouded our vision of the priesthood. Priests are not chattel owned by his diocesan bishop. They have a dignity and mission proper to them by divine law. That does not mean that the order of priests is not governed by the authority of the Church and immediately so by a diocesan bishop.

A restriction of the celebration of Mass outside of the circumstances explicitly outlined in the law is illegitimate. As we saw, the mind of the Supreme Legislator is clear: any priest celebrates licitly who is not impeded by canon law (c. 900, §2). The jurisprudence of the Signatura recognises this in oblique ways while maintaining the legitimacy of undetermined administrative restrictions. In terms of partial limitations, the Legislator provides only one in the canons.

Canon 930, §1 prohibits the celebration of Mass *coram populo* for any elderly or infirm priest unable to stand for Mass. That is a partial restriction on the celebration of Mass. The Signatura, failing to note this one restriction, ruled that it is never legitimate to

prohibit completely either the exercise of orders in general or the celebration of Mass *coram populo* specifically.[63] It ruled that *admiratio* among the people,[64] and the *fear* of possible scandal or financial loss[65] are not proportionate reasons. This jurisprudential limit highlights the centrality of the Eucharist in the life of a priest. An important distinction made by the jurisprudence now needs to be addressed. The law outlines the scenarios in which a total prohibition of Mass is imposed. It further provides that in the case of a priest unable to stand, partial restriction of the right is necessary, namely that Mass can be celebrated in private but not *coram populo*. In all other circumstances, the law leaves intact the right to celebrate *coram populo*. The jurisprudence of the Signatura, however, allows for a partial restriction on the celebration *coram populo*.

In *coram* Daneels/2022, the Signatura seems to have ruled that a severely restricted right, but not a total prohibition, to celebrating Mass *coram populo* is legitimate.[66] In that case, the cleric was allowed to celebrate Mass *coram populo* only on family occasions, or when confrères invited him to concelebrate (presumably at a private Mass). While the jurisprudence deems illegitimate a total prohibition of Mass *coram populo*, it seems that partial, even severe, restrictions are legitimate under the usual condition of a perduring legitimate cause.

It needs to be noted that no canonical foundation is provided by the jurisprudence for even a partial restriction on the celebration of Mass. Understanding that the mind of the

[63] See Decree of the Prefect/2009, no. 6.

[64] See *coram* Versaldi/2017.

[65] See *coram* Stankiewicz/2019.

[66] See *coram* Daneels/2022.

Legislator dictates that only a finite series of delicts justifies a total prohibition on the celebration of Mass, and that jurisprudence dictates that no non-delictual behaviour justifies a complete prohibition on Mass *coram populo*, what is the goal of a partial restriction? Are there truly proportionate causes that legitimize a severe restriction of the right to celebrate *coram populo*?

A few distinctions are in order. First, it must be remembered that we are not speaking of an ecclesiastical office holder such as a pastor, but merely a priest *qua* priest. As we saw in chapter one, the Signatura ruled that it is illegitimate to remove a faculty necessary for carrying out an office.[67] Hence, a pastor cannot have his faculty for saying Mass removed while he remains pastor. To do so would cause him to be impeded from fulfilling his office requiring the appointment of an administrator (c. 539)[68]; instead, he would have to be removed from office. Second, we are not even assuming that the right to celebrate publicly includes, for example, celebrating a publicly-announced parish Mass. The right to celebrate Mass *coram populo* involves the ability, with permission of the rector who, in normal circumstances, cannot refuse permission (c. 903), to celebrate Mass on the altar of a church, oratory**,** or chapel in the presence of anyone of the faithful who wishes to attend. It does not include the right to preach, as that faculty may be removed for just cause. Given the narrow limits of the right to celebrate Mass *coram populo*, a cause would have to be the gravest of the grave to restrict it. No one is being forced to attend the priest's

[67] See *coram* Versaldi/2010.

[68] It is worth noting that canon 539 lists reasons why a pastor would become impeded to be to be: captivity, exile or banishment, incapacity or ill health, or some other cause. Clearly, the mind of the Legislator is that being impeded from fulfilling the office requires a grave cause. The mere discretionary choice of the diocesan bishop does not seem, to this author, of sufficient gravity. The diocesan bishop's first duty, in the case of some gravely illicit, non-delictual, behaviour would be to remove the pastor from office, not to restrict his celebration of Mass.

Mass. The faithful have a right to attend Mass; they do not have a right to dictate who the celebrant will be. They can always choose to go to another church or Mass. If the conduct of the priest is not such to warrant penalty or irregularity, then it is incumbent on a bishop to remind the faithful that priests, like the apostles themselves, are capable even of grave sin that does not, *in se*, disqualify them from public ministry.

What proportion then is being respected by a partial restriction? An obvious reason for justifying one, in view of the recent past, is the protection of minors. But another provocative question needs to be posed. What true harm can befall a minor during the *actual* celebration of Mass? One can argue about concern for the physical areas and times surrounding Mass, but protections against those can be made by other means, as we will consider later, such as a penal precept forbidding being alone in the presence of minors, or forbidding presence in a particular church building. If we are honest, we must admit that the real motivating cause of restricting the public celebration of Mass is a desire to avoid unpopular news coverage or complaints from the faithful. We see, then, the difficulty of identifying an objective motivating cause for this very specific restriction. Without identifying one, the administrative restriction of celebrating Mass, or any other exercise of order, is subject to grave arbitrariness, if not abuse. Even if it remains that a priest may be allowed to celebrate a parish Mass, if there is public outcry, the pastor is not likely to give permission again. The priest will be limited by his own reputation rather than by an illegitimate administrative prohibition that this thesis argues is contrary to the mind of the Legislator.

4.6 A General Restriction

A final, similar, but unrelated restriction to the celebration of Mass *in genere* needs to be addressed. It takes two forms: the requirement for a visiting priest to receive prior approval by the diocese of his *celebret* in order to celebrate Mass, or the requirement for a visiting priest to provide, even to the rector on the occasion, what has come to be known as a "letter of suitability." This restriction does *not* take the form of an administrative act but is a particular law promulgated by a bishop (or more often, a rule published by the diocese). Such requirements are *ultra vires* on the part of a diocesan bishop.

4.6.1 Celebret

We saw in chapter three that the *CIC/17* specifically provided that a bishop could enact regulations with regard to visiting priests in his diocese. Approved authors all agreed that such regulations did not include the authority to require prior approval of a commendatory letter from a visiting priest. Nor did it include the authority to reserve to the bishop the permission that the Code required the rector of the church to give a visiting priest. The authority given by the Code was to enact other regulations, for example, that would require a rector to inform the bishop of the presence of any visiting priest in the diocese.

While that explicit mention of the authority of the bishop in this regard is not repeated in the *CIC/83*, we saw that the revision commission excluded it because it was assumed and well-known that such authority remained with the bishop. As such, the requirements surrounding the permission needed by a visiting priest to celebrate Mass in a church were not completely re-ordered by the new Code. Hence, according to canon 6, §2, canon 903 on the permission of the rector required for the celebration of Mass "must be

assessed also in accord with canonical tradition." It must be argued, therefore, that it is illegitimate for a bishop to reserve to himself the granting of permission to a visiting priest that is the prerogative of the rector of a church. Nor is it legitimate to *require* that a *celebret* be presented. The law gives the rector discretion to admit or refuse a visiting priest who does not have a letter. There is no such discretion, however, if the priest presents a *celebret*, as canon 903 specifically requires that the priest be admitted to celebrate.[69]

4.6.2 Letter of Suitability

The variation on this restriction is the need for what is known as a letter of suitability. A *celebret* attests to the valid ordination of the priest from his diocese of incardination and to the fact that he is not labouring under any impediment of law that prohibits him from celebrating Mass. A letter of suitability is much more encompassing. Conn notes that with the advent of letters of suitability that "[g]one is the presumption of a priest being considered suitable to celebrate Mass."[70] It became a custom in the United States, and has spread to other nations such as Canada, after the publication of the "Charter for the Protection of Children and Young People" by the United States Conference of Catholic Bishops. Article 13 of the document states that "[t]he diocesan/eparchial bishop is to evaluate the background of all incardinated priests and deacons. When a priest or deacon, not incardinated in the diocese/eparchy, is to engage in ministry in the diocese/eparchy, *regardless of the length of time*, the evaluation of his background may be satisfied through a written attestation of suitability for ministry supplied by his proper

[69] Conn argues that a competent authority could make the requirement for a *celebret* a necessity, thus removing completely the discretion of the rector of the church, or even requiring a shorter period for the validity of the *celebret*. See CONN, "Canon 903," 83.

[70] Ibid., 84. While that praxis is evidently true, this thesis is arguing that the praxis is illegitimate.

ordinary/major superior to the diocese/eparchy [emphasis added]."[71] The suitability for ministry to which the letter attests includes all sorts of personal details that do not respect the right of the faithful to protect their privacy guaranteed by canon 220. Furthermore, the norm reserves to the bishop himself the granting of permission to celebrate Mass. This is true not only because of the particular ecclesiastical law in effect in the United States. Other nations, such as Canada, are requiring similar letters. Examples of diocesan policies demonstrate the level of information required.

> Please note that no priest or deacon may exercise ministry within the Diocese of Youngstown without being granted faculties/permission by the bishop. […] Letters of suitability are to be sent from one bishop/superior to another, not directly to a parish, since it is the bishop who is responsible for determining a cleric's suitability for ministry.[72]
>
> No diocesan or religious priest will be accepted for ministry or residence in a parish in the Diocese of St. Catharines without full disclosure by his Bishop or Superior of any allegation of misconduct in the cleric's past.[73]
>
> The Archdiocese requires a priest from another diocese or religious order who wishes to minister in Toronto to obtain the permission of his bishop or superior, who must complete a certificate providing full disclosure, attesting to the good character and history of the priest candidate.[74]

Each of these policies contravenes the canons on the celebration of Mass. One of them requests information on mere allegations of misconduct – a non-canonical term that could have broad meaning. Another of the cited policies requires that a visiting priest have

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[71] UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, "Charter for the Protection of Children and Young People," in *Promise to Protect Pledge to Heal*, revised 2018, art. 13, (https://www.usccb.org/resources/Charter-for-the-Protection-of-Children-and-Young-People-2018-final%281%29.pdf 10 March 2026).

[72] DIOCESE OF YOUNGSTOWN, OHIO, Notice on Requesting Letters of Suitability, 21 November 2024 https://doy.org/letters-of-suitability-required/ (10 March 2026).

[73] DIOCESE OF ST. CATHARINES, ONTARIO, Responding to Allegations of Sexual Abuse of Children or Vulnerable Persons, 4th ed., October 2019, no. 33 https://saintcd.com/userfiles/Abuse-Policy-JULY-2020.pdf (10 March 2026).

[74] ARCHDIOCESE OF TORONTO, ONTARIO, Safe Environment Policy – Priests from Outside of the Archdiocese, https://www.archtoronto.org/en/our-community/safe-environment-policy/ (10 March 2026).

the explicit permission of his bishop of incardination, who will supply a full history of the requesting priest, before considering whether permission will be granted for the celebration of Mass. The Diocese of LaCrosse, Wisconsin requires priests attending a noted annual canon law convention to provide letters of suitability to concelebrate the conference's daily Mass. The letter must attest to "affirmation of good moral character and reputation, affirmation of qualification for this ministry, affirmation of background and suitability to work with minor children, completion of annual safe environment training, completion of child protection training, completion of safe environment background check."[75] All of that is required merely to concelebrate Mass. Such policies clearly violate a priest's right to celebrate the Eucharist. This is even affirmed recently by the Signatura in *coram* Sandri/2024, ruling that the ordinary is not competent to reserve to himself the granting of permission to celebrate the Eucharist in a church or oratory.[76]

Having examined the reasons why the law points to the idea that it is always illicit to restrict the celebration of Mass outside of the clearly indicated circumstances in the law, there is one final point that needs to be made, namely what avenues *are* available to a diocesan bishop.

4.7 Non-Penal or "Disciplinary" Sanctions Clearly Identified

A great deal of time and energy has been spent over the years trying to answer the question with which this thesis began: what are we to do? It is the question asked by diocesan bishops when confronted by the egregious behaviour of one of their priests. The answer has often been to "remove" him from ministry that entails the prohibition to

[75] SPECULUM IUSTITIAE THE CANON LAW CONFERENCE, Speculum Iustitiae 2026 Conference Event Details, https://speculumiustitiae.com/schedule/ (10 March 2026).

[76] See *coram* Sandri/2024.

celebrating Mass *coram populo*. As this thesis has been arguing, such a disciplinary sanction for non-delictual behaviour is both *ultra vires* and *contra legem*. Using some difficult cases as an example, we can look to the law to see what can be done within its confines.

4.7.1 Case Studies

A 70-year-old priest, who is a pastor, is accused today of sexually abusing a sixteen-year-old female forty years ago. When his personnel file is checked, there are a few memos dating from 20-30 years ago documenting some inappropriate behaviour with minors such as hugging or driving alone with them. The law is clear that when the abuse is alleged to have occurred, it was not a delict because she was sixteen at the time. Back then, such action was considered a delict only with a minor under the age of sixteen. Clearly the subsequent behaviour, while imprudent, was not a delict. Or consider the case of a thirty-year-old associate pastor who begins discussion with a seventeen-year-old parishioner who expressed interest in becoming a priest. Over time, the relationship develops, and the priest begins to take on a mentoring role. One day, the priest invites the young man to his bedroom in the rectory where the young man allows the priest to give him a back rub with his shirt off. The young man recounts the incident to his family. The boy's father makes a complaint of sexual assault to the bishop. Clearly, the behaviour is grossly inappropriate on all counts. While the actions committed in the bedroom could be stretched to consider them as a sin against the sixth commandment with a minor, it is not objectively obvious that sexual gratification was the intent of the massage, and the act itself is not a sexual act. Proving it as a reserved delict would be very difficult. So, we are left with inappropriate and negligent behaviour.

While the diocesan bishop is certainly limited in his options, he is not without any. The first and most obvious one, without discussing all the possible permutations of whether the accusation is public, or if the priest admits it, is that the bishop may remove each of the priests from office. But there are other necessary, and more effective, options as we shall now consider.

4.7.1.1 Magister De Paolis

Velasio De Paolis, one of the most well-respected penal law experts of modern times expertly demonstrates that the non-penal, "disciplinary" sanctions are to be found in the penal remedies of canon 1339.[77] He states:

> Alongside penalties in the strict sense, canon law recognises other measures which, although connected in some way with delicts, are not actually intended to punish them. These are penal remedies and penances [...] non-criminal sanctions [...] However, although they are not penalties in the strict sense, as punishment for a delict, penal remedies and penances are connected with delicts and are always linked to a serious violation of canon law. Therefore, they are penal in nature and are called punishments.[78]

Citing Wernz and Vidal, De Paolis says that penal remedies "can rightly be said to be disciplinary measures for restraining offences."[79] Instead of punishing delicts, penal remedies prevent them. Wernz continues "there is no scope for applying them unless there is external, objective**,** and subjective fault, which, however, may not in itself amount to a

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[77] De Paolis acknowledges that there are other standard-practice "disciplinary sanctions" mentioned in the *Regolamento Generale della Curia Romana*. These would be the same ones discussed earlier in the chapter. See V. DE PAOLIS, "Sanzioni penali, rimedi penali e penitenze nell'ordinamento canonico," in D. CITO (ed.), *Processo penale e tutela dei diritti nell'ordinamento canonico*, Pontificia Università della Santa Croce Monografie Giuridiche 28, Milan, Giuffrè Editore, 2005, 206.

[78] "Accanto alle pene, in senso proprio, l'ordinamento canonico conosce altre misure che, pur avendo una qualche connessione con il delitto, in realtà non sono in ordine alla punizione de esso. Si tratta dei rimedi penali e delle penitenze [...] di sanzioni non penali … Tuttavia, pur non essendo in senso proprio pene, a punizione di un delitto, i rimedi penali e le penitenze hanno una connessione con un delitto e comunque sono sempre legate ad una grave infrazione della norma canonica. Perciò esse hanno carattere penale e si chiamano punizioni" (ibid., 193-194).

[79] V. DE PAOLIS, "Sanzioni penali," 194 citing F. WERNZ and P. VIDAL, *Ius canonicum*, vol. 7, Rome, Universitatis Gregorianae, 1937, no. 368, 396.

delict, and which, being culpable, provides an occasion or danger of a true delict and readily gives rise to scandal among the faithful."[80] The revised Book VI reinstated two penal remedies of the *CIC/17*, namely the penal precept and vigilance.[81] By this revision, the Supreme Legislator manifested his will that non-delictual behaviour is to be addressed, not by *indeterminate* non-penal sanctions based on the discretionary power of governance of the diocesan bishop, but by the determined non-penal sanctions of the penal remedies, especially the penal precept.

4.7.1.2 The Penal Precept

Canon 49 defines a precept as a type of singular administrative act, a decree, "which directly and legitimately enjoins a specific person or persons to do something or omit something, especially in order to urge the observance of the law." Canon 1319 allows, in virtue of the power of governance, that penalties, except perpetual expiatory ones, can be threatened by precept. A precept that includes a penalty for those who transgress it is called a "penal precept."[82] According to De Paolis, the penal precept is an instrument for establishing penalties.[83] It needs to be made clear, given what was said about his teaching just above, that the creation of, in fact, a personal penal law, is not meant to punish the recipient of the penal precept, but to prevent further illicit behaviour and to protect the good

[80] "[I]psis applicandi locus non est, nisi obiectiva et subiectiva culpa externa habeatur, quae tamen ad rationem delicti fortasse non pertingat, et pro culpabili sit occasio vel periculum veri delicti et facile scandalum in fidelibus inducat" (WERNZ and VIDAL, *Ius canonicum*, vol. 7, no. 369, 397).

[81] See *CIC/17*, c. 2310 and *CIC/17*, c. 2311.

[82] See V. DE PAOLIS, Legge e precetto penali (lex poenalis, praeceptum poenale), in C. CORRAL-SALVADOR, V. DE PAOLIS, and G. GHIRLANDA (eds.), *Nuovo dizionario di diritto canonico*, 2nd ed., Milan, Edizioni San Paolo, 1996, 631.

[83] See DE PAOLIS, "Sanzioni penali," 24.

order of the community. A contrary voice to this is that of Sanchís who characterises penal precepts as "the imposition of disciplinary sanctions for unlawful actions."[84] While that is true in the sense that having a precept issued to you is a type of punishment, it is so only because the precept must be the result of illicit behaviour, or proximate to it. Forcing someone to stop breaking the law, or to follow it, under pain of penalty is not a punishment. In the above examples, both priests broke the prescription of canon 277, §2 that enjoins on clerics the obligation to behave prudently with persons who could "endanger their obligation to observe continence or could give rise to scandal among the faithful (c. 277, §2). The penal precept would change the failure to observe canon 277, §2 into a delict for future behaviors of the priests in question. The punishment happens only after the personal delict is committed.

That the penal precept is the Legislator's choice of disciplinary act can be deduced from the fact that canon 1339, §4 states "the ordinary *is to give* a penal precept (*ordinarius det praeceptum poenale.*)" Pighin observes that "the ordinary is held to giving a penal precept, 'in which what must be done or what must be avoided is clearly defined (c. 1339, §4)'."[85] Hence, when there is illicit behaviour that verges on being a delict, or when there is suspicion that a delict has been committed, the bishop is required to issue a penal precept. It belongs to the discretion of the bishop which penalty to apply to any inobservance of the precept. Moreover, the Legislator enjoins on the diocesan bishop the duty to observe canons 1317-1318 in choosing the penalty (c. 1319). Given this change in the law, it is

[84] "la comminazione di sanzioni disciplinari per la realizzazione di azioni illecite" (J. SANCHÍS, *La legge penale*, 146).

[85] "l'ordinario è tenuto a dare un precetto penale, 'nel quale disponga accuratamente cosa si debba fare o evitare' (c. 1339, §4)" (B. PIGHIN, *Il nuovo sistema penale della chiesa*, Facoltà di Diritto Canonico San Pio X Manuali 15, Venice, Marcianum Press, 2021, 219).

difficult to continue holding the position that indeterminate singular administrative acts can legitimately be imposed for non-delictual behaviour.

A final observation needs to be made with regard to the content of the penal precept. It must require observance of the law or it must prohibit the illicit behaviour demonstrated. It cannot prohibit behaviour or actions to which one has a right, such as prohibiting the celebration of Mass *coram populo* under threat of penalty for doing so. Examples of such penal precepts have been encountered several times by this author in his work assisting priests. The penal precept solves the difficulty that was the genesis of the Signatura's jurisprudence, namely placing restrictions by an administrative act that had the same effect as penalties and relied merely on the word of the one imposing them that the purpose was not penal. The penal precept, on the other hand, addresses illicit behaviour with the threat that intransigence will result in a penal sanction.

4.7.1.3 Canon 1399

Canon 1399 is both another manifestation of the mind of the Legislator and a possible avenue to address illicit behaviour.[86] It states: "In addition to the cases established here [in Book VI], the external violation of a divine or canonical law can only be punished by a just penalty when the special gravity of the violation demands punishment and there is an urgent need to prevent or repair scandals". The canon needs to be parsed carefully.[87] First of all, under specified conditions, the canon subjects to punishment the infraction of

[86] See RENKEN, *The Penal Law*, 527-535 for an analysis and comprehensive bibliography of the many questions and concerns raised by scholars on this canon.

[87] See P. KINSHIE LENYE, *La discipline et l'application du canon 1399 du Code de droit canonique face aux cas de scandales dans L'Église*, Paris, L'Harmattan, 206, 19 and 83-111 for an in-depth analysis of the wording of the canon and its meaning.

any divine or canonical law to which a penalty is not already attached.[88] Hence, breaking *any* canon in the Code to which a penalty is not already attached could, in specific circumstances, result in the imposition of a penalty. *Any* externally manifested *sin*, as an infraction of divine law, could, in specific circumstances, result in the imposition of a penalty. This is in virtue of the Church's "innate and proper right to coerce the Christian faithful with penal sanctions" (c. 1311, §1). A penalty may be imposed only if *all* of the following three conditions are met: there is an external infraction of a law to which no penalty is attached, the special gravity of the violation demands punishment, and there is an urgent need to prevent or repair scandal. If any of the conditions is not met, "canon 1399 does not pertain."[89]

Scholars point out that the viability of using the canon are probably rare. Renken posits that the "the gravity of the violation of the divine or ecclesiastical law would be clearly and certainly evident from the teaching of the Church, such that the offender would reasonably foresee of a penalty for the violation."[90] The occurrence of such a grave violation, not already sanctioned in the Code, would be rare. In addition, Sanchís points out that "[o]nly with difficulty can [canon 1399] be considered a pastorally effective measure against urgent and grave situations that can be more speedily resolved with greater effectiveness and justice by other means, including non-penal ones, as provided by law; for example, by correction (cf. c. 1339, §2)."[91] Pighin agrees that more effective means are

[88] See RENKEN, *The Penal Law*, 531.

[89] See ibid., 532.

[90] Ibid., 531, note 9.

[91] J. SANCHÍS, Commentary on canon 1399, in *Exegetical Comm*, vol. IV/1, 561 cited by RENKEN, *The Penal Law*, 561, note 10.

available such as the penal precept.[92] Kinshie Lenye, despite reservations from these canonists and others about the effectiveness of canon 1399, suggests that the canon's unchanged status in the 2021 revision of Book VI of *CIC/83* indicates that the Legislator intended the canon to be an effective means.[93]

While the usefulness of the canon may be debated, Kinshie Lenye is correct that it nevertheless expresses the mind of the Legislator. The infraction of non-penal laws in the Church are to be punished *only* when the *special* gravity of the *violation*, not the ensuing situation, *and* the *urgent* need to prevent or repair scandal are present. The Legislator does not envision punishment for even grave infractions of non-penal law. There must be a special gravity to the infraction. Even though many argue for the legitimacy of disciplinary sanctions, and even though the Signatura's jurisprudence is at pains to distinguish them from penalties, the fact remains that the so-called disciplinary sanction of restricting the right to celebrate Mass *coram populo* is of such special gravity to the life of a priest that it might not be warranted even in situations for which canon 1399 *could* be applied.

4.8 Other Available Means

Apart from the administrative measures we have been considering, it needs to be pointed out that legislative means are also available. A diocesan bishop, using his legislative power, is able to enact particular penal laws for his diocese. There may be behaviours that are not considered delicts in universal law but which nevertheless cause disturbance in a particular community. Given the current climate in the wake of the sex abuse crisis, it could be prudent for a bishop to enact laws forbidding priests to be alone

[92] PIGHIN, *Il nuovo sistema penale*, 522.

[93] See KINSHIE LENYE, *La discipline et l'application du canon 1399*, 124.

with a minor, or a prohibition on minors sleeping in rectories even with parents present. Those are precisely the situations that lead to accusations of improper behaviour that *could* be totally innocent, or not. Having a particular law in place would deter, one hopes, the opportunity for a complaint to be made. Should a complaint be made, the law would guarantee the rights of the accused to defend himself against punishment. Without such law, current praxis sees the priest removed from ministry, or prohibited from celebrating Mass in public, without any sort of juridically verifiable investigation into the facts.

What is clear is that a priest has a right to celebrate Mass *coram populo*. Apart from the specific instances outlined in the law, it is illicit to prohibit him from doing so *in toto* or *in parte*. Such a restriction is *contra legem* because the Supreme Legislator has manifested his will clearly on the importance of the right to celebrate Mass and placed firm boundaries around how it may legitimately be restricted according to *canonical* law. An illegitimate restriction is *ultra vires* because a diocesan bishop does not have the authority for an administrative act in this specific regard because canon 900 is clear that *only* canonical law impedes the licit celebration of Mass. Any administrative restriction is an attempt to circumvent the clearly expressed mind of the Legislator.

CONCLUSION

This thesis began by noting that increased discipline on clerics as a result of the clerical abuse scandals has resulted in a near universal practice of restricting a priest's right to celebrate the Eucharist *coram populo* whenever some disciplinary problem arises. For sinful behaviour that does not constitute a delict, a subsequent restriction on the public celebration of Mass seems like the unjust infliction of a penalty. Therefore, through numerous hierarchic recourses reaching its offices, the Supreme Tribunal of the Apostolic Signatura began to outline jurisprudence on the rationale and limits for imposing such a restriction.

Chapter One examined thirty-one such decisions. We saw how the Signatura began to refine its jurisprudence regarding the restriction of the celebration of Mass in non-penal cases. The apostolic tribunal began with the task of differentiating administrative restrictions from penalties, both of which often have the very same effects. The early jurisprudence stipulated that administrative restrictions were not penalties simply inasmuch as a penal process was not used to impose them. It also made the distinction that the final cause of penalties is the punishment of delict; the final cause of administrative restrictions is the protection of the faithful. The jurisprudence moved to a more refined examination of the motivations of administrative restrictions, of their time limits, and of their goals. The decision *coram* Stankiewicz/2016 pointed out that a distinction needed to

be made between faculties granted *a iure* and those granted *ab homine*. Faculties granted *ab homine* could be restricted or removed according to the norms of law. Faculties granted *a iure* at ordination, such as the faculty to celebrate the Eucharist, cannot be totally restricted except as a penalty.

The Signatura's jurisprudence developed with the notion of proportionality. It ruled that a proportion must exist between the nature of the restriction and the motivating cause. The reason for this necessity is the avoidance of ambiguity or arbitrariness. It based this necessity by analogy with long-standing jurisprudence requiring a proportion between a penalty and the delict for which it applies. As the jurisprudence continued to develop, the decision *coram* Stankiewicz/2019 referred to a "new institution emerging in the life of the Church."[1] It was referring to the now-commonplace administrative restrictions on priestly ministry. It was an acknowledgment that the canon law of the Church does not deal with the administrative prohibition of the exercise of sacred orders except through canon 1722 – the precautionary measures allowed in cases of penal processes – and the canons on the impediments to exercising orders already received found in canon 1044. This decision is important because it established the principle that there must be a proportion between the motivating cause of the imposition of an administrative restriction and the mind of the Legislator. In light of that, a severe administrative restriction for non-delictual behaviour must be considered illegitimate when the penalty for similar delictual behaviour is less severe than the administrative restriction. In addition, the restriction must be logically and rationally connected to the cause.

[1] *Coram* Stankiewicz/2019, no. 12.

CONCLUSION

The most recent development of the jurisprudence, as we saw, concerns the time limits of administrative restrictions. Administrative restrictions cannot be perpetual because that is the nature of a penalty. While indeterminate time limits have been ruled legitimate, a true examination of the perduring nature of the motivating cause of the restriction must be carried out at defined intervals.

Finally, in one of the most recent cases judged by the Signatura, it was ruled that an ordinary is not competent to reserve to himself the authority to permit a priest to celebrate Mass in a church, which is properly the prerogative of the church's rector according to canon 903.[2] This is an important decision as it further refines the authority of the diocesan bishop with regard to priests and the celebration of Mass.

The goal of chapter one was to examine how the Apostolic Signatura, as an authoritative source of canonical interpretation for situations not clearly defined in the actual canons – such as administrative restrictions on the celebration of Mass – defined the limits of a diocesan bishop's authority with regard to the ministry of diocesan priests. The Signatura admitted that administrative restrictions were somewhat of a new institute. Rather than examining the canonical foundation for its existence, the Signatura accepted the legitimacy of such administrative restrictions and sought to define their limits and legitimate parameters.

Chapter two examined the nature of the ministry of a diocesan priest in relation to his diocesan bishop of incardination. We saw how the Second Vatican Council taught that presbyters share in the very same priesthood of Jesus Christ that was conferred on the apostles and their successors. In fact they share, *a iure* by ordination, many of the faculties

[2] See *coram* Sandri/2024.

enjoyed by titular bishops. Presbyters are co-workers of the diocesan bishop because they are a constitutive part of the diocese that a diocesan bishop governs. Presbyters are not mere functionaries or employees of the diocesan bishop. Their role is not one of subjection to the diocesan bishop, but of service to the community to which they are joined.

In virtue of the sacrament of holy orders, *sacerdotes* enjoy a dignity and purpose inherent in the sacrament. The ordination of a presbyter is not an empty event that is later empowered by the diocesan bishop. Ordination confers on the priest the right and duty to sanctify the People of God by offering the redeeming sacrifice of the Eucharist. As *Lumen gentium* taught, priests exercise their sacred function above all in the eucharistic worship (*LG*, no. 28). While that ministry is governed by the diocesan bishop it is not wholly dependent on him.

These considerations of the subordinate yet independent nature of the priest, as well as the *presbyterium*, are a necessary refresher that assists in understanding why there are limits on a diocesan bishop's authority to restrict the exercise of the power of orders. While the Code may not explicitly enumerate the parameters of his authority for each and every scenario, it is clear from the teaching of the Church that a presbyter has a specific function and ministry in the Church willed by God.

In the first two chapters, we saw how the tension between episcopal authority and the ministry of a diocesan *presbyterium* arose. While the law explicitly deals with how to handle delictual behaviour, it is less explicit in dealing with other problematic behaviour. If it is not explicitly clear what authority a diocesan bishop has in regulating the celebration of Mass by the presbyters of a diocese, and if the Signatura authoritatively rules that a bishop *may* restrict the celebration within certain limits, then it was necessary to explore,

in detail, what the canons require for the licit celebration of the Eucharist. Chapter three did that specific task.

We saw that *any sacerdos* licitly celebrates the Eucharist who is not otherwise impeded by canon law (c. 900). We then explored the various and several ways that the canon law prohibits, or restricts, the celebration of Mass. The law explicitly outlines eight situations in which the celebration of Mass *coram populo* is not permitted. The first six of them are obligatory; the final two are left to the discretion of the diocesan bishop:

1. dismissal from the clerical state (c. 292);
2. all declared, but only some imposed, penalties (cc. 1331-1333, 1336);
3. impediments to exercising orders received (c. 1044);
4. a dismissed religious, or other consecrated, priest who has not found a benevolent bishop (c. 701);
5. a priest, the validity of whose ordination is being challenged (c. 1709, §2);
6. a priest who has petitioned for a dispensation from his priestly obligations (see c. 290, §3);
7. penal precautionary measures (c. 1722);
8. an infirm priest unable to stand for Mass (c. 930, §1).

In addition, we looked at the other canons governing the celebration of Mass, especially with respect to the permission needed to celebrate in a church, which permission is the prerogative and duty of the church's rector (c. 903). An in-depth study of the sources for this canon revealed a long history for the concern that priests be allowed to celebrate Mass with few restrictions. While there has always been care to verify that a visiting priest

is validly ordained and not labouring under a penalty or impediment, the emphasis was on letting him celebrate, even if only for a few occasions.

A study of the canons of the *CIC/17* revealed that the authority of a diocesan bishop did not extend to being able to restrict completely the celebration of Mass by visiting priests. The law was clear that a diocesan bishop could not reserve to himself, or his chancery officials, permission to celebrate, nor require prior approval through the submission of a commendatory letter from the visiting priest's superior. This historical analysis is useful in understanding the legitimacy of limits that are often placed on visiting priests today.

The examination of the Code with respect to the licit celebration of Mass highlighted that the celebration of Mass is presumed to be *pro populo* (c. 906) and on an altar in a sacred space (c. 932). In other words, the mind of the Legislator is that Mass is celebrated publicly, not in the sense of publicly advertised times of Mass, but in the sense of celebrating openly in the presence of the faithful in a sacred space that is normally open to the public. While exceptions to those expectations are envisioned in the law, the exceptions are exercised by the celebrant as a favour: they cannot be imposed as an obligation by an ordinary. The exceptions are granted so that a *sacerdos* may fulfill the exhortation of canon 904 to celebrate frequently, even daily, even alone, because the work of redemption is exercised continually in the eucharistic sacrifice. Chapter three demonstrated that few restrictions are placed on the celebration of the Eucharist.

The concluding chapter of this thesis sought to clarify what, in this author's opinion, is an error of law, or better of praxis, namely administrative restrictions on the celebration of Mass *coram populo*. The much broader question of the canonical foundation of

administrative restrictions in general is left to scholars. What is common to all administrative restrictions of the power of orders is the motivating factor of some problematic behaviour on the part of the presbyter that moves a diocesan bishop to restrict the priest's ministry. Almost always, that involves the immediate restriction of limiting Mass to being in private, alone (or at most with one person present), outside of a sacred space. Chapter four looked briefly and broadly at the real nature of such administrative restrictions in light of a diocesan bishop possessing all the ordinary, proper, and immediate power necessary for governing his diocese (c. 381, §1). As is evident, and cogently argued by approved authors, the law cannot envision every scenario; hence, bishops have discretion to make provision for the proper governance of the diocese through the use of his power of governance. Chapter four examined whether or not the restriction of Mass by such administrative means is legitimate according to the actual canons as well as to the mind of the Legislator as gleaned from other areas of the Code. We saw how, in penal matters, the restriction of the celebration of Mass is allowed only once a penal process has begun, except for reserved delicts when it may be imposed from the beginning of the preliminary investigation. That is a very strong statement of the mind of the Legislator. Only after a priest has been called to trial on delictual behaviour can his celebration be restricted. It cannot be restricted at the mere stage of accusation. Hence, the suspicion of illicit behaviour, or even the strong evidence of it, does not justify, in the mind of the Legislator, the restriction of Mass until the matter is being adjudicated. If that is the case, then behaviour which does not rise to the level of a delict must be treated with even more reserve when it comes to restricting the celebration of Mass.

CONCLUSION

While the sexual abuse crisis has been a large motivating factor in the widespread use of the administrative restriction of Mass, we considered, in chapter four, what real benefit such a restriction had. While there may be grave concern for regulating a priest's time and behaviour with minors, intellectually honest people will admit there is little to no risk to minors, or anyone, during the actual celebration of the Eucharist. Therefore, one has to ask, what is the real purpose of the restriction? And can that purpose ever be in proportion to the importance of the celebration of Mass as envisioned by the Supreme Legislator? The *admiratio* that may ensue because an accusation against a priest is public does not mean that allowing him to celebrate Mass in a church with whomever wishes to attend is scandalous or risky. This is true *a fortiori* in the case of priests who have been found guilty of actual delicts but whose penalty did not include a restriction on the celebration of Mass. If the presence of delictual or other scandalous behaviour requires the restriction of Mass *coram populo*, then the Legislator, at the least, would have constituted that specific restriction as a penalty for every delict. That he has not, and that he *has* enumerated specific situations of non-delictual behaviour that warrant such a restriction, clearly indicates what his mind is with regard to a priest's celebration of Mass.

The question that motivated this thesis namely "what are we to do?" in the face of behaviour that disturbs the peace of the Church or that causes *admiratio* among the People of God, is best answered, not by imposing administrative restrictions which are subject to arbitrariness, but by making use of the law itself – punishing delictual behaviour by a penal process and imposing penal precepts for other grave, non-delictual behaviour. While instantaneous results do not occur with either of these canonical mechanisms, they are swift enough for the needs of justice in the Church. What is clear is that the mind of the Legislator

expresses a cogent and well-defined will to allow the celebration of Mass *coram populo* because of the work of redemption that it accomplishes, even by sinful priests. Even well-defined limits to restricting Mass as enumerated in the jurisprudence of the Signatura do not seem to be in accord with the mind of the Legislator.

Twenty-five years after the tumult of the sexual abuse crisis going public, we see that, in the need to restore the credibility of episcopal governance and proper discipline in clergy, the fear of public outcry is a major motivating factor of administrative restrictions. The dignity of the divine nature of the sacred priesthood deserves that it functions according to the divine will and the mind of the Legislator as expressed in the canons.

BIBLIOGRAPHY

Primary Sources

Acta Apostolicae Sedis, *Commentarium officiale*, Rome, 1909-1929, vol. 1, no. 1 - vol. 21, no. 5, Vatican City, 1929-; vol. 21, no. 6-, Vatican City, Typis polyglottis Vaticanus, 1929-.

Acta Sanctae Sedis, Ex officina S.C. de propaganda fide, 185-1908, 41 vols.

BENEDICT XIV, apostolic constitution *Ad militantis*, 30 March 1742, in *Fontes*, vol. 1, no. 326, 723-733.

_____, bull *Apostolicum ministerium*, 30 May 1753, no. 6, in *Fontes*, vol. 2, no. 425, 390-404.

_____, encyclical letter *Quam grave*, 2 August 1757, in *Fontes*, vol. 2, no. 443, 549-554.

BENEDICT XVI, Apostolic Letter given *motu proprio* by which the *Lex propria* of the Supreme Tribunal of the Apostolic Signatura is Promulgated *Antiqua ordinatione*, 21 June 2008, in *AAS*, 100 (2008), 513-538, English in *DANIEL2*, 9-56.

BURCHARD OF WORMS, *Ecclesiae Episcopi Decretorum Libri Viginti ex Conciliis et Orthodoxorum Patrum Decretis, Tum Etiam Diversarum Nationum Synodis, Ceu Loci Communes Congesti, in Quibus Totum Ecclesiasticum Munus Luculenta Brevitate et Veteres Ecclesiarum Observationes Complectitur*, in J. MIGNE (ed.), *Patrologiae cursus completes*, Series Latina, Paris, J.P. Migne, 1844–1865, vol. 140, https://www-proquest-com.proxy.bib.uottawa.ca/docview/2684143447/Z600150463/1?accountid=14701&docview_hit_text=peregrinos (3 February 2026).

Codex Canonum Ecclesiarum orientalium auctoritate Ioannis Pauli PP. II promulgatus, *fontium annotatione auctus*, Vatican City, Libreria editrice Vaticana, 1995, English translation *Code of Canons of the Eastern Churches*, *Latin-English Edition*, *New English Translation*, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 2001.

Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus, *fontium annotatione et indice analytico-alphabetico auctus*, Vatican City, Libreria editrice Vaticana, 1989, English translation *Code of Canon Law*: *Latin-English Edition*, *New English translation, Fourth Printing*, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 2023.

Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papæ XV auctoritate promulgatus, Typis polyglottis Vaticanis, 1917, English translation in

E.N. PETERS (ed.), *The 1917 Pio-Benedictine Code of Canon Law*, San Francisco, CA, Ignatius Press, 2001.

Communicationes, Rome, PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW (PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO), 1969-1983, vols. 1-15; PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW (PONTFICIA COMMISSIO CODICI IURIS CANONICI AUTHENTICE INTERPRETANDO), vols. 16-20; PONTIFICAL COUNCIL FOR THE INTERPRETATION OF LEGISLATIVE TEXTS (PONTIFICIUM CONSILIUM LEGUM TEXTIBUS INTERPRETANDIS), 1989- , vol. 21-.

CONGREGATION FOR BISHOPS, Directory for the pastoral ministry of bishops *Apostolorum successores*, Vatican City, Libreria editrice Vaticana, 2004.

CONGREGATION FOR THE CLERGY, letter, 8 February 2008, prot. no. 2004-1282 in S. DOKTORCZYK, *Persistent Disobedience to Church Authority: History, Analysis, and Application of Canon 1371, 2°*, Tesi Gregoriana, Serie diritto canonico, no. 185, Rome, Editrice Pontificia Università Gregoriana, 2016.

CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, Instruction *Redemptionis sacramentum* on Certain Matters to be Observed or to be Avoided Regarding the Most Holy Eucharist, 25 March 2004, in *AAS*, 96 (2004), 549-601.

CONGREGATION FOR THE DOCTRINE OF THE FAITH, letter *Ad exsequendam ecclesiasticam legem*, 18 May 2001, in *AAS*, 93 (2001), 785-788, English translation in *Comm*, 33 (2001) 163-165.

_____, *rescriptum ex audientia Ss.mi*, 11 October 2021, in *AAS*, 114 (2022), 113.

Corpus juris canonici emendatum et notis illustratum, Gregorii XIII, pont. Max, iussu editum, Rome: In aedibus Populi Romani, 1582, https://digital.library.ucla.edu/catalog/ark:/21198/zz0014rx6c?cv=299 (26 February 2026).

Corpus iuris canonici, E. FRIEDBERG, (ed.), 2nd ed., 2 vols, Leipzig: B.Tauchnitz, 1879, Reprint, Graz: Akademische Druck- u. Verlagsanstalt, 1959, http://www.columbia.edu/cu/lweb/digital/collections/cul/texts/ldpd_6029936_001/pages/ldpd_6029936_001_00000188.html?toggle=image&menu=maximize&top=&left= (23 April 2023).

COUNCIL OF CHALCEDON, canons, in TANNER, vol. 1, 87-103.

COUNCIL OF TRENT, decree *de Observandis et vitandi in celebratione missarum*, 17 September 1562, in TANNER, vol. 2, 736-737.

_____, decree *Super reformatione*, 15 July 1563, in TANNER, vol. 2, 749-750.

DICASTERY FOR THE DOCTRINE OF THE FAITH, *Normae de delictis Congregationi pro Doctrinaa Fidei reservatis*, in *AAS*, 114 (2022), 114-122, English translation at https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20211011_norme-delittiriservati-cfaith_en.html (21 April 2026).

_____, *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics* (Version 2.0) 5 June 2022, no. 59, in *AAS*, 114 (2022), 913, English at https://www.vatican.va/roman_curia/congregations/cfaith/ddf/rc_ddf_doc_20220605_vademecum-casi-abuso-2.0_en.html (9 March 2026).

DICASTERY FOR LEGISLATIVE TEXTS, *Penal Sanctions in the Church: User Guide for Book VI of the Code of Canon Law*, Vatican City, 2023 at https://www.delegumtextibus.va/content/dam/testilegislativi/TESTI%20NORMATIVI/Testi%20Norm%20CIC/Libro%20VI/LibroVIsussidio/Penal%20sanctions%20User%20guide.pdf (26 February 2026).

FRANCIS, apostolic constitution *Predicate Evangelium*, 19 March 2022, in *AAS*, 114 (2022), 375-455, English translation in *CLSA Comm2*, 573-615.

_____, Apostolic Letter given *motu proprio* by which the *Lex propria* of the Supreme Tribunal of the Apostolic Signatura of 21 June 2008 is Modified *Munus tribunalis*, 28 February 2024, in *AAS*, 116 (2024), 407-410.

INNOCENT IV, *Apparatus in quinque libros Decretalium*, 1570, at folio 113, 176 at https://web.colby.edu/canonlaw/files/2025/04/Innocent-IV-Apparatus-in-quinque-librorum-Decretalium.pdf (26 February 2026).

Institutio generalis missalis romani, in *Missale romanum: ex decreto sacrosancti oecumenici concilii Vaticani II instauratum, auctoritate Pauli PP. VI promulgatum Ioannis Pauli PP. II cura recognitum*, 3rd ed., Vatican City, Libreria editrice Vaticana, 2002, 19-86.

JOHN PAUL II, apostolic letter *Dominicae cenae*, 24 February 1980, in *AAS*, 72 (1980), English in *Origins*, vol. 9, (1980), 653-666.

_____, apostolic letter *motu proprio Sacramentorum sanctitatis tutela*, 30 April 2001, in *AAS*, 93 (2001), 737-739, English translation in W. WOESTMAN, *Ecclesiastical Sanctions and the Penal Process: A Commentary on the Code of Canon Law*, 2nd ed., Ottawa, Faculty of Canon Law Saint Paul University, 2003, 300-302.

LEO XIV, *motu proprio Regolamento generale della curia romana*, 23 November 2025, at https://www.vatican.va/content/leo-xiv/it/motu_proprio/documents/20251123-regolamento-generale-curia-romana.html (13 March 2026).

BIBLIOGRAPHY

Missale romanum: ex decreto sacrosancti oecumenici concilii Vaticani II instauratum, auctoritate Pauli PP. VI promulgatum Ioannis Pauli PP. II cura recognitum, 3rd ed., Vatican City, Libreria editrice Vaticana, 2002.

PAUL VI, encyclical letter *Mysterium fidei*, 3 September 1965, in *AAS*, 57 (1965), 753-774, English in KARLEN, C. (ed.), *The Papal Encyclicals*, Wilmington, McGrath Publishing, 1981, vol. 5, 165-177.

PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, acts of *Coetus studiorum "de sacramentis*," Session VI, in *Comm*, 31 (1999), 116-151.

_____, acts of *Coetus studiorum "de sacramentis*," Session VII, in *Comm*, 31 (1999), 189-240.

_____, acts of *Coetus studiorum "de sacramentis*" *series altera*, Session VI, in *Comm*, 13 (1981), 211-245.

_____, *Relatio complectens synthesim animadversionum ab em.mis atque exc.mis patribus commissionis ad novissimum schema codicis iuris canonici exhibitarum, cum responsionibus a secretaria et consultoribus datis: patribus commissionibus stricte reservata*, Vatican City, Typis polyglottis Vaticanis, 1981.

_____, *Schema documenti pontificii quo disciplina canonica de sacramentis recognoscitur: reservatum*, Vatican City, Typis polyglottis Vaticanis, 1975.

PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, declaration *Circa la celebrazione dei sacramenti da parte dei sacerdoti che hanno attentato il matrimonio*, in *Comm*, 29 (1997), 17-18.

_____, explanatory note *Applicazione del can. 223 § 2 CIC*, 8 December 2010, in *Comm*, 42 (2010), 280-281.

_____, Instruction to be Observed by Diocesan and Interdiocesan Tribunals in Handling Causes of the Nullity of Marriage *Dignitas connubii*, 25 January 2005, in *Comm*, 37 (2005), 11-92, English in PCLT, *Dignitas connubii*: Instruction to be Observed by Diocesan and Interdiocesan Tribunals in Handling Causes of the Nullity of Marriage, Vatican City, Libreria editrice Vaticana, 2005.

_____, note *Elementi per configurare l'ambito di responsabilità canonica del Vescovo diocesano nei riguardi dei presbiteri incardinati nella propria diocesi e che esercitano nella medesima il loro ministero*, February 12, 2004, in *Comm*, 36 (2004), 33-38.

Pontificale Romanum ex decreto sacrosancti oecumenici concilii Vaticani II renovatum auctoritate Pauli PP. VI editum Ioannis Pauli PP. II cura recognitum: *de*

ordinatione episcopi, presbyterorum et diaconorum, 3rd ed., Vatican City, Libreria editrice Vaticana, 2011.

SACRED CONGREGATION FOR BISHOPS AND RELIGIOUS, *Comen.*, 27 October 1593, in *Fontes*, vol. 4, no. 1496, 649.

_____, *Feltren*., 5 February 1595, in *Fontes*, vol. 4, no. 1532, 665.

SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, letter *Per litteras*, 14 October 1980, in *AAS*, 72 (1980), 1132-1135.

_____, norms D*e modo procedendi in examine et resolutione petitionum quae dispensationem a caelibatu respiciunt*, in *AAS*, 72 (1980), 1136-1137, English at https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19801014_dispensa-celibato_en.html (22 January 2025).

SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, encyclical letter, 20 April 1873, in *Fontes*, vol. 7, no. 4884, 456-457.

SACRED CONGREGATION OF CARDINALS, response, 26 August 1826, in C. LINGEN, and P. REUSS (eds.), *Causae selectae in S. Congregatione Cardinalium Concilii Tridentini Concilii Tridentini interpretum propositae per summaria precum ab anno 1823 usque ad annum 1869*, at https://books.google.ca/books?id=FkkIMpZY7BQC&printsec=frontcover&source=gbs_book_other_versions_r&redir_esc=y#v=onepage&q&f=false (28 January 2026).

SACRED CONGREGATION OF THE HOLY OFFICE, decree *De missa celebrandi a vagis*, 11 August 1649, in *ASS*, 24 (1891), 701.

SECOND VATICAN COUNCIL, Decree Concerning the Pastoral Office of Bishops in the Church *Christus Dominus*, 28 October 1965, in *AAS* 58 (1966), 673-696, English in TANNER, vol. 2, 921-939.

_____, Dogmatic Constitution on the Church *Lumen gentium*, 21 November 1954, in *AAS*, 57 (1965), 5-67, English translation in TANNER, vol. 2, 849-900.

_____, Decree on the Ministry and Life of Priests *Presbyterorum ordinis* 7 December 1965, in *AAS* 58 (1966), 991-1024, English translation in TANNER, vol. 2, 1042-1069.

SECRETARIAT OF STATE, *rescriptum ex audientia* Derogations from the Code of Canon Law Concerning Offenses against the Sixth Commandment Committed by a Cleric with a Minor, 25 April 1994, in W. WOESTMAN, *Ecclesiastical Sanctions and the Penal Process: A Commentary on the Code of Canon Law*, 2nd ed., Ottawa, Faculty of Canon Law**,** Saint Paul University, 2003, 270-271.

BIBLIOGRAPHY

SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA, definitive sentence *coram* FAGIOLO, June 11, 1993, in *Ius ecclesiae*, 32 (2020), 183-210, English in *DANIEL3*, 157-179.

_____, definitive sentence *coram* Agustoni, 24 June 1995, in *DANIEL1*, 357-376.

_____, definitive sentence *coram* Davino, 4 May 1996, in *IE*, 9 (1997), 595-597, English in *DANIEL1*, 383-387.

_____, definitive sentence *coram* Pompedda, 6 May 2000, in *Ius ecclesiae*, 30 (2018), 593-613.

_____, definitive sentence *coram* Cacciavillan, 18 March 2006, in *DANIEL2*, 59-70.

_____, definitive sentence *coram* Grocholewski, 28 April 2007, in *DANIEL1*, 415-439.

_____, decree of the Prefect in Congresso, 13 June 2008, in *DANIEL2*, 117-125.

_____, decree of the Prefect in Congresso, 30 May 2009, in *DANIEL2*, 127-133.

_____, definitive sentence *coram* Versaldi, 18 November 2010, Prot. N. 42480/09 CA, unpublished,

_____, decree of the Secretary, 18 December 2012, in *DANIEL2*, 217-221.

_____, definitive sentence *coram* Stankiewicz, 20 June 2013, in *DANIEL2*, 144-178.

_____, definitive sentence *coram* Versaldi, 24 June 2014, Prot. no. 47888/13 CA unpublished.

_____, definitive sentence *coram* Zvolensky, 15 January 2016, in *IC*, 63 (2023), 803-813, English in *DANIEL3*, 315-329.

_____, definitive sentence c*oram* Stankiewicz, 16 January 2016, in *Apollinaris* 92 (2019), 356-362, English in *DANIEL3*, 297-313.

_____, definitive sentence *coram* Versaldi, 29 November 2017, in *IC*, 60 (2020), 843-852, English in *DANIEL3*, 345-358.

_____, definitive sentence *coram* Burke, 30 November 2017, Prot. no. 51606/16 CA, unpublished.

_____, definitive sentence *coram* Stankiewicz, 25 April 2018, Prot. no. 52364/18 CA, unpublished.

_____, definitive sentence *coram* Stankiewicz, 26 January 2019, in *IC*, 63 (2023), 381-400, English in *DANIEL3*, 385-412.

_____, definitive sentence *coram* Burke, 8 October 2019, Prot. no. 51677/16 CA, in *IE*, 38 (2026), 293-307, with English translation.

_____, decree of the Congresso, 14 November 2019, Prot. N. 51822/16 CA, unpublished,

_____, defintive sentence *coram* Versaldi, 25 June 2020, Prot. N. 52362/16 CA, unpublished.

_____, definitive sentence *Coram* Daneels, 26 March 2021, Prot. N. 54067/18 CA, unpublished.

_____, definitive sentence *coram Burke*, 26 March 2021, Prot. no. 51822/16 CA, unpublished.

_____, definitive sentence *coram* Sandri, 26 March 2021, Prot. no. 52535/17 CA, unpublished.

_____, definitive sentence *coram* Mamberti, 3 December 2021, Prot. no. 53788/18 CA, unpublished.

_____, definitive sentence *coram* Mamberti, 3 December 2021, in *IE*, 36 (2024), 671-681.

_____, definitive sentence *coram* Daneels, 14 December 2021, Prot. no. 55056/20 CA, unpublished.

_____, definitive sentence *coram* Daneels, 28 October 2022, Prot. no. 53090/17 CA, unpublished.

_____, definitive sentence *coram* Hendriks, 6 February 2023, Prot. no. 54523/19 CA, unpublished.

_____, definitive sentence *coram* Migliavacca, 16 November 2023, Prot. no. 54619/19 CA, unpublished.

_____, definitive sentence *coram* Sandri, 27 June 2024, Prot. N. 55648/21 CA, in *IE*, 38 (2026), 309-322, with English translation.

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, "Charter for the Protection of Children and Young People," in *Promise to Protect Pledge to Heal*, revised 2018, art. 13, (https://www.usccb.org/resources/Charter-for-the-Protection-of-Children-and-Young-People-2018-final%281%29.pdf 10 March 2026).

BIBLIOGRAPHY

Books

ABBO, J., HANNAN, J., *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church*, rev. ed., vol. 1, St. Louis/London, Herder Book Co., 1957.

ANON., *The Sayings of the Desert Fathers: The Alphabetical Collection*, B. WARD (trans.), London, A.R. Mowbray & Co. Ltd., 1975.

ARRIETA, J (ed.), *Code of Canon Law Annotated*, 4th ed., Gratianus Series, Montreal, Wilson & Lafleur, 2022.

_____, *Codice di diritto canonico e leggi complentari commentato*, 9th ed., Pontificia Università della Santa Croce Testi Legislativi 5, Rome, Coletti a San Pietro, 2025.

_____, *Discrezionalità e discernimento nel governo della Chiesa*, Istituto di diritto canonico San Pio X Studi 8, Venice, Marcianum Press, 2008.

_____, *Governance Structures within the Catholic Church*, Gratianus Series, Montreal, Wilson & Lafleur Ltd., 2000.

ARROBA-CONDE, M., *Diritto processo canonico*, 7th ed., Rome, EDIURCLA, 2020.

BAURA, E., and J. CANOSA (eds.), *La giustizia nell'attività amministrativa della Chiesa: il contenzioso amministrativo*, Milan, Giuffrè, 2006.

BONNET, P., and C. GULLO (eds.), *La* lex propria *del S.T. della Segnatura Apostolica*, Studi Giuridici LXXXIX, Vatican City, Libreria editrice Vaticana, 2010.

BRIGHT, W., *Notes on the Canons of the First Four General Councils*, Oxford, Clarendon Press, 1882, https://archive.org/details/notesonthecanons00briguoft/mode/2up?ref=ol (29 April 2026).

CANCE, A., *Le code de droit canonique: commentaire succinct et practique*, R. Naz (ed.) vol. 2, Paris, Librairie Lecoffre, 1934.

CAPPELLO, F., *Tractatus canonico-moralis de sacramentis*, 5th ed., vol. 1, Rome, Marietti, 1947-1961.

CHIAPPETTA, L., *Il codice di diritto canonico: commento giuridico-pastorale*, F. CATOZZELLA et al. (eds.), 3rd ed., Bologna, Edizione Dehoniane, 2011, 3 vols.

CITO, D. (ed.), *Processo penale e tutela dei diritti nell'ordinamento canonico*, Pontificia Università della Santa Croce Monografie Giuridiche 28, Milan, Giuffrè Editore, 2005.

BIBLIOGRAPHY

CLAEYS BOUUAERT, F., *De sacramentis*, 2nd ed., Manualis iuris canonici, vol. 2, Ghent/Liège, 1935.

CORRAL-SALVADOR, C., V. DE PAOLIS, and G. GHIRLANDA (eds.), *Nuovo dizionario di diritto canonico*, 2nd ed., Milan, Edizioni San Paolo, 1996.

DA CORONATA, M., *Institutiones iuris canonici ad usum utriusque cleri et scholarum de sacramentis: tractatus canonicus*, Turin/Rome, Marietti, 1943.

DANIEL, W. (ed.), *Ministerium iustitiae. Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, Gratianus Series, Montreal, Wilson & Lafleur, 2011.

_____, *Ministerium iustitiae vol. II: The Lex propria and More Recent Contentious-Administrative Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, Gratianus Series, Montreal, Wilson & Lafleur, 2021.

_____, *Ministerium iustitiae vol. III: More Recent Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, Gratianus Series, Montreal, Wilson & Lafleur, 2026.

DE CLERCQ, C., *Traité de Droit Canonique*, vol. 2, Paris, Letouzey et Ané, 1947-1949.

DE PAOLIS, V., and D. CITO (eds.), *Le sanzione nella Chiesa: commento al codice di diritto canonico libro VI*, Manuali 8, Vatican City, Urbaniana University Press, 2000.

DOKTORCZYK, S., *Persistent Disobedience to Church Authority: History, Analysis, and Application of Canon 1371*, *2°*, Tesi Gregoriana, Serie diritto canonico, no. 185, Rome, Editrice Pontificia Università Gregoriana, 2016.

DUGAN, P. (ed.), *Advocacy Vademecum*, Gratianus Series, Montreal, Wilson & Lafleur, 2006.

GASPARRI, P., *Codicis iuris canonici fontes*, Typis polyglottis Vaticanis, 1923-1939, 9 vols. (vols. 7-9 ed. by I SERÉDI).

_____, *Tractatus canonicus sanctissima Eucharistia*, vols. 1-2, Paris, Delhomme et Briguet, 1897.

GHIRLANDA, G., *Il sacramento dell'ordine e la vita dei chierici: (Cann. 1008-1054; 232-297)*, 2nd ed., Rome, Edizioni Studium, 2024.

GRAY, R., *Cardinal Manning: A Biography*, New York, St. Martin's Press, 1985.

HERVADA, J., *Diritto costituzionale canonico*, G. LO CASTRO (trans.), Milan, Giuffrè Editore, 1989.

BIBLIOGRAPHY

HUELS, J., *Empowerment for Ministry: A Complete Manual on Diocesan Faculties for Priests, Deacons, and Lay Ministers*, New York NY/Mahwah NJ, Paulist Press, 2003.

_____, *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry*, 5th ed., Gratianus Series, Montreal, Wilson & Lafleur, 2016.

INCITTI, G., *Il sacramento dell'ordine nel codice di diritto canonico: il ministero dalla formazione all'esercizio*, 2nd ed., Manuali Diritto Strumenti di Studio e Ricerca 63, Rome, Urbaniana University Press, 2021.

INTERGUGLIELMI, A., *I decreti singolare nell'esercizio della potestà amministrativa della chiesa particolare: studio giuridico-pratico sulla potestà amministrativa del vescovo diocesano con schemi di decreto*, Studi Giuridici XCV, Vatican City, Libreria editrice Vaticana, 2012

JONE, H., *Commentarium in codicem iuris canonici*, vol. 2, Paderborn, Libraria F. Schöningh, 1954.

KINSHIE LENYE, P., *La discipline et l'application du canon 1399 du Code de droit canoniqu face aux cas de scandales dans l'Église*, Paris, L'Harmattan, 2026.

LEWIS, C., and SHORT, C., *A Latin Dictionary*, Oxford, Clarendon Press, 1879.

LIGUORI, A., *The School of Christian Perfection*, C. WARREN (trans.), Boston, Mission Church Press, 1912.

LINGEN, C., and R. REUSS, (eds.), *Causae selectae in S. Congregatione Cardinalium Concilii Tridentini Concilii Tridentini interpretum propositae per summaria precum ab anno 1823 usque ad annum 1869*, at https://books.google.ca/books?id=FkkIMpZY7BQC&printsec=frontcover&source=gbs_book_other_versions_r&redir_esc=y#v=onepage&q&f=false (28 January 2026).

MIRAS, J., J. CANOSA, and E. BAURA, (eds.), *Compendio di diritto amministrativo canonico*, 2nd ed., Pontificia Università della Santa Croce Facoltà di Diritto Canonico Subsidia Canonica 4, Rome, EDUSC, 2009

NAVARRO, L. (ed.), *L'istituto dell'incardinazione: natura e prospettive*, Pontificia Università della Santa Croce Monografie Giuridiche 29, Milan, Giuffrè Editore, 2006.

PAPALE, C., *I processi: commenti ai canoni 1400-1670 del codice di diritto canonico*, Manuale diritto strumenti di studio e ricerca, 49, Vatican City, Urbaniana University Press, 2017.

BIBLIOGRAPHY

PIGHIN, B., *Il nuovo sistema penale della chiesa*, Facoltà di Diritto Canonico San Pio X Manuali 15, Venice, Marcianum Press, 2021.

PINTO, P. (ed.), *Commento al codice di diritto canonico*, 2nd ed., Studium Romanae Rotae: Corpus iuris canonici, vol. 1, Vatican City, Libreria editrice Vaticana, 2001.

_____, *I processi nel codice di diritto canonico: commento sistematico al lib. VII*, Vatican City, Libreria editrice Vaticana, 1993.

PRICE, R. and M. GADDIS (eds.), *The Acts of the Council of Chalcedon*, Translated Texts for Historians 45, 2 vols., Liverpool, Liverpool University Press, 2005, https://www-liverpooluniversitypress-co-uk.proxy.bib.uottawa.ca/doi/epdf/10.3828/9780853230397 (3 February 2026).

QDE (eds.), *Codice di diritto canonico commentato*, 6th ed., Milan, Ancora editrice, 2022.

REGATILLO, E., *Ius sacramentarium*, vol. 1, Santander, Sal Terrae, 1945.

REILLEY, P., *Non-Penal Disciplinary Measures Imposed on Clerics: An analysis in the Light of the Essential Norms of the United States Conference of Catholic Bishops and Published Jurisprudence from the Apostolic Signatura Regarding the Principle of Proportionality*, Dissertationes Series Canonica LXXI, Rome, Edizioni Santa Croce, 2024.

RENKEN, J., *The Penal Law of the Roman Catholic Church: Substantive Law*, Ottawa, Faculty of Canon Law Saint Paul University, 2024.

SALVATORI, D., R. PALOMBI, and A. CATTA (eds.), *Diritto penale canonico: dottrina, prassi e giurisprudenza della curia romana*, Annales Doctrinae et Iurisprudentiae Canonicae, XV, Vatican City, Libreria editrice Vaticana, 2023.

SANCHÍS, J., *La legge penale e il precetto penale*, Ateneo Romano della Santa Croce Monografie Giuridiche, vol. 7, Milan, Giuffrè Editore, 1993.

SUCHECKI, Z. (ed.), *Il processo penale canonico*, Facoltà di Diritto Canonico Quaderni di Apollinaris, Rome, Lateran University Press, 2003.

_____, *Le sanzioni penali nella Chiesa: Parte I, I delitti el le sanzione penali in genere (cann. 1311-1363)*, Vatican City, Libreria editrice Vaticana, 1999.

SZUROMI, A. (ed.), *Il quindicesimo anniversario dell'Istituto di Diritto Canonico "ad instar facultatis" dell'Università Cattolica Pázmány Péter*, Budapest, Szent Istuán Társulat, 2011.

TANNER, N., *Decrees of the Ecumenical Councils*, London & Washington, DC, Sheed & Ward and Georgetown University Press, 1990, 2 vols.

VERMEESCH, A., and I. CREUSEN, *Epitome iuris canonici cum commentariis: ad scholas et ad usum privatum*, 7th ed., vol. 2, Mechelen/ Rome, H. Dessain, 1954.

VON WILHELM REES, H., H. KALB, and C. NIEMAND (eds.), *Kanonist, Ordensmann und Gestalter: Festschrift zur Emeritierung von. Univ.-Prof. Mag. Theol. Dr. iur Dr. iur. can. Severin Johann Lederhilger OPraem*, Berlin, Duncker & Humblot, 2023.

WERNZ, F., and P. VIDAL, *Ius Canonicum*, vol. 1 Rome, Gregorian University, 1934.

WINROTH, A., and J. WEI (eds.), *The Cambridge History of Medieval Canon Law*, Cambridge, Cambridge University Press, 2022.

WOESTMAN, W., *Ecclesiastical Sanctions and the Penal Process: A Commentary on the Code of Canon Law*, 2nd ed., Ottawa, Faculty of Canon Law Saint Paul University, 2003.

_____, *Sacraments: Initiation, Penance, Anointing of the Sick: Commentary on Canons 840-1007*, 3rd ed., Ottawa, Faculty of Canon Law Saint Paul University, 2004.

WOYWOD, S., and C. SMITH, *A Practical Commentary on the Code of Canon Law: by Stanislaus Woywod*, *Revised by Callistus Smith.*, revised and enlarged edition of combined vols. I and II, New York, Joseph F. Wagner, Inc., 1957

Articles

ARCHDIOCESE OF TORONTO, ONTARIO, Safe Environment Policy – Priests from Outside of the Archdiocese, https://www.archtoronto.org/en/our-community/safe-environment-policy/ (10 March 2026).

ASTIGUETA, D., "Lo scandolo nel CIC: significato e portata giuridica," in *Periodica*, 92 (2003), 589-651.

AUSTIN, B., "Canon 291 and the 1980 *Normae procedurales*, Art. 4: *Suspnesio ad cautelam* for Priests Requesting 'Laicization,'" in *Roman Replies and Advisory Opinions*, 2020, 105-109.

AUSTIN, B., "Due Process of Law and the USCCB Norms," in *StC*, 51 (2017), 58-64.

BAURA, E., "Analisi del sistema canonico di giustizia amministrativa," in E. BAURA and J. CANOSA (eds.), *La giustizia nell'attività amministrativa della Chiesa: il contenzioso amministrativo*, Milan, Giuffrè, 2006, 1-58.

_____, "Atto amministrativo e limitazione del diritti," in J. ARRIETA (ed.), *Discrezionalità e discernimento nel governo della Chiesa*, Istituto di diritto canonico San Pio X Studi 8, Venice, Marcianum Press, 2008, 187-213.

_____, "La legge propria della Segnatura Apostolica: le sanzioni disciplinari, i ricorsi gerarchici, le dichiarazioni di nullità del matrimonio," in P. BONNET and C. GULLO (eds.), *La* lex propria *del S.T. della Segnatura Apostolica*, Studi Giuridici LXXXIX, Vatican City, Libreria editrice Vaticana, 2010, 337-371.

BEAL, J., "The 1962 Instruction *Crimen sollicitationis*: Caught Red-Handed or Handed a Red Herring?" in *StC*, 41(2007), 199-236.

_____, "Administrative Leave: Canon 1722 Revisited," in *StC*, 27 (1993), 293-320.

_____, "Doing What One Can: Canon Law and Sexual Misconduct," in *J*, 52 (1992), 642-683.

BEGUS, C., "Principio di proporzionalità e diritto amministrativo canonico: Indizi giurisprudenziali," in *Apollinaris*, 92 (2019), 371-382.

BOCCAFOLA, K., "Le norme penali degli USA e la loro applicazione," in D. CITO (ed.), *Processo penale e tutela dei diritti nell'ordinamento canonico*, Pontificia Università della Santa Croce Monografie Giuridiche 28, Milan, Giuffrè Editore, 2005, 303-326.

BONA, R., The Right to Ministry, Remuneration and Support of Unassignable Incardinated Presbyters: A Canonical Analysis, JCD thesis, Washington, DC, The Catholic University of America, 2019.

BONNET, P., Commentary on Canon 1457, in *Exegetical Comm*, vol. IV/1, 883-884.

BRUGNOTTO, G., "La celebrazione eucaristica venga compiuta nel luogo sacro (c. 932, §1)," in *QDE*, 9 (1996), 476-482.

BURKE, R., "Canon Law at the Service of Justice and Freedom in the Church as the People of God," 28 August 2012 at https://zenit.org/2012/08/30/cardinal-burke-to-kenya-canon-law-convention/, and https://www.catholicculture.org/culture/library/view.cfm?recnum=10035 (October 25, 2025**).**

BUTTERWORTH, R., "Council of Chalcedon 451: Introduction," in TANNER, vol. 1, 75-76.

CALVO, J., Commentary on Canon 1457, in *CCLA4*, 1164-1165.

CANOSA, J., "L'articolazione dynamica della distinzione fra diritto penale e diritto amministrative nella chiesa," in *IE*, 32 (2020), 198-209.

_____, "Il procedimento amministrativo disciplinare previsto in alcuni regolamenti vigenti nella curia romana," in D. CITO (ed.), *Processo penale e tutela dei diritti nell'ordinamento canonico*, Pontificia Università della Santa Croce Monografie Giuridiche 28, Milan, Giuffrè Editore, 2005, 433-448.

BIBLIOGRAPHY

THE COMMISSION TO INQUIRE INTO CHILD ABUSE, *Commission Report*, 5 vols., Dublin, Government of Ireland, 2009 at https://childabusecommission.ie/, (20 April 2026).

CONN, J., "Canon 903 and Other Restrictions on Ministerial Mobility," in *CLSA Proceedings*, 78 (2016), 78-88.

CONNOLLY, P., "The Concept of Scandal in a Changed Ecclesial Context," in *StC*, 51 (2017), 135-148.

COPPOLA, R., Commentary on Canon 1722, in *Exegetical Comm*, vol. IV/2, 2017-2020.

CORIDEN, J., Commentary on c. 764 in *CLSA Comm2*, 925-926.

DALY, B., "Removal of the Faculties of a Priest by a Diocesan Bishop," in *The Canonist*, 8 (2017), 94-109.

DAMIZIA, G., Commentary on c. 384, in P. PINTO (ed.), *Commento al codice di diritto canonico*, 2nd ed., Studium Romanae Rotae: Corpus iuris canonici, vol. 1, Vatican City, Libreria editrice Vaticana, 2001, 235.

DANEELS, F., "Il riferimento al c. 1348 come asserita base legale per la sospensione amministrativa non penale nella giurisprudenza della Segnatura Apostolica," in H. VON WILHELM REES, H. KALB, and C. NIEMAND (eds.), *Kanonist, Ordensmann und Gestalter: Festschrift zur Emeritierung von. Univ.-Prof. Mag. Theol. Dr. iur Dr. iur. can. Severin Johann Lederhilger OPraem*, Berlin, Duncker & Humblot, 2023, 295-302.

DANIEL, W., "The Faulty Execution of a Definitive Sentence Declaring the Illegitimacy of a De Facto Penal Decree," in *IE*, 38 (2026), 323-338.

_____, "The Judicial Protection of Priestly Ministry in the Jurisprudence of the Apostolic Signatura," in *J*, 81 (2025), 227-274.

DEFENSOR DEL PUEBLO, *Informe sobre los abusos sexuales en el ámbito de la Iglesia católica y el papel de los poderes públicos: una respuesta necesaria*, Madrid, 2023, at https://www.defensordelpueblo.es/en/publications/report-sexual-abuse-within-catholic-church-role-public-authorities/ (20 April 2026).

DE LA HERA, A., Commentary on c. 384, in *Exegetical Comm*, vol. II/1, 790-791.

DE LEÓN, E., Commentary on c. 930, in *Exegetical Comm*, vol. III/1, 652-653.

DE OTADUY, J., Commentary on c. 274, in *Exegetical Comm*, II/I, 329-332.

BIBLIOGRAPHY

DE PAOLIS, V., "Incardinazioni anomale," in L. NAVARRO (ed.), *L'istituto dell'incardinazione: natura e prospettive*, Pontificia Università della Santa Croce Monografie Giuridiche 29, Milan, Giuffrè Editore, 2006, 351-377.

_____, Legge e precetto penali (lex poenalis, praeceptum poenale), in C. CORRAL-SALVADOR, V. DE PAOLIS, and G. GHIRLANDA (eds.), *Nuovo dizionario di diritto canonico*, 2nd ed., Milan, Edizioni San Paolo, 1996, 631.

_____, "Il processo penale amministrativo," in Z. SUCHECKI (ed.), *Il processo penale canonico*, Facoltà di Diritto Canonico Quaderni di Apollinaris, Rome, Lateran University Press, 2003, 215-234.

_____, "La punizione dei delitti in genere (cc. 1311-1312)," in V. DE PAOLIS and D. CITO (eds.), *Le sanzione nella Chiesa: commento al codice di diritto canonico libro VI*, Manuali 8, Vatican City, Urbaniana University Press, 2000, 87-124.

_____, "Sanzioni penali, rimedi penali e penitenze nell'ordinamento canonico," in D. CITO (ed.), *Processo penale e tutela dei diritti nell'ordinamento canonico*, Pontificia Università della Santa Croce Monografie Giuridiche 28, Milan, Giuffrè Editore, 2005, 165-208.

DIOCESE OF ST. CATHARINES, ONTARIO, Responding to Allegations of Sexual Abuse of Children or Vulnerable Persons, 4th ed., October 2019, no. 33, at https://saintcd.com/userfiles/Abuse-Policy-JULY-2020.pdf (10 March 2026).

DIOCESE OF YOUNGSTOWN, OHIO, Notice on Requesting Letters of Suitability, 21 November 2024, at https://doy.org/letters-of-suitability-required/ (10 March 2026).

ERDÖ, P., Commentary on Canon 900, in *Exegetical Comm*, vol. III/1, 576-578.

_____, Commentary on c. 903, in *Exegetical Comm*, vol. III/1, 585-586.

_____, "Il diritto amministrativo canonico: disciplina giuridica autonoma?" in A. SZUROMI (ed.), *Il quindicesimo anniversario dell'Istituto di Diritto Canonico "ad instar facultatis" dell'Università Cattolica Pázmány Péter*, Budapest, Szent Istuán Társulat, 2011, 15-25.

FABIO, F., Commentary on Canon 900, in *QDE* (eds.), *Codice di diritto canonico commentato*, 6th ed., Milan, Ancora editrice, 2022, 776-777.

FELTON, D., "Update regarding Father William C. Graham," in *The Northern Cross*, vol. 2, no. 5 (2024), 10.

FERME, B., "Graviora delicta: the M.P. sacramentorum sanctitatis tutela," in Z. SUCHECKI (ed.), *Il processo penale canonico*, Facoltà di Diritto Canonico Quaderni di Apollinaris, Rome, Lateran University Press, 2003, 365-382.

BIBLIOGRAPHY

FORTESCUE, A., "John Scholasticus," in *The New Catholic Encyclopedia*, 2nd ed., Washington DC, The Catholic University of America, vol. 7, 915-916.

FRENCH INDEPENDENT COMMISSION ON SEXUAL ABUSE IN THE CATHOLIC CHURCH, *Sexual Violence in the Catholic Church France 1950 – 2020: Final Report*, 2021 at https://www.ciase.fr/ (20 April 2026).

FUENTES, J., Commentary on c. 764 in *Exegetical Comm*, vol. III/1, 81-83.

GHIRLANDA, G. "Doveri e diritti implicati nei casi di abusi sessuali perpetrati da chierici," in *La Civiltà Cattolica*, 3646 (2002), 341-360.

GULLO, C., "Le ragioni della tutela giudiziale," in D. CITO (ed.), *Processo penale e tutela dei diritti nell'ordinamento canonico*, Pontificia Università della Santa Croce Monografie Giuridiche 28, Milan, Giuffrè Editore, 2005, 145-164.

HUELS, J., Commentary on Canon 900, in *CLSA Comm2*, 1097.

KASLYN, R., Commentary on c. 207, in *CLSA Comm2*, 251-254.

_____, "The Sacrament of Orders: Irregularities and Impediments – an Overview," in *J* 62 (2002), 159-194.

KIMES, J., "Reclaiming 'Pastoral:' *Pascite gregem Dei* and Its Vision of Penal Law," in *J*, 77 (2021), 269-289.

KIRBY, S., "Limitazione delle facoltà ministeriali," in D. SALVATORI, R. PALOMBI, and A. CATTA (eds.), *Diritto penale canonico: dottrina, prassi e giurisprudenza della curia romana*, Annales Doctrinae et Iurisprudentiae Canonicae, XV, Vatican City, Libreria editrice Vaticana, 2023

LLOBELL, J., "Due Process and the 'Administrativization' of the Canonical Penal Procedure," B. AUSTIN (trans.), in *StC*, 57 (2023), 171-228.

LOHSE, E., "The Origin and Nature of the Suspension *ad cautelam* of Article 4 of the 1980 *normae procedurals* for Dispensations from Celibacy," in *Periodica*, 94 (2005), 647-680.

LOZA, F., Commentary on c. 976, in *Exegetical Comm*, vol. III/1, 796-797.

LYNCH, J., Commentary on c. 274, in *CLSA Comm2*, 347-351.

MACDONALD, S., "Legality and Law: Some Reflections," in P. DUGAN, (ed.), *Advocacy Vademecum*, Gratianus Series, Montreal, Wilson & Lafleur, 2006, 107-113.

_____, What are We to Do? The Error of the "Broad Interpretation" (Canons 1044, §2, 2° and 1041, 1°), JCL Thesis, Rome, Pontificia Università Gregoriana, 2001.

MARZOA, A., Commentary on Canon 900, in J. ARRIETA (ed.), *Codice di diritto canonico e leggi complentari commentato*, 9th ed., Pontificia Università della Santa Croce Testi Legislativi 5, Rome, Coletti a San Pietro, 2025, 614.

MIGLIAVACCA, A., Commentary on c. 274, in *QDE* (eds.), *Codice di diritto canonico commentato*, 6th ed., Milan, Ancora editrice, 2022, 287-288.

MIRAGOLI, E., "Il *celebret*," in *QDE*, 7 (1994), 435-442.

MIRAS, J., "Lezione II – il principio di legalità e l'amministrazione ecclesiastica," in J. MIRAS, J. CANOSA, and E. BAURA (eds.), *Compendio di diritto amministrativo canonico*, 2nd ed., Pontificia Università della Santa Croce Facoltà di Diritto Canonico Subsidia Canonica 4, Rome, EDUSC, 2009, 57-84**.**

_____, "Lezione IV – Note sull' attività contrattuale e sanzionatoria dell'amministrazione ecclesiastica," in J. MIRAS, J. CANOSA, and E. BAURA (eds.), *Compendio di diritto amministrativo canonico*, 2nd ed., Pontificia Università della Santa Croce Facoltà di Diritto Canonico Subsidia Canonica 4, Rome, EDUSC, 2009, 121-153.

MONTINI, G., Commentary on Canon 1457, in *QDE* (eds.), *Codice di diritto canonico commentato*, 6th ed., Milan, Ancora editrice, 2022,

_____, "La funzione nomopoietica della giurisprudenza amministrativa per il diritto amministrativo canonico: alcuni esempi," in *Ephemerides iuris canonici*, New Series, 65 (2025).

_____, *Massime* for STAS, definitive sentence *coram* Burke, 8 October 2019, Prot. no. 52041/16 CA, https://www.iuscangreg.it/stsa_decisione.php?id_decisione=380&lang=IT (14 November 2025).

_____, *Massime* for STAS, definitive sentence *coram Burke*, 26 March 2021, Prot. no. 51822/16 CA, https://www.iuscangreg.it/stsa_decisione.php?id_decisione=396&lang=IT (14 November 2025).

_____, *Massime* for STAS, definitive sentence *coram* Daneels, 12 March 2021, Prot. no. 54067/18 CA, https://www.iuscangreg.it/stsa_decisione.php?id_decisione=391&lang=IT (14 November 2025).

_____, *Massime* for STAS, definitive sentence *coram* Daneels, 14 December 2021, Prot. no. 55056/20 CA, https://www.iuscangreg.it/stsa_decisione.php?id_decisione=402&lang=IT (14 November 2025).

_____, *Massime* for STAS, definitive sentence *coram* Daneels, 28 October 2022, Prot. no. 53090/17 CA, https://www.iuscangreg.it/stsa_decisione.php?id_decisione=411&lang=IT (15 November 2025).

_____, *Massime* for STAS, definitive sentence *coram* Hendriks, 6 February 2023, Prot. no. 54523/19 CA, https://www.iuscangreg.it/stsa_decisione.php?id_decisione=429&lang=IT (15 November 2025).

_____, "*Massime* for STAS, definitive sentence *coram* Migliavacca, 16 November 2023, Prot. no. 54619/19 CA," https://www.iuscangreg.it/stsa_decisione.php?id_decisione=429&lang=IT (15 November 2025).

_____, *Massime* for STAS, definitive sentence *coram* Sandri, 26 March 2021, Prot. no. 52535/17 CA, https://www.iuscangreg.it/stsa_decisione.php?id_decisione=395&lang=IT (14 November 2025).

_____, *Massime* for STAS, definitive sentence c*oram* Versaldi, 24 June 2014, Prot. no. 47888/13 CA, https://www.iuscangreg.it/stsa_decisione.php?id_decisione=258&lang=IT (17 November 2025).

_____, "Provvedimenti cautelare urgenti nel caso di accuse odiose nei confronti di ministri sacri. Nota sui canoni 1044 e 1722," in *QDE*, 12 (1999), 191-204.

_____, "Il sacerdote ministro della valida e della lecita celebrazione dell'Eucaristia," in *QDE*, 7 (1994), 398-412.

MOSCONI, M., Commentary on Canon 1722, in *QDE* (eds.), *Codice di diritto canonico commentato*, 6th ed., Milan, Ancora editrice, 2022, 1389-1390.

OBEL, A., The Agreement for Temporary Service of a Diocesan Priest Outside His Diocese of Incardination According to Canon 271 of the 1983 Code of Canon Law, JCD Thesis, Ottawa, Saint Paul University, 2017, 18-27, https://ruor.uottawa.ca/bitstream/10393/36717/1/Obel_Andrew_Kinarah_2017_Thesis.pdf (3 February 2026).

PAGÉ, R., Commentary on c. 556, in *Exegetical Comm*, vol. II/2, 1405-1408.

PAOLA, R., Il diritto del sacerdote a celebrare l'eucaristia, JCD Thesis, Rome, Pontificia Universitas Antonianum, 2013.

PAVANELLO, P., "L'adozione delle misure cautelari nel corso dell'indagine previa," in D. SALVATORI, R. PALOMBI, and A. CATTA (eds.), *Diritto penale canonico: dottrina, prassi e giurisprudenza della curia romana*, Annales Doctrinae et Iurisprudentiae Canonicae, XV, Vatican City, Libreria editrice Vaticana, 2023, 321-328.

BIBLIOGRAPHY

PENNSYLVANIA ATTORNEY GENERAL, *40th Statewide Investigating Grand Jury Report 1 Redacted*, 2023 at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/ https://www.attorneygeneral.gov/wp-content/uploads/2023/05/INVESTIGATING-GRAND-JURY-REPORT-NO.-1_FINAL_May-2023_Redacted.pdf (20 April 2026).

PERLASCA, A., Commentary on c. 1012, in *QDE (eds.), Codice di diritto canonico commentato*, 6th ed., Milan, Ancora editrice, 2022, 847-848.

PISANIELLO, G., Misure disciplinari nei confronti di chierici con disturbi psichici, JCD thesis, Rome, Pontificia Universitas Antonianum, 2014.

PUNDERSON, J., Commentary on c. 1709, in *Exegetical Comm*, vol. IV/2, 1949-1951.

RENKEN, J., Commentary on c. 384, in *CLSA Comm2*, 522-523.

RHODE, U., "La sospensione imposta di carrattere non penale," in *Periodica*, 109 (2020), 273-312.

RODRÍGUES-OCAÑA, R., "El control judicial del principio de proporcionalidad en los actos administrativos," in *IC*, 60 (2020), 853-867.

RODRÍGUEZ-OCAÑA, R., "Limitaciones al ejercicio del ministerio tras sentencia absolutoria," in *IC*, 63 (2003), 853-867.

ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE, *Final Report*, 17 vols., Commonwealth of Australia, 2027 at https://www.childabuseroyalcommission.gov.au/final-report (20 April 2026).

ROSINSKI, M., Due Process to Be Followed in the Administration of Discipline in Religious Institutes According to the Code of Canon Law, JCD thesis, Ottawa, Saint Paul University, 2016.

SANCHÍS, J., Commentary on canon 1399, in *Exegetical Comm*, vol. IV/1, 559-561.

SCICLUNA, C., "Procedura e prassi presso la Congregazione per la Dottrina della Fede riguardo ai *delicta graviora*," in D. CITO (ed.), *Processo penale e tutela dei diritti nell'ordinamento canonico*, Pontificia Università della Santa Croce Monografie Giuridiche 28, Milan, Giuffrè Editore, 2005, 279-288.

SPECULUM IUSTITIAE THE CANON LAW CONFERENCE, Speculum Iustitiae 2026 Conference Event Details, at https://speculumiustitiae.com/schedule/ (10 March 2026).

STANKIEWICZ, A., "La portata della funzione nomopoietica della giurisprudenza rotale," in *Periodica*, 100 (2011), 381-407.

BIBLIOGRAPHY

TANNER, N., "Church Councils," in *The Cambridge History of Medieval Canon Law*, A. WINROTH, and J. WEI (eds.), Cambridge, Cambridge University Press, 2022, 192-207.

TURNER, P., "Celebrating Mass Alone: What Does the Priest Do When No People Have Gathered?" in *The Priest*, vol. 81, no. 1 (2025), 15-18**.**

UNITED NATIONS GENERAL ASSEMBLY, *General Assembly Resolution 217 A: Universal Declaration of Human Rights*, 1948, art. 11.2.2 at https://www.un.org/en/about-us/universal-declaration-of-human-rights (20 April 2026).

THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, "Essential Norms for Diocesan/ Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons," in *Promise to Protect Pledge to Heal*, Washington, DC, United States Conference of Catholic Bishops, 2018, 19-28 at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.usccb.org/resources/Charter-for-the-Protection-of-Children-and-Young-People-2018-final%281%29.pdf (21 April 2026).

VAN BERKUM, A., "An Act of Christ and the Church: The Order of Mass with the Participation of Only One or No Minister," in *J*, 80 (2024), 85-119.

VIANA, A., Commentary on c. 132, in *Exegetical Comm*, vol. 1, 835-836.

VISIOLI, M., "I provvedimenti cautelari: annotazioni pratiche," in *QDE*, 32 (2022), 468-484.

WOESTMAN, W., "Restricting the Right to Celebrate the Eucharist," in *StC*, 29 (1995), 155-178.

_____, "Too Good to Be True: A Current Interpretation of Canons 1041, 1° and 1044, §2, 2°," in *ME*, 120 (1995), 619-629.

WOO, V., "The Celebration of Daily Mass with No Faithful Present after Vatican II," in *J*, 80 (2024), 53-83.

WRENN, L., Commentary on Canon 1457, in *CLSA Comm2*, 1637-1638.

BIOGRAPHICAL NOTE

Stuart MacDonald, born and raised in Welland, ON, obtained a B.A. in history and philosophy from McGill University in 1987, an M.A. in history from McGill in 1990 before entering St. Augustine's Seminary for the Diocese of St. Catharines. After obtaining an M.Div. from the Toronto School of Theology at the University of Toronto, he was ordained priest in 1997. He was engaged in parish ministry before studying canon law at the Pontifical Gregorian University in Rome where he earned his J.C.L. in 2001. Returning to parish ministry for two years, Stuart then began work as an official at the Congregation for the Doctrine of the Faith in Rome. Returning once again to the diocese, he has been engaged full-time in parish ministry, helping occasionally in tribunals as judge and defender of the bond but mostly using canon law as an advocate for priests.