

# Communion or schism?

## Are unattached bishops a threat to church order?

by

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*The views expressed in this article are those of the author and not necessarily those of the International Federation for a Renewed Catholic Ministry.*

### **The rule of law**

We take the maintenance of law and order in society for granted and few advocate anarchy. But bad laws bring the the concept of law itself into contempt and lead to violations, even by those normally considered law-abiding citizens. The prohibition era showed that – and the law was changed back. No system of law is perfect and each country has its own, and of course all countries have processes, more and less democratic, for *changing* the law as society changes – from the autocracy of Saudi Arabia to the highly developed democracy of Switzerland.

Today we even have supra-national bodies and agreements to which appeal can be made when a country's legal system has failed to uphold justice, such as the *International Criminal Court* in the Netherlands (sadly not accepted by the USA), the 1948 *Universal Declaration of Human Rights* and the 1989 United Nations' *Convention on the Rights of the Child*. In Europe we also have the *Council of Europe* with its *European Court of Human Rights* in Strasbourg to which the citizens of some 47 European countries can have recourse if they feel they have not obtained justice in their national courts.

### **Canon Law**

The Catholic Church too has its Canon Law. It was only properly codified in 1917 and thoroughly revised after Vatican II as the 1983 Code. It is true to say that many Catholics neither know about Canon Law nor care. It can be argued that our Church is beset with legalism and that the whole concept of law is contrary to the spirit of the Gospel.<sup>1</sup> And a case can also be made for the need for rules if we are to avoid anarchy. No one believes that the present Code is perfect and we have to acknowledge that the process to amend and improve it does not involve the faithful. It is the preserve of the pope's men in Rome with the pope himself the supreme law-giver. This is manifestly unsatisfactory, more akin to the eighteenth century pre-revolutionary France of Louis XIV than the twenty-first century participative democracies we live in.

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<sup>1</sup> The Sabbath was made for man, not the other way round, Jesus told us. Mark 2:23-28.

Three canons in the current Code in particular strike most reform-minded Catholics as in need of change. Canon 1404 insists that the 'The First See is judged by no one'. The pope is above the law and, as Paul VI demonstrated more than once at the Second Vatican Council<sup>2</sup>, is not only *not* subject to the world's bishops gathered in council but can also overrule its clear majority. Some Catholics believe that the pope should be made accountable to the Church in some way that this canon does not permit.

Canon 1024 states that 'Only a baptised man can validly receive sacred ordination'. The number of Catholics, including bishops, who believe this canon to be pernicious seems to grow every year. We have seen it being flouted and now the Church can boast of its 'non-canonical' *Roman Catholic Women Priests*.

Canon 1059:2 proclaims that every marriage between baptised persons is a sacrament, thus denying Catholics whose marriages have broken down irretrievably the remedy available to Orthodox Christians of a second *non-sacramental* marriage. The result is our undignified and disreputable nullity procedures which simply serve to bring the Church's law into contempt.<sup>3</sup> The canon law of the Orthodox churches has something to teach the Roman Catholic Church here.<sup>4</sup>

However unsatisfactory Canon Law is, it represents the rules under which the Church is *supposed* to operate.<sup>5</sup> Many Catholic canon lawyers have demonstrated that it is not as inflexible as some would have it.<sup>6</sup> Even if some of us dislike the whole concept of canon law and find it repugnant, we can still propose change. The *Bill of Rights and Responsibilities* adopted by the American Catholic Council in Detroit in June this year<sup>7</sup>, points the way to some of the reforms that many of us consider necessary. Even if we must campaign for the reform of canon law,<sup>8</sup> we surely cannot ignore it or consider it of no value at all.<sup>9</sup>

For this reason I should like in this article to examine the question of ordinations done contrary to canon law and their consequences, bad or good, for Church order. This means that I shall use such terms as irregular, illicit, non-canonical etc. It does not mean that I condemn all such acts so labelled, but I am keen to open a discussion within the reform movement of the extent to which some actions are necessary to witness to the Gospel – however contrary to canon law they may be – and how such

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2 See Franzoni's recent paper to the 31<sup>st</sup> Congress in September 2011 of the *Asociación de Teólogos y Teólogas Juan XXIII* in Madrid at <http://www.associationofcatholicpriests.ie/2011/09/vatican-ii-lost-and-betrayed-giovanni-franzoni/>.

3 See Sheila Rauch Kennedy, *Shattered Faith* (NY: Owl Books, 1997). She was subsequently vindicated by the Roman Rota in 2005 after lots of skulduggery by the Boston Archdiocese..

4 See Mgr Basil Loftus, 'Eastern promise' in *the Tablet*, 8 Oct 2011, pp 14-16.

5 400 Austrian Catholic priests have recently told the Archbishop of Vienna of their intention to act contrary to canon law in several areas, including giving the Eucharist to non-Catholics and to re-married divorced Catholics. (*The Tablet*, 8 Oct 2011, p 31)

6 See Caroline Vander Stichele et al (eds), *Disciples & Discipline – European Debate on Human Rights in the RC Church* (Leuven: Peeters, 1993) and Leonard Swidler and Herbert O'Brien, *A Catholic Bill of Rights*, (Kansas City: Sheed & Ward, 1988).

7 See *Corpus Reports* Vol 38, No 3 , p 7.

8 The *Association for the Rights of Catholics in the Church* is one organisation prominent in this field: [www.arcc-catholic-rights.net](http://www.arcc-catholic-rights.net).

9 As Anthony Padovano pointed out in his keynote address to the American Catholic Council, the last canon in the list (1752) proclaims the highest law to be the salvation of souls and that must take precedence. Padovano uses canon law to excellent effect in that paper. See below fn 22.

actions can lead to our being accused of schism or even to anarchy. If the language seems offensive and condemnatory, that is not my intention; not everything that is illegal is wrong or even undesirable, as we all know.

### **The ministry of illegally ordained bishops**

My friend William Manseau's moving account of his progression to episcopal consecration on 11 June 2011 in Detroit [*Corpus Reports* Vol 37, No 5, pp 24-29] has not helped me resolve some niggling issues I have with ordinations contrary to canon law.

A major practical difficulty arises over the question of *episcopal* ordinations<sup>10</sup>. Traditionally bishops are ordained for a particular territorial diocese and remain in communion with the ecclesiastical authority which approved their episcopal ordination and with all other bishops in communion with the Holy See.

Once bishops are ordained without the approval of Rome, then schism is the risk. This situation exists at present in the eastern Orthodox churches, in the Chinese Catholic Church and in the body overseen by bishops in the Lefebvre succession. Some illicitly ordained bishops seek retrospective recognition by the Holy See and receive it. Many others do not seek such approval and insist on their autonomy or their communion with a number of other bishops flouting the primacy of Rome.

This results in, at two extremes, both the witness of the Orthodox churches and of the churches of the Old Catholic Union of Utrecht to their understanding of Catholic Tradition and the proliferation of *episcopi vagantes* (a technical term, lit. wandering bishops)<sup>11</sup> with only the loosest of connection with each other, with ever-changing names for their organisations.

### **In schism?**

But are we already in schism? Some might say so. The *International Federation for Renewed Catholic Ministry*, of which CORPUS is a member and of which I have the honour to be current president, is a self-proclaimed association of Roman Catholics operating under Canons 212.3, 215 and 216, among others (e.g. 299.1, 309, 748.1 - despite other canons undoubtedly appearing to circumscribe these rights)<sup>12</sup>. Its legitimacy as a voluntary and not episcopally approved association of Roman Catholics under Canons 215 and 300 can of course be questioned by rigorists<sup>13</sup>, not

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10 Canon 1013 states that 'No bishop is permitted to consecrate someone as bishop, unless it is first established that a pontifical mandate has been issued.'

11 The phenomenon of free-lance bishops was dealt with by Henry R T Brandreth (*Episcopi Vagantes and the Anglican Church*, London: SPCK, 1957), and Peter F Anson (*Bishops at Large*, London: Faber and Faber, 1962) and there are now numerous articles on the web. See particularly Lewis Keizer, *Wandering Bishops: Apostles of a New Spirituality*, (2000) downloadable at the bibliography of [http://en.wikipedia.org/wiki/Episcopi\\_vagantes](http://en.wikipedia.org/wiki/Episcopi_vagantes)

12 See <http://renewedcatholicministry.org/>

13 Its legitimacy can be questioned for the following reasons:

1. Its members accept and welcome the ministry of legitimately ordained Catholic priests who have resigned their position in order to marry, whether with or without dispensation. Such ministry, particularly when sacramental, is exercised irregularly, without formal and explicit approval by a bishop in good standing with the Holy See, and sometimes in defiance of it.

least for its willingness to support *Roman Catholic Women Priests*, but its members insist on their legitimacy within the Roman Catholic Church.

We deny that we are schismatic. But realistically how far can one go without breaching communion? Can a breach in communion be effected by one party acting alone? What if others in communion with Rome reject the actions of the excommunicator, the Bishop of Rome? We clearly do not take seriously the pronouncements of bishops like Fabian Bruskewitz of Lincoln Nebraska or Allen Vigneron of Detroit seeking to marginalise us. I know that 'excommunicated bishop' Christine Mayr-Lumetzberger when denied the Eucharist by some priest in an Austrian Catholic church, took the host herself, and I applaud. The schismatic Orthodox reject Roman primacy as exercised for the last thousand years, and many of us understand and sympathise with their reasons.

### **A particular case**

The IFRCM has been approached by one such irregularly ordained bishop in Africa, with the request that he and his organisation, however defined or named, be admitted to membership of the IFRCM. He lists some twenty bishops not recognised by Rome whom he has been associated with.<sup>14</sup> How do we evaluate the episcopal ministry of such men?

He also lists some of the groupings he has been involved with or had dealings with:

- Catholic Apostolic Church of the USA
- Charismatic Catholic Church of Kenya
- Christ Catholic Church International in Canada
- Caritas Catholic Church International [USA?]
- Ecumenical Catholic Church of Christ
- Ecumenical Church of Christ [UK?]
- Reformed Catholic Church of America
- Reformed Roman Catholic Church USA
- United Catholic Church

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2. Its members accept the ministry of RC women ordained deacon and priest in accordance with traditional RC understanding of apostolic succession, despite such women being declared excommunicate by the Holy See.
  3. It similarly accepts the ministry of RC women ordained bishops and declared excommunicate.
  4. It proclaims the right of all the baptised to choose a state of life without co-ercion (Canon 219) and thus rejects episcopal authority that denies priestly or episcopal ordination to married men or marriage to the ordained.
  5. It similarly proclaims the right of homosexuals to be sexually active in accordance with their informed consciences.
  6. It proclaims the right of the baptised to the Eucharist (Canon 213) and other sacraments and believes that at the present time in the history of the Church, ecclesiastical authority is denying this right to many of the faithful, who are thus justified by these exceptional circumstances in seeking and providing ministry without the usual canonical approval and in defiance of ecclesiastical authority.

<sup>14</sup> Ace Angel, Chege, Cornelius, Adrian Glover, Joseph Gouthro, George Jamba, Joaquin, Daniel Kasomo, Tom Kiisa, Mark Leavell, Luciano Mbewe of Zambia, Peter Ndambuki, Peter Njogu, George Otieno, Karl Rodig, Richard Rodney, Benedict Simiyu, Godfrey Shiundu, Matthew Teuri, Mullan, Bernard Wamalwa Kinisu, Phillip Zimmerman. [There may be some spelling errors here.]

- United Ecumenical Catholic Church
- United Free Catholic Church

My own researches have also revealed a number of other groupings with which these bishops and others have been associated.<sup>15</sup> Can they be considered Catholic associations under Canon 215 or are they in reality separate churches, in schism?

### **Orthodox objections**

Abba Seraphim, Metropolitan of Glastonbury, of the tiny British Orthodox Church, now within the Coptic Patriarchate of Alexandria, came from a background of competing episcopal jurisdictions in the UK not dissimilar to that obtaining today in the parts of Africa which have approached the IFRCM.<sup>16</sup> He is a long-standing personal friend of mine, and was asked by me to comment on this application from Africa. The Metropolitan made two points that merit attention: first about the ‘validity and regularity’ of ordinations contrary to canon law and secondly about the preservation of ‘Catholic Faith and Order.’

### **Validity**

As to the first point I do not believe that questions of ‘validity’ feature high in the minds of those who support the member associations of the IFRCM. Does not Orthodox theology have a theory of ‘economy’ that allows the Holy Spirit to make good human deficiencies in the sacraments? Some orthodox churches continue to ordain women deacons, as has been reliably shown<sup>17</sup> to have been the indubitable practice of the Roman Catholic Church for centuries, despite Rome today insisting that such ordinations are ‘invalid’ or of no effect.

### **Regularity**

‘Regularity’ is a more serious charge as it means we are accused of breaking communion by disobedience and defiance of ecclesiastical authority. It is a matter of conscience how far one can go to be faithful to one’s rights and defy the law.<sup>18</sup> Can one act ‘irregularly’ and still not commit the sin of schism? The traditional discipline of the Roman Catholic Church as to the irregularity of sexual lapses by the clergy has been one of tolerance and a pastoral approach to the offender, provided open scandal is not caused. Thus heterosexual and homosexual clergy secretly co-habiting with a partner have been seen as in *irregular* positions *but not totally out of communion*, whatever their canonical rights to access to the sacraments. I do not know of one sexually delinquent priest *excommunicated* for that reason alone<sup>19</sup>.

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15 African Orthodox Church, American Catholic Church, Catholic Diocese of One Spirit, Independent Catholic Charismatic Church of Kenya, Independent Catholic Church (or Diocese) of the Americas, Independent Liberal Catholic Fellowship, Liberal Catholic Apostolic Church, Married Priests Now Prelature, Reformed Catholic Church, Reformed Roman Catholic and Apostolic Church, Reformed Roman Catholic Church, United Ecumenical Catholic Church, United Free Catholic Church [diocese of the Good Shepherd Kenya]

16 Peter F Anson, *Bishops at Large* (London: Faber and Faber, 1962) pp 444-501

17 John Wijngaards, *No Women in Holy Orders? The Women Deacons of the Early Church* (Norwich: Canterbury Press, 2002)

18 St Paul told St Peter at the Council of Jerusalem that he was wrong to insist on observance of the Mosaic Law in the matter of circumcision, and he won the day (Acts 15 and Galatians 2). Will Roy Bourgeois?

19 Archbishop Emmanuel Milingo was of course disciplined for refusing to abandon the marriage he had contracted and later went on to ordain priests and bishops without permission from Rome. Strictly he is not an *episcopus vagans* as he was properly consecrated with the approval of Rome.

It is arguable that dishonesty is integral to the Roman system. This may be no bad thing when pastoral reasons trump law, so that people in second marriages can seek an 'internal forum' solution to their problem and thus continue to receive the sacraments. Homosexuals have been doing this for centuries. This policy of doing one thing and saying another may not be a bad thing after all, if it acknowledges the rights of conscience. But it brings the Church into disrepute when such duplicity becomes public. One is reminded of Charles Kingsley's charge to John Henry Newman that 'truth for its own sake had never been a virtue with the Roman clergy . . . cunning is the weapon which heaven has given to the saints wherewith to withstand the brute male force of the wicked world'<sup>20</sup> Newman then wrote his *Apologia pro Vita Sua* which triumphantly demonstrated his own honesty and integrity, but Monsignor Talbot had schemed against him in Rome and Cardinal Manning attempted to deceive Rome over Newman's willingness to accept a cardinal's hat. The integral deceit and dishonesty of many of the systems our Church relies on and pretends are in fine fettle have been amply chronicled by Garry Wills in his *Papal Sin – Structures of Deceit*.<sup>21</sup>

Anthony Padovano has recently written eloquently and compellingly of the consequences for church order of giving due weight to the *sensus fidelium*, of the integrity and canonical justification for *intentional communities*, of the criteria for defining oneself as Catholic.<sup>22</sup> If the Catholic people want a man or woman ordained bishop today then does that really require the approval of the rest of the college of bishops or a 'pontifical mandate'? The layman and consular prefect for upper Italy, Ambrose of Milan was so elected and swiftly ordained bishop of Milan in 374. Are the cases of our RC women bishops and William Manseau of a different order?

### **Bishops without dioceses**

In addition, episcopal ordinations performed without the approval of Rome need to be set against current practice in many churches of permitting

- 'general' or 'curial' bishops with purely titular sees simply to give them status
- auxiliary bishops, with no diocese of their own, ordained to assist a diocesan
- retired, emeritus or even deprived and resigned bishops in good standing but without jurisdiction (such as Patrick Kalilombe of Lilongwe, Jacques Gaillot of Evreux and William Morris of Toowoomba)
- bishops ordained with a limited and carefully defined pastoral charge such as eparchies, military bishops, ordinariates or prelatures – who then operate canonically within the ecclesiastical jurisdictions of local ordinaries in communion with the Holy See

Is there room in the Roman Catholic Church for such prelatures or ordinations of 'worker' bishops with particular apostolates, such as the women bishops ordained to offer women's ministry to those who demand it and William Manseau who perceives himself called to a special ministry of leadership to married Catholic priests? If an

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20 1864 in *Macmillan's Magazine*.

21 NY: Doubleday, 2000.

22 *Corpus Reports*, Vol 38, No 4, pp 24-34.

illicitly-ordained holocaust-denying bishop<sup>23</sup> can have his excommunication overturned (although not given episcopal faculties) by the Holy See, then surely the People of God can call a man or woman to the episcopate for an extra-diocesan apostolate?

### **Human Rights not Doctrine**

As to Abba Seraphim's second point about the preservation of Catholic Faith and Order, it must be stressed that the members of the IFRCM do not subscribe to any beliefs other than those of the Catholic Church<sup>24</sup>, but *maintain that human rights are being violated by ecclesiastical authority and require to be proclaimed at whatever cost to Church order*. Attempts to argue that the ordination of women is theologically unacceptable do not convince many theologians and the IFRCM denies that such exclusion of women is an article of Faith. The arguments that any Eucharist not presided over by a validly ordained male is 'invalid' similarly do not convince us and there are theologians who agree.

The rights which the IFRCM sees as indisputable and inalienable are:

1. the equality of women and men
2. the right to the Eucharist and other sacraments
3. the right to a committed sexual relationship in accordance with an informed conscience and the broad outlines of Church tradition

In the light of these, the IFRCM also insists that Catholics are free to:

- seek pastoral care and sacramental ministry from whomever they wish
- accept the ministry of women ordained deacon, priest and bishop
- accept, for good reason, whilst not repudiating the authority of the local ordinary, the ministry of those not in communion with the Holy See

Does the insistence on these rights constitute a schismatic act? What is schism in this ecumenical age? Is it really schismatic to accept the ministry of an illicitly ordained bishop who protests that she (or he) remains a Roman Catholic, as do Christine Mayr-Lumetzberger of Austria, Vice-President of the IFRCM, and William Manseau? Does it matter?

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23 Richard Williamson of the SSPX was excommunicated in 1988 after illicit consecration as a bishop. The excommunication was lifted in 2009 but he remains suspended.

24 Not necessarily as elaborated by what Hans Küng has called 'Neo-scholastic Roman Court theology' (*Disputed Truth – Memoirs II* [London & NY: Continuum, 2008] p 244) but as understood by other Catholic theologians, e.g. on the Roman Primacy, the status of non-infallible teaching, human sexuality etc. The Incarnation, Trinity, Sacraments, Scripture etc are of course not in question.