In the Light of the Law

A Canon Lawyer's Blog

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Questions in the wake of Cdl. Coccopalmerio's comments on Anglican orders

A rock dropped into quiet waters produces a visible splash and observable ripples. The same rock thrown into a storm-tossed sea, however, passes unnoticed, for its effects are overwhelmed by larger and wider waves.

Before the splash of **Cdl. Coccopalmerio's startling comments** toward recognizing Anglican orders disappears in the theological chop that is the new normal for Catholics, let's record some questions deserving of consideration.

Note, the only source I have for Coccopalmerio's comments is *The Tablet* and, as that site sets the stage for its report by recalling "Leo XIII's remarks [on] Anglican orders"—as if **Leo's letter *Apostolicae curae* (1896)**, which declared Anglican orders "absolutely null and utterly void", simply conveyed, you know, some "remarks"—one is not reassured that *The Tablet* fully grasps what is at issue here. In any case, no *Tablet* quotes attributed to Coccopalmerio directly attack Leo's ruling (we are not even told what language the cardinal was speaking or writing in, and I think that is an important point) so there is some room for clarification.

But, if Coccopalmerio said what *The Tablet* reports him as saying, the following questions would warrant airing.

1. Was Leo's *Apostolicae curae* an exercise of the *extraordinary* papal magisterium, itself making infallibly certain the invalidity of Anglican orders and thus requiring Catholics to hold them "absolutely null and utterly void"? I think it was, and I think we must, but I am open to counter arguments.

2. Or, was *Apostolicae curae* a prominent exercise of the *ordinary* papal magisterium which coalesced with several centuries of other ordinary exercises of papal-episcopal magisterium in rejecting the validity of Anglican orders to the point that Catholics must hold them invalid? I think they surely came together thus and so hold that Catholics must regard Anglican orders as null. I can scarcely see any counter argument, let alone a plausible one, here, but if someone wants to offer it, I would listen.

3. Or, finally, does *Apostolicae curae*, and the effectively unanimous rejection of Anglican orders by Catholic authorities over the centuries, and the express inclusion of the invalidity of Anglican orders by then-Cdl. Ratzinger in his doctrinal commentary on ***Ad Tuendam Fidem* (1998)** as something known with infallible certainty, and therefore as something to be held definitively by Catholics, leave any room whatsoever for speculating on, let alone defending, the possible validity of Anglican orders? Surely the question is rhetorical.

Next, if the answer to *any* of the above scenarios is Yes, do we not then face the situation anticipated by **Canon 750 § 2** whereby one who rejects an assertion "proposed definitively by the magisterium of the Church" is in that regard "opposed to the doctrine of the Catholic Church"? And, if the answer to *that* question is Yes, would not 'obstinacy' (which, I hasten to add, can scarcely be proven by a few comments) in rejecting a "doctrine mentioned in can. 750 § 2" leave one, following fruitless admonition by the competent ecclesiastical authority, liable to a "just penalty" under **Canon 1371, 1º**?

Now, besides the possibility that Coccopalmerio did not say what *The Tablet* thinks he said, or that he said it but, on further consideration, he wishes to revise his remarks, the only other accounting I can come up with for his remarks is that, while Anglican *orders* are themselves invalid, some *Anglicans* are nevertheless validly ordained—not in virtue of their Anglican orders, to be sure, but in virtue of a post-Edwardian reintroduction of valid orders (conferred by break-away Catholic bishops or

Orthodox prelates), such that a given Anglican minister might, by doing an 'ordination pedigree' search, be able to trace his orders back to a prelate possessed of valid orders. Such a query can be tedious, of course, and it might impact only a small number of Anglican ministers, but I think it only fair to acknowledge the possibility. (For what it's worth, I think the Roman decision to ordain "absolutely" all Anglican ministers coming into full communion who wish to serve as priests—if applied without regard for the possibility that some could trace their orders to a bishop with valid orders—is problematic). Maybe this unusual source of sacramental validity is what the prelate had in mind.

If, by the way, our speaker above were not a credential canonist, I would pause to make it clear that the canonical-doctrinal conclusion of the invalidity in Anglican orders does not, repeat *not,* mean that "nothing happened" at, or as the result of, the rites undergone by Anglican ministers. Such rites can of course be occasions of great grace for their recipients and ministry conducted in their wake can, and doubtless has, helped many to grow closer to Christ. But canonists need no reminding that the power of a devotional rite to dispose one toward a closer cooperation with grace is *not* to be confused with whether a specific sacrament was (i.e., validly), conferred thereby, and so I mention this point only for the sake of others following this discussion.

In the end, though, perhaps the prelate said exactly what *The Tablet* claims he said, and perhaps he meant it just the way it sounds. If so, I grant, he would not be alone, at least not in, how to put this?, **ruminating around the possible validity of Anglican orders**.

That said, and as important as the above questions might be, the cardinal's further statement, one directly attributed to him, also deserves a closer look: namely, that the Church has "a very rigid understanding of validity and invalidity: this is valid, and that is not valid. One should be able to say: 'this is valid in a certain context, and that is valid another context.'"

That, folks, is *huge.*

But, one issue at a time, shall we?

Update (11 May): (1) See Fr. Dwight Longenecker, **here**. (2) See Phil Lawler, **here**.

APRIL 22, 2017

Fake canon law goes on goin' on

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Fr. James Keenan **writing in *Crux*** this week makes his own a question raised (last July, it seems) by Rocco Buttiglione in *L'Osservatore Romano*: "Is there any contradiction between the popes who excommunicated divorced and remarried persons and Saint John Paul II who lifted that excommunication?"

That's fake canon law. John Paul II never lifted any excommunication against divorced and remarried Catholics because, quite simply, there was no excommunication against divorced and remarried Catholics for him to lift. Shall we talk about it?

Buttiglione writes in the L'OR piece upon which Keenan draws: "*Once upon a time, divorced and remarried persons were excommunicated and excluded from the life of the Church. That kind of excommunication disappears from the new Code of Canon Law and* Familiaris Consortio*, and divorced and remarried persons are now encouraged to participate in the life of the Church and to give their children a Christian upbringing. This was an extraordinarily courageous decision that broke from an age-old tradition. But* Familiaris Consortio *tells us that the divorced and remarried cannot receive the sacraments.*"

Gracious! however far back in Church history Buttiglione needs to search for an excommunication of divorced-and-remarried Catholics, he apparently thinks that the 1917 Code itself excommunicated divorced and remarried Catholics and that, only by making a "courageous decision that broke from an age-old tradition", could John Paul II 'disappear' that "excommunication" from the new (1983) Code of Canon Law.

There is just one problem with Buttiglione's and Keenan's canonical narrative of a pope kicking down a penal door locked against divorced-and-remarried Catholics—and thus with their broader '*if-John-Paul-could-then-Francis-can*' claim, namely: the 1917 Code did *not* excommunicate divorced and remarried Catholics.

Oops.

Neither Buttiglione nor Keenan provide a citation for their claim about what canon law allegedly did up to the time of John Paul II (nor, come to think of it, **did Abp. Scicluna who was**, it now seems, uncritically repeating Buttiglione's claim and extending it to embrace adulterers!), so one is left to guess at what they had in mind. But a couple of ideas occur to me, some of which **I have addressed before**.

Maybe Keenan and Buttiglione had in mind the Pio-Benedictine excommunication levied against Catholics who attempted marriage in violation of canonical form; problem is, this sanction was applicable to *all* Roman Catholics (not just to divorced-and-civilly-remarried ones) and, more importantly, it had already been abrogated by Paul VI in 1970, a dozen years before the 1983 Code went into force!

Or maybe Keenan the American (if not Buttiglione, an Italian) recalled when American Catholics who divorced and civilly remarried were indeed excommunicated for that offense; problem is, that rule was peculiar to American (not universal) canon law, it dated back only to 1884 (hardly 'age-old'), and, most importantly, it too had already been abrogated in 1977—again by Paul VI, not John Paul II—several years before the 1983 Code was promulgated.

Or maybe by "new" Code of Canon Law, Buttiglione and Keenan meant the 1917 Code which, in its day, was certainly new; problem is, I can't find an excommunication for divorced and civilly remarried Catholics in the main, pre-Code, penal document of the 19th century, Pius IX's *Apostolicae Sedis moderatione* (1869). Do Buttiglione and Keenan know of one? Of course, even if one were found lurking somewhere, it had

obviously 'disappeared' from codified canon law some *65 years before* John Paul II arrived on the scene.

Or maybe Buttiglione and Keenan understand by the term "excommunication" a much older usage that sometimes blurred the distinctions between "excommunication" (as a canonical penalty, c. 1331) and "denial of holy Communion" (as **a sacramental disciplinary norm, c. 915**); problem is, their claim about what John Paul II supposedly did demands that they use canonical terms as he and the Church understand them today—and as Buttiglione himself recognizes when he notes above that, despite the (alleged) lifting of a (non-existent) excommunication, divorced-and-remarried Catholics are still prohibited the sacraments (a statement wrong in some respects, but right enough in this regard).

So much contextualizing and back-storying, just to address one more fake canon law claim. But at least such research allows one to argue better not '*if-John-Paul-could-then-Francis-can*', but rather '*John-Paul-didn't-and-Francis-shouldn't*'.

end entry

APRIL 13, 2017

Sever 'canon law' from 'pastoral practice' and lots of things make sense

I am tempted to address at length **Austen Ivereigh's commentary** on **Fr. Raymond de Souza's observations** on **Cdl. Wuerl's statement** on **Francis' document *Amoris laetitia***, but at a certain point the law of diminishing returns sets in leaving such an exercise tedious.

So let me just say: Ivereigh is free to argue that *Amoris* does not undermine Church teaching on sin, but he needs to respond to those who disagree with his claim with something more than paternalistic tsk-tsk'ing and, before anything else, he needs to face the simple fact that Wuerl *can't* be right (as I think he is, if

narrowly read) and the bishops of Malta *also* be right (**as I think they certainly are not**)—which is de Souza's main point.

The reason Ivereigh misses de Souza's point is, I suspect, that, deep down, Ivereigh thinks that "canon law" and 'approved pastoral practice' are two fundamentally different things. Thus Ivereigh *could* logically hold that canon law (including the barring of divorced-and-remarried Catholics from holy Communion) has remained the same, while at the same time holding that pastors *may* admit such persons to holy Communion under conditions other than those already recognized by the Church (namely, separation of abodes, or a commitment to live as brother-sister where the irregular marriage is not known). Ivereigh would be right, *if* canon law has little or nothing to do with what pastors should really *do*.

At some point I hope that Ivereigh et al will sit down, look at the text of **Canon 915 and the numerous ecclesial values behind it,** and recognize, among other things, that degrees of *personal* culpability (which Ivereigh and others go on and on and on about, as if *that* were the central insight his adversaries lack) have nothing to do with the operation of the *objectively* oriented Canon 915, the main *law* that controls pastoral *practice* in this area—whereupon they will do one of two things: accept that tradition and promote it, or acknowledge that tradition and honestly call for changing it. At which point all sides would be talking about the same, and the dispositive, issue.

What I fear is that, instead, Ivereigh et al, ignoring the connection that must, and usually does, exist between law and practice, will simply keep on repeating that *canon law* has not changed but good *pastoral practice* has. Which is a huge waste of time.