

*CORPUS
RESEARCH 2*

*Pastoral Ministry and the
Non-Clerical Priesthood
A Theological and Canonical Reflection*

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Pastoral Ministry and the Non-Clerical Priesthood A Theological and Canonical Reflection

The present ministerial crisis in Catholicism requires new ways of thinking. The hitherto unthinkable lay administration of parishes and lay leadership of Sunday Communion Services in Priestless Parishes reveals the benefits and the liabilities of this crisis. The benefits include an enhanced realization of the dignity of baptism and lay discipleship. The liabilities deprive the community of trained, commissioned, ordained pastors and also of the celebration of Eucharist, Reconciliation and Anointing. The survival of the sacramental tradition and, indeed, of the best available care of people is the issue in this crisis.

1. A Theological Preamble

There is a trained corps of 18,000 Catholic priests in the United States who are ordained but no longer clergy. The number worldwide is about 100,000.

It is not the intention of this paper to review in great detail the history, statistics or theology which lead to the inevitable conclusion that a married priesthood is one of the major and unavoidable requirements for the solution of this crisis. All of the data are available for those interested from CORPUS (c/o Dr. Terence Dosh, 4124 Harriet, Minneapolis, MN 55409).

The statistics are astonishing and alarming. The median age of American priests (nearing 60), the drastic loss of seminarians (from 50,000 to about 9,000 in 25 years) and the certainty that the number of American priests will drop by 50% in the next decade call for more than business-as-usual attitudes. The National Conference of Catholic Bishops (NCCB) Committee on Priestly Life and Ministry observes in "Reflections on the Morale of Priests" that there is a substantial loss of morale and exhaustion among many priests. This is due, in large measure, to the diminished ranks of the clergy and the prohibition imposed upon them of serious discussion of issues such as optional celibacy and ministerial reform. (cf. *Origins*, January 12, 1989).

Jesus never spoke of celibacy for ministers. The passage in Matthew 19, 10-12 does not refer to celibacy but to marriage and divorce. Jesus chooses married men, almost exclusively, for apostleship. In I Corinthians (9,5), Paul refers to his right to marry and to the fact that Cephas and the other apostles travel with their wives. In I Corinthians 7, Paul speaks negatively of marriage, counsels celibacy as an ideal but admits: "On the question of celibacy, I have no instructions from the Lord..."(v.25). In I Timothy, the presiding elder or bishop is presumed to be married (3,2) and, indeed, is considered trustworthy as a Church officer only if he is married and manages his family well. In other words, marriage and family life are the norm for ministerial suitability. The same insights are essentially repeated in Titus (1, 6-9).

It was, of course, this tradition which has guided the Church so that it has always maintained a married priesthood (for 20 centuries in the Eastern Churches; for 12 centuries in the Latin Church until the Second Lateran Council of 1139 A.D.). Historically, celibacy was linked to priesthood for reasons of ritual purity and church property as well as for spiritual and pastoral

considerations. Many, but not all of the motives, had to do with a denigration of women and sexuality.

The special arrangements of John Paul II have restored a married priesthood in the Latin Rite in three instances.

- 1) Episcopal priests who become, canonically, married Catholic lay men in conversion and, then, are ordained Latin Rite priests; this, in effect, opens the priesthood to married Catholic laymen
- 2) Lutheran ministers and pastors who are dealt with in the same manner
- 3) Polish National Church priests whose ordination is accepted as valid so that they are received as married priests.

This means, therefore, that both married Catholic laymen and married priests are acceptable, in principle, in the Latin Rite, as canonical priests provided, of course, that they were not Catholics when they began their ordained ministry. This policy of permitting a canonical married Latin Rite priesthood began with Pius XII, was confirmed by John XXIII and Paul VI and expanded by John Paul II.

There is now no substantial reason to continue obligatory celibacy for priesthood although the Vatican argues that ordained priests who have married need to be punished so that their promise of celibacy will be seen by the community as a serious one. This issue was addressed in an essay entitled "Broken Promises" available from CORPUS, on request. The essay, contained in the first CORPUS paper, *Shaping the Future Priesthood*, maintains that promises rigidly maintained are a sign of little faith in life or in God.

The Vatican is also concerned about the loss of celibacy as a witness for the Church. We might observe that just as the monastic tradition of the Eastern Churches have done already, the monastic tradition in the Latin Church will assure the survival of this value.

The Second Vatican Council in its **Decree on the Ministry and Life of Priests** (16) observes that celibacy is not "demanded by the very nature of the priesthood" and praises "married priests of outstanding merit" in the Eastern Churches.

The trajectory toward a canonical married priesthood over the last 25 years can be traced as follows:

- 1) 1963: **Pastoral Constitution on the Church in the Modern World** - Vatican II.

Marriage extolled as "an intimate community of married life and love" (48), of which God is the author and in which the couple are given a "special sacrament ... and ... consecration".

Marriage is not a concession to human weakness but a means by which there is made manifest "the Savior's living presence in the world, and the genuine nature of the Church."

Marriage is, therefore, at least equal to celibacy and is described in terms which make it fully compatible with priesthood.

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- 2) 1965: **Decree on the Ministry and Life of Priests - Vatican II**

Celibacy described (as above) as not demanded by the nature of the priesthood. Married priests are praised as men of "outstanding merit".

- 3) 1970: **Letter of Paul VI to Secretary of State Cardinal Villot**

The Pope agrees to accept married men as canonical priests if a vast majority of bishops approve and if requests for such a dispensation be limited to mission countries. Thus, the Pope, in principle, accepts a married priesthood for the Latin Church.

- 4) 1971: **Synod of Bishops**

Celibacy is maintained as the norm for the Latin Church but only 54% of the bishops at the Synod envision no change. The others either vote for change or abstain from voting.

- 5) 1971-1988: The following characteristics become permanent features of Catholic ministry:

- a) widespread utilization of ordained married deacons
- b) massive resignations of priests who are bound by obligatory celibacy (100,000 world-wide)
- c) refusal of young people, world-wide, to accept priesthood if obligatory celibacy is a pre-condition
- d) special arrangements for married priests if they convert from Episcopal, Lutheran or Polish National Churches

- 6) 1973: **National Conference of Catholic Bishops**

The National Conference of Catholic Bishops (U.S.A.) votes to receive the Ad Hoc Committee Report for Priestly Life and Ministry and refers it to the permanent Committee on Priestly Life and Ministry. It also agrees to have the report made available to priests at large. The Ad Hoc Report recommends "in view of the evolving life of the Church" that "the question of ordaining married men to the priesthood" be given "further study" by the permanent committee on Priestly Life and Ministry in the light of the Synod of 1971. The NCCB seems to leave the question open for discussion and does not view the question negatively.

The same Report recommends that "appropriate opportunities for service to the Church be made available" to dispensed priests by bishops and that the "needs of the Church" and the "education, talents and good will" of dispensed priests be given consideration.

- 7) 1974-1988: The consciousness of the Catholic community is changed as result of a number of factors:

- a) national (1974-CORPUS-U.S.A.) groups of married priests are organized in 26 countries
- b) polls and studies, including those authorized by the NCCB, show that a majority of Catholic laity and priests in the U.S.A. favor a canonical married priesthood

- c) The National Federation of Priests' Councils issues Resolutions through the 70's and 80's calling for a canonical married priesthood and the return of married priests to full canonical ministry.

- d) an International Federation of Married Catholic Priests (1986) is organized after a successful Synod of Married Priests takes place in Rome (1985)

- e) all major European and American television and print media feature the issue of a married priesthood and favor its adoption.

2. The Canonical Argument

The "Theological Preamble" of this paper makes it clear that a crisis of major proportions has occurred. We might now ask whether a careful examination of the provisions of Church law provide the possibility that in meeting this crisis there may be instances where non-clerical priests may be called upon to serve Christian communities pastorally and sacramentally. The Code of Canon Law (1983) allows an opening in this regard. Biblical, theological and pastoral data ought to be convincing, but, sometimes, they are not unless the canonical and legal argument is addressed. With this in mind, the following may be useful.

A. General Principles

The Code makes it clear that "the salvation of souls ... is always the supreme law of the Church." (c.1752)

The Code is also governed by the ancient principle that "a doubtful law does not oblige" (*lex dubia non obligat*). (c.14)

The Code never uses the term "laicization". This term is theologically and pastorally inept. Indeed, it is not a truly canonical term since it appears in neither the old (1917) or the new (1983) Code.

There are no restrictions imposed on non-clerical priests who are willing to function in a full lay capacity. These restrictions were in norms previous to the 1983 Code but are not part of the present legal structure of the Church. This last point requires some explanation.

B. Abrogation of Former Restrictive Norms

In Canon 6, the Code declares:

When this Code goes into effect, the following are abrogated:

1. the Code of Canon Law promulgated in 1917
2. any universal or particular penal laws whatsoever issued by the Apostolic See, unless they are contained in this Code;
3. other universal disciplinary laws dealing with a matter which is regulated *ex integro* by this Code

European and American Canon lawyers argue that this Canon abolishes the restrictions of the 1917, 1972 and 1980 norms from the Congregation for the Doctrine of the Faith. These norms prohibited non-clerical priests from teaching Christian doctrine, pastoral administration and Liturgical ministries although these were open to the laity. The restrictive

dimensions of these norms is terminated by the Code but not the procedural guidelines which apply to the manner in which a dispensation may be requested.

The interpretative principle which is operative here is that penal laws and laws restrictive of rights are to be understood narrowly and that, therefore, the burden of proof is on the legislator to make the prohibition clear and unassailable (Canon 18). This same Canon observes that this narrow interpretation applies when a law restricts "the free exercise of rights". This does not mean that invitation to lay ministry is a right but that the capacity to be invited and not to be disqualified arbitrarily and a-priori is a right. At the very least, right to full lay status with no liabilities should be accorded someone who, after all, served the Church as a priest, often with honor and distinction. This same person has lost the clerical state, almost always at his own initiative and only as a result of a favorable rescript from Church leaders, one which allows him to enter a sacramental and canonical marriage.

Strict interpretation would limit lay ministry only in the case of those dispensed priests who use that ministry to disturb the good order of the Church and to create confusion in the community.

These restrictions inhibit "free exercise of rights" and amount to universal penal laws and are, therefore, to be interpreted narrowly and abrogated, as the case may be. Six points may be helpful:

- 1) these restrictions are *universal* because they apply to all, in the same situation, without exception
- 2) they are also *penal* because they sought, in 1971, 1972 and 1980 to impose upon a dispensed priest who is, canonically, a lay person a punishment which has nothing to do with what this canonical lay person ever did as a lay person; they sought to limit full lay status to someone who, as a lay person, is in good standing with the Church and who is able to receive all the sacraments of the Church
- 3) it is, therefore, difficult to ascertain what the source of these restrictions is; since there are no sound theological or pastoral reasons for the restrictions, one would have to assume that the restrictions, when in force, were, arbitrary or vindictive or legally inept; in any case, they limited "free exercise of rights"
- 4) the dispensed priest, acting fully as a canonical lay person, does not disturb the good order of the Church nor confuse people; indeed he enriches the Church and gives witness to his faith and loyalty; he does not represent himself as a canonical priest but as a canonical lay person who is always a validly ordained priest.
- 5) the purpose of all law is justice; legalism is not a value in the Gospel or in the Church; law, therefore, must always justify itself as on the side of the community and of that community's right to ministry and service; it is, perhaps, impossible to view these restrictive norms as anything but universal and penal; they are, therefore, abrogated by the 1983 Code which imposes no penalties or restrictions other than loss of the clerical state.

- 6) even though one might argue that these restrictions are not universal since they are granted as a favor and in a rescript given to each dispensed priest individually, this seems to be an instance of legalism; the rescripts, after all, are drawn up in accord with universal norms and are applied, without substantive exception, to all dispensed priests; if they are, then, universal penal laws of the past, they are abolished by the 1983 Code.

It would seem that Canon 292 rather than the 1971, 1972, 1980 norms now governs the situation of a dispensed priest. The consequence of dispensation from clerical ministry, or indeed, as we shall see, even of civil marriage, is not a penalty, in this instance, but the loss of the "clerical state" and "the rights which pertain to" it. The priest is prohibited from exercising the power of orders except in the emergency situations which we shall consider at a later point. The loss of this clerical state, furthermore, is a purely positive ecclesiastical law which cedes to higher spiritual or pastoral needs.

The effect of Canon 292 seems to be good order in the Church and the maintenance of the law of celibacy for those Latin Rite priests who are not converts. The purpose of Canon 292 is, therefore, not punishment but the protection of those policies we have just articulated.

Canon 290 says clearly: "After it has been validly received, sacred ordination never becomes invalid." A cleric, however "may lose the clerical state. This loss is brought about by "a rescript of the Apostolic See ... for the most serious reasons".

It would seem, therefore, that a non-clerical priest who accepts his loss of the clerical state and who does not publicly present himself as in the same situation as he was before his resignation or marriage has abided by this Code. He neither disturbs good order nor challenges the law of celibacy by his liturgical or ministerial actions as a lay person in the public forum.

Such a priest is juridically a lay person in most cases, but theologically and sacramentally he is always a priest. His surrender of his entitlement to use the power of orders is the result of an administrative action by the Church, not a punitive one. Its legal intent is not punishment but order. In any case, the non-clerical priest is expected to act as a priest in emergency situations. The juridical lay definition of such a priest is, clearly, not an absolute one. The non-clerical priest, according to the Code, must not act as a lay person in emergency situations but always as a priest.

The loss of the clerical state is not a punishment in the Code unless initiated by Church leaders. This loss, as we know, most often comes about as a result of a request by a canonical priest. It is almost never initiated by Church leaders but by the petitioner. This request is granted as a favor and allows a Catholic and sacramental marriage to follow, a marriage which according to the Pastoral Constitution on the Church in the Modern World, makes Christ present in the world and manifests "the genuine nature of the Church". God is the author of this married state and the couple, according to the **Pastoral Constitution**, is given a "special sacrament" and "consecration".

All these benefits could not derive from a punishment! Nor ought there to be any restrictions as this favor is granted unless they can be theologically and legally justified. As far as can be

determined, they cannot be so justified. The 1917 Code allowed a cleric who married to be returned to the lay state. It "laicized" him. The 1983 Code merely takes away the clerical state and restricts the power of orders, but never absolutely, always conditionally. Indeed, if one were in a region of the Church where canonical priests were unavailable permanently or for long periods of time, the "emergency situations" under which a non-clerical priest would be obliged to act as a priest would be frequent and numerous so that they would become a norm rather than an exception in terms of the community.

If the dispensed priest becomes in most cases, a lay person juridically, he enjoys all the rights of a lay person (unless these are limited legitimately by the Code or by Church law) and all the rights of the priesthood but not of the clerical state.

It would seem, therefore, that a dispensed priest:

- 1) is a Catholic lay person with all the rights, privileges and responsibilities which go with this personhood
- 2) is a priest, forever, who is expected, on occasion, to exercise that priesthood
- 3) is able to receive a sacrament of the Church unavailable to him before dispensation, i.e. marriage
- 4) is deprived of the clerical state, the normal exercise of the power of orders and the right to claim these publicly or to act as though he were in the same situation as when he was a celibate, clerical priest.
- 5) is not the subject of any penalties or even restrictions as a lay person but of an administrative action which seeks to maintain the Church's policy on obligatory celibacy and its good order.

In arguing for the abrogation of the 1971, 1972, 1980 restrictions in terms of the 1983 Code, it may be helpful to observe that the pastoral situation has changed and become dire since the restrictions were issued. This opens the way, all the more, by canonical implication, for the utilization of dispensed priests in their full canonical role as lay persons since they bring to that role an extraordinary amount of pastoral and theological experience. Even the Code, much less the restrictive norms, does not exist for itself. The purpose of all law is the life of the community.

It is worthwhile to recall that no less eminent a canon lawyer than Ladislav Orsy S.J. has argued that the 1983 Code or any other legal system is not able to encompass the evangelical mandate of Christ to the Church. The 1983 Code, he notes, is strong on governing people but weak on serving them. The law, Orsy says,

will not become a vital force in the community unless it is received by people ... To receive the law well, the community must understand the value the law intends to uphold; then the faithful must reach for it freely, moved by internal conviction. Christian people cannot act according to their innate dignity unless they act with intelligence and freedom ... there is no better interpreter of the laws than the people of God, freely dedicated and well-informed. (*The Code of Canon Law*, ed. by Coriden, Greene, Heintschel, p. 26)

C. Full Lay Ministry in the Church

It remains to be seen what lay pastoral opportunities there are for the non-clerical priest. The 1983 Code has expanded lay ministry considerably and, as we have seen, does not restrict non-clerical priests from sharing in this ministry fully. There are five areas of special significance for our purposes

- 1) **Advisory Assistance**
Lay people who excel in knowledge may assist pastors of the Church, even in councils, as experts or advisors (c.228, n.2)
- 2) **Teaching Theology**
Lay persons are seen as possible recipients of a mandate to teach theology and "the sacred sciences" (c.229, n.3)
- 3) **Diocesan Curia Appointments**
Lay people may serve as chancellor of a diocese (c.482 abrogates the old Canon 372 from the 1917 Code, which required that the chancellor be a priest). Lay people may also serve as diocesan judges (1421, n.2), auditors (1428, n.2), or in the capacity of promoter of justice (1435) and defender of the bond (1435).
- 4) **Pastoral Care**
Lay people are able to participate in the pastoral care of a parish, under the supervision of an ordained pastor (517, n.2). This section of the Canon reads:

If the diocesan bishop should decide that due to a dearth of priests a participation in the exercise of the pastoral care of a parish is to be entrusted to a deacon or to some other person who is not a priest ... he is to appoint some priest endowed with powers and faculties of a pastor to supervise the pastoral care.
- 5) **Liturgical Ministry**
The following liturgical ministries are listed as open to the laity (c.230, n.1, 2, 3):

1. Installation as lector and acolyte in the prescribed liturgical rite
2. lector, commentator, cantor
3. ministry of the word
4. presiding over liturgical prayers
5. conferral of baptism (cf. also c.861, n.2)
6. distribution of Eucharist

If Canon 230 is taken in conjunction with other canons, there are further ministries available to laity:

7. preaching (c. 766)
8. funeral services and burials
(cf. c.230, n.3 on presiding over liturgical prayer; also, c.530, n.5 which changes the role of a pastor with regard to the funeral service from a function "reserved" alone to him to a function he is "entrusted" with so that he can easily delegate it)

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9. officiant at marriage
“With the prior favorable opinion of the conference of bishops and after the permission of the Holy See has been obtained, the diocesan bishop can delegate lay persons to assist at marriages where priests or deacons are lacking. A suitable lay person is to be chosen who is capable of giving instructions to those to be wed and qualified to perform the marriage liturgy correctly.”
(c.1112, n.1, 2)

D. The Sacramental Ministry of the Ordained Priest

There are occasions when any priest, clerical or non-clerical, dispensed or not, may and even should offer sacramental ministry to people. One might consider that the “Christian faithful have the right to receive ... the word of God and the sacraments” (Canon 213). The law must provide a canonical as well as a pastoral remedy when this right is not able to be realized.

1. Sacrament of Reconciliation
Any priest validly and licitly absolves any penitent in danger of death, even if an approved priest is present (c.976). Canon 986 n.2 adds that in danger of death “any priest” is “obliged” to hear the confessions of the Christian faithful. The phrase used in the Canons is “danger of death” and not “in articulo mortis”. This, therefore, does not restrict a non-clerical priest to celebrating Reconciliation only for those in the throes of death. “Danger of death” can include hospital patients who are in danger of death especially most of those about to undergo surgery. The seriously sick of the parish or those who are about to take a perilous trip may also be seen as in this danger.
2. The Sacrament of Confirmation
For those in danger of death “any priest” is able to celebrate the sacrament of Confirmation (c.883, n.3). The “danger of death” again does not mean the moment when death is imminent. “Any priest” means what it says.
3. The Sacrament of Anointing
“Every priest is allowed to carry blessed oil with him so that he can administer the sacrament of the anointing of the sick in case of necessity” (c.1003, n.3). In case of necessity “any priest” may bless any (plant) oil to be used in anointing (c.999, n.2). This term “in case of necessity” is broader than “danger of death” and leaves the non-clerical priest free to determine the nature or degree of this necessity and when it is liturgically and spiritually suitable.
4. The Sacrament of Eucharist

If one follows the new Code, the possibility, right and even obligation of a non-clerical priest to celebrate sacraments, albeit in restricted circumstances, is extended to five of them: baptism in non-emergency situations and marriage (as lay ministers if the priest is dispensed); reconciliation, confirmation and anointing (as non-clerical priests even if there is no dispensation). Only orders and Eucharist are excluded by the 1983 Code.

With regard to Eucharist, three points may be made:

- A. the non-clerical priest may preside at prayers, be commentator, cantor, lector, preacher and eucharistic minister at a public Liturgy under present canonical norms
- B. the restriction on celebration of the Eucharist may be limited to public celebration only so that the good order of the Church which is the intent of this restriction is not disturbed. A non-clerical priest may, therefore, celebrate at home, “in private”, so to speak, with his family, relatives or immediate friends when there is a good reason for this. In this case, a pastoral situation is addressed without harm to the intent of the Church’s law. One might consider a dying parent, a disabled child or other reasons for considering this possibility. The purpose of such a Eucharist is not defiance or one’s own preference but a genuine pastoral need, one which the non-clerical priest may be the only one to address. The non-clerical priest may have to make the pastoral judgment himself about the depth of this need and his suitability to meet it. The present restriction on the celebration of Eucharist does not seem to envision the situation we have just described, i.e.
 - 1) a pastoral need
 - 2) a non-clerical priest as the only one suitable to address the need
 - 3) a “private” celebration
 - 4) the preservation of good order in the Church and public respect for the law
- C. Edward Schillebeeckx argues that the growing crisis in pastoral leadership may necessitate *public* celebration of the Eucharist by those who are excluded by law. He observes in **Ministry** that such alternative practice is not against the law of the Church but beyond the law since it seeks to safeguard that which Church order was always obliged to preserve, i.e. the integrity of Christian communities, their right to the sacramental tradition in its fullness and their need for competent pastoral care. The deprivation of adequate celebrants of the Eucharist may, therefore, be brought about by the very law which is intended to provide for such ministries. In this case, the law has failed to do what the law was meant to accomplish and is, therefore, no longer an ordinance serving the common good. “Existing church order ... cannot be legitimated on the basis of (its) inertia” ... (**Ministry**. p. 84).

It might be suggested that if Church order withdraws pastors from Christian communities without solid biblical, theological, pastoral and even canonical reasons, if parishes are to remain priestless Sunday after Sunday, if no clerical priest is available for the sacramental care of the faithful, then alternative practices may be required, indeed practices necessitated by the inertia or intransigence of those in charge of Church order. In this case, non-clerical priests who come forward are, indeed, doing what the lawmakers would have done if the law had been well formulated and if it were written with full sensitivity to the dire pastoral

situation which the lawmaker has failed to address. If the lawmaker knew or experienced what the non-clerical priest does or what the community suffering the loss of all adequate pastoral leadership suffers, the lawmaker would have provided more adequately for the people in question. This is a form of Epikeia or canonical equity, i.e. reading the law as the full intent of the law itself requires. Epikeia serves to correct the deficiencies of the law, in the process of applying the law. It seeks a norm more Christian and pastoral than mere verbal and literal application of the law. The law never intends that the essential care of people would be put in danger by the law itself. Indeed, the Code tells us, as we have seen, that the salvation of people is always the supreme law of the Church.

5. Sacraments in General and the Special Situation of Those not Dispensed

All of the norms for non-clerical priests to celebrate sacraments apply to those who have not requested or received a dispensation. Such priests are not excommunicated, even if they marry civilly; they lose the clerical state, only this and nothing more.

Canon 1335 allows a wide sacramental and pastoral latitude, even for those under censure. It states that “the prohibition is suspended whenever it is necessary to take care of the faithful who are in danger of death”. Indeed, if the censure is not a declared censure, “the prohibition is also suspended whenever a member of the faithful requests a sacrament, a sacramental or an act of governance; this request can be made for any just cause whatsoever.” It is extremely rare that a priest, dispensed or not, is under declared censure. For this to prevail, a bishop or church court must declare the censure, after appropriate procedure.

The Code is consistent in its generous and sensitive reading of the pastoral situation. Laity are to be given every access possible to any priest at all whenever pastoral need dictates “for any just cause whatsoever”. Priests, all priests, are expected to respond appropriately. A priest is anyone who has been validly ordained. The Code presupposes, in 1335, that the censured priest is still a cleric. Nonetheless, to be free of censure is always a better canonical situation than to be burdened by censure. The dispensed or non-dispensed priest is not under censure, as we have seen. Canon 1352, n.2 adds that in places where a penalty is not notorious the obligation to observe it (unless declared) is “suspended to the extent that the person cannot observe it without danger of serious scandal or infamy.” Priests, dispensed or not, are free to follow this norm since they are almost never in a situation of declared penalty.

One might argue, furthermore, from Canon 844, n.2 that non-clerical priests, dispensed or not, may celebrate Reconciliation, Anointing, and Eucharist in circumstances where the faithful request this even when there is no danger of death. The Canon in question counsels that “whenever necessity requires or genuine spiritual advantage suggests”, the faithful who find it “physically or morally impossible to approach a Catholic minister” for the three sacraments noted above, may ask for these three sacraments from “non-Catholic ministers in whose churches these sacraments are valid”. One could reason that, a fortiori, the faithful might

request these of a Catholic priest, albeit a non-clerical priest. A pastoral judgment must be made by the non-clerical priest and by the Catholic in question about when this physical or moral impossibility is present. The intent of this Canon is not ecumenism as such but pastoral care. One might argue that a Catholic priest, even if non-clerical, can give that care more effectively to a Catholic than a non-Catholic pastor might.

The point of the line of reasoning we have used throughout this paper is that a higher law (i.e., the pastoral care of people) is always to be observed, maintaining good order where possible but even disrupting it when need be.

3. General Observations and Guidelines

The purpose of this Reflection has been the empowerment of priests and people to attend to urgent pastoral situations. These situations will multiply as a result of the ministerial crisis, a crisis Edward Schillebeeckx tells us has been brought about by Church leaders, a crisis which he predicts, will be long-term and is not able to be settled by the present law or policies of the official Church. We have argued, prudently, it is hoped, but also realistically and compassionately on the basis of biblical, theological, historical, pastoral and canonical evidence.

There are ten points we might make in concluding this paper. Some of these have been developed in the paper; some are introduced here for the first time; together they form the essence of this lengthy Reflection:

1. a non-clerical priest loses clerical status by marriage and the public, official exercise of orders and nothing more
2. this loss is not a penalty but an administrative policy for the good order of the Church while the present policy on obligatory celibacy is in force
3. extraordinary entitlement is given to a non-clerical priest to function in danger of death or in the case of necessity or for any just cause; these are technical terms and less restrictive than “in articulo mortis”
4. all previous punitive norms from the Congregation of the Doctrine of the Faith (i.e. 1971, 1972, 1980) are abrogated by the 1983 Code
5. what laity can do, a dispensed priest can do in the circumstances we have noted throughout this paper
6. the necessity for the Eucharist may be due not only to the physical absence of a clerical priest but even to the moral absence of a clerical priest; this may prevail whenever the only parish community in an area is presided over by a priest who is alcoholic or ill, one who celebrates Liturgy in an offensive manner or one who is widely regarded as guilty of sexual misconduct with children or adults or of some other deed which deeply and legitimately offends a Christian community
7. the term “in danger of death” is clearly intended by the Code as a physical or moral danger of biological death; one might argue, not canonically, but theologically and pastorally that

the danger of death may be *spiritual*; extended deprivation of the sacramental life of the Church or of adequate pastoral care may create a spiritual “danger of death” situation far more devastating than biological death itself

8. those not dispensed are suspended or dismissed from the clerical state but not excommunicated, even if they marry civilly
9. four principles are of great importance in interpreting the law: a doubtful law does not bind or oblige; a restrictive law must be interpreted strictly and narrowly, in its minimal meaning; a law which restricts the free exercise of rights is subject to a narrow interpretation; generous laws are to be interpreted generously
10. the confusion on naming and defining the non-clerical priest is evident in the 1983 Code; such a priest is juridically a lay person and yet, on occasion, called to act as a priest; he is always a priest and is sometimes asked not to act as a lay person when the faithful need him, in their necessity, to be a priest; this confusion arises because the pastoral, ministerial, Christian context is sometimes more than the literal meaning of the law can encompass; this pastoral situation may have to be addressed properly, therefore, by the non-clerical priest who knows he is a priest and that people need him, who knows the Church and is respectful of it, who knows the law of Christ and is sensitive to it, who may be a married priest who has found in his marriage, not an impediment to pastoral care of people but, rather an experience in which Jesus Christ and the very nature of the Church are revealed. (cf. **Pastoral Constitution of the Church in the Modern World** n.48).

These General Observations began with the comment that the purpose of this Reflection was empowerment to attend to urgent pastoral needs. Perhaps this is said best of all by the Code of Canon Law which reminds us that “the salvation of souls ... is always the supreme law of the Church” (c.1752).

TEXT OF TWENTY-SEVEN RELEVANT CANONS

(listed in order of appearance in text)

Canon 1752

... the salvation of souls ... is always the supreme law of the Church.

Canon 14

When there is a doubt of law, laws do not bind, even if they be nullifying and disqualifying ones. When there is a doubt of fact, however, ordinaries can dispense from them.

Canon 6

When this Code goes into effect, the following are abrogated:

1. the Code of Canon Law promulgated in 1917;
3. any universal or particular penal laws whatsoever issued by the Apostolic See, unless they are contained in the Code;
4. other universal disciplinary laws dealing with a matter which is regulated *ex integro* by this Code.

Canon 18

Laws which establish a penalty or restrict the free exercise of rights or which contain an exception to the law are subject to a strict interpretation

Canon 290

After it has been validly received, sacred ordination never become invalid.

Canon 292

A cleric who loses the clerical state in accord with the norm of the law ... is prohibited from exercising the power of orders with due regard for the prescription of Can. 976 ...

Canon 228, n.2

Lay persons who excel in the necessary knowledge, prudence and uprightiness are capable of assisting the pastors of the Church as experts or advisors; they can do so even in councils, in accord with the norm of law.

Canon 229, n.3

... lay persons are capable of receiving from legitimate ecclesiastical authority a mandate to teach the sacred sciences.

Canon 482

(the text eliminates the requirement that a chancellor be a priest; cf. explanation in this paper, p. 4)

Canon 1421, p. 2

The conference of bishops can permit lay persons to be appointed judges ...

Canon 1428, n. 2

The bishop can approve for the function of auditor clerics or lay persons who are outstanding for their good character, prudence and learning.

Canon 1435

It is the task of the bishop to name the promoter of justice and the defender of the bond who are to be clerics or lay persons of unimpaired reputation who hold doctorates or licentiates in Canon law and are proven in prudence and in zeal for justice.

Canon 517, n.2

If the diocesan bishop should decide that due to a dearth of priests, a participation in the exercise of the pastoral care of a parish is to be entrusted to a deacon or to some other person who is not a priest or to a community of persons, he is to appoint some priest endowed with the powers and facilities of a pastor to supervise the pastoral care.

Canon 230, n. 1,2,3

Lay men who possess the age and qualifications determined by the decree of the conference of bishops can be installed on a stable basis in the ministries of lector and acolyte, in accord with the prescribed liturgical rite ...

Lay persons can fulfill the function of lector during liturgical actions by temporary deputation; likewise all lay persons can fulfill the functions of commentator or cantor or other functions, in accord with the norm of law.

When the necessity of the Church warrants it and when ministers are lacking, lay persons, even if they are not lectors or acolytes, can also supply for certain of their offices, namely, to exercise the ministry of the word, to preside over liturgical prayers, to confer baptism, and to distribute Holy Communion in accord with the prescriptions of law.

Canon 861, n.2

If the ordinary minister is absent or impeded, a catechist or other person deputed for this function by the local ordinary confers baptism licitly as does any person with the right intention in case of necessity ...

Canon 766

Lay persons can be admitted to preach in a church or oratory if it is necessary in certain circumstances or if it is useful in particular cases according to the prescriptions of the Conference of bishops and with due regard for Can. 767, n.1.

(Can. 767, n.1 reserves the *homily* to a priest or deacon)

Canon 530, n.5

The following functions are especially entrusted to the pastor ... the performing of funerals ... (cf. explanation of text in this paper, p. 4)

Canon 1112, n.1, 2

With the prior favorable opinion of the conference of bishops and after the permission of the Holy See has been obtained, the diocesan bishop can delegate lay persons to assist at marriages where priests or deacons are lacking.

A suitable lay person is to be chosen who is capable of giving instructions to those to be wed and qualified to perform the marriage liturgy correctly.

Canon 213

The Christian faithful have the right to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the word of God and the sacraments.

Canon 976

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

Canon 986, n. 2

In urgent necessity, any confessor is obliged to hear the confessions of the Christian faithful, and in danger of death, any priest is so obliged.

Canon 883, n.3

The following have the faculty of administering confirmation by the law itself ... with regard to those in danger of death, the pastor or indeed any presbyter.

Canon 1003, n.3

Every priest, and only a priest, validly administers the anointing of the sick ... every priest is allowed to carry blessed oil with him so that he can administer the sacrament of the anointing of the sick in case of necessity.

Canon 999, n.2

Besides a bishop, those can bless the oil to be used in the anointing of the sick ... in case of necessity, any priest but only in the celebration of the sacrament.

Canon 1335

If a censure prohibits the celebration of the sacraments or sacramentals or the placing of an act of governance, the prohibition is suspended whenever it is necessary to take care of the faithful who are in danger of death; and if an automatic censure (*latae sententiae*) is not a declared one, the prohibition is also suspended whenever a member of the faithful requests a sacrament, a sacramental or an act of governance; this request can be made for any just cause whatsoever.

Canon 1352, n.2

The obligation to observe an automatic penalty (*latae sententiae*) which has not been declared and which is not notorious in the place where the offender is living is totally or partially suspended to the extent that the person cannot observe it without danger of serious scandal or infamy.

Canon 844, n.2

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

Summary Statement

The needs of the Christian community for leadership, pastoral care and sacramental celebration are urgent. There is not now nor will there be for a long time adequate ordained ministers to serve these needs. Married Catholic priests who are no longer canonical or clerics are a rich resource for the Christian community.

This paper gives biblical, pastoral and theological data which call for a married priesthood, fully recognized and universally available, in the Latin Rite Catholic Church. The burden of the paper, however, is the canonical reflection it offers to support the following:

1) a full lay ministry for dispensed priests including diocesan curia appointments, pastoral care, sacramental ministry, preaching, wedding and funeral services.

2) an expanding role for the married priest, dispensed or not, to celebrate the sacraments of Reconciliation, Confirmation, Anointing, Eucharist (in limited circumstances), Baptism (when necessary), Marriage (as a lay person); only the sacramental celebration of Orders is excluded from this list.

The paper also addresses the fact that a married priest, dispensed or not, is not the subject of penalties or censures in the 1983 Code nor of excommunication, even if he marries civilly.

The point of all this is greater service to the Christian community, especially by those who have been called to both priesthood and marriage. "The supreme law of the Church" is not the Code of Canon Law but "the salvation of souls" (Canon 1752).

The present moment is a *kairos*, an opportune time for the Catholic Church in America, as elsewhere, to explore new ways of thinking and acting about priestly ministry. This analysis and reflection of Anthony Padovano is an instrument that suggests ways for priests who are married to serve the Catholic community in such pastoral ministry.

CORPUS shares this with our 320 American bishops hoping that they will seek legitimate and healthy ways to utilize the talents and gifts of their brother priests, now married. We see this document as another demonstration of our interest in dialoguing with our episcopal spiritual leaders.

CORPUS also shares this document with its members: 4400 married priests and their spouses, 2500 clergy and 2700 others. We hope that the knowledge this document provides will move these groups to develop new collaborative pastoral ministries. Such united service will bring joy to our spiritually hungry Christian communities, who deserve the best from all of us.

Additional copies of this document and also CORPUS RESEARCH 1, **Shaping the Future Priesthood**, are available from CORPUS. A donation is requested.

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Through the Prism of Church Law

The canon law of the church is meant to be an expression of love, the gospel as it affects the legal framework of the church as a society. That's a high demand, and given the human condition, is not easily achieved.

Church laws, like all human creations, are culturally and historically conditioned. Hence they are fallible and changeable. They are open to varied understandings and interpretations.

Roman Catholic Church law is based on Roman law, a system that has endured for 2500 years in a world and a church centered in Europe. To the Roman mind, the function of law is to define the ideal. Romans see law as ideal for all, but adapt the law as reality to each. Such law reflects one worldview.

Americans have a different worldview, which is reflected in our Anglo-Saxon common law. To the American mind, the function of law is to define the normative. Americans write the minimum of law for a maximum of people.

Americans who read this CORPUS document have to keep in mind the Roman

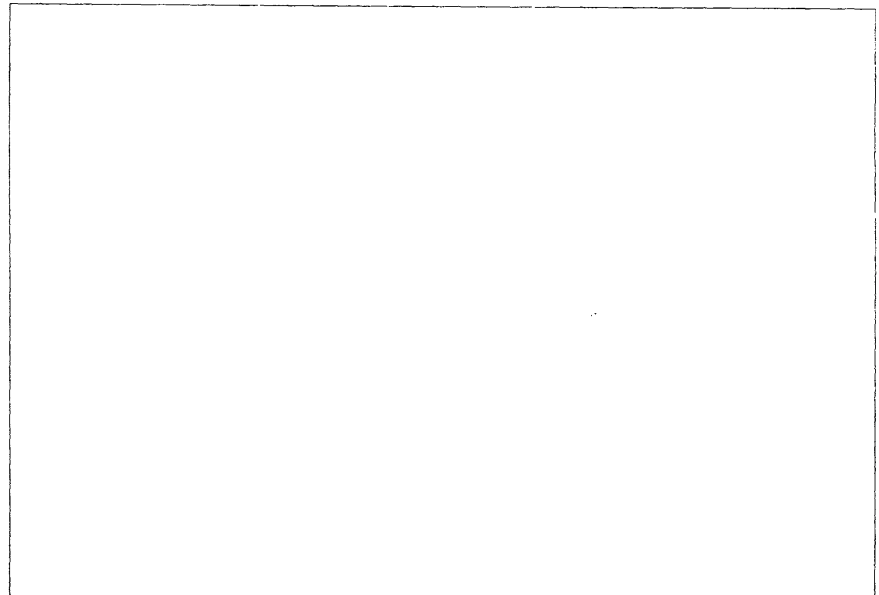
mindset: law as an ideal, not law as a norm. One can then perceive the flexibility and latitude inherent in the canon law of the church and in this Reflection.

Although half of our CORPUS readers have not studied canon law and hence might find several sections of this Reflection difficult to comprehend, there are nonetheless several substantive sections which can be profitably read by all. We urge all our readers to at least read these sections. They are: the Summary;

pages 1 and 2; the last four paragraphs of page 3; section C on page 4; the last two paragraphs of page 5; section 3 on pages 6 and 7.

Our collective song of thanks to Anthony Padovano for exercising his gift of "inspired utterance" (Romans 12:6) and to the five distinguished canon lawyers and many others who critiqued this document.

Dr. Terence Dosh



Sharing CORPUS message in your community

The purpose of this Reflection is to help priests and people experience their own power so that they can attend to urgent pastoral situations.

So, what can we do after reading this document?

Share it with your pastor and discuss with him its practical possibilities.

Send CORPUS the names and addresses of sympathetic clergy—and other acquaintances.

Speak with your bishop. In February CORPUS promised the bishops that CORPUS married priests and clergy would soon be coming to them to discuss the implications of this document. Do not disappoint them!

Send CORPUS any feedback: personal, from your pastor, canonist or bishop. Then these ideas can receive a wider audience.

Note: the printing cost of this document was three times the cost of a regular issue of CORPUS REPORTS. Your financial support is welcome and needed.

Law lives when welcomed

The law will not become a vital force in the community unless it is received by people.

To receive the law well, the community must understand the value the law intends to uphold; then the faithful must reach for it freely, moved by internal conviction.

Christian people cannot act according to their innate dignity unless they act with intelligence and freedom. There is no better interpreter of the laws than the people of God, freely dedicated and well-informed.

Ladislav Orsy, SJ