

Friday, November 16, 2018

Summorum Pontificum is a special, valid, in force, effective, universal ecclesiastical law. It is a canonically founded law. Word of a canonist.

Like all of you, we were left astonished by the deliberate and targeted attempts with which three bishops and one scholar tried to delegitimize the *Motu Proprio Summorum Pontificum* at the extraordinary General Assembly of the Italian Episcopal Conference (CEI) – perhaps in some committee, perhaps in a plenary session, but it does not matter, given the abundant malicious commitment.

In terms of the "pastoral" aspect, we do not waste words on it because Girardi's theory is as disconnected as ever from reality. How can you consider "non-pastoral" a missal (or *rectius*, of a liturgy form) that for (at least) 500 years has fed generations of faithful and that, even in the modified version of 1962, still satisfies the hieratic and spiritual yearning of many believers who request it of their own free will? And then, if we really want to be so strict, not even the neo-catechumenical "mass" is in conformity with the will of the conciliar fathers! Yet nobody, except us, dares to criticize it and declare it illegitimate, etc... etc. as it was recently done with respect to the Missal of St. John XXIII.

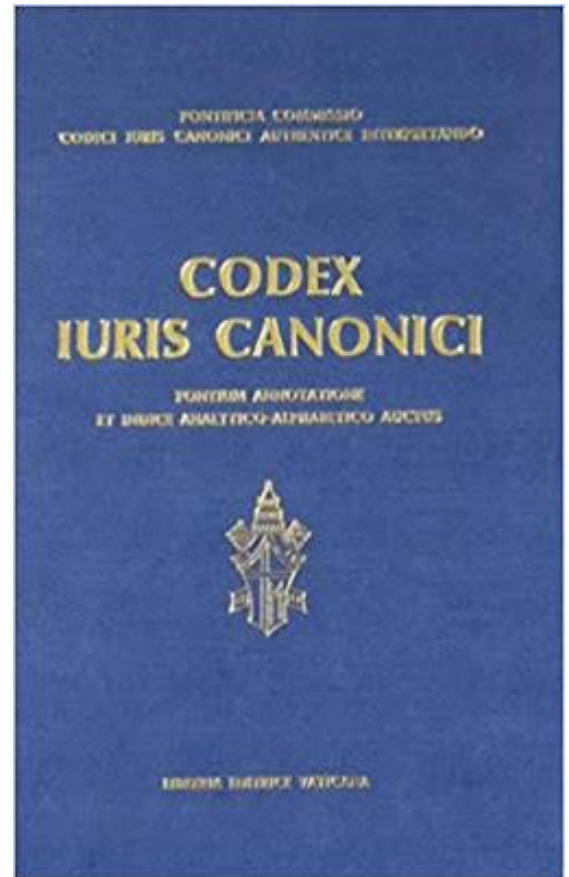
On the juridical-canonical aspect, however, despite having analyzed the unfounded and manifest illogicality of the canonical arguments carried out against the validity of the *motu proprio*, we have preferred to entrust ourselves to a knowledgeable *iurisperitus*: lawyer Fabio Adernò, Doctor of Canon Law. Having received our *quaesitum*, he kindly sent us his *responsum* that he has authorized us to publish.

We do not wish to affix any gloss over the *responsum* because the contents are so clearly laid out as to make the text instantly understandable. Any synthesis of it would diminish its significance.

The only note with which we can unworthily gloss over the commentary of lawyer Adernò, is that, admirably, some of its exquisitely juridical remarks about the *Motu Proprio* (M.P.) also illustrate the pastoral thoughts: this is because, in the mind of the supreme Legislator, the *bonum* he cared about was the good of the faithful.

Roberto

P.S. the underlining is ours.



**Codex Iuris Canonici auctoritate
IOANNIS PAULI PP. II
promulgatus**

Distinguished editors,

I keenly feel the duty to accept your request and to intervene on the question of the alleged discussions that took place in the last plenary assembly of the Italian bishops – which ended, as we know, with the approval (it would be interesting to read the Minutes with the proportions of the *pro* and *contra* votes) of the decree amending the *Prece Dominica* and the *Angelic Hymn* – which appear to have demonstrated (it seems, however, minimally) a certain intolerance towards the phenomenon of the diffusion of the celebration of the Holy Mass in the so-called "extraordinary form" and, indeed, some of the prelates also ended up speculating on the "lack of legal basis" of the M.P. *Summorum Pontificum*.

In these more than well-informed headquarters, it is not necessary to provide an introduction on the most recent ecclesiastical history, even less from 7 July 2007, the day when Benedict XVI promulgated the Apostolic Letter Given *Motu Proprio* "*Summorum Pontificum*".

Nevertheless, I want to make clear that the following comments are strictly of a technical nature and are meant to dispel the doubts that may have arisen in the readers about the subject matter. Therefore, it is not a direct answer to an expressed position – which, moreover, objectively speaking, is not there – but an attempt to nip in the bud an unnecessary controversy.

It's never good to be self-referential, but this time I can't avoid it.

In 2013, having been invited to speak at a conference on the application of the M.P. to the Ambrosian Rite (see <http://chiesaepostconcilio.blogspot.com/2013/02/fabio-aderno-profilo-giuridici-e.html>), I had the opportunity to dwell on the legal nature of the provision of Benedict XVI, believing that it dealt with both the "universal and special law" in accordance with Can. 8 CIC, emanated by the supreme Pontiff on account of Can. 838 § 1 and 2 CIC.

On the same occasion, I myself raised the issue with respect to the unhappy expression related to the "non-repeal" of the Missal of John XXIII (1962), arguing – without having changed my opinion today – that it would have been more appropriate to assert that the Roman Missal (not just the one of 1962) was rather "non-repealable" because it contained venerable customs and a normative *ab immemorabili*, which in the canonical Order has always enjoyed singular privileges of *stabilitas*.

If what has been reported on the post of your blog *Messainlatino* (<http://blog.messainlatino.it/2018/11/cei-va-abrogata-la-messa-antica-papa.html>) is true, one cannot say, *technically speaking*, that the Archbishop of Gorizia is erring in stating that it does not correspond to the truth that the 1962 Missal was never repealed (cf. SP, art. 1); but from merely observing an historical fact to asserting that the *Summorum Pontificum* does not have a juridical basis and that, therefore, it must be repealed, to us it seems to be a really excessive leap.

The legal basis of an act – as is its interpretation – is evident from both the text and the context (cf. Can. 17), and the context is the whole premise to the *Motu Proprio*. It is also evident from the

accompanying letter to the bishops of the promulgating Pontiff, who, as is his style, has always worked in an honest intraepiscopal *communio*.

The text, although it contains – as we said – some unhappy expressions (like, for example, the use of the adjective "Roman" referring to the liturgy, when it would have been more correct to adopt the adjective "Latin"), is not spoiled neither in the form nor in its substance and nor in its aim, which is – we strongly reiterate it – an intent of intraecclesial pacification, and not just a paraenetic and sentimentalistic gesture, as someone could idly consider.

After all, if the Archbishop of Gorizia had held this opinion at the time of the promulgation of the M.P., having been the Auxiliary Bishop of Milan in those years, we wonder why he had not already presented his perplexities to the Holy Father at that time and he does so only today, 11 years after the entry into force of *Summorum Pontificum*, while statistics indicate that celebrations in the so-called extraordinary form are multiplying all over the world.

It is appropriate to recognize the benefit of the doubt regarding such indiscretions, since there is no record to draw on to trace the actual contents of the intervention of H.E. Mons. Radaelli, and we want to believe that perhaps only some doubts about the spread of the celebrations in the ancient rite have been stirred, and that the point has not come where it is argued that the M.P. can be deprived of legal force. This is also because it would be paradoxical to theorize such a thing today, after decades of diffusion and persistence of the celebrations in the ancient form, and moreover with the presence, in the Roman Curia, of a Pontifical Commission – the Ecclesia Dei – endowed with very special faculty *ad instar Dicasterii* in ritual matters and from which depend several institutes and congregations that have flourished with many young vocations in recent decades.

Furthermore, also in the light of the so-called "pardon" granted by John Paul II in 1984, the thesis of the "resistance" of a liturgical use is strengthened, even if *formally* supplanted by another (after all, one would not be so much agitated if they were not different and if it was a matter of a mere reformed text, just as the Missal of Pius V was over the centuries until the rubrical modifications of John XXIII); a liturgy, in fact, which has remained in use in a constant and never interrupted manner, sometimes explicitly (e.g.: *validly*, in the case of the fraternity of St. Pius X, which today enjoys high consideration by the Holy Father; and also *licitly*, in the case of the Apostolic Administration of Campos and the other realities linked to the "world of Tradition") other times in a para-catacomb way (let's remember, for example, the Polish church, the Chinese church faithful to Rome, the Catholic churches of the Balkan area, as well as all the priests and bishops prisoners of war of the Communist regimes, celebrating mass "by heart").

Appealing to an alleged missed-out non-repeal of the previous Missal, as a way to argue that the M.P. is invalid, is juridically acrobatic in addition to being a sophism.

All this is for the simple reason that the *Summorum Pontificum* is not based on the assumption of the *non-repeal* or the *repeal* of the previous Missal – incidentally, one should remember that there was another Missal, almost entirely forgotten, in 1965, between the 1962 Missal and that of 1970 so-

called of Paul VI – because the provision of Benedict XVI does not set the 1970 Missal, with its subsequent modifications, against the previous one. Furthermore, in our system, there is also the institution of *implicit repeal* when one reorders a matter *ex integro*.

The provision contained in *Summorum Pontificum*, on the contrary, is based on the need – deemed so significant as to become universal and special law – not to abandon the treasure of tradition and to integrate, with its custody, the impoverishment gaps that were created by a hasty simplification in the immediate post-Council years. After all, if we go to the *mens* of the Legislator, let us remember that the very same Card. Ratzinger, in 1985, admitted to Messori in his interview-book *The Ratzinger Report*: “Experience has shown that the retreat to 'intelligibility for all', taken as the sole criterion, does not really make liturgies more intelligible and more open but only poorer.” (chapter IX).

Moreover, the true foundation of *Summorum Pontificum* resides in considering the ancient liturgy – in all its expressions – as something persistent, enduring, stable... something from which a great part of Christian people, composed of clerics and laymen, has never wanted to completely draw away, realizing as essential the longing for that tension to return to the roots, to the liturgical mystagogy that does not need so many words to be internalized and that, at the same time, shrouded in the sanctity of the one true “Language of God”, does not require the unravelling of the mystery with a desecrating and fatal unveiling of the Sacred.

To believe, on the contrary, that the *Summorum Pontificum* is *only* based on the non-repeal of the 1962 Missal is to consider, in a short-sighted way, the operation of liberalization of something that is not only a sentiment, but it is in fact a right, coherent with what was also established by the last Council and the Code of Canon Law in force (cf. Cann. 213-214).

In this regard, I like to recall, among others, the Apostolic Letter *Sacrificium laudis* by Paul VI of 15 August 1966, in which we are reminded of the necessity of keeping not only the Latin language but also the beauty of the ritual and choral offices.

In support of all this, it is good to remember that the argument set to the *contrary* on the legal basis of the MP loses altitude and, in fact, is already void from the moment we learn that there are two forms (an *ordinary* and an *extraordinary* one) of the same *Lex orandi* (cf. SP, art. 1) as a result of the antiquity and venerability of the rite preceding the last reform. Therefore, the fact that the Missal of John XXIII has been repealed or not repealed bears no influence whatsoever – first and foremost, from a substantive point of view prior to a formal one – on the efficacy and validity of *Summorum Pontificum*, because both missals coexist in the current existing liturgical system of the Latin Church: «*sunt enim duo usus unici ritus romanis*», because «*Hae duae expressiones “legis orandi” Ecclesiae, minime vero inducent in divisionem “legis credendi” Ecclesiae*» as we clearly read in the MP, just before the sentence stating the non-repeal («*Proinde Missae Sacrificium, iuxta editionem typicam Missalis Romani a B. Ioanne XXIII Anno 1962 promulgatam et numquam abrogatam, uti formam extraordinariam Liturgiae Ecclesiae, celebrare licet.*»).

By interpreting the criteria in the aforementioned Can. 17 in a coherent and faithful way («Ecclesiastical laws are to be understood according to the meaning of the words considered in the text and in the context; that if they remain dubious and obscure, one must resort to parallel places, if any, in the aim and circumstances of the law and the understanding of the legislator. »), it is evident, therefore, that the expression «numquam abrogatum»:

- ought to be understood not merely as the negation of a fact (which has no bearing on the purpose of the provision), but also as the gaining of awareness («ob venerabilem et antiquum eius usum debito gaudeat honore») by the Supreme Legislator that that Rite has “survived” in the vita Ecclesiae; and
- takes into consideration the use of this form, of this *antiquior usus, extra-ordinary way* («*Missale autem Romanum a S. Pio V promulgatum et a B. Ioanne XXIII denuo editum habeatur uti extraordinaria expressio eiusdem “Legis orandi” Ecclesiae»*) due to the statement in the preceding paragraph in which it is specified that the *Lex orandi ordinaria* is the Missal published in 1970 («*Missale Romanum a Paulo VI promulgatum ordinaria expressio “Legis Orandi” ecclesiae catholicae ritus latini est.»*).

If it wasn't so, the sentence on the 1962 Missal would not have been preceded by the adverb «*Proinde*» translated into Italian with «therefore», introducing, in this way, a consequential concept to a specific and well-defined premise.

Invoking principles of legalistic formalities is very risky, both because of the very nature of the canonical order and because venturing on those grounds – perhaps appealing to high-level law sophistry, especially in these times of crisis in which the legal system is on its way to become more and more something at times archaeological and at times over-structured, rather than being coessential and necessary to the life of the church – is likely to be a dangerous *boomerang*.

Just as if it is true that someone invoked an alleged inconsistency of the MP contents with the intentions of the Vatican II Conciliar Fathers (and here, then, we should establish where and when the council imposed what the so-called Paul IV Missal really contains) all the same it should be recalled, together with the hermeneutic principle of *continuity* which constitutes the pivotal address of the pontificate of Benedict XVI, that, in some recent provisions and acts of the central ecclesiastical legislation, that very same intangible and iconized Council - in its documents and not only in its "intentions"- often turns out to have been, *ictu oculi*, completely evaporated into nothing.

In conclusion, the thesis according to which the non-repeal of the Missal preceding the reform of 1970 undermines or, even worse, annuls the *vis* of the *MP Summorum Pontificum* is an entirely peregrine thesis and devoid of any logical and legal foundation because, as it has been proved and can continue to be widely demonstrated, the canonical system does not live on watertight compartments, but on harmony within complexity, and also on "discordant canons" which, among themselves, "are in agreement" due to the essential ontological foundation as well as the ultimate objective and *suprema Lex* of the Law of the Church, which is the *salus animarum* (cf. Can. 1752).

Therefore, such a theory is not permissible, not even hypothetically, since the very same premises and the reasons on which this theory is based are not congruent with the act intended to be criticized and undermined.

I hope to have helped settling an issue that, albeit inconsistent, might appear to many as alarming. Thank you for your attention.

With grateful esteem,

Fabio Adernò, Lawyer, JCD