

# Living Tradition

ORGAN OF THE ROMAN THEOLOGICAL FORUM

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U.S.A.

Distributed several times a year to interested members.

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No. 87

[Roman Theological Forum](#) | [Article Index](#) | [Study Program](#)

May 2000

## A HERETICAL POPE WOULD GOVERN THE CHURCH ILLICITLY BUT VALIDLY

by **Brian W. Harrison**

Much anguish has been aroused in traditional Catholic circles by the dramatic changes which in recent decades have altered the face of the Church so significantly. Some groups and individuals have even gone so far as to claim that the See of Peter has been vacant in one or more - even all - of the pontificates since the death of Pope Pius XII in 1958. Others, on the basis of the same premise, i.e., that Blessed John XXIII and his successors have not been true Popes, have managed to set themselves up as "Popes" (such as "Gregory XVII" in Spain and "Pius XIII" in the United States) with small groups of followers. I wish to argue here that any such rejection of the authority of recent Pontiffs has no support in the traditional doctrine and law of the Church, *even on the (highly unlikely) assumption that one or more of these men has in fact fallen into heresy in the strict, canonical sense of that word.*

I am well aware that St. Robert Bellarmine and some other noted theologians have held that a Pope may cease to be Pope if he falls into heresy. But that is not *doctrine*, to which all Catholics are obliged to give their assent; it is debatable theological opinion, with which we are free either to agree or disagree. I have no access at present to all the relevant canonical legislation which was in vigor four centuries ago, in St. Robert's time; but for present purposes that does not matter. The thesis which I will defend in this brief article is summed up in its title: on the basis of twentieth-century canon law (found in both the 1917 and 1983 Codes), a Pope who fulfilled the canonical requirements for heresy (that is, who pertinaciously doubted or denied one or more truths to be believed with divine and Catholic faith<sup>1</sup>) would not have the *moral right* before God to be Pope, so that his remaining in office would be *illicit*. Nevertheless, if he refused to resign, he would still truly be the Pope, in the sense that his acts of papal governance would still be *valid* before God and the Church.<sup>2</sup>

A clear understanding of the difference between *licity* and *validity* is of fundamental importance here. A *licit* action means one carried out in accordance with law. The law in question may be natural law, a law revealed by God (such as the obligation to receive baptism), or it may be human legislation, either civil or ecclesiastical, which is in accord with God's law. It follows that an *illicit* action is objectively immoral, insofar as it violates a just law. A *valid* action, on the other hand, is one which produces the spiritual or juridical effects which it intends to produce. But it may be either licit or illicit, morally good or morally bad. For instance, a bishop who carries out an episcopal consecration without papal mandate acts illicitly, but validly: he violates a just law, but the man he ordains receives effectively the sacramental powers of a bishop, so that he in turn can ordain true priests, capable of offering the Holy Sacrifice of the Mass. A priest who celebrates Mass while in mortal sin, or without using proper vestments, acts illicitly; but, assuming there are no other defects in the way he offers Mass, it is still valid: the bread and wine he consecrates still truly become the Body and Blood of Christ. In the juridical field, the same principle holds. For instance, a bishop who appoints a certain priest as pastor of a parish knowing that the man is morally or psychologically unfit for the task, will act illicitly, since the appointment will violate canon law.<sup>3</sup> But the appointment will still be *valid*. In other words, that priest will indeed be the rightful pastor of that parish in question, so that (for instance) the marriages he witnesses there will be true marriages. The parishioners, for their part, will be obliged to accept and obey his just decisions for as long as the bishop keeps him in office.

Let us return now to the question of who can occupy the Chair of Peter. Some sedevacantists claim that Cardinal Angelo Roncalli's election as Pope John XXIII in 1958 was invalid,<sup>4</sup> on account of his having already fallen into heresy, and/or having secretly become a Freemason while acting as Papal Nuncio in Paris, thereby putting himself outside the Church. (At that time, membership in the Freemasons carried it with automatic, or *latae sententiae*, excommunication.) I will not attempt here to investigate and evaluate such charges, because in any case, even if they were true, the resulting excommunications - surprising as this may sound - would not have disqualified Cardinal Roncalli from being validly elected as Pope. This is made clear by the special Church law governing conclaves. At that time the relevant legislation was that laid down in Pope Pius XII's Apostolic Constitution *Vacantis Apostolicae Sedis* (8 December 1945);<sup>5</sup> and this document includes a special provision - startling at first glance - which in fact has been included substantially in all other papal legislation for conclaves from the fourteenth century up till the present time.<sup>6</sup> The relevant law laid down by Pius XII reads as follows:

34. None of the Cardinals may in any way, or by pretext or reason of any excommunication, suspension, or interdict whatsoever, or of any other ecclesiastical impediment, be excluded from the active and passive election of the Supreme Pontiff. We hereby suspend such censures solely for the purposes of the said election; at other times they are to remain in vigor.<sup>7</sup>

"Active" in this context means that such a Cardinal can vote in the election, while "passive" means he himself can be elected.

Some readers may spontaneously react with incredulity to the news that the Church's traditional law goes out of its way to make it possible, thus, for heretics, apostates and Freemasons, among others, to be elected to the See of Peter. Surely such enemies of the Church should be the very first to be excluded from any participation whatever in something so sacred? At first sight it would certainly seem so. But a moment's reflection shows that such legislation is necessary precisely in order to protect the papacy from the calamity which sedevacantists say has

now in fact befallen it: a Church with no visible head, and therefore no visible unity - a Church whose structures lie in utter chaos. It needs to be remembered that some offences carrying a penalty of *latae sententiae* excommunication, such as heresy itself, can be committed in great secrecy, without any public knowledge of the fact. Thus, if the Church's law required that a Cardinal be free from all ecclesiastical censure in order to be eligible for the papacy, the voters in general would have no guarantee that any given candidate was not in fact ineligible because of some secret crime by which he had incurred excommunication. They might unwittingly carry out an invalid election, in which case the "Pope" they elected would not be true Pope. The invalidity of his acts would then be a kind of spiritual cancer, quietly destroying the Church's vital structures from within: the Bishops appointed by him would have no true right to govern their respective dioceses; no laws he passed would be binding on the Church; and in particular, the Cardinals named by him would not be valid electors of a future Pope. How, then, could a true Pope be restored, if at all? Who would be competent to decide? When the fact of this hidden excommunication finally came to light, the resulting chaos would be unimaginable. Nobody would know with certainty who, if anyone, still had any real authority in the Church, and schism - perhaps a series of schisms - would seem almost inevitable. The Church's law therefore foresees and avoids the possibility of this catastrophic situation by allowing that even a secret heretic or apostate, if elected as Pope, would ascend the Chair of Peter with full *juridical* rights over the universal Church on earth, even though at the interior, mystical level of grace and the Communion of Saints, he might be totally separated from the Mystical Body of Christ.

Now, if a heretic, apostate or Freemason can thus validly be *elected* as Pope, then obviously he can validly *remain* acting as Pope until he dies. The cardinals he appoints will be true cardinals, the bishops he appoints to Sees will have true jurisdiction, the saints he canonizes will be truly guaranteed to be in Heaven, and the legislation by which he binds us will have to be obeyed (insofar as it does not command us to sin or do something manifestly opposed to the common good of the Church). Thus, the continuity of the framework and structures of the universal Church will be preserved until, in God's Providence, a more worthy Pontiff is elected.

What of the case, however, of a hypothetical Pontiff who is orthodox when elected, but falls into heresy *during* his pontificate. Does he thereby lose the papacy? It would seem strange and paradoxical, in the light of the conclave law we have just noted, if the answer were to be in the affirmative. Why should a Pope who has been a secret traitor to Christ right from the beginning of his pontificate have some sort of advantage over the man who at least *began* his pontificate with the faith of Peter?

In any case, canon law makes it clear that such a Pope will not in fact lose his power to govern the Church validly, not even by public expressions of heretical doctrine. In the 1917 Code, we find that apostates and heretics certainly incur *latae sententiae* (*ipso facto*) excommunication (c. 2314, §1); but we need to consider other canons in order to see how excommunication relates to loss of ecclesiastical office. C. 2263 states that an excommunicated person, as we would expect, "is forbidden to exercise ecclesiastical offices or duties"<sup>8</sup> - the first among which is, of course, the papacy. However, the next canon (2264) affirms the following: "An act of jurisdiction carried out by an excommunicated person, whether in the internal or the external forum, is illicit; and if a condemnatory or declaratory sentence has been pronounced, it is also invalid, without prejudice to c. 2261, §3; otherwise it is valid".<sup>9</sup>

These last four words are highly significant. Let us assume that this Pope - the validity of whose election nobody is disputing - refuses to admit that he has now fallen into heresy. Then, since no other earthly person or authority - not even all the rest of the Bishops gathered in an ecumenical council - would be competent to pass a condemnatory sentence against this Pope, or to emit a declaration that he has incurred excommunication, it follows from the Church's law that, if he refuses to resign, all his acts of jurisdiction remain valid, even though they are illicit. So while, on this hypothesis, this Pope will be offending God gravely by stubbornly exercising his office while under an (undeclared) excommunication, all his official acts are still juridically valid and binding on the rest of the Church's members.<sup>10</sup>

In the context of the contemporary dispute about the vacancy of the papal see since Vatican II, there is one other canon in the 1917 Code which might at first glance seem to provide a legal basis for the thesis that a Pope could lose his office by falling into heresy after his election to the Chair of Peter. Canon 188, §4 states that among the actions which automatically (*ipso facto*) cause any cleric to lose his office, even without any declaration on the part of a superior, is that of "defect[ing] publicly from the Catholic faith" ("*A fide catholica publice defecerit*"). However, to "defect publicly" from the faith, in this context, clearly means something a lot more drastic than making heretical (or allegedly heretical) statements in the course of public speeches or documents. This particular cause of losing an ecclesiastical office is found in that section of the Code dealing with the *resignation* of such an office (cc. 184-191), and is part of a canon which lists eight sorts of actions which the law treats as "tacit resignations". In other words, they are the sorts of actions which can safely be taken as evidence that the cleric in question *does not even want to continue* in the office he held up till that time, even though he may never have bothered to put his resignation or abdication in writing.

Other examples within c. 188 make clear the sort of thing which is contemplated: §3 has in mind a priest who accepts promotion to another ecclesiastical office incompatible with his previous one (e.g., a new diocesan bishop, whose very consecration could be taken as a tacit resignation from his previous office of being pastor of a certain parish); §5 mentions clerics who get married, whether canonically (with a dispensation) or merely civilly; §6 mentions clerics who, contrary to canon law, spontaneously join the secular armed forces. In such a context, therefore, c. 188, §4, in speaking of "public defection from" (or "abandonment of") the Catholic faith, can only mean that kind of defection which is obvious and indisputable before all the world, even to doctrinally illiterate Catholics and non-Catholics; the kind of defection, that is, wherein the cleric in question plainly *ceases even to profess* the Catholic faith, and clearly has not the slightest desire to continue in his previous clerical office. What the Code is contemplating here would be, for instance, a priest who openly joins a Protestant sect or a Masonic lodge, or who declares himself an atheist and joins the Communist Party. In such sad cases as these, it is quite common that the priest in question just packs up and leaves, without ever bothering to submit a formal letter of resignation to his bishop.

Now, it is quite obvious that none of the post-conciliar Popes has ever acted in any way which is even remotely comparable with these sorts of "public defections" from the faith. Every sedevacantist must admit that these occupants of the Apostolic Palace in Rome, recognized by nearly all the world as Popes, have all at least *publicly professed* to be Catholics throughout their respective pontificates, and have shown every public sign of intending to continue exercising the papal office right up till their dying day.

We have now seen that the 1917 Code of Canon Law, together with traditional papal conclave legislation, leaves no room for the view that the commission of heresy or apostasy, as such, prevents a man from validly attaining, or retaining, the papal office. (This is equally true of the 1983 Code and John Paul II's 1996 conclave legislation; but since the validity and binding character of these documents is not accepted by sedevacantists, I have not appealed to their authority in this essay.)

## Let us sum up:

1. The traditional and continuing law of the Church, expressed repeatedly in papal Constitutions ever since the Middle Ages, clearly allows for a heretical or apostate Cardinal to participate fully in a papal conclave, and even to be elected as Pope. And if he could validly *attain* the papacy as a heretic or apostate, he could certainly *retain* it validly, even while remaining in that unhappy spiritual state.

2. A Pope who began his pontificate as an orthodox Catholic, but became a formal heretic or apostate *during* his pontificate, would thereby legally incur excommunication. However, even if his heresy or apostasy should become publicly discernible, at least to those Catholics with the benefit of a sound doctrinal formation, the absence of any competent authority on earth who could lawfully *declare* his excommunication would mean that, if he refused to resign and continued to insist on carrying out acts of papal authority, those acts, though illicitly exercised, would still be valid. In other words, he would still be *juridically* the true Pope, whom we would have to recognize and obey in all things but sin, even though at the inner level at which grace operates, he might well be totally separated from the Mystical Body of Christ. Thus God guards his Church from the possibility of being cast into chaos by being left without an earthly governing authority.

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## ENDNOTES

1. Cf. 1983 Code, c. 751; 1917 Code, c. 1325, §2.

2. It goes without saying that Divine Providence would never permit him to define his heresy *ex cathedra*, for the dogma of papal infallibility assures us that this can never happen.

3. Cf. c. 521, §2, 1983 Code; c. 453, §2, 1917 Code.

4. If that were true, it would follow without further ado that no subsequent occupant of the Vatican's Apostolic Palace has been a true Pope either; for those named by the 'non-Pope' Roncalli as Cardinals would then have been in reality 'non-Cardinals', with no capacity to validly elect the next Pope. So the election of G. B. Montini as Paul VI would also have been invalid, as well as those of his two successors up till now.

5. AAS 38 (1946), pp.65-99.

6. The most recent legislative act on this topic is John Paul II's Apostolic Constitution *Universo Dominici Gregis* of 22 February 1996 (AAS 88 [1996] pp. 305-343). The relevant article is #35 (p. 322).

7. "34. *Nullus Cardinalium, cuiuslibet excommunicationis, suspensionis, interdicti aut alius ecclesiastici impedimenti praetextu vel causa a Summi Pontificis electione activa et passiva excludi ullo modo potest; quas quidem censuras ad effectum huiusmodi electionis tantum, illis alias in suo robore permansuris, suspendimus*" (AAS 38 [1946], p. 76). This legislation was in force for the elections of both John XXIII and Paul VI. The elections of John Paul I and John Paul II were governed by the substantially identical law promulgated by Paul VI in his Apostolic Constitution *Romano Pontifici Eligendo* of 1 October 1975 (AAS 67 [1975] pp.609-645). This slightly revised text reads as follows: "35. *Nullus Cardinalis elector, cuiuslibet excommunicationis, suspensionis, interdicti aut alterius ecclesiastici impedimenti causa vel praetextu, a Summi Pontificis electione activa et passiva excludi ullo modo potest; quae quidem censurae, ad effectum huiusmodi electionis tantum, suspendendae putandae sunt*" (AAS 67 [1975], p. 623).

8. "*Excommunicatus . . . prohibetur ecclesiasticis officiis seu muneribus fungi, . . .*".

9. "*Actus iurisdictionis tam fori externi quam fori interni positus ab excommunicatis est illicitus; et si lata fuerit sententia condemnatoria vel declaratoria, etiam invalidus, salvo praescripto can. 2261, §3; secus est validus, . . .*". The other canon cited here (2261, §3) simply makes an exception to this invalidity when it is a case of an excommunicated priest (whose sentence has been declared) giving absolution to someone in danger of death. The words omitted after *validus* in the above citation also have nothing to do with the question of losing the papal office. They refer to c. 2261, §2, which allows the faithful to request the sacraments from an excommunicated priest whose sentence has *not* been declared, and make it clear that, in acceding to that request, such a priest acts licitly as well as validly in giving absolution.

10. These considerations arising from cc. 2263 and 2264 also provide the answer to a possible objection regarding our first hypothetical case: i.e., that of a Pope who is *already* formally heretical, or otherwise secretly excommunicated, at the time of his election. It might be argued that since Pius XI's legislation makes a point of stipulating that the suspension of all ecclesiastical censures applying to Cardinal electors applies *only* while the election itself is actually being carried out, it is clear that such a Pope (assuming he does not inwardly re-embrace the orthodox faith, renounce his Masonic membership, or whatever, at the very moment in which he accepts the Chair of Peter) would, in the first instant *after* his election, again fall under the same excommunication which had weighed upon him beforehand. In which case he would be unqualified to continue holding the papal office - or any other ecclesiastical office. This is all very true. Such a Pope would indeed be holding office *illicitly*, and would therefore have the moral duty before God to resign the papacy immediately after having been elected. But if he did not do so, and since his election itself would have been valid, the canons we have just discussed would guarantee the continuing *validity* of his acts for as long as he refused to resign.