

Some Notes on the Application of *Traditiones Custodes* in light of Canon Law from the Latin Mass Society

In this document we wish to give some brief indications of what the Apostolic Letter does and does not do in terms of the canonical obligations of bishops and priests, in light of the advice we have received from more than one canonist.

The Authority of the Bishop

The Apostolic Letter emphasises the authority of the bishop in each diocese over the liturgy.

Art. 2. It belongs to the diocesan bishop, as moderator, promoter, and guardian of the whole liturgical life of the particular Church entrusted to him, to regulate the liturgical celebrations of his diocese. Therefore, it is his exclusive competence to authorize the use of the 1962 Roman Missal in his diocese, according to the guidelines of the Apostolic See.

This article footnotes (*inter alia*) Vatican II's Decree on the Office of Bishop, *Christus Dominus* 11, which states:

Therefore bishops are the principal dispensers of the mysteries of God, as well as being the governors, promoters, and guardians of the entire liturgical life in the church committed to them.

A similar point is made by Vatican II's Constitution on the Liturgy, *Sacrosanctum Concilium* 22.

The Apostolic Letter takes, therefore, this principle already well-established in the discipline of the Church, and concludes ('therefore') that the bishop has authority over the 1962 Missal in his diocese. This is reminiscent of the comment in Pope Benedict XVI (2007) Letter to Bishops Accompanying *Summorum Pontificum*:

I very much wish to stress that these new norms do not in any way lessen your own authority and responsibility, either for the liturgy or for the pastoral care of your faithful. Each Bishop, in fact, is the moderator of the liturgy in his own Diocese (cf. *Sacrosanctum Concilium*, 22).

The Apostolic Letter is, at this point, not making any innovation, or investing bishops with special authority, but merely reiterating the existing legal situation, which had itself not been altered by *Summorum Pontificum*.

The Rights of Priests and Faithful

Pope Benedict's Apostolic Letter *Summorum Pontificum* Article 1 notes, as a historical fact, that the 1962 Missal has never been abrogated. It goes on to confirm the legal implications of this fact: that priests of the Latin Rite have the right to celebrate according to this Missal, and that the faithful have the right to attend it.

Nevertheless, the *exercise* of the right of priests to celebrate the 1962 Missal impacts the question of the liturgical life of the diocese, and for this reason comes under the authority of the bishop. Thus, for example, *Summorum Pontificum* limits the celebration of the older Easter Triduum (Art. 2).

The provisions of *Traditionis Custodes* must be understood in the same way. It does not abrogate the 1962 Missal, and thus leaves the right of priests to celebrate it intact. It does regulate the way this right can be exercised.

It should be noted that the Apostolic Letter says nothing about the right of the faithful to attend the 1962 Mass, the celebration of the other sacraments according to the older Roman Ritual, or the saying of the older Divine Office by priests in public or in private: accordingly, all of these things remain permitted. It is general principle of Canon Law that laws which restrict things are to be interpreted narrowly rather than widely:

Can. 18: Laws which establish a penalty, restrict the free exercise of rights, or contain an exception from the law are subject to strict interpretation.

'Groups' attached to the 1962 Missal

Article 3 concerns 'groups that celebrate according to the Missal antecedent to the reform of 1970'. With sight only of vernacular translations of the Apostolic Letter, the context of this terminology is harder to clarify, but the way the term is used indicates that the Apostolic Letter has a formal association in mind. These are entities which might have settled views about the liturgical reform (Art 3.1), have a right to pastoral care (3.4), and up to the time of the Apostolic Letter could be 'authorised' by the local Ordinary (3.6). The provision in 3.5 concerning 'parishes canonically erected for the benefit of these faithful' reinforces this impression.

This corresponds to the use of the term 'group' (in the English translation) in *Summorum Pontificum* Articles 5 and 7. In those articles, 'groups' of the faithful attached to the older Missal had the right to request a regular celebration of this Missal (Art. 5) and, if denied by a parish priest, to appeal to the bishop and then to the Holy See (Art. 7). Relatedly, it authorises bishops to erect 'personal parishes' (Art. 10).

The Instruction *Universae Ecclesiae* (2011) tried to establish a fairly informal understanding of what was required for the existence of a 'group' (see *Universae Ecclesiae* 15), in order to make it easier for them to claim the rights attached to the concept of a group in *Summorum Pontificum*. The notion of a 'group' being subject to 'authorisation' in *Traditionis Custodes* nevertheless suggests a fairly formal understanding.

The regulation of the celebration of the 1962 Missal for such 'groups' is the sole preoccupation of *Traditionis Custodes* Article 3. Bishops where these groups currently exist are instructed to find places for them to worship according to the 1962 books (3.2), to determine the times at which Masses are to be celebrated (3.3), and to appoint celebrants for

them (3.4). The existence of personal parishes are to be reviewed (3.5). No new groups are to be established (3.6).

What these provisions do is to emphasise the authority of the bishop in regulating arrangements which may have been made under *Summorum Pontificum* Art. 5. It does not instruct bishops to close these arrangements down: on the contrary, it tells him to make provision for the faithful concerned. On the other hand, the rights of such groups to form and to request celebrations is rescinded, and it follows that no new groups of this kind will come into existence (or be recognised as such).

The following articles, 4 and 5, concern the authorisation of priests to celebrate according to the 1962 Missal: in the case of newly ordained priests, with reference to the Holy See. As noted above, this is a matter of the bishops' moderation of the liturgy in his diocese, and not the right in principle of priests to celebrate the 1962 Missal, so this should be taken to concern the public celebration of the older Missal. There is accordingly no need for a priest to apply for permission to celebrate the 1962 Missal in private.

Priests who have this permission will be able to celebrate the 1962 Mass in their parishes, or anywhere else, and the faithful will be able to attend it. If these faithful do not constitute a recognised 'group', the provisions of Art. 3 do not apply. Indeed, they could not do so: it would make no sense to ask of a collection of Catholics who happen to turn up at a particular Mass, but may never have met before, what theological position they collectively hold about the Second Vatican Council, as per Art 3.1, or if their existence as a collective is 'authorised', as per Art. 3.6.

To summarise, *Traditiones Custodes* is concerned to maintain the pastoral care of officially-constituted 'groups' attached to the ancient Mass, for example in personal parishes, but wishes to emphasise the authority of the bishop to regulate where, when, and by whom, their Masses are celebrated.

At the same time, it does not prevent priests in general celebrating the older Mass, even in public, but it wishes to emphasises the authority of the bishop to give permission for this.

In both cases, it should be observed that in practice under *Summorum Pontificum* bishops continued to exercise the kind of care and control which *Traditionis Custodes* underlines, though they might sometimes have done this implicitly and indirectly: for example, by choosing where to assign priests. Although they are given more direct power over the situation by *Traditionis Custodes*, it seems likely that many bishops will continue to exercise this power as a matter of general oversight, rather than micro-managing each parish and apostolate.

The decision of many bishops in the immediate aftermath of the publication of *Traditionis Custodes*, to give blanket permissions for existing arrangements to continue, is a perfectly reasonable exercise of their prerogatives under the Apostolic Letter.

Parish Churches

The most surprising thing about Article 3 is that the places of worship to be assigned to 'groups' should not include parish churches. In the context of Italy and certain other countries, where for historical reasons dioceses have an abundance of non-parish churches, this presents no great difficulty, and personal parishes for the 1962 Mass do indeed, in such countries, tend to make use of these places of worship: chapels of ease, confraternity chapels, chapels attached to religious communities, and so on.

In other countries this is not so. If a bishop cannot easily find an alternative venue for such a group then, in accordance with Canon 87.1, he need not apply this restriction:

Canon 87.1. A diocesan bishop, whenever he judges that it contributes to their spiritual good, is able to dispense the faithful from universal and particular disciplinary laws issued for his territory or his subjects by the supreme authority of the Church.

As already explained, this question only arises with formally constituted 'groups'. It is interesting to note, nonetheless, that while no new 'personal parishes' are to be established, the moving of 'groups' from parish churches to other places of worship implies the continuing usefulness of the concept of a 'shrine' dedicated to the celebration of the 1962 Missal, and in general to 'chaplancies' for those attached to this Mass.

Vernacular readings

It should be noted that the requirement of Article 3.3 that lections be given in the vernacular does not exclude their being proclaimed first in the Latin of the liturgical text, which is generally required under the liturgical law of the 1962 Missal.

The congruence of the translation used with the liturgical text, which sometimes varies from the Hebrew or Greek versions which form the basis of most recent translations, should be kept in mind.

In any case, this requirement only applies in the context of the provision of the Mass for 'groups' as explained above.

The Good of Souls

All ecclesiastical legislation aims at the good of souls: the concluding words of the Code of Canon Law, indeed, tells us so:

Can. 1752: ...the salvation of souls, which must always be the supreme law in the Church, is to be kept before one's eyes.

The authority of the Holy See and of bishops and priests is given, not for their own good, but for the good of souls; on bishops in particular, see the Code Can. 383 §1. Canon 87.1 has already been quoted, above.

All of these statements remind us that it is in the context of the good of souls that Church's legal provisions must be interpreted and applied. Within the Church's tradition, to apply a regulation in such a way as manifestly to harm the good of souls, is not just a pastoral or practical problem, but a failure to evaluate its *legal* force correctly.

Traditionis Custodes concerns itself directly with the good of souls, and the Holy Father's Letter to Bishops underlines this motivation. The reason why the former Missal is not simply banned outright is that Pope Francis is mindful of the pastoral harm this would do. The 'two principles' the Letter gives to guide bishops are these:

to provide for the good of those who are rooted in the previous form of celebration and who need time to return [e hanno bisogno di tempo] to the Roman Rite promulgated by Saints Paul VI and John Paul II, and, on the other hand, to discontinue the erection of new personal parishes tied more to the desire and wishes of individual priests than to the real need of the "holy People of God."

This is therefore the crucial consideration in applying the Apostolic Letter according to the *mens* of the legislator. Bishops are to make arrangements and to give, or withhold, permissions, according to whether they believe it will be of spiritual benefit to the faithful attached to the older Mass, and to the priests who wish to celebrate it.