

# ECCLESIASTICAL LEGISLATION ON LITURGY AND CHURCH MUSIC AFTER THE SECOND VATICAN COUNCIL

This article originally appeared in the *Festschrift für Johannes Overath: In Caritate et Veritate*, edited by Hans Lonnendonker (Saarbrücken: Minerva-Verlag, 1973), pp. 67–99. The first part of the three-part study is given in translation here; the other two sections will follow in subsequent issues of *Sacred Music*. Some examples taken from Germany may not correspond to American or Canadian situations, but since these serve as illustrations of Professor May's major theses and are not crucial in themselves, they have been retained. No effort has been made to substitute examples from our experiences. The translation was made by Dr. Richard M. Hogan.

## I. The relationship between conciliar and papal legislation and the instructions for its implementation

Every question directed to a law-giving body should be settled with one and only one answer. If there are contradictory answers to the same question given by different authorities within a single law-giving body, then the principle, *lex superior derogat legi inferiori*, is applied, i.e., the legal force of these norms is determined by the hierarchical relationship of the different authorities which laid them down. The norms of lower authorities may not contradict those of higher ones. If there is a contradiction in the norms laid down by the same authority, the conflict between the two principles, *lex posterior derogat legi priori* and *lex specialis derogat legi generali*, must be resolved.

The pope and the general council of the whole Church hold the highest power in the Church. To state it in another way, the pope alone or the pope together with the episcopal college is the ultimate ecclesiastical authority. The pope is head of a general council and without him the council would not be a general one. Therefore, a conflict between the pope and a general council is impossible.<sup>1</sup>

The pope or a general council may issue laws which entail specific instructions for their implementation. When he or it chooses to do this, it is superfluous to issue further instructions concerning these laws. However, often the highest authority in the Church only establishes the outline of the chief characteristics of the new law and entrusts its implementation to the lower authorities. But even if there is no specific instruction that the lower authority should lay down guidelines for the new law, those responsible for implementing the new law may issue whatever guidelines which are necessary. Still, the lower authority must be conscious of the boundaries of its legitimate activity. The authorization to issue guidelines for new laws does not give the lower authority the right to develop its own legal ideas, but only entrusts it with the power to reveal the ramifications of the new law. Instructions for implementation exist to complete the new legislation, not to promulgate further laws.

As mentioned, there is no subordinate relationship between a general council and the pope. When the pope executes the instructions of a council, he does not act as one subject to the council. Undoubtedly the pope has a right to ignore conciliar directives and to abrogate partially or completely conciliar decrees.

However, such papal acts cannot claim to be serving the directives of the council. If the pope declares a wish to fulfill the conciliar decrees, his legislation must be measured by the conciliar texts. Further, it should be recognized that the pope in office at the time of a council usually wishes to fulfill the decrees of the council and to assist in accomplishing the will of the fathers. Therefore, such papal instructions are to be judged according to the decrees of the council itself.

# 1. Conciliar legislation and the instructions for its implementation

## A. Conciliar legislation

The Second Vatican Council promulgated voluminous texts treating almost every aspect of ecclesiastical life.<sup>2</sup> The differing character and weight of these documents is outwardly apparent if only from their many and varied forms. In addition to dogmatic constitutions, a constitution, and a pastoral constitution, there are decrees and declarations. With regard to the contents, the literary quality, importance, and obligatory force of the texts vary widely. In addition to appeals, declamations, and proclamations, there are historical passages and descriptions of the current situation. Authoritative sections alternate with explanatory material, thanksgivings, acknowledgements, exhortations, and warnings. The legally pertinent sections and the legislation of the Second Vatican Council suffer from many weaknesses which cannot be described here.<sup>3</sup> Above all, there is a lack of clarity which causes considerable difficulties in the implementation of these directives because the implementation of a law depends on how it is interpreted. However, the interpretation of an unclear law is usually itself unclear and unconvincing.

The lack of precision which is found almost everywhere in the authoritative texts of the Second Vatican Council is a consequence of the decision of the conciliar fathers to speak "pastorally" and not "juridically." Allegedly, this was to insure a better reception for the texts.<sup>4</sup> The fathers stood well within the influence of a theology which was allergic to the law and, unfortunately, as a result, generally opposed to precise language. But now we find that what the council meant to be "pastoral" is interpreted "juridically," i.e., its juridical relevance is examined. Of course, this would not have been unexpected if the council had wished to speak authoritatively. But the transposition of devotional and rhetorical remarks into precise legal norms is a risky business. The many, various, inexact, and ambiguous expressions used by the council encourage a chaos of interpretations. The *explanations* of the conciliar documents have produced serious and irreconcilable differences. Totally incompatible viewpoints are held and defended by appeals to the council.<sup>5</sup> Even those who go beyond the council or consciously deviate from it, generally cite the council in defense of their activity. Further, in not a few cases it is clear that there has been a departure from both the letter and spirit of the council. Where opposing positions stand against one another, it will be necessary to issue a *non liquet*. On the one hand, some will not be able to show that their view of the meaning intended by the council is unequivocally found in the conciliar texts. However, others will not be convinced that their opinion is undoubtedly contradicted by the texts. The documents are ambivalent. Both positions may cite them or ignore them.

In some cases the conciliar texts are interpreted in a shockingly amateur way and with an impudence which introduces into the conciliar documents many

things which the council did not intend to say.<sup>6</sup> These aspects have found their way into the seamless quilt of post-conciliar theology and canon law because some theologians and canon lawyers have abandoned the principles of scholarly endeavor and pay homage to their own wishful thinking. In other words, they have made their "scholarship" into an ideology.<sup>7</sup> In addition to some minor problems, there are many important tasks to be accomplished, *e.g.*, in the conciliar texts we must distinguish the legally binding statements from the mere programmatic, goal-setting maxims which empower a competent lower authority to implement them. Such a distinction is in most cases not even perceived, let alone taken into consideration.

#### B. Instructions for the implementation of conciliar legislation

Generally, the implementation of conciliar directives has followed a trend which depends on an unconvincing interpretation of the conciliar texts. The documents of the council treat general questions, but they do not define their own, proper interpretation. Many instructions for the implementation of the conciliar documents openly acknowledge this situation, *e.g.*, the instruction from the secretary of state dated March 31, 1969, speaks of *indicia et consilia* given by the Second Vatican Council.<sup>8</sup> There are few instructions for the implementation of the conciliar texts which define only one, proper interpretation of questionable passages found in the documents. In most cases, there could have been solutions other than those suggested in the various instructions which would not have deviated from the will of the council. In fact, in not a few cases an impartial understanding of the conciliar texts would have adopted interpretations other than those suggested in the instructions. In these instances, the scheme suggested in the instructions must be considered a departure from the will of the conciliar fathers. Not a few of the instructions for the implementation of the documents represent either a compromise or are simply the consequences of the seizure of ecclesiastical influence and power by the progressive party.

No one, for example, is able to demonstrate that most post-conciliar stipulations regarding liturgy and church music are necessary conclusions drawn from the pertinent, conciliar texts. On the contrary, it can be shown that many such directives contradict the conciliar decrees. In the Constitution on the Sacred Liturgy,<sup>9</sup> the fathers indicate that the *ordo missae* should be revised to facilitate the pious and active participation of the faithful (no. 50). On the basis of this suggestion, the first instruction for the implementation of this constitution<sup>10</sup> allows the priest and people to say the Our Father together (no. 48g). Further, the instruction, *Musicae sacram*,<sup>11</sup> establishes this privilege almost as a rule (no. 35, *convenienter profertur*). Clearly, there is nothing in the conciliar decree suggesting that the reciting or singing of the Our Father in common is either permissible or proper. This question was to be decided by the experts. But the opinions of liturgists on this question were and are still divided.<sup>12</sup> However, the party which favored the common reciting of the Our Father managed to gain the upper hand in the congregation responsible for this matter. If the other side had held that position, the opposite norm would have found its way into the instructions. The opinion which holds that the common reciting of the Our Father is the will of the council is, at the very least, unprovable.

Another example might be useful. The Constitution on the Sacred Liturgy

asks for a revision of the directives concerning the form of the material things used in the liturgy, e.g., it calls for directives regarding "the nobility, placing, and security of the eucharistic tabernacle" (no. 128). No one is able to show that the recommendation to place the Blessed Sacrament outside of the main body of the church as found in the *Institutio generalis missalis Romani* (no. 227) expresses the will of the council. From the very words of the conciliar text the opposite position also cannot be conclusively demonstrated even though one can in general hold that the overwhelming majority of the fathers would not have approved radical innovations. They certainly did not offer their support to the proposal to remove the Eucharist from the main body of the church.<sup>13</sup> It seems obvious that most of the fathers believed that the Holy See would maintain control of the post-conciliar development and would find judicious solutions to the problems which would arise in the accomplishment of the council's directives.

The Constitution on the Sacred Liturgy provides that the Holy See may establish the cases when it would allow Holy Communion to be received under both species (no. 55). By way of example, the constitution mentions three cases when Communion under both species may be permitted, but the occasions for this privilege were considerably increased in the degree of the Congregation of Rites dated March 7, 1965,<sup>14</sup> and especially in the instruction, *Eucharisticum mysterium*, dated May 25, 1967.<sup>15</sup> The *Institutio generalis missalis Romani* even went beyond this latter instruction (no. 76). Further, in the instruction dated June 29, 1970, the Holy See completely abandoned the principle that it should decide when Holy Communion under both species might be allowed. It was left to the individual episcopal conferences to decide the occasions, in addition to those listed in the *Institutio generalis missalis Romani*, when the local ordinaries might allow Holy Communion under both species.<sup>16</sup>

A truly sad tale is the fate of the Latin language in the liturgy of the post-conciliar Church. The path from the regulation of this matter in the Constitution on the Sacred Liturgy to the *Notificatio* of the Congregation for the Sacraments and Divine Worship dated June 14, 1971,<sup>17</sup> cannot be seen as anything but an abandonment of the spirit and letter of the council.<sup>18</sup> The council did ask for a more frequent use of the vernacular language in the liturgies celebrated with the participation of the people. The goal of the council was unequivocally "pastoral," i.e., it wished to allow a somewhat extended use of the vernacular in a wider sphere in order to facilitate the active participation of the faithful in the glorification of God through the liturgies of the Church. But the preeminence of the Latin language was not to be called into question even though the vernacular languages were elevated to liturgical use. The post-conciliar development has departed widely from this principle. It has introduced (perhaps only tolerated) a condition which in many parts of the so-called Latin Church gives to the Latin language only a shadowy existence. It even appears that Latin is condemned to extinction. In part, the directives which claim to implement the stipulations of the council concerning the vernacular in the liturgy unequivocally violate them. Therefore, every attempt to harmonize these directives with the conciliar norms is doomed to failure. For example, the Constitution on the Sacred Liturgy allows the use of the vernacular in Masses celebrated with the people (no. 54), but, on the contrary, the *Notificatio* allows the priest who celebrates a Mass in private to

use either Latin or the vernacular. It seems clear that the *Notificatio* is not faithful to the conciliar wishes.<sup>19</sup>

The construction of parish councils is another instance of a clear departure from the will of the fathers. The decree on the lay apostolate<sup>20</sup> provides, as far as possible, for the erection of such parish boards. These would enable priests, religious, and the faithful to work together in furthering the Church's apostolic activity (no. 26). In Germany, the parish councils have generally been given decision-making authority even though the lay personnel on these councils often have the power to vote down the wishes of the pastor, the priestly head of the parish.<sup>21</sup> In spite of the pastor's right to veto the decisions of the councils,<sup>22</sup> he still becomes a mere functionary fulfilling the council's wishes. The few remarks in the decree, *Apostolicam actuositatem*, are shockingly far removed from the parish council system, at least as it has developed in the German-speaking countries.<sup>23</sup>

In the implementation of the decrees of the Second Vatican Council, the neglect of certain directives which are opposed to the trend taken by the post-conciliar Church under the influence of the progressives is a serious omission. For example, the stipulation, found in the Constitution on the Sacred Liturgy, that Gregorian chant should be accorded pride of place in liturgical celebrations (no. 116) has generally been ignored in the promulgation of instructions for the implementation of this constitution. The instruction, *Musicam sacram*<sup>24</sup> limits the precedence of Gregorian chant very significantly to the liturgical functions celebrated in the Latin language (no. 50). The *Institutio generalis missalis Romani* does not even mention Gregorian chant although it expresses a wish that the faithful would be able to sing at least a few parts of the ordinary of the Mass in Latin.<sup>25</sup>

Generally, it can be said that the council fundamentally wished at all times to go forward cautiously and to continue the developments which had already begun. They did not wish to overturn or to dismantle previous practices. The pastoral theme which guided the council's directives<sup>26</sup> insured this procedure. However, if the conciliar texts are examined together with the instructions for their implementation, one cannot escape the conclusion that the continuity of ecclesiastical practices has, in not a few instances, been broken. Progressive theologians and bishops, using the ambivalence of the conciliar texts or employing the "salami tactic," *i.e.*, slowly establishing their program one stage at a time, have been able to eliminate countless treasures of tradition including much of our liturgical and musical heritage.

## 2. Papal legislation and instructions for implementation

Among papal laws one must distinguish between the immediate and the mediate ones. Immediate papal legislation includes those directives which emanate from the pope himself, whereas the mediate directives are promulgated by a papal agency. The immediate papal laws appear in different form according to the importance of the subject matter, but it is impossible to establish a hierarchical relationship between these immediate papal laws on the basis of their various forms. On the other hand, the mediate papal laws are neither in form nor in their weight identical, *e.g.*, there is a great difference between a general ordinance of a congregation and a directory.

One is inclined to rank the immediate papal legislation over the mediate. In fact, such a principle cannot be established. By virtue of a special confirmation the pope may at any time abrogate his immediate laws with mediate ones, *e.g.*, he could modify the law in the Code of Canon Law through an instruction from a congregation. However, where there is no special papal confirmation, immediate papal legislation takes precedence over mediate legislation. Therefore, a mediate papal directive cannot in principle establish regulations which are contrary to an immediate papal directive.

The hierarchical structure of the Church implies that papal legislation takes precedence over the legislation of lower hierarchical bodies. Ecclesiastical law is generally governed by the principle that the rights of lower units are to be preserved. An application of this principle is the norm that general papal legislation abrogates the legislation of episcopal conferences only if it expressly states that it does see can. 22 of the *Codex iuris canonici*). Of course, the presumption is that the law-givers subordinate to the pope remain within their field of competence and have promulgated valid laws. The regulations of lower instances are not valid unless these have been granted a certain area of competence by the higher authority. These boundaries may not be crossed, if the laws are to be valid. When papal legislation conflicts with the legislation of law-givers subordinate to the pope, the laws of the subordinate is abrogated, *i.e.*, destroyed.

The participation of the pope in the legislation, the *interpositio auctoritatis*, in the form of acceptance, ratification, or consent does not raise the laws of bishops and episcopal conferences to the rank of papal law. Papal legislation and the norms of bishops and episcopal conferences, which agree with the papal decrees, are compatible.

#### A. Papal legislation

For an understanding of post-conciliar, papal legislation and that of the Roman curia, which represents and assists the pope, two premises are necessary. Beyond all doubt the pope wishes to maintain the Church's functional efficiency. Nevertheless, it seems that his priorities are not in order. Diplomatic flexibility without the necessary firmness is, as history shows, insufficient to check the centrifugal forces in the Church. Friendly exhortations, even in a spiritual society, cannot by themselves maintain the order of that society. The shirking of conflicts with episcopal "colleagues" can only harm the Church by attacking its highest principle, the use of the petrine authority.

The Roman curia is partially bound by the papal authority, but it is also partially free from control. The homogeneity of the curia has not been preserved. In the last few years, even within the curia, a disastrous pluralism has grown, which cripples and divides the Church, which opposes every attempt to unite the strengths of the Church, and which hinders the making of clear decisions. The pluralistic confusion is undeniably reflected in the promulgated laws. As in parliamentary democracies where coalition parties divide the executive and legislative power, the norms issued today from the Roman curia usually represent, at best, compromises between divergent trends and often are only the results of a temporarily victorious party.

It is no longer rare to find parts of one and the same law to be formally and materially contradictory.

The contradictions found in the instruction, *Memoriale Domini*, dated May 29,

1969,<sup>27</sup> concerning the administration and reception of Holy Communion are described elsewhere.<sup>28</sup> These contradictions arose through two different redactions of the same law which attempted to unite irreconcilable positions with one another: the traditional mode of administering the sacrament, supported with many sound reasons, and the new, fashionable approach used in Holland which raises some serious misgivings. In spite of the clear wishes of the bishops, scattered around the world, who favored the traditional mode of administering Holy Communion, the pope succumbed to the pressure applied by certain episcopal conferences (and by the presidents of those conferences) and permitted a practice which had established itself through disobedience. The responsible bureau of the Roman curia was forced against its better judgment to take this papal permission into account and to append it to the already completed instruction concerning the reception of Holy Communion.

There are striking contradictions in the legislation concerning the reservation of the Blessed Sacrament.<sup>29</sup> These are found not only in documents which were issued successively and which allegedly conform to the norms of the Second Vatican Council, but also there are contradictions between successive paragraphs of the same document as in nos. 53 and 54 of the instruction, *Eucharisticum mysterium*, dated May 25, 1967.<sup>30</sup> The only explanation for this contradiction is that a higher authority caused the post-conciliar commission for the application of the Constitution on the Sacred Liturgy, which was responsible for the instruction, *Eucharisticum mysterium*, to quote in paragraph 54 another instruction, *Inter oecumenici*, which, at that time, was barely three years old. However, this higher authority did not have the strength to abrogate the clauses of paragraph 53 which stand in contradiction to the quotation in paragraph 54.

At the beginning of paragraph 12 of the instruction issued by the Congregation for the Sacraments and Divine Worship dated September 5, 1970,<sup>31</sup> it is stipulated that only the Congregation for the Sacraments and Divine Worship may permit liturgical experiments of any kind. In a later passage of this document, where the reforms of the liturgy according to paragraph 40 of the Constitution on the Sacred Liturgy are discussed, the conditions which would permit liturgical experimentations without the previous permission of the Congregation for the Sacraments and Divine Worship are set out. In these cases, the congregation only asks for a report about the experiment. It is clear from this situation that the law-giver did not have the strength to maintain a necessary principle without weakening it.

An instruction, dated July 1, 1972,<sup>32</sup> which discusses the special cases when other Christians would be permitted to receive Holy Communion in the Catholic Church, allows a Protestant, who in an emergency wishes to receive Holy Communion in the Catholic Church, to do so if he professes a eucharistic faith in accord with Catholic teaching. Of course, if a Protestant believes the Catholic teaching on the Eucharist, he would, in most cases, contradict the beliefs of his own religious body. However, the instruction indicates that in normal times, *i.e.*, when no emergency exists, this same Protestant should participate in the eucharistic celebration of his own faith and, of course, he would in this case profess an understanding of the Eucharist which contradicts the Catholic teaching. The law-giver, the Secretariat for the Promotion of Christian Unity, assumes that on one occasion (in normal times) the Protestant would participate in the

eucharistic celebration of his own religious body with a Protestant view of the Eucharist, and, on another occasion (in an emergency), this same man would receive Holy Communion in the Catholic Church with a Catholic understanding of this sacrament.<sup>33</sup> In other words, this one man would at the same time accept two different and mutually exclusive doctrines concerning the Holy Eucharist. Such spiritual confusion is the result of the attempt, made for reasons of sentiment or emotion, to reconcile absolute contradictions.

When the promulgated laws of the highest shepherd in the Church or those of his representatives and assistants (the Roman curia) are burdened with so many conflicts and even contradictions as has been illustrated by these examples, then one cannot expect that they will be effective laws. It is to be feared that only those laws which take the widespread trends into consideration will be accepted or that those subject to the laws, judging them to be impractical, will ignore them.

#### B. Instructions for Implementation

As the implementation directives for the conciliar texts often diverged substantially from the decrees of the council, so the corresponding regulations concerning papal legislation differ from that legislation.

As is well-known, the introduction of the so-called *communion in the hand* occurred, in Germany, in conscious disobedience of the laws in force. This disobedience was encouraged by the chairman of the German episcopal conference, Cardinal Döpfner.<sup>34</sup> When the permission to legalize this disobedience was wrested from the pope in the instruction, *Memoriale Domini*, astonishing things happened. The indult, issued by the Congregation for the Sacraments and Divine Worship detailing how communion in the hand was to be introduced into individual countries, stood in contradiction to the higher norm of the instruction, *Memoriale Domini*.<sup>35</sup> The regulations issued by bishops on the basis of the indult exceeded the bounds permitted by both the instruction and the indult.<sup>36</sup> The Congregation for the Sacraments and Divine Worship promulgated an instruction concerning the celebration of the Mass in special communities on May 15, 1969.<sup>37</sup> On September 24, 1970, the German episcopal conference issued directives for the implementation of this document.<sup>38</sup> However, these directives contradicted in many places the text of the instruction. The guidelines issued by the German bishops allow in group Masses a spiritual talk instead of a homily. The instruction of the Congregation forbids this (no. 6d). The guidelines of the German episcopal conference allow changes even by members of the congregation present at Mass in the collect, secret (prayer over the gifts), and postcommunion, as well as in the preface. The instruction of the Congregation for the Sacraments and Divine Worship strictly rejects the use of any text other than the approved one (no. 11a). According to the guidelines of the German bishops, the chasuble, alb, and stole "should!" be used by the priest celebrating a group Mass in a liturgical space. Outside of a liturgical setting, the priest should "at least" wear an alb and stole. In extraordinary cases, the vestments prescribed to be used by the priest in the administration of the other sacraments "will be sufficient," but the stole must always be worn. On the other hand, the instruction of the Congregation for the Sacraments and Divine Worship asks that the vestments conform in number, form, and quality with the existing norms (no. 11b), and refers to the *Institutio generalis missalis Romani* (nos. 297–310), where it



is prescribed that the priest is to wear the chasuble, stole, and alb for the celebration of Mass except where there are other liturgical provisions regarding the chasuble, as on Holy Saturday (nos. 299, 281). According to the guidelines of the German episcopal conference, one “should” retain, even in group Masses, “at least” the canon. The instruction of the congregation prescribes that the participants through their conduct should offer adoration in the traditional way to the sacrament of the eucharistic sacrifice. Further, it establishes that the conduct of the celebrants and the participants must be the same in group Masses as it is in all other Masses (no. 11c). This regulation means that the norms of the *Institutio generalis missalis Romani* (nos. 20–22) should be followed. These norms indicate that the people are to stand at many times, but also that they are to kneel, at least for the consecration.

The German episcopal conference deviated from the norms established by superior legislation for two reasons. First, they were afraid of the censure and opposition of progressive theologians who would have opposed guidelines faithful to the papal regulations. Second, the German episcopal conference under the chairmanship of Cardinal Döpfner became completely dependent on these progressive theologians.<sup>39</sup>

In one case, instructions for the implementation of an immediate papal decree issued by the German episcopal conference must be regarded as an attempt to remove norms burdensome to the German episcopate. On March 31, 1970, Pope Paul VI promulgated the *motu proprio, Matrimonia mixta*.<sup>40</sup> According to this document, there is an impediment of differing cults in a marriage between two baptized persons, one a Catholic, and the other non-Catholic (no. 1), and there is an impediment of differing religions in a marriage between a Catholic and a non-baptized person (no. 2). Dispensations from both these impediments may be obtained “if there is a sufficient reason” (no. 3). Of its very nature a dispensation is an improvisation for exceptional cases. It does violence to the law and may be permitted only for grave reasons. Therefore, there must be a just and intelligent reason for the granting of a dispensation (can. 84 of the *Codex iuris canonici*). Without such a reason, a dispensation may not be granted. If there is a dispensation granted without sufficient reason, it is invalid, unless the pope, himself, issues it. Even the law-giver is bound by his law in the sense that he cannot remove the obligatory force of the law on a whim, but only after impartial deliberations. The instructions for the implementation of the *motu proprio, Matrimonia mixta*, issued by the German<sup>41</sup> and Austrian episcopal conferences<sup>42</sup> affirm that in Germany and Austria there is now reason for a dispensation “in every case.” They claim that paragraph 3 of the *motu proprio* provides a sufficient reason for these dispensations. If this is true, the law concerning marriage impediments makes little or no sense, at least for Germany and Austria. It is clear that both episcopal conferences hold this opinion because they have directed that the dispensation be granted without exception. In light of this norm, the intelligent and just reason for the dispensation is made part of the interpretation of the law. In fact, the repeated and even customary practice of granting dispensations denies the necessity for a sufficient reason, *i.e.*, one is using the dispensation to promulgate new law. In place of the allegedly inadequate papal law, the two episcopal conferences have established, through readily available dispensations, their own supposedly superior law. When a dispensation is granted

in every case that the law is applied, the exception becomes the rule. It has rightly been said that if dispensations are always granted from a particular law, it is better to abrogate it than to allow the credibility of the entire judicial order to be eliminated by its continued existence.<sup>43</sup> Both episcopal conferences clearly presume to judge whether or not the marriage impediments of differing cult and religion are justified. They have decided that the impediments are unjustified. With their practice of granting dispensations, the bishops have revolutionized the law on marriages within their own dioceses. They have done this because they view the present law as impractical. The dispensation, in this case, is deprived of its specific character and it becomes a tool for both episcopal conferences to express and to make effective their opposition to a papal law. The authorization to issue dispensations, *i.e.*, to exempt someone from the law in a specific case, and the authorization to issue general exemptions, *i.e.*, to promulgate legal maxims, are entirely different.

A similar situation occurs in the dispensations from *canonical form*. According to the *motu proprio*, *Matrimonia mixta* (no. 9), a dispensation from the ecclesiastical form of matrimony may be granted "if there are weighty obstacles" opposing it. Therefore, the reason for the dispensation, according to the papal legislator, is "weighty obstacles." What do the bishops do with this? The instructions for the implementation of this *motu proprio* issued by the German and Austrian episcopal conferences provide for the granting of the dispensation "if the couple is not ready for a Catholic wedding." With this norm, the bishops rejected the regulation that "weighty obstacles" must exist before the dispensation may be granted and they made the opposition of the couple a reason for granting the dispensation. In this case also, the dispensation is forced to perform a function contrary to its purpose. At the same time, the law is deprived of its normative force. A law which is applied only when those subject to it find themselves in agreement with it and not when they oppose it loses its binding force. It becomes merely advisory. This mode of granting dispensations is capable of destroying the rule obliging Catholic couples to be married according to the canonical form, and presumably this is the goal of some of those who established this practice.<sup>44</sup> It is clear that in this case also the episcopal conferences have attacked a papal law. Precisely stated, the norms which were to serve the implementation of the papal law have been used as a lever to overturn that very same papal maxim. Presumably, this is what Cardinal Döpfner meant when he explained that the bishops have the possibility "to develop this dispensation further."<sup>45</sup> In a similar way, but in a different matter, the cardinal, against the existing law,<sup>46</sup> made the exception the rule. The existing law holds that laicized priests may only serve as religion teachers in exceptional cases. In the Archdiocese of Munich and Freising, every laicized priest has reason to expect that he will be allowed by Cardinal Döpfner to teach religion. The official bureau of education may, in light of hesitations concerning the cardinal's circumvention of the law, restrict him in this matter.

The prevailing thoughtlessness regarding dispensations has not escaped the Holy See and it has at least in one area asked the bishops to regard the obtaining of dispensations as a serious matter. With the return of some priests to the lay state, the Congregation for the Defense of the Faith has insisted that the dispen-

sation from the duties (celibacy, the Divine Office) assumed at the time of ordination is not automatically given, but that serious and proportionate reasons are necessary before it may be granted (*rationes proportionate graves*). At the same time, it has given many reasons which it regards as insufficient for the granting of the dispensation.<sup>47</sup>

As these examples illustrate, the generous bestowal of full dispensatory rights<sup>48</sup> on the bishops, which was granted in recent years, was a serious mistake. The bishops are not equipped to handle their newly granted powers any more than the episcopal conferences are.<sup>49</sup> The conferences are especially unsure in legal matters.<sup>50</sup> The right of the pope to confirm the laws of episcopal conferences and their instructions for the implementation of papal decrees is, in most cases, not an effective guarantee against mistakes. First, the Roman curia is taxed beyond its capabilities by the immense body of norms which the episcopal conferences produce without end. Second, the leniency of the Roman curia towards the experienced and very touchy episcopal conferences is so great that eventual responses are to be expected only when there are striking mistakes. The countless, serious errors of the Dutch pastoral council<sup>51</sup> were decisively revealed by private persons<sup>52</sup> and not by the Roman curia whose hands are admittedly, in a large measure, tied. In addition, if the important stipulation of the *motu proprio*, *Matrimonia mixta* (no. 12), that the episcopal conferences must only inform the Holy See of their instructions for the implementation of laws, is a precedent, the Holy See seems to be abrogating the prescribed obligation found in the decree, *Christus Dominus* (no. 38, 4), that episcopal conferences must submit their legally binding decisions to the Holy See for approval.<sup>53</sup>

GEORG MAY

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#### NOTES

1. See Georg May, "Das Verhältnis von Papst und Bischöfen auf dem Allgemeinen Konzil nach dem CIC," *Trierer Theologische Zeitschrift* 70 (1961): 212–232.

2. For a convenient edition, see X. Ochoa, *Index verborum cum documentis Concilii Vaticani Secundi* (Roma, 1967).

3. See my review, *Erasmus* 20 (1968): 71–88.

4. For this idea, see H. Pfeil, *Tradition und Fortschritt im nachkonziliaren Christsein* (Freiburg-im-Breisgau, 1969), pp. 9–19.

5. See, for example, the controversy between Cardinal Daniélou and the union of religious superiors, *Deutsche Tagespost* 145 (December 6, 1972): 5.

6. See Georg May, "Deutung und Misdeutung des Konzils," *Archiv für katholisches Kirchenrecht* 135 (1966): 444–472.

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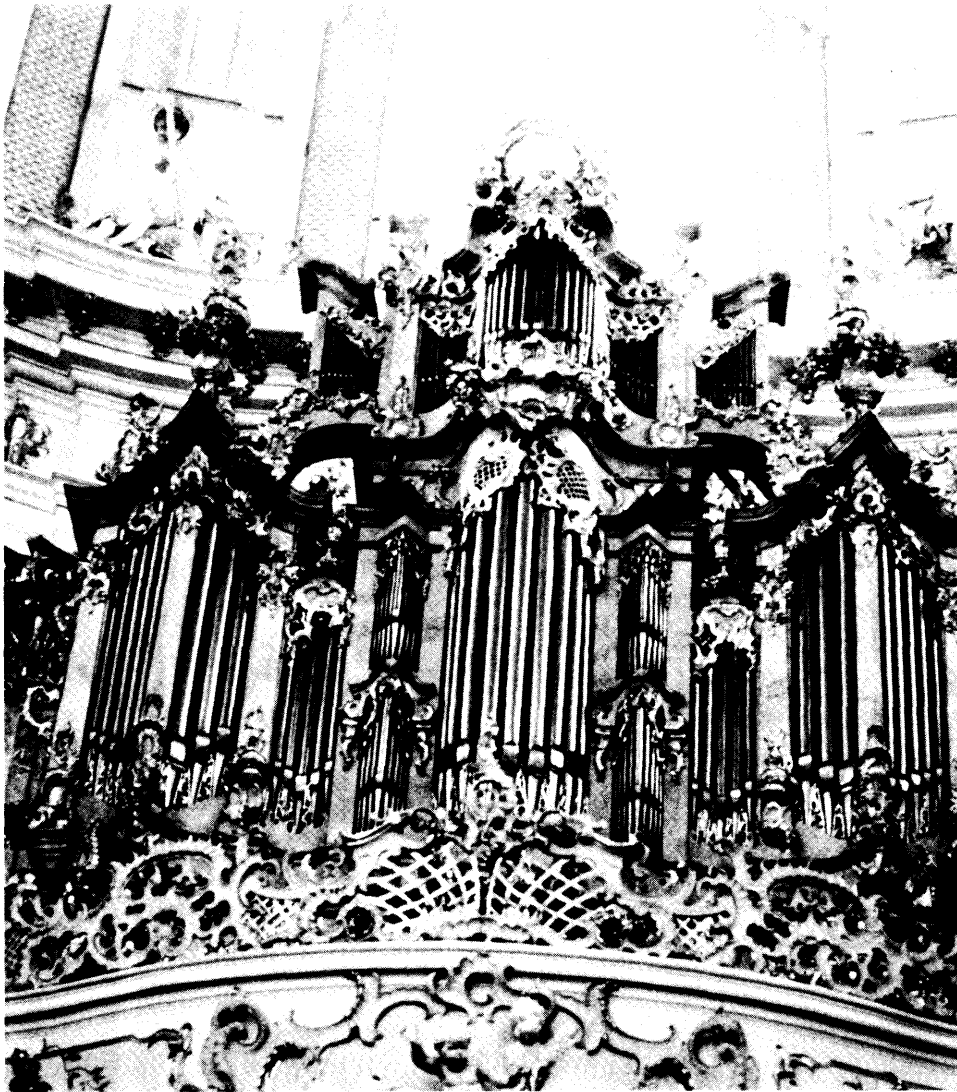
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16. AAS 62 (1970): 664–666 (n. 2).
17. *Notitiae* 7, (1971): 215–217.
18. G. May, "Umfang und Grenzen des Gebrauches der Landessprache in der Liturgie nach der Gesetzgebung des Zweiten Vatikanischen Konzils," *Österreichisches Archiv für Kirchenrecht* 18, (1967): 16–94; "Der Gebrauch der Volkssprache in der Liturgie nach der Konstitution des Zweiten Vatikanischen Konzils über die Heilige Liturgie vom 4. Dezember 1963," *Liturgie und Glaube. Sammelband der Schriftenreihe Una Voce — Deutschland*. (Regensburg 1971), pp. 17–38.
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28. G. May, "Die sogenannte Handkommunion. Ein Beitrag zur Praxis der kirchlichen Rechtsetzung in der Gegenwart," *Liturgie und Glaube*, pp. 124–127.
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31. AAS 62 (1970): 692–704.
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33. See *Der Fels* 3 (1972): 244–246.
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35. May, "Die sogenannte Handkommunion," pp. 127–132.
36. May, "Die sogenannte Handkommunion," pp. 136 f, 138.
37. AAS 61 (1969): 805–811.
38. *ABl. München und Freising* (1970): 392–401. See J. Zimmermann, "Gruppenmessen," *Una Voce Korrespondenz* 1 (1970): 50–54.
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40. AAS 62 (1970): 257–263.
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42. *Österreichisches Archiv für Kirchenrecht* 21 (1970): 349–353.
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44. See G. May, "Die Mischehenfrage auf der ersten Generalversammlung der Bischofssynode," *Österreichisches Archiv für Kirchenrecht* 21 (1970): 233–266.
45. *ABl. München und Freising* (1970): 271.

46. AAS 63 (1971): 308, n. 4e. (Translator's note: Cardinal Döpfner, recently deceased, was Archbishop of Munich-Freising.)
47. AAS 64 (1972): 642.
48. See *Motu proprio, De Episcoporum muneribus* (1966). (AAS 58. 467–471).
49. See G. May, "Die deutsche Bischofskonferenz nach ihrer Neuordnung," *Archiv für katholisches Kirchenrecht* 138 (1969): 405–461.
50. E.g., M. Pesendorfer, "Zur Ausführungsgesetzgebung der österreichischen Bischofskonferenz zum *motu proprio, Matrimonia mixta*," *Österreichisches Archiv für Kirchenrecht* 23 (1972): 16–33.
51. Letter of Paul VI to Cardinal Alfrink, AAS 62 (1969): 66–69.
52. M. Schmaus, L. Scheffczyk, J. Giers (eds.), "Exempel Holland," *Theologische Analyse und Kritik des niederländischen Pastoralkonzils* (Berlin 1972); *Der Fels* 3 (1972): 18 f., 54–56, 82–84.
53. "Ein neues Beispiel für den Verzicht auf Bestätigung in einer wichtigen Angelegenheit (Bischofsbestellung)," AAS 64 (1972): 387 (art. II, 2), 390 (art. X).



Abbey of Ettal, the organ. Photography by Richard M. Hogan

## OPEN FORUM

### Translation of *Panis Angelicus*

This translation of Saint Thomas Aquinas' *Panis angelicus* can be adapted to most of the familiar melodies associated with that hymn, including those by César Franck, Fr. Lambilotte, P. Meurers and J. Mohr.

O Bread of Angels,  
Gift to man, Bread from Heav'n;  
Here Thy True Presence dwells! —  
Bread changed: Divine Life giv'n!  
O praised of miracles!  
Poor humblest servants fed,  
Lord God, Thy Body, Living Bread.

One God in Trinity,  
Incarnate Word adored,  
Come, dwell in us, as we  
Shall live in Thee, O Lord!  
Lead, Thou our Way, to Thee,  
Truth, Life, Light Infinite:  
Glorious Love! — Father, Son, Spirit.

This second translation fits the melody of *Beautiful Savior*.

O Bread of Angels,  
Bread from Heaven come to men;  
True Bread, Divine Life given:  
Here Thy True Presence dwells,  
As bread is changed, O Lord,  
To Thee, Incarnate Word adored.  
Praised miracle, Thy Feast! —  
Fount of gifts Thy Love shall give:  
O Bread of Life, by Whom we shall live!  
Though servants, poorest, least,  
Humblest, yet we are fed,  
Lord God, Thy Body, Living Bread.

One God in Trinity,  
Word made Flesh, come dwell in Thine,  
As we shall live in Thee, Love Divine!  
Lead, Thou our Way, to Thee,  
Truth, Life, Light Infinite:  
Glorious Love! — Father, Son, Spirit.

I am happy to offer them to readers of *Sacred Music* for their use, hoping that in so doing I might open a door by which our Lord might be praised in the Holy Eucharist even if only in a small way. LOIS KURT JACKSON

### Austrian Organist in the United States

I would like to introduce the readers of *Sacred Music* to a very distinguished and accomplished Austrian organist, Gottfried Holzer, professor at the Mozarteum in Salzburg and organist at the great church in Neuberg in Styria. He has recently completed a concert tour of the United States which began at Saint John's Abbey and University in Collegeville, Minnesota, where he played the great Holtkamp organ. He continued his tour in Saint Paul, Minnesota, at Gloria Dei Lutheran Church and in Colorado where he played at the Hoag Music Hall of the University of Southern Colorado on the new Schlicker organ. He had many fine reviews at all his recitals here and in Europe.

Gottfried Holzer was born in 1950 in Styria in Austria. He studied in Vienna with Alois Forere and also with Flor Peeters in Belgium. He has concertized in Austria, Germany, France, Spain and Italy. He is at present director of music at the Franziskuskirche in Salzburg. With me, he has organized and participated in the Neuberg international cultural and music symposium. He won first prize in Linz in the international improvisation competition on the famous Bruckner organ in the cathedral.

Mr. Holzer will tour the United States in February, 1981. The Church Music Association of America will sponsor his visit and arrange for his concerts. If you are interested in having this distinguished Austrian artist at your church, write to me at P.O. Box 1678, Pueblo, Colorado 81002.

GERHARD TRACK

## CONTRIBUTORS

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*Abbey of Ottebeuron, interior.*

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