

The Errors of Sedevacantism and Ecclesiastical Law

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Sedevacantists use many different authorities and arguments to support their thesis that we have no Pope. However, their biggest “stick” is Pope Paul IV’s *Cum Ex Apostolatus Officio* (1559). In this Apostolic Constitution, Pope Paul IV declared that if the Roman Pontiff, prior to his election to the papacy, was a heretic, then his election to the papacy is invalid. Pope Paul IV further declared that the invalidity of such an election happens automatically, without any need for further declaration. (*Cum Ex* does not address the situation of a legitimately elected Pope who falls into heresy after his election, which most Sedevacantists believe is almost if not entirely impossible; however, the analysis that follows also applies to that hypothetical). Following are the pertinent parts of *Cum Ex*:

“In addition, if ever at any time it shall appear that any Bishop, even if he be acting as an Archbishop, Patriarch or Primate; or any Cardinal of the aforesaid Roman Church, or, as has already been mentioned, any legate, or even the Roman Pontiff, prior to his promotion or his elevation as Cardinal or Roman Pontiff, has deviated from the Catholic Faith or fallen into some heresy:

“(i) the promotion or elevation, even if it shall have been uncontested and by the unanimous assent of all the Cardinals, shall be null, void and worthless;

“(iii) it shall not be held as partially legitimate in any way;

“(vi) those thus promoted or elevated shall be deprived automatically, and without need for any further declaration, of all dignity, position, honor, title, authority, office and power.”

Pope Paul IV’s decree on the invalidity of the papal election of a heretic affirms the Divine Law that formal heresy results in self-expulsion from the Church, without the need for ecclesiastical censure, and that such self-expulsion disqualifies one from being Pope (one severed from the Body cannot rule the Body). This begs the obvious question: How does one determine whether a Cardinal was a heretic prior to his election to the papacy? How does one know whether self-expulsion for pre-election heresy has occurred?

While Sedevacantists answer the question by literally “taking the law into their own hands,” Catholics are required to look to the ecclesiastical law of the Church to resolve the issue. Ecclesiastical law (canon law and other papal legislation) helps to understand the Divine Law in light of the facts and circumstances of a particular case. Because Sedevacantists believe Pope John Paul II was an “anti-pope,” they believe that the 1917 Code of Canon Law (and not the 1983 Code promulgated by John Paul II) is the operative law. Hence, we begin by looking to the 1917 Code.

First, the 1917 Code says that the Pope is the sole judge of the Cardinals. Canon 1557, par. 1-2 says: “It belongs entirely to the Roman Pontiff to judge...Cardinal Fathers / Cardinal Priests.” Moreover, canon 1558 says: “In the causes of which canon 1556, 1557 treat, the incompetence of any other judge is absolute.” In other words, only the Pope – and no one else – can judge a Cardinal in doctrinal or disciplinary matters. The Pope’s authority is absolute (*est absoluta*) in this regard. Unlike the Pope, who has no judge, the Cardinals *do* have a judge – and it is *the Pope alone*. Therefore, the Pope alone determines if a “Cardinal...prior to his elevation as Roman Pontiff, has deviated from the Catholic Faith or fallen into some heresy.”

As applied to the Sedevacantist thesis, Sedevacantists claim that Pope John XXIII (Cardinal Roncalli) was invalidly elected because he was a heretic prior to claiming the papal throne. This is a reason why Sedevacantists don't believe we have had a Pope since 1958. But in order for Cardinal Roncalli's election to the papacy to have been invalidated for heresy (or any other transgression), Pope Pius XII would have had to judge that Cardinal Roncalli was a heretic, since Pius XII is sole judge of his Cardinals under canons 1557 and 1558 of the 1917 Code of Canon Law. But he did not. Therefore, Cardinal Roncalli's election to the papacy cannot be invalidated using *Cum Ex* because Pope Pius XII did not judge him guilty of heresy, or any other crime which violates Divine Law.

Sedevacantists correctly maintain that Divine Law expels a formal heretic from the Church without further declaration. They point to canon 188, par. 4 of the 1917 Code which says that "all offices whatsoever fall vacant and without any declaration if the cleric...publicly defects from the Catholic Faith." However, the same Code of Canon Law also determines *how we know* a cleric has publicly defected from the Faith and lost his office as a result of the defection: *The Church tells us*. Thus, ecclesiastical law follows Our Lord's directive: "tell it to the church; and if he refuses to listen even to the church, let him be to you as a Gentile and a tax collector" (Mt 18:17). While the person in Matthew 18 was publicly suspected of a transgression, Jesus tells us to treat him as excommunicated *only after the Church judges the matter*.

Attempting to ignore Jesus' words and take matters into their own hands, Sedevacantists also refer to Titus 3:10-11 where St. Paul tells Titus to avoid a heretic after two admonitions because he is self-condemned. However, Titus 3 is consistent with Matthew 18. Titus has the authority to determine who is a heretic in his diocese *because he is their bishop*. He has God-given authority over his subjects. St. Paul is not giving every Catholic the authority to make a formal and binding determination of another Catholic's orthodoxy. Titus 3 is an instruction from one apostle and bishop to another bishop concerning his ecclesial authority. Similarly, Matthew 18 is an instruction from Our Lord to his future bishops concerning their authority. Both passages reveal that ecclesial authority (either the bishop of a diocese or the Church at large) must determine whether Divine Law has been violated. The case of a claimant to the papal throne would necessarily involve the jurisdiction of the Church at large (a "Matthew 18" case vis-à-vis a "Titus 3" case).

As applied here, the Pope is the sole judge of whether the self-expulsion of a Cardinal contemplated by *Cum Ex* and canon 188.4 has occurred. This papal judgment is required even if the Pope does not affirm the self-expulsion with a public decree of excommunication (but, as we will see, canon law also requires declaratory sentences to be issued for the common good of the Church). Said differently, with regard to the putative heresy of a Cardinal, ecclesiastical law requires the Pope (and no one else) to determine whether Divine Law has been violated (irrespective of whether the Pope issues a canonical censure). Sedevacantists ignore the mandates of the governing ecclesiastical law and Scripture itself and, consequently, make themselves the judge of Divine Law.

The 1917 Code of Canon Law imposes other requirements that Sedevacantists ignore. For example, canon 1939, par. 1 requires a special investigation for certain transgressions against Divine Law (e.g., heresy):

If the transgression is not notorious, or not entirely certain, but has arisen from rumor or public report . . . before anyone is summoned to answer for the transgression, a special investigation must be undertaken to decide whether, and on what foundation, the charge may be founded.

The alleged heresies of Cardinal Roncalli must be considered “not notorious” and “not entirely certain” because they do not meet the definition of “public” and “notorious” under canon 2197 of the 1917 Code. The alleged heresies cannot be considered “public” under canon 2197, par. 1 because they were not “already commonly known” (evidenced by the fact that Pope Pius XII neither investigated nor rendered any judgment against Roncalli for heresy and almost the entire Catholic population accepted Roncalli as Pope). Further, under the same canon, the circumstances were not such as to lead to the conclusion that the alleged heresies would easily become commonly known (evidenced by the fact that, over the last 50 years, the College of Cardinals, the four successor Popes and almost the entire Catholic world held Roncalli as a true Pope).

Further, the alleged heresies cannot be considered “notorious in fact” under canon 2197, par. 3 because they were not “publicly known” (for the reasons explained above) and were not committed under such circumstances that “no maneuver can conceal nor legal defense excuse” them. In fact, since Pope Pius XII (or anyone else with ecclesiastical authority) never even alleged that Roncalli committed heresy, it is not possible to raise, much less evaluate, a “maneuver” or “legal defense” (to such “non-allegations”) as this canon requires. Of course, if no canonical defense could excuse Roncalli’s public and notorious heresies, then one must explain how Pope Pius XII failed to recognize such grievous crimes, much less punish Roncalli for them.

The same canonical conclusions apply to the alleged heresies of Cardinals Montini, Wojtyla and Ratzinger before they were validly elected to the papacy. That being the case, ecclesiastical law requires a special investigation (*inquisition specialis*) to be undertaken to assess such accusations of transgression. This investigation is required for “anyone” who is suspected of a transgression, and would certainly apply to someone who claimed to be Pope. Further, canon 1939, par. 2 specifically applies this rule to the question of whether a declaratory sentence is required against someone who has already incurred self-expulsion for heresy.

As we alluded to, Canon 2223, par. 4 sets forth the rules for when declaratory sentences are required:

In general, to declare a penalty *latae sententiae* is left to the prudence of the superior; but whether at the instance/request of a party who is involved, or because the common good requires it so, a declaratory sentence must be given.

While, according to Divine Law, formal heresy results in self-expulsion from the Church without the need for a declaratory sentence, ecclesiastical law (can 2223.4) requires a declaratory sentence (*sententia declaratoria dari debet*) of said heresy if the common good of the Church requires it. Needless to say, it is in the best interests of the Catholic Church to know whether we have a valid Pope. Nothing more important for the Church could possibly be imagined. Hence, a declaratory sentence proclaiming a Cardinal’s pre-election heresy “must be given.” If such an ecclesiastical declaration were not required, the Church would never know with certainty whether Divine Law has been violated, and this uncertainty would undermine the Church’s very mission and existence. This also means maintaining the Sedevacantist position (that a given papal election is invalid) in the absence of a declaratory sentence *attacks* the best interests of the Church.

Further, it should go without saying that the required declaratory sentence must be given by ecclesiastical authority (Mt 18:17; Titus 3:10-11). Of course, nothing in either positive law or Divine Law permits just any Catholic individual or group to issue declaratory sentences and ecclesiastical censures, nor does the law permit Catholics to licitly resist a duly elected Pope in the absence of these required ecclesiastical adjudications. As applied here, since the elected Pope would be the object of the investigation, any declaratory sentence would have to come from the College of Cardinals – the next highest authoritative rank in the Church. Further, we are reminded

that a declaratory sentence of heresy against an anti-pope would simply affirm that he excommunicated himself (ecclesiastical law determining that self-expulsion occurred under Divine Law), and that a valid Pope has no judge on earth but God.

Ecclesiastical law poses further problems for the Sedevacantist thesis. Popes St. Pius X and Pius XII legislated that a Cardinal's election to the papacy is presumed to be valid, irrespective of any ecclesiastical censures he may have incurred prior to his election.

Pope St. Pius X: "None of the Cardinals may be in any way excluded from the active or passive election of the Sovereign Pontiff under pretext or by reason of any excommunication, suspension, interdict or other ecclesiastical impediment" (*Vacante Sede Apostolica*, 1904).

Pope Pius XII: "None of the Cardinals may, 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" (*Vacantis Apostolicae Sedis*, 1945).

First, to participate "actively" in the election of the Supreme Pontiff means to vote for the Pope, and to participate "passively" in the election means to be elected Pope (to be the "passive" object of the "election"). Second, Popes St. Pius X and Pius XII's legislation is clear that "by reason of *any* excommunication...*whatsoever*" a Cardinal is not excluded from being elected to the papacy. "Any excommunication whatsoever" necessarily includes a Cardinal's excommunication for heresy. This means the governing ecclesiastical law – which Sedevacantists agree applies to the question at hand – *presumes the validity of papal elections*, until there is a determination by the Church of whether or not Divine Law has been violated. Ecclesiastical law, then, requires this formal determination to be made by the Church *after* the election.

As applied here, we recall that Pope Pius XII never declared Cardinal Roncalli a heretic. Roncalli was never excommunicated under ecclesiastical law. Thus, if, according to the Pius X/XII legislation, a Cardinal who was a heretic by both Divine and ecclesiastical law (self-expulsion affirmed by judicial sentence) can be elected to the papacy, how much more so can a Cardinal be elected Pope who, like Cardinal Roncalli, never incurred ecclesiastical censure for heresy! The "more" includes the "lesser," and thus if a self-expelled censured heretic (the "more") can be elected Pope, then a self-expelled but non-censured heretic – the Sedevacantist claim against Cardinal Roncalli – (the "lesser") can also be elected Pope.

These ecclesiastical provisions provide Cardinals with the opportunity to follow the same path to the papacy as St. Peter himself took. St. Peter committed a public act of apostasy by denying Our Lord before validly ascending to the papal office. Hence, ecclesiastical law requires the Church to presume that the elected Pope has reconciled with Christ (as St. Peter did) and thus pre-election heresy, apostasy or schism does not automatically invalidate his election (whether the offense continues after the election is a separate question determined by the same procedures of ecclesiastical law requiring special investigations and declaratory sentences). If there were no presumptive validity of papal elections, then Catholics would never have assurance that they have a true Pope, for any ecclesiastical impediment would operate to nullify his election. This would cripple the Church.

The presumption of valid papal elections is also reflected in the 1917 Code. Canon 2264 provides that even if a Cardinal excommunicated himself for heresy prior to his election to the papacy, his jurisdiction as pope is valid, and also licit if recognized by the faithful:

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 can. 2261, par. 3 [not applicable to self-expelled heretics]; otherwise it is valid and also licit, if it was requested by the faithful in accordance with the norm of can. 2261, par. 2.

Canon 2261, par. 2 provides:

Without contradicting paragraph 3, the faithful may, for any just cause, request sacraments and sacramentals from an excommunicated person, especially if other ministers are not available, in the this case the excommunicated person can administer them and is not under any obligation to enquire as to the reason for the request.

As applied here, Cardinals Roncalli, Montini, Wojtyla, and Ratzinger were never excommunicated by declaratory sentences before being elected to the papacy. Therefore, Canon 2264 says they had (and Pope Benedict XVI continues to have) valid jurisdiction over the universal Church. Canon 2264 also indicates that even a Pope who, as a Cardinal, “excommunicated” himself for heresy (self-expulsion), still has valid jurisdiction over the Church if no “condemnatory or declaratory sentence has been pronounced.” Moreover, because the faithful (which is 99.9 percent of the people in the Catholic Church) request the sacraments from the current Pope and the bishops and priests in communion with him, his jurisdiction is also licit in addition to being valid.

Thus, even if Sedevacantists argue, for example, that Cardinal Ratzinger was self-expelled before his papal election for heresy (often pointing to some of his controversial writings as a private theologian), the Sedevacantists are still subject to his jurisdiction as Pope, which is both valid and licit under the Church’s ecclesiastical law. By withdrawing submission from the Holy Father and the faithful in communion with him, Sedevacantists are schismatic and hence automatically excommunicated from the Church under both Divine and ecclesiastical law (canon 1325, par. 2).

In summary, ecclesiastical law presumes we have a valid Pope unless the Church formally declares otherwise. These ecclesiastical provisions serve the Divine Law and the Church’s unicity and indefectibility. They also reflect the wisdom of the Church which recognizes that determining formal heresy is a sensitive matter requiring great caution and prudence – especially when dealing with a claimant to the papal throne. To be a formal heretic, one must willfully and pertinaciously deny or doubt a dogma of the Faith. If St. Paul formally and publicly rebuked St. Peter for a *disciplinary* matter (Gal 2:11-12), how much more formal and public would the investigation of a Pope need to be for a *doctrinal* matter, and one whose outcome determines the validity of his office! As with St. Peter, the reigning Pope must be formally confronted with his errors by legitimate authority, and given time to respond before any offense can be asserted. As we have seen, the Church’s ecclesiastical law mandates the requirements for this procedure.

In 1917, Our Lady came to Fatima to warn the Church of the crisis of Faith we are now experiencing. She also revealed that the Holy Father would have much to suffer (in none of Her reported communications did She say the Pope would lose his office for heresy). In that same year, Pope Benedict XV providentially promulgated law that would prevent people from saying the forewarned crisis was so bad we no longer *have* a Pope. As we have seen, Popes St. Pius X and Pius XII followed suit with their own legislation.

Sadly, Sedevacantism is an over-reaction to the crisis in the Church foretold by Our Lady, accompanied by an ignorance of ecclesiastical law. In fact, it is fair to conclude that

Sedevacantism *is part of the very crisis in question*, since it has created even more confusion among the faithful, already so confused and scandalized by the doings of the post-conciliar era. Restoring the Church will be furthered by recognizing the authority of the current Pope, as well as properly distinguishing his binding papal teachings from his mere opinions and actions, which may be the product of human weakness or self-respect, but which can never be evidence of formal heresy.