

**Canonical Remarks on the  
Motu Proprio *Summorum Pontificum***

von  
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# Canonical Remarks on the Motu Proprio *Summorum Pontificum*<sup>1</sup>

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On 7 July 2007, Pope Benedict XVI signed the Motu Proprio *Summorum pontificum* (henceforth SP) concerning the Roman liturgy in its configuration prior to the reform of 1970, and on that occasion wrote an accompanying letter to the bishops.<sup>2</sup> This for many was the end of a long period of tense anticipation, joyous or worrisome depending on one's attitude toward the liturgical reforms implemented after Vatican II. "Now the documents are available. This is what matters."<sup>3</sup> They are to be analyzed according to Church law and ecclesologically classified.<sup>4</sup>

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1 "Kanonistische Anmerkungen zum Motu Proprio *Summorum Pontificum*," in *Liturgisches Jahrbuch* 58 (2008) 3-34. Translated by Gary N. Deckant and Gunhild von der Bank. *Antiphon* gratefully acknowledges the joint permission of Prof. Lüdecke and the German Liturgical Institute to make this canonical commentary available in English. A table of abbreviations is provided at the end.

2 BENEDICT XVI, Apostolic Letter *Summorum pontificum* [henceforth: SP] (7 July 2007), in *L'Observatore Romano* 147 (2007) No. 153 (8 July) pp. 1 and 5, and the accompanying explanatory letter to the bishops [henceforth: Letter] (German: VAS 178). [SP in *Acta Apostolicae Sedis* (AAS) 99 (2007) 777-81; Letter in AAS 99 (2007) 795-99; Ed.] For an overview, see A. GERHARDS, "Die Sorge der Päpste. Das Motu Proprio Benedikts XVI. zur Wiederzulassung der alten Liturgie," *HerKorr* 61 (2007) 398-403.

3 K. LEHMANN, "Erklärung des Vorsitzenden der Deutschen Bischofskonferenz zum Motu Proprio *Summorum Pontificum* von Papst Benedikt XVI. vom 7. Juli 2007," at <[www.dbk.de/aktuell/meldungen/01410/print\\_de.html](http://www.dbk.de/aktuell/meldungen/01410/print_de.html)> (accessed 4 January 2008). Guidelines on implementation by the Apostolic See were announced by T. BERTONE, "*Summorum Pontificum*: Folgedokument angekündigt," *Die Tagespost* 1 (3 January 2008).

4 For the current scientific liturgical discussion see B. KRANEMANN, "Mehr Engagement für die erneuerte Liturgie. Anmerkungen zum Motu Proprio *Summorum Pontificum*," *Theologie der Gegenwart* 50 (2007) 273-75; A. GRILLO, *Oltre Pio V. La Riforma liturgica nel conflitto di interpretazioni* (Brescia 2007); A. GRILLO, "Ende der Liturgiereform? Das Motuproprio *Summorum Pontificum*," *Stimmen der Zeit* 225 (2007) 730-40; A. ODENTHAL, "Gottesdienst wider den Zeitgeist. Die Diskussion um die Reform der Messe geht weiter," *HerKorr* 57 (2003) 452-56; and now A. GERHARDS, *Ein Ritus – zwei Formen. Die Richtlinie Papst Benedikts XVI. zur Liturgie* (Freiburg 2008).

## I. LEGAL FORM

For quite a long time, papal laws have been issued in the form of *Litterae Apostolicae Motu proprio datae* or *Motu proprio* for short. The omission of an addressee and the designation "on his own initiative" characterize the special and sovereign commitment with which the Pope writes such a letter.<sup>5</sup>

Nothing changes even when some faithful have taken an initiative to solicit for a ruling by way of "pleading."<sup>6</sup> In particular they may address spiritual needs to pastors (can. 212 §2)<sup>7</sup> and, insofar as these faithful appear to their pastors to be sufficiently knowledgeable, competent and prestigious, may even express their opinion on topics in which the pastors are able to recognize something relevant to the Church's good (can. 213 §3).<sup>8</sup> It remains the Pope's primatially independent decision and order ("DECERNIMUS" in uppercase for emphasis) whether and to what extent he embraces these concerns.<sup>9</sup>

This is doubly underscored. The opening words of the document ("Summorum Pontificum") in the *Incipit* by which papal statements are cited and which mostly sets a programmatic signal are a papal title: *Summus Pontifex* since the eleventh century was supposed to designate the Pope as the highest authority in the Church. At Vatican II the title was used for Christ. For the Pope it retreated far behind the title *Romanus Pontifex*, except for the *nota praevia*, where its use is concentrated.<sup>10</sup> In 1970 the International Theological Commission had almost unanimously considered the title misleading and recommended that its usage be discontinued.<sup>11</sup> The popes did not embrace these concerns. The title remains a current expression of the Roman Pontiff's concept of himself.<sup>12</sup> Furthermore the *motu proprio* exten-

5 See I. WÄCHTER, "Motu Proprio," LKRStKR 2, 825-26, here 826.

6 See as an example the initiatives and reactions mentioned in H.-L. BARTH, "Ist die traditionelle lateinische Messe antisemitisch? Antwort auf ein Papier des Zentralkomitees der Deutschen Katholiken" (Brennpunkt Theologie 7) (Altötting 2007) 21-27.

7 Unless otherwise noted, all canons cited are drawn from the 1983 *Codex Iuris Canonici* (CIC).

8 R. M. SCHMITZ, "Das Recht der Laien auf die Verkündigung der göttlichen Heilsbotschaft. Seine Verankerung in der Rechtsordnung des CIC," in *Kirche und Recht. Referate der "Internationalen Theologischen Sommerakademie 1998" des Linzer Priesterkreises in Aigen/M.*, ed. F. Breid (Steyr 1998) 66-100.

9 See also M. RIZZI, "Acta Romana Pontificis," DMC 1:43-44.

10 See X. OCHOA, *Index verborum cum documentis Concilii Vaticani secundi* (Rome 1967) 380-81.

11 Y. CONGAR, "Titel, welche für den Papst verwendet werden," *Conc(D)* 11 (1975) 542-43, esp. 543.

12 There are as many as twenty instances of the title in OCHOA, *Index verborum ac locutionum Codicis Iuris Canonici*, 2nd ed. (Vatican City 1984) 477.

sively clarifies in its general introductory explanation,<sup>13</sup> the “Arenge,” that it has been the Pope’s prerogative from time immemorial to look after the unity of the universal Church and the particular Churches, both in the doctrine of faith and in usages included among the apostolic tradition, especially in the Roman Rite. They are to be kept to maintain the intact transmission of the faith. The *lex orandi* corresponds to the *lex credendi*.<sup>14</sup>

In this way, the specific Roman Catholic distribution of responsibility as regards liturgical law is recalled. In it all, veneration of God and sanctification takes place in a hierarchical and (in contrast to the first millennium<sup>15</sup>) centralized directive. The Apostolic See, i.e. the Pope and the competent agencies of his Curia, takes primary responsibility for the direction<sup>16</sup> and surveillance (can. 838 §2) of all liturgical life.<sup>17</sup> Not only is the basic structure of the Church reflected therein as *communio fidelium hierarchica*, but also as the *communio ecclesiarum hierarchica* corresponding to the hierarchical relationship of primacy and episcopacy.<sup>18</sup>

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13 The structure of the motu proprio corresponds to the basic scheme of medieval documents. T. VOGTHERR, “Diplomatik,” in *Handwörterbuch zur deutschen Rechtsgeschichte*, 2nd ed., Lfg. 5 (2007) 1080-86, here 1083.

14 Thus also *Institutio generalis Missalis Romani* [henceforth: IGMR], editio tertia (Vatican City: Vatican Press, 2002) 397, and CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, Instruction *Liturgiam authenticam* (28 March 2001), AAS 93 (2001) 889, p. 715. The liturgy is considered a norm of faith, by virtue of its being the result of the papal office as pastor and teacher. Even in the title of the Instruction the parallel resonates between the *magisterium authenticum* and *liturgia authentica*. What is meant here is not only the loyalty to the origin but also the binding character.

15 See J. H. MILLER, “Liturgy,” in *New Catholic Encyclopedia*, vol. 8 (New York: McGraw-Hill, 1967) 928-36, here 932.

16 This also includes the publication of liturgical books and checking their translation into the vernacular. See can. 838 §§1 and 2.

17 The episcopal conferences have the task of obtaining translations of the liturgical books in the vernacular, following a recent strict and complex ruling, and, as far as allowed for in the books themselves, to adapt these while observing local customs. Following the *recognitio* of the Apostolic See, the conferences of bishops can legally publish the liturgical books. This can be tied to the fulfillment of substantial content conditions: see *Liturgiam authenticam*, 80, as well as U. ROHDE, “Die recognitio von Statuten, Dekreten und liturgischen Büchern,” AKathKR 169 (2000) 433-68. The exceptional lawmaking responsibility of the diocesan bishop in liturgical questions (can. 838 §§1 and 4) is objectively limited to the fulfillment of framework prerequisites of the universal Church and certain questions of detail.

18 For details on this see G. BIER, *Die Rechtsstellung des Diözesanbischofs nach dem Codex Iuris Canonici von 1983* (FzK 32) (Würzburg 2001) 63-74.

Before the *pars normativa* of the *motu proprio* presents the legal directives in twelve articles, the Pope, in the *pars narrativa* from the most recent history prior to the decree, reminds us of the special pastoral care to which his predecessor saw himself stirred with regard to those faithful who saw themselves so personally influenced, both spiritually and culturally, by the earlier liturgical forms that they adhered with great love and affection to them.<sup>19</sup> He said Pope John Paul II in 1984 had enabled diocesan bishops to allow the faithful under certain conditions the celebration of Holy Mass according to the *Missale Romanum* of 1962, and in 1988 had exhorted the bishops to grant this permission broadly and generously.<sup>20</sup> In the context of this background, and after consultation in the 23 March 2006 consistory,<sup>21</sup> Benedict XVI became legislatively active.

*Summorum pontificum* is a universal law binding on the whole Latin Church. The Pope stated that it would take effect on 14 September

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19 See CONGREGATION FOR DIVINE WORSHIP, Letter (*Epistula*) *Quattuor abhinc annos* (3 October 1984), AAS 76 (1984) 1088-89. In it the pro-prefect of the Congregation, A. Mayer, had informed the presidents of the conferences of bishops that the Pope had empowered the diocesan bishops to allow the faithful under certain conditions to celebrate Holy Mass according to the *Missale Romanum* of 1962. With the *motu proprio* *Ecclesia Dei afflictata* of 2 July 1988 (AAS 80 [1988] 1495-98) Pope John Paul II created the Pontifical Commission "Ecclesia Dei" as a new institution of the Roman Curia; he later specified its responsibilities in: Pontifical Commission "Ecclesia Dei," Rescript from audience, 18 October 1988, in AAS 82 (1990) 533-34. [Ed.: Pope Benedict XVI in his Apostolic Letter *Ecclesiae unitatem* (2 July 2009), given *motu proprio*, attached the Ecclesia Dei Commission to the Congregation for the Doctrine of the Faith.] Also in detail H. SCHMITZ, "Sondervollmachten einer Sonderkommission. Kanonistische Anmerkungen zum Rescriptum ex Audientia SS.mi vom 18. Oktober 1988 der Päpstlichen Kommission *Ecclesia Dei*," in AKathKR 159 (1990) 36-59 and R. SCHEULEN, *Die Rechtsstellung der Priesterbruderschaft "St. Petrus."* Eine kritische Untersuchung auf dem Hintergrund der geltenden Struktur und Disziplin der Lateinischen Kirche" (MKCIC Beiheft 30) (Essen 2001) 17-26.

20 *Summorum Pontificum*, AAS 99 (2007) 779: "...anno autem 1988 Ioannes Paulus II iterum... Episcopos exhortatus est..." The sequential and (at the same time) adversative construction "autem... iterum" and the expression "exhortare" indicate that the bishops' attitudes did not meet the Pope's expectations.

21 Cardinal Darío Castrillón Hoyos and twenty other cardinals are said to have spoken on the relationship to the Society of St Pius X. Concrete results of this first consistory in the new pontificate are supposedly not known: see "Konsistorium: Noch keine konkreten Schritte," UVK 36 (2006) 192 (dated there erroneously as 23 February); this article further reports that on 7 April 2006 a meeting of the dicasterial prefects with the Pope took place on the same topic.

2007<sup>22</sup> and attached to it a customary derogation clause (“*contrariis quibuslibet rebus non obstantibus*”). This serves to eliminate everything prior that contravenes the new law and that could interfere with its validity. The addition of the clause expressly (*expresse*) overrides universal and particular laws, even though not concretely (explicitly) enumerated but inclusively (implicitly), to the extent that these contradict the new one.<sup>23</sup> In relation to the conditions under which the usage of the Roman Missal of 1962 was permitted until now, mentioning predecessor norms results in an explicit abrogation too.<sup>24</sup>

As administrator of the Pope in a diocese,<sup>25</sup> the diocesan bishop is legally obligated to urge the observance of this law (can. 392 §1) and to guard against any abuses (can. 392 §2). The faithful are entitled to this, as the Apostolic See recently emphasized.<sup>26</sup> In order to fulfill these obligations, the diocesan bishop himself can take supportive legal measures.<sup>27</sup> He can issue a general executory decree for the faithful under his charge in order to define the application of the papal law more precisely or to urge the observance of the law (can. 31). In an instruction, he can give explanations and instructions for implementation to the officials who apply the law (can. 34). In both cases, his directives have to remain “within the obligatory field of the benchmarks,” “dependent on the law and in conformity with it.” They implement, concretize and interpret. New obligatory contents cannot be added.<sup>28</sup> Where they attempt such, they lack legal force (cc. 33 §1; 34 §2).

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22 That was earlier than the regularly delayed delivery of the fascicle of the ruling organ provided in can. 8 for the effectual promulgation of laws. It may therefore be assumed that the Pope arranged the exceptional promulgation in *L'Osservatore Romano*; see H. SOCHA, in MKCIC 8, 4.

23 See G. MAY, “Derogationsformeln,” AKathKR 161 (1992) 11-41, here 11-13, 27-28, 32-35. The extent of the invalidation, whether it is a question of an immediate contrast resulting in a total abrogation (*abrogatio*), or rather a partial contrast resulting in a derogation (*derogatio*), cannot be deduced from the derogation clause by itself, but is to be determined by the interpretation.

24 See SP 1, referring to the indult of 1984 and the motu proprio *Ecclesia Dei* of 1988 (as in footnote 19). This is not complete; the stricter conditions were drawn up in the “Rescriptum ex Audientia SS.mi” in the same year (see n. 19).

25 See the summarizing characterization of the legal position of the diocesan bishop as a “papal civil servant” in BIER, “Rechtsstellung” (as in footnote 18) 376.

26 CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, Instruction *Redemptionis Sacramentum* (25 March 2004), AAS 96 (2004) §24, p. 557 (German: VAS 164).

27 The conference of bishops possesses no legislative authority in this area.

28 See H. SOCHA, in MKCIC 31, 3. *Summorum pontificum* is not a frame-

## II. LEGAL CONTENT

### II.1. *Elimination of general suspicions*

Article 1 of *Summorum pontificum* establishes authoritatively that the Roman Missal issued by Paul VI and the one promulgated by St Pius V<sup>29</sup> and later reissued by John XXIII are not contradictory or mutually exclusive traditions, but rather two equally legitimate forms of expression of the one Roman Rite, and thus of the same *lex orandi* and the same *lex credendi* which becomes manifest in it. It is not a question of two rites but rather two *usus* (applications, usages) of the single Roman Rite.<sup>30</sup> Those who adhere to the new usage and those who prefer the old are thus forbidden from mutually holding each other in general suspicion. Adherents to the old rite may not (as such) be suspected of disobedience with regard to the Council and its

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work law that would be for the diocesan bishops not only to comply with but to expand upon and adapt; cf. the differentiation (*ibid.*). This character indeed is not excluded by occasional existing remarks with the content that implementing regulations are not necessary: see G. MAY, A. EGLER, *Einführung in die kirchenrechtliche Methode* (Regensburg 1986) 169. But speaking against this: (a) Nowhere does the Pope indicate any need for a particular legislation; (b) On the contrary, in his accompanying letter he sees the need for “clear juridical regulation” covered by his *motu proprio*. The prior time is said to be marked by “the lack of precise juridical norms” for the use of the old Missal outside of certain groups; (c) The Pope abolishes the areas of discretion previously had by the diocesan bishops; he wants to “free bishops from constantly having to evaluate anew how they are to respond to various situations” (Letter).

Moreover, the Pope sees in the “Ecclesia Dei” Commission the agency responsible for overseeing and applying his law (*ibid.* and n. 2 above). The conference of bishops lacks any authority to rule on this question. The guidelines [*Leitlinien*] on the application of the *motu proprio*, which the German bishops’ conference (DBK) agreed upon at Fulda on 27 September 2007, are not obligatory for the diocesan bishop and for the faithful only *qua* having been adopted by the diocesan bishop; see for example Cardinal Meisner (Archdiocese of Cologne) in *ABl. Köln* 147 (2007) 225-26, no. 230. The formulation that the *motu proprio* establishes the “framework conditions” for the celebration of Mass according to the old Missal can create the erroneous impression that it involved the completion of framework law. It is to that extent imprecise and misleading.

29 See the unofficial edition in M. SODI AND A. TONIOLO, *Missale Romanum. Editio Typica 1962* (Vatican City: Libreria Editrice Vaticana, 2007). On the text of the bull of Pius V see M. KLÖCKENER, “Die Bulle *Quo primum* Papst Pius V. vom 14. Juli 1570 zur Promulgation des nachtridentinischen *Missale Romanum*” (Liturgische Quellentexte lateinisch-deutsch 2), *ALw* 48 (2006) 41-51.

30 BENEDICT XVI, Letter, *AAS* 99 (2007) 795.

authoritative implementation by postconciliar popes or of sympathy or agreement with the schismatic Society of St Pius X.<sup>31</sup>

The Pope establishes in his letter accompanying the motu proprio that many adherents of the former usage clearly accept the authority of Vatican II and remain loyal to the Pope and the bishops. On the other hand, the adherents to the new usage may not be charged with deviating from mandatory traditions or even with heresy. No one may be, as such, charged with violating the *communio* simply for preferring one ritual form to the other. It would do illegal harm to the good reputation of these faithful until there was proof to the contrary (can. 220). A disruption of *communio* surely exists where a declaration is issued completely rejecting the celebration of either rite.

## *II.2 The old Missal – never abolished?*

Paul VI concluded his Apostolic Constitution *Missale Romanum* of 3 April 1969 with an especially strongly worded<sup>32</sup> derogation formula:

We wish that these Our decrees and prescriptions may be firm and effective now and in the future, notwithstanding, to the extent necessary, the apostolic constitutions and ordinances issued by Our predecessors, and other prescriptions, even those deserving particular mention and derogation.<sup>33</sup>

The law reorganized the entire matter of the *Ordo Missae* and thus abrogated earlier regulations (1917 CIC 22).<sup>34</sup> In addition, the derogation formula strongly emphasized the predecessors in the primacy and (all) other directives. This, plus the words “etiam peculiari mentione et derogatione dignis,” “show the expression with which every argument reaching back into the past should be refuted.”<sup>35</sup> Paul VI made his clear will known even in other statements.<sup>36</sup> Dicasteries of the

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31 On the legal classification see SCHEULEN, “Rechtsstellung” (as in footnote 19) 5-16.

32 See MAY, “Derogationsformeln” (as in footnote 23) 27.

33 PAUL VI, Apostolic Constitution *Missale Romanum* (3 April 1969), AAS 61 (1969) 217-222, here 222.

34 See G. MAY, “Die alte und die neue Messe. Die Rechtslage hinsichtlich des Ordo Missa” (Schriftenreihe der UNA VOCE-Deutschland e. V. 8), 2nd ed. (Kalkar 1975), 49.

35 MAY, “Derogationsformeln” (as in footnote 23) 27-28; original quote in German.

36 See the papal addresses of 19 November 1969 in AAS 61 (1969) 777-80 and 26 November 1969 in *Notitiae* 5 (1969) 412-16. On 24 May 1976 Paul VI stated in an address given at the secret consistory for the appointment of cardinals in connection with the case of Lefebvre: “Novus Ordo promulgatus est, ut in locum veteris substitueretur post maturam de-



Roman Curia have repeatedly confirmed this.<sup>37</sup> Georg May, although himself always involved in the preservation of the *Ordo Missae* of Pius V, was correct when he established canonically that “The Bull of Pius V, *Quo primum*, ... is said be abolished. The unceasing attempts

liberationem, atque ad exequendas normas quæ a Concilio Vaticano II impertitæ sunt. Haud dissimile ratione, Decessor Noster S. Pius V post Concilium Tridentinum Missale auctoritate sua recognitum adhiberi iusserat,” AAS 68 (1976) 369-79, here 374.

37 On 24 May 1974 the prefect of the Congregation for Divine Worship, Cardinal J.R. Knox, refused the request to permit a Sunday “messe tridentine” for a group of faithful, turning them down with the justification: “Depuis la Constitution apostolique *Missale Romanum* du 3 avril 1969, le Missel romain révisé selon les principes établis par la Constitution liturgique du IIe Concile du Vatican est devenu obligatoire comme le seul Missel du Rite latin dans l’Église catholique romaine.... Pour cette raison, il nous a paru impossible d’approuver la prolongation demandée. Par contre, il est nécessaire et urgent de faire comprendre à ces fidèles, et d’abord aux prêtres qui animent leur groupe, le grave devoir d’obéissance qui leur incombe, en acceptant filialement les directives de l’Église, comme l’ont fait tous leurs frères.” X. OCHOA, *Leges Ecclesie post Codicem iuris canonici editæ V* (Rome 1980) 6811-12, no. 4292.

In a notification of 28 October 1974 (*ibid.*, 6868, no. 4325), Knox furthermore declares that the *Ordo Missae* of the new Roman Missal is to be adhered to by all priests and faithful. He said, on the other hand, that only non-Roman rites endured, but not rites that were in use from time immemorial. Secretary of State Cardinal Jean Villot wrote on 11 October 1975, while invoking the derogation formula of the apostolic constitution of Paul VI, that the old Missal was thereby to have been replaced by the new one. Nobody could validate an indult according to *Quo primum* (cf. n. 29) for the use of the old Missal. And by invoking the notification of the Congregation for Divine Worship mentioned, he emphasized, no Ordinary could permit the use of the old Missal for the *missa cum populo*, not even by invoking ancient customs (pp. 7072-73, here 7072, no. 4405).

On 11 October 1976 Paul VI wrote to Archbishop Lefebvre: “Aus Deiner... falschen Geisteshaltung kommt, daß Du die mißbräuchliche Feier der nach dem hl. Papst Pius V. benannten hl. Messe beibehältst. Du weißt ganz genau, daß auch dieser Ritus das Ergebnis der im Laufe der Zeit eingetretenen Veränderungen war und daß der Römische Kanon auch heute das erste Hochgebet geblieben ist. Das Werk der Erneuerung der Liturgie, das in unserer Zeit geleistet wurde, wurde durch das Konzil ausgelöst, begründet und ausgerichtet. [...] Wir haben diese Erneuerung mit unserer Autorität als gültig anerkannt und verordnet, daß sie von allen Katholiken mitvollzogen wird. Wenn Wir entschieden haben, daß in dieser Sache kein Aufschub angebracht und keine Ausnahme zu gewähren ist, so wegen des Heils der Seelen und der Einheit der ganzen kirchlichen Gemeinschaft. Denn die Meßordnung ist ein hervorragendes Zeichen für die Einheit der Katholiken des lateinischen Ritus.” Y. CONGAR, *Der Fall Lefebvre. Schisma in der Kirche* [Freiburg: Herder, 1977; Ed.] 117-33, here 127.

to consider the Pope as the counselor for the maintenance of the so-called Tridentine Rite are illusory. Paul VI stands with his authority behind the new *Ordo Missae*.<sup>38</sup>

With this background in mind, it must be surprising canonically when *Summorum pontificum* casually characterizes the 1962 Roman Missal as “never abrogated” (SP 1),<sup>39</sup> and when the accompanying letter reiterates that the Missal was “never juridically abrogated” and “consequently, in principle was always permitted.”<sup>40</sup> According to *Summorum pontificum* the 1962 Missal thus has at least to a certain extent<sup>41</sup> continued to be valid during the entire postconciliar

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38 MAY, “Messe” (as in footnote 34) 49; original quote in German. For a more recent example see W. WALDSTEIN, “Zur Frage der normativen Qualität des Verbots des Missale Romanum von 1962,” *Rundbrief Pro Missa Tridentina* 31 (March 2006) 1-13 at <[www.pro-missa-tridentina.org/upload/rb31/02\\_VerbotMissale\\_1962\\_K\\_130306.pdf](http://www.pro-missa-tridentina.org/upload/rb31/02_VerbotMissale_1962_K_130306.pdf)> (accessed 1 January 2008). The article overlooks the critical point in which May would have to be refuted and simply claims that Paul VI never wanted to abolish the old Missal. Any serious canonical examination is lacking.

39 *Abrogare* is the special term for a total repeal of one law by a later one. See MAY, EGLER, “Einführung” (as in footnote 28) 154; H. SOCHA, in MKCIC 20, 2.

40 The surprise is even greater, as Cardinal Ratzinger himself spoke of a prohibition rather often. J. RATZINGER, *Aus meinem Leben. Erinnerungen (1927-77)* (Munich 1998) 173: “Das nunmehr erlassene Verbot des Missale, das alle Jahrhunderte hindurch seit den Sakramentaren der alten Kirche kontinuierlich gewachsen war, hat einen Bruch in die Liturgiegeschichte getragen, dessen Folgen nur tragisch sein konnten” [Ed.: “The prohibition of the missal that was now decreed, a missal that had known continuous growth over the centuries, starting with the sacramentaries of the ancient Church, introduced a breach into the history of the liturgy whose consequences could only be tragic.” *Milestones: Memoirs 1927-1977*, trans. Erasmo Leiva-Merikakis (San Francisco: Ignatius, 1997) 147-48.]

On the other hand, it was claimed by appealing to press products not more clearly specified, that Cardinal Ratzinger as early as 16 November 1982 in his Congregation for the Doctrine of the Faith had conducted a meeting with Cardinals Baum, Casaroli (Secretariat of State), Oddi (Congregation for the Clergy), Baggio (Congregation for Bishops) and Msgr Casoria (Congregation for Divine Worship). At the meeting, so it is said, it was unanimously confirmed that the “Tridentine” Mass had never lost its validity. At the same time a catalog of procedures is said to have been approved which nearly corresponds to *Summorum pontificum*. In the final years of the pontificate of John Paul II, Cardinal Ratzinger is supposed to have requested another appropriate action from him; so C. BARTHE, “Ein Motuproprio, das einen Wendepunkt darstellt,” *UVK* 37 (2007) 376-77.

41 The formulation of the accompanying letter does not rule out the understanding that both Missals were fully valid the whole time in a parallel manner.

liturgical reform and therefore is not *again*, but *still*, valid. Thereby the Pope does not want his *motu proprio* to be considered what could legally be perfectly unproblematical: the legal correction of prior legislation, either because it was a mistake or is now redundant owing to new conditions. That would be a normal process, for every Pope can only effectively prevent any revision by his successors by applying the authority of infallibility.

One reason why Benedict XVI does not choose this convenient way is not contained in the legal text. The context – the emphasis on equal conformity of both usages of the Roman Rite with the *lex credendi* – can indicate a motive: What was perceived as a break with liturgical tradition could be identified as missed continuity, and the quality of the legal reform of Paul VI could thus be “diluted” as the opening of a new broad channel for the river “new usage of the Roman Rite” without allowing the tributary “old usage” to dry out. The Pope’s remark in the accompanying letter to the bishops can also point in this way: “At the time of the introduction of the new Missal, it did not seem necessary to issue specific norms for the possible use of the earlier Missal. Probably it was thought that it would be a matter of a few individual cases which would be resolved, case by case, on the local level.” That is said to be otherwise today due to increased demand.

What does it mean when Benedict XVI insists that validity continues? How can this be reconciled canonically with the clear orders and accompanying statements of Paul VI?

(a) It is hardly conceivable that it could be implied to consider the subsequent approval of previously forbidden things *in principle* as a proof that there should never have been an outright prohibition. That would lead the Church’s derogational practice *ad absurdum*. Even primatial legislation would be compromised through a dispute at any time regarding the scope of validity. It is not canonically perceivable how the requirement for obedience could be effectively maintained and the primacy remain unaffected.

(b) Does the Pope want to embrace the position of the adherents to the old Missal, that Vatican II itself immunized the 1962 Missal against a reform which was to replace it? The constitution on the liturgy *Sacrosanctum concilium* (4 December 1963) declared that the Church acknowledges in faithfulness and obedience with respect to tradition all juridically\*recognized rites (“omnes ritus legitime agnitos”) as equal in privileges and honor. It pointed out that the Church wants them all to be maintained and promoted in the future, but at the same time to be examined equally in a spirit of sound tradition, and equipped soundly for the present day (no. 4). With or without

express references to it, the assertion is made that the Council neither abolished<sup>42</sup> the earlier Missal nor intended to do so.<sup>43</sup>

On the other hand, it has long been asserted that the passage from the foreword of the Liturgy Constitution was not supposed to freeze the Roman Rite in its 1962 form or exclude it from the need to adapt. Discussions and text statements were far more targeted mainly to the ritual families of the Christian East. Their equal footing was supposed to be emphasized contrary to the historical legacy of Latin predominance, and at the same time, the possibility of new ritual families coming into being was to be left open.<sup>44</sup>

Neither in his law nor in his accompanying letter does the Pope refer to this argumentation or even merely to its conciliar guarantee. Nor would much have been gained. Even if the Pope should interpret them authentically in the sense mentioned earlier, the decisive legislative act of Paul VI would not have been cancelled. It would merely be clarified that Paul VI had acted contrary to the intentions of the Council instead of in the spirit of it. Both are legitimate actions of papal authority over the Council. Rather, Benedict XVI denies an

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42 See C. Perl [Camille Perl, Secretary of the Pontifical Commission *Ecclesia Dei*; Ed.], Interview of 13 October 2007, at <[www.papanews.it/news.asp?IdNews=3479#a](http://www.papanews.it/news.asp?IdNews=3479#a)> (accessed 18 December 2007) and likewise Cardinal Hoyos, Interview with *30 Giorni* of July 2007, at <[www.30giorni.it/te/articolo.asp?id=14982](http://www.30giorni.it/te/articolo.asp?id=14982)> (accessed 1 January 2008). However, as far as can be determined, no one is claiming the Council abolished the old rite; this was done by Paul VI.

43 Cardinal Hoyos spoke to this effect in a homily on the old *usus* of the Roman Rite on 25 May 2003, for example: “Man kann nicht sagen, daß der Ritus des heiligen Papst Pius V. erloschen sei.” Appealing to *Sacrosanctum concilium* 4, he continued: “Der alte römische Ritus behält also in der Kirche sein Bürgerrecht im Rahmen der Vielfalt der Riten, sowohl der lateinischen wie der orientalischen,” <[www.stjosef.at/dokumente/hoyos\\_predigt\\_rom.htm](http://www.stjosef.at/dokumente/hoyos_predigt_rom.htm)> (accessed 29 December 2007), and appealing to him WALDSTEIN, “Frage” (as in footnote 38). He quotes (p. 1) from a letter by Professor Ratzinger to him in 1976: As for the prohibition of the Missal of 1962, it is said to be a “type of prohibition of something previously existing, which is completely foreign to the Church’s legal and liturgical history... I can say with certainty from my knowledge of the Council’s debate and another reading of the lectures conducted then by the Council Fathers, that this was not the intention” (original in German).

44 B. FISCHER, “Liturgie oder Liturgien?” *TrThZ* 90 (1981) 265-75. The Apostolic See never embraced this concern but replaced it with the concept of inculturation of the one Roman Rite: CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, Instruction *Varietatis legitima* (25 January 1994), AAS 87 (1995) §36, p. 302 (German: VAS 114). On the argumentation with *Sacrosanctum concilium*, 4, see also SCHEULEN, “Rechtsstellung” (as in footnote 19) 87-91.

abrogating legislative act of his predecessor and thereby the only canonically well-founded concept that Paul VI exercised his primatial responsibility to set forth and legally transform the Council, establishing a new rite in place of the Roman Rite of 1962.

(c) Does the Pope only want to interpret bindingly *this* legislative act of Paul VI differently – not as a substitution of one form by another, but as a clear beginning of an additional new form, while silently maintaining the previous form and showing temporary normative neglect of it? Is this a sign of a particularly conscious use of full primatial authority? Is Benedict XVI asserting his primatial monopoly on interpretation in order to decree a historical version of continuity of papal actions, by only desiring to continue the normative shaping of the form never laid to rest which was left undone by Paul VI and started by John Paul II, instead of letting the old form of the one Roman Rite be revived by virtue of his authority? Who would want to deprive the Pope as supreme teacher, who as *dominus canonum* is sovereign in regard to codified rules of interpretation, the competence for such binding interpretation of history, as it was expressed by Pope Pius IX, although agitated, yet thoroughly understandable in the true sense of the Catholic logic of tradition: “La tradizione sono io”?<sup>45</sup>

For both those who adhere to the old and those who adhere to the new usage of the Roman Rite, this can lead to problems of acceptance. Especially the Roman dicasteries responsible for the implementation of the new usage and the executive diocesan bishops may subsequently feel wronged.<sup>46</sup> Those adhering to the old usage, “who have experienced forty years marked by expulsions, coercions, exclusions, even proper persecutions,” characterize the Pope’s assertion of validity as “paradoxical” or “surrealistic.”<sup>47</sup> Many priests and faithful had “taken note of this with deep soul-searching horror.... To put it in a few words: regarding an entire crucial segment of people’s

45 On the historicity of this sentence, clarified since, see K. SCHATZ, “La tradizione sono io,” *Vaticanium I: 1869-1870*, vol. 3, *Unfehlbarkeitsdiskussion und Rezeption* (Konziliengeschichte Reihe A: Darstellungen) (Paderborn 1994) Appendix 1, pp. 312-22.

46 Something similar applies when the Pope cites in his accompanying letter, as a reason for the difficulty of using the old Missal outside of definite groups, that the bishops had often feared that the authority of the Council would be called into question. Among the conditions under which diocesan bishops since 1984 could permit even groups of priests and faithful the celebration of Mass according to the old Missal, was the one that it had publicly without a doubt to be certain that the priests and faithful involved not be in community with those who doubt the legitimacy and doctrinal rectitude of the Missal of 1970; see *Quattuor abhinc annos* (as in footnote 19) 1088.

47 BARTHE, “Motuproprio” (as in footnote 40), 377.

biography – the conditions of Eucharistic celebration – it is thereby explained that it has been nothing more than an incomprehensible nightmare! Forty years...”<sup>48</sup> Such upheaval is secondary from the point of view of superordinate “reasons of Church.” The exercise of the Church’s authority, as it perceives itself, is always service. She expects as a matter of course that the faithful will comply with every order to change direction without grumbling. Such obedience can also require one to actualize something as *still* allowed at the behest of authority today, that until yesterday was held by her to be strictly forbidden for decades, and what one thought necessary to avoid or fight for in order to *regain* it under pangs of conscience. In light of this, it is crucial for the existence of the Church not to let the divinely appointed authority appear susceptible to error, even in areas where this authority has not been promised infallibility, such as in matters of discipline and dogmatic content not close to revelation.<sup>49</sup>

Whether this is the only possibility of canonically preserving a legislative continuity in matters about the Missal, or whether the Pontifical Commission *Ecclesia Dei* will offer additional means of explanation, is secondary for the upcoming application of norms and remains to be seen.

### *II.3 Application of the usus antiquior*

The norms of *Summorum pontificum* concern the *usus antiquior* for various Mass forms and other liturgical celebrations, options for an appropriate spiritual care, and safeguards to oversee applications.

(a) The celebration of Mass without the people

#### *i. Missa sine populo*

According to Article 2 of *Summorum pontificum*, each Latin-rite Catholic priest, whether secular or religious, may freely and without any limitation choose either the Missal of 1962 or that of 1970 on any day except from the Mass of the Lord’s Supper on Holy Thursday to the Easter Vigil – the Sacred Triduum – in Masses celebrated without the people (*in missis sine populo celebratis*). To reinforce the abolition of all previous limitations, it is added that priests need no permission of any kind. The expression *missa sine populo* originates from the

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48 Ibid.

49 On the probability and determination of error in the area of non-definitive teachings according to official perception, see N. LÜDECKE, *Die Grundnormen des katholischen Lehrrechts in den päpstlichen Gesetzbüchern und neueren Äußerungen in päpstlicher Autorität* (FzK 28) (Würzburg 1997) 304-358.

extra-codical liturgical law, specifically from the general rubrics. It designates the celebration of Mass in which, other than the celebrant, only the server or a member of the faithful (virtually) participates. It was created in order to provide a slightly changed liturgical form according to the 1970 Missal.<sup>50</sup> For every Mass where at least one member of the faithful participates, the rubrics for the *missa cum populo celebrata* apply.<sup>51</sup> Any priest may celebrate individually (can. 902) according to a freely chosen usage, with only one acolyte (in future, “liturgical server”), or, if a just and reasonable cause exists, without any member of the faithful. The church rector or the pastor or the priest in charge of a capitular or an order’s church<sup>52</sup> must permit this at every place allowed (cc. 932, 933) so long as the person wishing to celebrate is known to him *or* can show a *celebrat*<sup>53</sup> not older than one year *or* can be assumed to have no existing impediment to celebrate.<sup>54</sup> Referring him to another place besides his place of residence is only

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50 See G. MAY, “Das Recht auf Einzelzelebration,” UVK 27 (1997) 117-72, here 153-56; also IGMR (1970) 77 and 209. IGMR (2002) no longer uses the concept but contrasts the *missa cui unus tantum minister assistit* (no. 115) with the *missa cum populo*. In the German translation the “Mass at which only one liturgical server participates” is contrasted with the “Mass with the people.” *Grundordnung des römischen Messbuchs. Vorabpublikation zum Deutschen Messbuch (3. Auflage) vom 12. Juni 2007*, ed. Sekretariat der DBK (Arbeitshilfen 215) (Bonn 2007). The celebration permitted under certain circumstances without any faithful, cf. can. 906, is dealt with under the same heading, but distinguished from it, and has additional omissions in the rite as a consequence; see IGMR (2002) 254.

51 See MAY, “Recht” (as in footnote 50), 156, with appeal to K. RICHTER, “Meßfeier ohne Gemeinde,” *Gemeinde im Herrenmahl. Zur Praxis der Messfeier*, eds Richter, Maas-Ewerd (Freiburg i. Br.-Einsiedeln-Zürich et al. 1976) 136-42, here 140. The postconciliar basic form is the parish celebration of Mass. The Mass celebrated by a bishop with the presbytery and people is considered the highest form, and considered especially important is the Mass celebrated with a parish or monastic community. Besides this there are Masses where faithful spontaneously join with a celebrant or Masses with special groups. The criterion of this division of Masses is the degree of the “Church public.” A. ADAM, R. BERGER, “Meßformen,” in *Pastoral liturgisches Handlexikon*, 2nd ed. (Freiburg 1980) 347-48.

52 See K. LÜDICKE, in MKCIC 903.

53 *Celebrat* is the customary non-codical term for the letter of introduction by his Ordinary mentioned in can. 903, which entitles a priest to celebrate. See M. WENTINK, “Zelebrat,” LKRStKR 3:901.

54 See K. LÜDICKE, in MKCIC 903. If there exists no cause to suspect that the one wishing to celebrate violates the regulations for celebrating or distributing the Eucharist (cc. 900-911), or that celebration is forbidden to him as a person (for example, because of an ecclesiastical penalty or grave sin: cc. 1331-33, 916), the celebration is to be permitted.

permitted when insurmountable obstacles exist, i.e., with such “as result from external circumstances which can in no way be removed by any allowable means, and when they apply to any priest willing to celebrate.”<sup>55</sup>

Regarding the time and the necessary preparations, the priest wishing to celebrate has to adapt to local needs and conditions. At the same time, the celebration must not be rendered impossible by them.<sup>56</sup> Restrictions of the *usus antiquior* by particular Church law at certain places and times are just as illicit in this case as a *usus*-related limitation of the *celebret*. Permission is to be granted to the priest, not to the *usus*.<sup>57</sup>

ii. *Missa sine populo* with faithful (“private Mass”)

The descriptive concept *missa sine populo* in the sense of the rubrics had become a normative and pejorative liturgico-political term in post-conciliar practice. In 1969 the Congregation for Divine Worship had issued the strictly limited permission to continue to use the rites and texts that had been common so far. It must involve (a) older priests who (b) had rather serious difficulties with the new Order of Mass, the new texts of the Missal, or the Order of Readings who received permission from the Ordinary, and who (c) (only) celebrated Mass *sine populo*.<sup>58</sup> Two notifications by the Congregation issued on 14 June 1971<sup>59</sup> and 28 October 1974<sup>60</sup> had reinforced the third condition. The Congregation obliged this tightly limited group of priests while implementing the new liturgical directives. But for them, something that can occur, a *missa sine populo*, had become a mandatory directive. Their extinction was predictable. The other faithful had to obey without exception. They were thereby not to be made insecure by publicly accessible celebrations of the Mass in its earlier form.<sup>61</sup> Rather, the latter were to be forgotten during the change of generations.<sup>62</sup>

This situation remained until the Apostolic See in 1984 changed its practice. Since then the Ordinary has been allowed to permit the

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55 MAY, “Recht” (as in footnote 50), 169; original quote in German.

56 MAY, “Recht,” 169-70.

57 MAY, “Recht,” 171-72.

58 CONGREGATION FOR DIVINE WORSHIP, Instruction *De Constitutione Apostolica “Missale Romanum”* (20 October 1969), AAS 61 (1969) §19, p. 753. The number following additional “special” cases of priests affected for reasons of health or otherwise reserved for the Congregation; see MAY, “Messe” (as in footnote 34), 51.

59 AAS 63 (1971) 712-15.

60 *Notitiae* 10 (1974) 353.

61 See SCHEULEN, “Rechtsstellung” (as in footnote 19), 52.

62 See MAY, “Recht” (as in footnote 50), 157.



public celebration of Mass according to the earlier Missal for certain priests and communities under certain conditions.<sup>63</sup> Since 1988 the president of the Pontifical Commission *Ecclesia Dei* has been able to allow all priests and laity requesting it to use the Missal of 1962. On account of the claims of various bishops conferences, he has been instructed to issue a *celebret* only after approval by the respective diocesan bishop.<sup>64</sup>

With this in mind, article 4 of *Summorum pontificum* lifts the disciplinary character of the *missa sine populo*. Every priest entitled to it can admit (*admittere*) additional faithful to take part in the celebration of Mass, insofar as they freely request it. All faithful have the obligation to promote their continual sanctification (can. 210). They thereby are supported by the right to receive assistance out of spiritual goods, especially word and sacraments, from the sacred pastors (can. 213). These may not deny the sacraments to those who seek them at appropriate times, are properly disposed, and are not prohibited by law from receiving them (can. 843 §1, in conjunction with, for example, can. 915). It is especially stressed that these faithful must be admitted to communion (can. 912). For the Code of Canon Law, the celebration is crucial; it recommends it even when the faithful cannot participate. Their participation is desired where possible (cc. 904, 906). That applies to every celebration of Mass, not only to parish Masses or announced Masses. Only the priest who has to celebrate while seated because of age or illness may do this publicly, and only with permission of the Ordinary (can. 930 § 1). There are no other reasons for constraining the number of participants.<sup>65</sup>

The request to participate must occur *sua sponte*. The formula commonly used in the Code of Canon Law means individually and “voluntarily,” in the sense of without compulsion and without external pressure constraining one’s own initiative or impetus such as (demonstrated) pressure of expectations.<sup>66</sup> This does not mean spontaneity in the sense of a sudden decision or impulse without external impetus. The formula urges the celebrant to leave the initiative to the faithful and urges the faithful to allow each other appropriate freedom to

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63 See *Quattuor abhinc annos* (as in footnote 19).

64 See PONTIFICAL COMMISSION “*ECCLESIA DEI*,” Rescript *Quia peculiare* (as in footnote 19), as well as SCHEULEN, “Rechtsstellung” (as in footnote 19), 55. Previously the *Ecclesia Dei* Commission had merely informed the bishop in charge that the *celebret* had been issued: W.H. WOESTMAN, “*Ecclesia Dei* and Ecclesial Communion,” *Jurist* 53 (1993) 199-209, here 205.

65 See MAY, “Recht” (as in footnote 50), 163.

66 See the seventeen quotations for the expression in OCHOA, *Index CIC* (as in footnote 12), 462-63.

participate in Mass. The public character of the celebration is not to be restricted thus. The faithful may make each other aware of celebrations taking place, for example when they learn that a priest vacationing at his parents' home celebrates in their parish church daily outside of community Masses. When a retired priest regularly celebrates using the old form, the faithful cannot be refused to take part, too. If such a group forms, it will convey its desires for a parish Mass to the pastor.

Factually thus, a link is made to the classical private Mass,<sup>67</sup> which is (in contrast to Sunday and holy-day Masses) not held in front of and for a legally defined group of people such as a parish community or a monastic association in special solemnity; but where a group of people congregates that is not specified otherwise.<sup>68</sup> The fact that there is a *missa sine populo* even in the presence of several faithful is odd in terms of legal terminology. Possibly the Pope does not want generally to reintroduce the term "private Mass" so as not to damage the character of the Eucharist as a public exercise of the sanctifying function of the Church.<sup>69</sup>

(b) The celebration of Mass with the people

*i. Parochial*

In contrast to Masses taking place, depending on the will to celebrate as well as the place of residence of a priest, and to which no established group of people but rather changing groups of faithful have access, article 5 of *Summorum pontificum* provides for regular Mass celebrations according to the 1962 Missal in a parish for a group of faithful which exists there for the long term and has requested it (§1). This can happen several times on working days and once on Sundays and holy-days (§2).

*Stable group.* It is a prerequisite that in a parish a group of faithful continually (*continenter*) exists which adheres to the earlier liturgy. *Summorum pontificum* does not specify what constitutes a group, nor is a mini-

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67 MAY, "Recht" (as in footnote 50), 172, quotes from the *celebret* in his possession from the Ecclesia Dei Commission. He says it is only issued for a private celebration ("pro celebratio privata"). It is distinguished from the "celebrationes publicae habendae," which are requested by a group of faithful ("aliquo coetu fidelium rite id petunt").

68 See the overview of the non-uniform usage of the term "private Mass" until Vatican II in MAY, "Recht" (as in footnote 50), 147-52.

69 See cc. 834, 837, 839. The Congregation of Rites for this reason wanted the expression "private Mass" to be avoided as early as the Instruction *De musica sacra* (3 September 1958), AAS 50 (1958) §2, p. 633. See MAY, "Recht" (as in footnote 50), 151.

num size determined. The council<sup>70</sup> and codex<sup>71</sup> application of *coetus* is multifaceted and eludes a uniform definition. A *coetus "fidelium"* means several physical persons; because it exists permanently, this majority distinguishes itself from a temporary assembly or gathering.<sup>72</sup> In order to qualify as an association (*consociatio*), a minimal structure and formal tie would be required.<sup>73</sup> The context of the *coetus* is a parish. Considering the way *coetus* is used in the canons about the parish (cc. 545 §2; 560; 564; 479 §2), the questionable expression can be defined as a group of faithful of the parish which does not have to be legally organized or separated by membership rules. One may feel part of it without having to declare membership or to declare to be a solid member. The composition of the group can vary. It is a matter of a community of mind or need.<sup>74</sup> Since the legislator has renounced any establishment of a minimum size, according to the principle "Tres faciunt collegium," a minimum number of three persons is sufficient. The Apostolic See is free to set a higher number; the diocesan bishop cannot legally do so.<sup>75</sup>

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70 See H. HALLERMANN, *Die Vereinigungen im Verfassungsgefüge der lateinischen Kirche* (Paderborn 1999) 185-86.

71 See OCHOA, *Index CIC* (as in footnote 12), 83.

72 See the application of *coetus* in this sense, e.g., for the gathering of a synod of bishops (cc. 342, 345), a diocesan synod (can. 460) or the assembling of judges (can. 1429).

73 W. AYMANS, K. MÖRSDORF, *Kanonisches Recht. Lehrbuch auf Grund des Codex Iuris Canonici*, vol. 2 (Paderborn 1997) 468. It is also true for a *communitas*, from which a *coetus* of faithful in a parish is set apart in can. 564; likewise in can. 1223 in the definition of an oratory.

74 Rightly so, W.F. ROTHE, "Wie groß ist eine Gruppe? Eine kirchenrechtliche Anmerkung zu *Summorum Pontificum* und dessen praktischer Umsetzung," UVK 37 (2007) 365-373, here 370-71. As examples he cites project groups or those addressed by categorical spiritual care, such as faithful speaking a different mother tongue who occasionally celebrate their own Masses but otherwise participate in the usual parish life.

75 As ROTHE, "Gruppe" (as in footnote 74), 372, rightly indicates, the determination by Walter Mixa, bishop of Augsburg, of twenty-five as the minimum number is invalid and by no means mandatory. Also, Cardinal Hoyos' comment in an interview: "Ich habe den ganzen iter verfolgt, bis zur Schlussfassung, und soweit ich mich erinnern kann, war in keinem der Entwürfe von einer Mindestzahl der Gläubigen die Rede, weder dreißig, noch zwanzig und auch nicht hundert!" (as in footnote 43). No. 5 of the guidelines of the DBK (as in footnote 28) explains that a determination regarding the type and size of a group making application is not made, in order to be able to conform to given local conditions adequately. This waiver is misleading, because at the moment neither the DBK nor the diocesan bishop nor certainly the pastor is entitled to issue obligatory regulations.

*Spiritual need.* The rights of the faithful to help from spiritual goods and to a celebration of the liturgy according to liturgical regulations valid in the Latin Rite<sup>76</sup> (cc. 213f.), including the old Missal, can only be exercised within the ruling of ecclesiastical authority oriented to the common good (can. 223 §2). Such a ruling is offered by *Summorum pontificum*. The group can petition the pastor about the opportunity to participate in a Mass according to the 1962 Missal. It will present this justified spiritual need (can. 212 §2) in a manner which does not lack reverence for the ordained men in the Church (can. 212 §§1 & 3), which respects the rights of the other faithful to a celebration of Mass according to the 1970 Missal, and does not interfere with their right to a good reputation (can. 223 §1 in conjunction with can. 220).<sup>77</sup> They should do this in written form so that their correct way of proceeding is documentable if necessary.<sup>78</sup>

*Obligations to fulfill the request.* The pastor<sup>79</sup> is legally obligated willingly to accept this concern (SP 5 §1).<sup>80</sup> It is part of his official duties to nourish the faithful through the devout celebration of the sacraments, to let the Most Holy Eucharist become the center of the parish assembly, and to encourage the faithful frequently to approach the sacraments of Eucharist and penance (can. 528 §2). To do this carefully, he should know the faithful of his parish in person whenever possible (can. 529 §1). He is to bring the good of those who express

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76 W.F. ROTHE, "Das Recht der Gläubigen auf die authentische Feier des Gottesdienstes nach can. 214 im Blick auf die Instruktion der Kongregation für den Gottesdienst und die Sakramentenordnung *Redemptionis Sacramentum* vom 25. März 2004," FoKTh 21 (2006) 293-306, here 298, as well as C. OHLY, "*Redemptionis Sacramentum*: Die Eucharistie als unverfügbarer Schatz der Kirche. Erwägungen zu einem Gemeinrecht der Christgläubigen," in *Klerusblatt* 84 (2004) 181-84, here 181.

77 Reverence means "a complex feeling of acknowledgment and wondering emotion of something or someone exalted, in the ambivalence of attraction while keeping one's distance, of trusting devotion and humble interior awe." S. LEDERHILGER, "Ehrfurcht," LKRStKR 1:570-71, here 570; original quote in German. Reverence is due to the ordained, obedience to the holder of jurisdiction. Insofar as the petition of the faithful is within the framework of the possibilities opened by *Summorum pontificum*, and as long as the faithful make their desire to participate in the Mass known within the framework of the possibilities opened by the motu proprio, it is "adequate" in the sense of can. 843 §1.

78 A person can also be authorized to present the concerns in the name of a group.

79 According to SP 5 §5, the rector of the church is the responsible contact person in churches which are not parish or conventual churches.

80 On the legal character of his action, see Section II.4 ("Implementation") below.

their wish to participate in a Mass celebrated according to the Missal of 1962 harmoniously into accord<sup>81</sup> with the general pastoral care of the parish by avoiding conflict and promoting the unity of the entire Church. In doing so, he will in his personal demeanor take care that he exercise equally applied pastoral care toward all his faithful and not due to his own preference of the older or newer form of liturgy favor, marginalize, or exclude any faithful. Also he will declare as unallowable any opposing suspicions among the faithful supporting only their liturgical preferences, “prudently correcting” those who are lacking in adequate behavior (can. 529 §1). If he recognizes a shortage of familiarity with the respective liturgical form as a cause for tensions, he will be able to eliminate it with clarification of common grounds and differences in emphasis using adequate information (all meetings).<sup>82</sup> If need be, he will call on the diocesan bishop to support the fulfillment of the request.

Prompted by such considerations, the pastor, whenever possible, will accept into the order of Masses a celebration of the Mass according to the old Missal on working days, as needed, and only once on Sundays and holy-days (SP 5 §2)<sup>83</sup> and make it possible on request also on special occasions (SP 5 §3).<sup>84</sup>

He can celebrate himself or permit another priest to celebrate. Here the rules of canon 903 apply.<sup>85</sup> According to *Summorum pontificum*, article 5 §4, the celebrant has to be “qualified” besides. The text of

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81 The fulfillment of the group’s desire may not be made dependent on whether “existing tensions are reinforced or new ones are brought about”; see No. 1 of the guidelines of the DBK (cf. n. 28; original quote in German). Such tensions are not grounds for a refusal according to SP 5 but merely an occasion for further efforts and a search for other possibilities. Nor can DBK guideline no. 1 impose an obligation as a condition, because it goes beyond the bounds of *Summorum pontificum*. That is true also for No. 1 of the guidelines of Swiss conference of bishops (SBK).

82 See, for example, C. BECKER, “‘Wenn ihr also zum Mahl zusammenkommt...’ Ein Abend zur liturgischen Bildung,” *gd* 41 (2007) 121-24.

83 Parish Masses according to the new Missal cannot thereby be blocked. The pastor is likewise not entitled to limit the publicity of the Mass according to the old *usus* through silence or by scheduling it at inconvenient times. The harmony and integration desired by the Pope would not thereby be promoted, but rather possibly conventicle formation and separation.

84 Those named are not all-inclusive but a list of examples, to which other occasions, even of situational character, can legitimately be added, such as weddings, funerals, pilgrimages.

85 See n. 57 above. The readings during the celebration of Mass according to the old Missal can additionally (*etiam*) be presented in the vernacular, insofar as the version recognized by the Apostolic See is used (SP 6). On this see No. 8 of the DBK guidelines (as in footnote 28).

the law does not stipulate the criteria for qualification. The addition of this phrase may have been influenced by the Pope's experience that "that there have been exaggerations and at times social aspects unduly linked to the attitude of the faithful attached to the ancient Latin liturgical tradition."<sup>86</sup> Therefore according to context, whoever hinders in word and behavior a harmonious integration of the special spiritual need, does not avoid discord, and does not foster unity with the entire Church, is certainly unqualified.

Also required is certainly a familiarity with the *usus antiquior* and a knowledge of Latin. Priests educated in Germany have demonstrated the knowledge of languages required for their service. Needless to say, this also includes the capability of being able to say Mass in Latin according to the 1970 Missal.<sup>87</sup> In his approval of the old Missal for all priests even in celebrations of Mass with the faithful, the Pope stipulated the corresponding appropriateness, as well as the assumption that a priest would refrain from celebrating when he does not possess a sufficient command of the liturgical requirements which he is legally obligated to adhere to (can. 846 §1). In this case, a pastor will surely not offer the celebration requested himself. Whoever is able to present a *celebret* and shows no evidence of being incapable with regard to the *usus antiquior* may not be rejected as a celebrant for the group. It is not permitted to require a previous test in rubrics or Latin.<sup>88</sup> This does not affect the pastor's official duty to oversee

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86 See BENEDICT XVI, Letter.

87 The level of language requirements in the biblical languages Hebrew and Greek in the formation of priests is debatable. In a Church whose official worldwide language is Latin and which uses, for the most part, Latin as a liturgical language; in a Church in which the Vulgata is the obligatory original source for the translation of biblical words in liturgical texts (see *Liturgiam authenticam*, 37); and in a Church in which the faithful have immediate access to the truths of revelation in the obligatory *Latin* documents of the Magisterium, it may be difficult to consider comprehensible that the DBK is satisfied with a knowledge of Latin in the training of priests which, in contrast to state requirements for religion teachers, does not require an official qualification of Latin. See *Rahmenordnung für die Priesterbildung vom 12. März 2003*, ed. Sekretariat der DBK (Die deutschen Bischöfe 73) (Bonn 2003) No. 130. To instrumentalize as a limitation this self-managed level reduction however via aptitude to celebrate in the *usus antiquior* is a liturgical-politically and legally unallowable measure. A lack of a knowledge of Latin is no reason not to comply at all with the desire of the faithful. Far more do they indicate the need for adequate remedial qualification, further education, or better formation.

88 The conditions for qualification listed in No. 6 of the DBK guidelines (cf. n. 28) as well as those of the SBK are also unallowable as ordered by a diocesan bishop and thus not mandatory. To emphasize the require-

matters and his right to intervene, if he should detect any liturgical dabbling (can. 528 §1).

*ii. Extra-parochial*

Interested laity can also turn directly to a diocesan bishop with their spiritual concern independent of a concrete parish. The bishop's readiness to fulfill it is taken for granted (SP 8).<sup>89</sup> Additionally, the Pope indicates to the diocesan bishop how to accommodate the wish of the faithful alternatively to a normal parish concerning the organization of pastoral care. He designates the establishment of a personal parish (can. 518) and the appointment of a church rector and a chaplain (*cappellanus*) (SP 10). The personal parish is a form of regular, both other cases are forms of supplementary extraordinary organization of pastoral care<sup>90</sup> for groups set apart based on a personal criterion, in this case the preference and maintenance of the Roman liturgy in its old form.

The personal parish is a community of the faithful stably constituted and provided with a pastor as its proper pastor (cc. 515, 518). All rights and obligations of a pastor fall to the *pastor proprius* (cc. 528-535, 1110). Based on their place of residence, the faithful also belong to a territorial parish, but can freely choose whether they approach the local or the personal pastor.<sup>91</sup> The diocesan bishop is

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ment for "general qualifications that every priest must possess" specifically for a certain group of priests places their general qualification illegitimately in doubt. The explicit acceptance of the whole liturgy of the Church, in its ordinary and extraordinary forms, is a condition abolished by *Summorum pontificum*. This acceptance is taken for granted until proof to the contrary, because the adherents of the older form of the liturgy are free from general suspicion of rejecting the Council. The bishops cannot impose this suspicion again. The appeal of the DBK guidelines to the Pope's letter accompanying *Summorum pontificum* is absurd at this point. Moreover the adherents of the new liturgical form may not fundamentally reject the older one. It is authoritatively shown as a legitimate expression of the same *lex orandi* and *lex credendi*. The offer of additional and continuing education course work is welcome news (cf. n. 87). Familiarity with the old ritual form and an appropriate knowledge of Latin are to be presumed, however, unless there is proof to the contrary.

<sup>89</sup> See also can. 383 §1, which obliges the diocesan bishop to look after *all* the faithful entrusted to him. In this sense the Pope at the end of this message recalls the charge given to the Apostles: "Take heed to yourselves and to all the flock, in which the Holy Spirit has made you overseers" (Acts 20:28).

<sup>90</sup> See AYMANS, MÖRSDORF, *Lehrbuch*, vol. 2 (as in footnote 73) 413.

<sup>91</sup> See H. HALLERMANN, "Personalparferei," LKRStKR 3:187-89, here 188-89.

to hear the presbyteral council before validly establishing a personal parish (cc. 515 §2; 127 §2, n. 2).<sup>92</sup>

The local ordinary can, for the permanent pastoral care of adherents to the earlier form of the liturgy, also appoint a *pastor of souls for particular communities* (*cappellanus*)<sup>93</sup>. He is not restricted to questions of divine worship but has a basic supply of pastoral competences by law.<sup>94</sup> His responsibilities can be extended by delegation or particular law. He is not subordinate to the territorial pastor but must remain in coordinated contact with him. Ordinary parochial pastoral care takes precedence and may not be compromised. Good coordination also serves effective caretaking of the special group.<sup>95</sup>

The *church rector* is, by virtue of his office, not appointed to general pastoral care but for demands of divine worship at a so-called tributary church.<sup>96</sup> He may only take on parochial functions with explicit permission or delegation, as the case may be, from the pastor-in-charge (can. 558). His right to celebrate Mass in the tributary church is to be exercised by him without impacting the parochial liturgy, i.e., free of any schedule conflicts in Mass times (cc. 559, 1219). The church rector may receive the task of opening the church to hold liturgical celebrations for specific groups from the local ordinary. Responsibilities for pastoral care are not connected with this. They fall on the pastor or a possible *cappellanus*. The latter should generally also be the rector of the church.

All these possibilities indicated by the Pope have in common that in contrast to the associate pastor as in canon 545, they have a

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92 With a special mandate of Pope John Paul II the Congregation for Bishops, in a decree as early as 19 January 2002 (AAS 94 [2002] 305-308), created the formerly [schismatic; Ed.] traditionalist Society of St John Mary Vianney in the Diocese of Campos, Brazil, as an Apostolic Personal Administration (*Apostolica administratio personalis*) and appointed its former superior as Apostolic Administrator. After a hearing by the diocesan bishop, the administrator can erect personal parishes for the pastoral care of his faithful; for details, see also P. KRÄMER, "Die Personaladministration im Horizont des kirchlichen Verfassungsrechts," AKathKR 172 (2003) 97-108 [= UVK 33 (2003) 367-80].

93 This must not be confused with the associate pastor (parochial vicar), commonly designated in Germany as *Kaplan*, who according to can. 545 is bound to the respective pastor's directives.

94 From a legal standpoint he can administer confession and anointing of the sick, bring Viaticum and preach. AYMANS, MÖRSDORF, *Lehrbuch*, vol. 2 (as in footnote 73), 451-52.

95 See H. PAARHAMMER, in MKCIC 571, 1.

96 These are churches which are neither parochial nor capitular nor connected with a house of a religious community or of a society of apostolic life; see can. 556.



certain independence from the pastor. The circumvention of the rule criterion of “territory” that confines the community under his pastoral care encounters well-founded canonical skepticism. The setting of territorial boundaries is said to be “especially appropriate ecclesologically because the connection of church life with the most important characteristics of everyday life can thus be preserved independently from particular interests,” while “all personal criteria are not quite suitable to bring to bear the unifying power of faith and church life.”<sup>97</sup> A particularistic development would contradict the Pope’s declared desire for harmonious insertion into parochial pastoral care. For this reason, these structures cannot be recommended as a long-term solution. However they can provisionally enable a reestablishment and consolidation of the earlier liturgical form “at a certain distance” and a reciprocal customization, until in the medium term, full integration into normal parochial pastoral care takes place.

### iii. *Community Masses of (religious) “orders”*

The Pope also allows all (religious) “orders”<sup>98</sup> the *usus antiquior* for their daily community Mass<sup>99</sup> to be celebrated in their houses of prayer (oratories). If individual communities or whole institutes or societies want to do this often, habitually or permanently, it is decided by the Superiors Major based on their order’s laws or statutory regulations (SP 3). Other faithful may participate in these celebrations of Mass.<sup>100</sup>

#### (c) Other actions of divine worship according to the *usus antiquior*

The pastor is to respond to the request to use the 1962 Missal when (minor) prerequisites are met. For the good of souls, it is also within his thoroughly examining discretion to allow the use the earlier ritual for the administration of baptism, marriage, penance, and the anointing of

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97 AYMANS, MÖRSDORF, *Lehrbuch*, vol. 2 (as in footnote 73) 414; original quote in German. For other skeptics see H. HALLERMANN, *Pfarrei und pfarrliche Seelsorge. Ein kirchenrechtliches Handbuch für Studium und Praxis* (Kirchen- und Staatskirchenrecht 4) (Paderborn 2004) 158-59, n. 183.

98 Under this general concept in German, imprecisely in terms of Church law but still common, are included the institutes of consecrated life and the societies of apostolic life. R. HENSELER, in MKCIC Einführung vor 575, 1; to critique, see AYMANS, MÖRSDORF, *Lehrbuch*, vol. 2 (as in footnote 73) 541.

99 They are called “conventual Masses” in “orders” having obligations of communal Liturgy of the Hours (choral requirement) and “community Masses” in “orders” without the latter. See ADAM, BERGER, “Chorpflicht,” in *Handlexikon* (as in footnote 51) 97; idem, “Conventsmesse,” in *ibid.*, 275.

100 The International Federation Una Voce lists 33 communities using the old Missal: <[www.ifuv.org/links\\_broe.html](http://www.ifuv.org/links_broe.html)> (accessed 1 January 2008).

the sick (SP 9 §1). The Roman Pontifical is approved by common law only for the administration of confirmation by a bishop (SP 9 §2).<sup>101</sup> Clerics have the right to use the Roman Breviary of 1962 (SP 9 §3).

#### *II.4. Implementation*

The possibility of celebrating Mass according to the *usus antiquior* is not the result of an act of grace. It is not by way of exception or in an individual case that a prohibition is abolished (“dispensation,” can. 85), nor are some granted a privilege that is withheld from others (“privilege,” can. 86). It is not a case of permission in the legal-technical sense. The papal law speaks of *licentia* only in reference to the application of old rituals. The use of the old Missal *is* allowed by the Pope. The celebration according to it is the right of all priests, which is to be exercised according to general regulations for the allowed celebration.<sup>102</sup> All faithful who desire to do so have the right to participate in a Mass so celebrated. A regulation whereby they have to obtain permission for this, without which their action would be illegal,<sup>103</sup> does not exist.<sup>104</sup> The Pope did not order that the pastor would

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101 The Pope has given only limited response to corresponding desires going beyond that, such as the one presented to him on 12-13 January 2007 by the International Federation *Una Voce* for the release of all liturgical books in the old rite; see “Vor dem Motuproprio” UVK 37 (2007) 249. Ordination in the older form remains limited to specific communities with rights of incardination such as the Priestly Fraternity of St Peter; see SCHEULEN, “Rechtsstellung” (as in footnote 19), 78-82.

102 See n. 57 above.

103 Cf. H. SOCHA, in MKCIC 59, 11 and Einführung vor 85, 3, as well as K. LÜDICKE, “Erlaubnis,” in *Lexikon des Kirchenrechts*, eds S. Haering, H. Schmitz (Freiburg 2004) 262.

104 What happens here is the way every right is claimed in Church-related common law, based on the matter at hand. There are no Church-related fundamental laws. All laws are simple laws. They are not higher-ranking entitlement laws, but rather they come under the general reserve of the fulfillment of basic obligations to preserve *communio* in word and behavior as well as in their exercise being compatible with the common welfare and appropriate ruling by Church authority (cc. 209, 223). N. LÜDECKE, “Das Verständnis des kanonischen Rechts nach dem Codex Iuris Canonici von 1983,” in *Standpunkte in Kirchen und Staatskirchenrecht. Ergebnisse eines interdisziplinären Seminars*, eds N. Lüdecke and C. Grabenwarter (FzK 33) (Würzburg 2002) 177-215, here 206-212. See also United States Conference of Catholic Bishops’ Committee on the Liturgy [renamed the Committee on Divine Worship in 2007; Ed.], “Twenty Questions on the Apostolic Letter *Summorum Pontificum*,” *NewsLetter* 43 (May-June 2007) 23-26, here 23: “In parishes where a group of the faithful are attached to the extraordinary form of the Mass, they may approach the pastor, who is to support their petition willingly. No permissions are required” (Reply to Question 5, citing SP 5 §1).

*be able* to fulfill the wishes of interested faithful. He ordered that the pastor *must* do this.<sup>105</sup> If this does not happen, regardless of whether the pastor does not want to or is unable to do it, then not only do the faithful have the possibility of bringing this to the diocesan bishop's attention, they have the *obligation* to do so (SP 7). Their matter of concern is thus legitimized by law as one affecting the good of the Church in the sense of the right of notification according to canon 212 §3.<sup>106</sup> The faithful are justly recommended to approach the pastor again after four weeks in case of a non-existent or negative response, and then to approach the diocesan bishop.<sup>107</sup> This diocesan bishop is urgently requested (*enixe rogatur*) to see to the fulfillment of their desire, perhaps with a singular precept to the recalcitrant pastor (can. 49) or with alternative initiatives of his own volition. There is at his discretion no provision for deliberate failure, but there is a case where he cannot (*non potest*) fulfill the desire, i.e., for reasons independent of his will (SP 7). In this case the matter *must* be reported (*referatur*) to the Pontifical Commission Ecclesia Dei (SP 7). This can happen through the faithful or by the bishop himself.

A willing bishop who considers himself to be unable (*Episcopus qui vult... sed... impeditur*) to fulfill requests presented by lay people and not connected with a concrete parish regarding the use of the old Missal can communicate this to the Pontifical Commission.<sup>108</sup> It is to give him counsel and assistance (SP 8), which he will accept pursuant to his oath of fidelity. In his accompanying letter the Pope "invites" the bishops to report on their experiences after three years.

It is the aim of the regulations that the request of the faithful go unfulfilled only because of impossibility, not because of unwillingness. The obligations to report ensure that every refusal be made known to the higher authority and that thus an effective control is possible. The supervision of the observance and application is taken over by the Apostolic See by the Commission Ecclesia Dei (SP 12), equipped with corresponding responsibilities.

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105 How the DBK (see n. 28) and SBK in their guideline No. 4 speak of applying for "approval" is therefore not precise.

106 It is doubtful whether the information pursued intensively on the Internet for the implementation of *Summorum pontificum* in dioceses and parishes always preserves the required reverence towards the pastors as well as towards the common advantage and dignity of the other faithful (see can. 212 §3). That applies in the same way for many reactions of those who adhere to the new form of the liturgy.

107 Sample letters are available for this, see <[www.unavoce.de](http://www.unavoce.de)> (accessed 4 January 2008) in menu item "Motuproprio".

108 This can also happen by way of the faithful: can. 212 §3.

II.5. *The old Missal – an extraordinary form?*

In his motu proprio the Pope designates the Roman Missal of 1970 as the “ordinary” and the Roman Missal of 1962 as the “extraordinary” expression of the *lex orandi*. He says both are usages of the one Roman Rite. By using the latter, the Church’s liturgy is celebrated in its “extraordinary form” (SP 1).

According to the law of the codex, the designation *extraordinarius* means the lawgiver has taken legal precautions that certain acts remain the exception by being limited to typical cases.<sup>109</sup> They do occur but are not desired by the lawgiver to be regular or frequent. A possible increase in cases would be determined by circumstances but not dependent on desire, tendency, and preference.

There are no such legal precautions in regard to the use of the old Missal. The Missal is not prohibited. The former conditions for usage are abolished. Limitations on usage exist only for the rituals and the Pontifical. The Missal is not restricted to specifically prescribed groups of persons but is for all who desire it. No one is forbidden from promoting this version of the Mass. The *extraordinary character* of the celebration of Mass according to the old Missal is therefore *not* a legal one and does not have, as a consequence, an intended status of a rarity. It is far more a purely *factual* one and as such may be revised by increasing usage.

In his accompanying letter, the Pope himself makes references to the number of communities using the old Missal and to the fact “that young persons too have discovered this liturgical form, felt its attraction and found in it a form of encounter with the Mystery of the Most Holy Eucharist, particularly suited to them.” In particular the *increased need* was declared to be a motivating factor for his law. With this background in mind, the word of the Pope that the new Missal would “certainly remain the ordinary form of the Roman Rite, not only on account of the juridical norms, but also because of the actual situation of the communities of the faithful,” is difficult to comprehend canonically with regard to the legal situation; with regard to the factual it is a personal prognosis.<sup>110</sup>

109 See cc. 346 §2; 353 §3; 910, 943; 1355 §2; 1356 §2. On the law of temporal goods see R. ALTHAUS, in MKCIC 1277, 8; on the law of religious life see R. HENSELER, in MKCIC 638.

110 The Pope considers mandatory “a certain degree of liturgical formation and some knowledge of the Latin language for the *usus antiquior*.” He says both are “not found very often” (Letter). Certainly the 1970 Missal should not be disqualified as a Mass form for the uneducated. The corrupted use of the term “ordinary” to mean “customary” (*ordinaire*) or “less solemn or careful” (e.g., A. SCHÖNBERGER, “Die ‘gewöhnliche’ und die ‘außergewöhn-

### III. CONCLUSION AND ECCLESIOLOGICAL APPRAISAL

Vatican II emphasized in *Lumen gentium* 8 as a marker of Roman Catholic identity that the Catholic Church, as the Church of Jesus Christ,<sup>111</sup> is both a community in faith *and* a community in law.<sup>112</sup> Legal form and legal configuration are extremely significant ecclesio-logically as expressions of the Church's official self-understanding. That applies especially in relation to the order of divine worship. The liturgical representation of the Church and of its faith has an important stabilizing function and preserves its identity. *Summorum pontificum* shows as well that law and doctrine are mutually dependent. The form and content of *Summorum pontificum* make it clear that liturgical celebration is and remains according to hierarchical directives and hierarchical order.<sup>113</sup>

1. As Supreme Pontiff of the Catholic Church, the Pope declares both Missals legitimate forms of expression of the one *lex orandi* and the one *lex credendi*. He fully authorizes what his predecessor conditionally allowed: the use of the 1962 Missal both for (quiet) private Masses with only one server (and possibly with the faithful joining it) as well as for parish Masses. There are no longer any limitations. The fact that the desire for a parish Mass in the older liturgical form must be brought to the attention of the pastor or the diocesan bishop results from the nature of the matter. Such "applications" are not requests for grace or favors. Both pastors and diocesan bishops are legally held to accommodate this desire. Guidelines on implementation by particular Churches are possible for promotion and orientation of application. They cannot validly hinder or obstruct the execution of mutual rights for the celebration of Mass according to the old Missal. The law contains a reporting mechanism which enables effective

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liche' Form des Ritus," UVK 37 [2007] 185-86) has to stop. They certainly do not serve the Holy Father's concern for integration and harmony.

111 See N. LÜDECKE, "Die kirchenrechtliche Relevanz der 'subsistit in'-Formel. Ein kanonistischer Ökumenebaustein," *Kirchenrecht und Theologie im Leben der Kirche*. FS H. Reinhardt, eds R. Althaus, K. Lüdicke, M. Pulte (MKCIC Beiheft 50) (Essen 2007) 279-309.

112 See CONGAR, *Der Fall Lefebvre* (as in footnote 37), 33: The Catholic Church as a spiritual community has "um eine solche zu bleiben, konkrete Strukturen, die sie erhalten, darstellen und ordnen ... nach der Struktur und den Dimensionen wirklichen Lebens...: nach Raum, Zeit und Ereignissen, Menschen. Das ist das Kirchenrecht ('quo sit Ecclesia Christi felix' sagt eine Inschrift an der alten Universität von Salamanca: 'Dank dessen die Kirche glücklich ist')...."

113 For more detail see N. LÜDECKE, "Feiern nach Kirchenrecht. Kanonistische Bemerkungen zum Verhältnis von Liturgie und Ekklesiologie," *JBTh* 18 (2003) 395-456.

hierarchical control by the Apostolic See. In regard to the Missal, its designation as an “extraordinary form” of the Roman Rite is not a qualitative legal one, but rather a quantitative factual one that is currently correct.

2. The use of old rituals is made possible in the judgment of Church authorities. The old ordination rite is not permitted to particular Churches. It remains limited to certain communities with the right of incardination.

3. As with all the faithful, the bishops were also allowed to present their concerns and views on this topic to their pastor for the good of the Church. In the last few years they have often done this, according to reports.<sup>114</sup> A few days before the promulgation of *Summorum pontificum* the Pope had had about thirty representatives of selected bishops’ conferences come to Rome, which in his estimation had been especially concerned with the question, among them Cardinal Lehmann. Headed by Cardinal Bertone, the content and spirit of the announced decree were explained to them. The Pope himself is said to have mingled with them for about an hour and had a deep conversation with the bishops.<sup>115</sup> Every one of them is reported to have had the possibility to state his opinion on the text handed out to them. The bishops are said to have given the Pope no reason to do anything beyond some lexical changes.<sup>116</sup>

The implementation, too, will be less dramatic than some have feared. Disobedience or even resistance to the Pope is not only irreconcilable with the identity of Roman Catholic diocesan bishops, which they took an oath on, but also virtually the absolute exception, as is shown by the case of Lefebvre. The normal attitude is likely the one of the bishop of Metz, P. Raffin, which he announced a year before *Summorum pontificum*, subsequent to his sharp criticism of the then-still outstanding approval of the old rite: “It goes without saying that we would follow the decisiveness of Benedict XVI, even if we regret it in this area, and reject it because of anticipated negative consequences for the faithful, who, whatever is maintained in this matter, approve

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114 See K. NIENIETD, “Ritenstreit,” *HerKorr* 60 (2006) 545-46, here 545, as well as G. HORST, “Warten auf Godot,” *Die Tagespost* 72 (16 June 2007) and HORST, “Nichts abgeschafft, sondern freigegeben. Papst und Kardinalstaatssekretär erläutern das *Motu proprio* zur ‘alten’ Messe in Rom einer kleinen Gruppe von Bischöfen,” *Die Tagespost* 78 (30 June 2007).

115 See “Vor dem *Motu Proprio*,” *UVK* 37 (2007) 249 and HORST, “Nichts abgeschafft” (as in footnote 114).

116 So said Cardinal Hoyos in an interview with *30 Giorni* (as in footnote 42).

the Mass of Pope Paul VI by a large majority.”<sup>117</sup> Where necessary, the Apostolic See will invoke the *communio hierarchica* of the bishops.

The Pope did that in his own way. While it had long been forbidden to the bishops after the Council to allow the exceptional use of the old Missal, this very thing was granted to them with the indult of 1984 – not at their desire, but for reasons of Church, more specifically as a signal to the adherents of Archbishop Lefebvre – with obligations for restricted conditions. Four years later this area of responsibility for limited permission was withdrawn from them again and the Pontifical Commission *Ecclesia Dei* authorized to issue unconditional permission, which in practice it issued, however, only after approval by the respective diocesan bishop.<sup>118</sup> Even the steps taken then interfered with the competences of the diocesan bishops. Now Benedict XVI has withdrawn from the diocesan bishops the responsibility to consent granted before. He changed that discipline, which the bishops are obligated to promote and the observance of which they are to urge (can. 392), of his own accord, and through an obligation to report put the observance of this compliance under close supervision by the Apostolic See.

This is not unusual ecclesiologically, but rather it conforms to the system. The extent of a diocesan bishop’s power, in correspondence to the Roman Catholic relationship of primacy and episcopacy, is at the discretion of the Pope. The power of the diocesan bishop always encompasses as much as the Pope considers necessary for the execution of the function of a pastor and does not, because of a right or through personal intervention, reserve to himself or some other authority (can. 381 §1).<sup>119</sup> The Pope is expressing nothing else when he assures the diocesan bishops in the accompanying letter that his *motu proprio* does not diminish their authority and responsibility. It is never autonomous but rather petronomous (*cum et sub Petro*).

Even where *Summorum pontificum* corrects the liturgical reform initiated by Vatican II, it does not contradict it. For Roman Catholics the mandatory will of a past Council exists only in the interpretation presented by the respective postconciliar Magisterium or put into practice by the universal Church legislator. The primatial sovereignty

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117 Quoted from NIENIETD, “Ritenstreit” (as in footnote 114), 545; original quote in German. For the situation in France after the decree, see idem, “Niederlage? Das Motu Proprio zur tridentinischen Messe in Frankreich,” *HerKorr* 61 (2007) 382-83.

118 See SCHEULEN, “Rechtsstellung” (as in footnote 19), 25, 53-55, and SCHMITZ, “Sondervollmachten” (as in footnote 19).

119 For more detail see BIER, “Rechtsstellung” (as in footnote 18), 119-279.

of interpretation is part of the specifically Roman Catholic concept of "council." Attempts made time and again to establish Vatican II as a lever against papal actions bypass the inviolable structures of the Roman Catholic Church and can lead to hopes, which those who arouse them cannot fulfill.<sup>120</sup> *Summorum pontificum* is thus also enlightening for the current controversy over the reception of Vatican II.<sup>121</sup>

Just as little as the action of the Pope may be brought to bear in opposition to the Council, so little is it possible for its content to do so. The Pope has decreed it: both Missals do not contradict each other. There may be differences and thereby eucharistic theological and ecclesiological accentuations, but not contradictions. To that, even those will be able to agree who take into account the circumspection with which the Council Fathers, when recovering the ecclesiological significance of baptism and thereby the visibility of the laity, paid attention to the fact that the unsunderable hierarchical structure of the Church would not be violated and with just how much acrimony this was implemented during the composition of the valid Code of Canon Law and even the 1970 Missal. Whoever takes into account the legal translation of the Roman Catholic *communio hierarchica* into the liturgical editorial instructions for distribution of roles in the celebration of the Eucharist, which – according to status and sex – notes different *participatio fidelium (hierarchica)*,<sup>122</sup> will find in the celebration of Mass according to the old Missal not another Church represented, and not the drama, but rather (only) its production changed – which production corresponds more to the spiritual needs of the faithful can comfortably be anticipated.

Theologians, according to the self-understanding directed to them,<sup>123</sup> have the task of exploring the official teaching, deepening

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120 Thus recently reiterated by B.J. HILBERATH, "Es geht um mehr als nur um das Messbuch. Ökumenische Bemerkungen zum Motu Proprio *Summorum Pontificum*," *Una Sancta* 62 (2007) 231-40.

121 Also stated by K. KOCH, "Zwei Formen des einen römischen Messritus. Liturgietheologische Hinführung zum Motu Proprio von Papst Benedikt XVI.," *IKZ Communio* 36 (2007) 422-30, here 427-30. See also the proceedings of the conference "Vierzig Jahre Rezeption des Zweiten Vatikanums – Mythos und Wirklichkeit," published in *Vierzig Jahre II. Vatikanisches Konzil*, ed. Geschichtsverein der Diözese Rottenburg-Stuttgart (*Rottenburger Jahrbuch für Kirchengeschichte* 26) [Sigmaringen: J. Thorbecke, 2007; Ed.].

122 LÜDECKE, "Feiern" (as in footnote 113), 422-51.

123 To be found in CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction *Donum veritatis* (24 May 1990), AAS 82 (1990) 1550-70 (German: VAS 98). For details see G. BIER, "Das Verhältnis zwischen dem kirchlichen Lehramt und Theologen in kanonistischer Perspektive," *Kirchenrecht aktuell*.



it, systematizing it, and passing it on to the rest of God's people in a comprehensible way.<sup>124</sup> They are challenged to illuminate the different accentuations of the two forms of the liturgy with the hermeneutical key of the essential unity of the Roman Rite as presented by *Summorum pontificum* and to make it acceptable to all the faithful.<sup>125</sup>

Where this succeeds, another concern of the Pope is likewise served, namely, to make an offer of reintegration to those who may have followed Archbishop Lefebvre into disobedience, since not enough was done officially to hold them within the full Catholic community. Thirty years ago, Freiburg professor of dogmatics Karl Lehmann already wrote in this vein:

The last few months – especially Lefebvre's appearance in Friedrichshafen on Lake Constance on 24 October 1976 – showed that Lefebvre can also gather large crowds of people around himself in our country who are dissatisfied with their church, or who no longer feel 'at home' in her. Have we not also in our country often adopted a "legal standpoint" and recognized too late the pastoral needs of many Lefebvre sympathizers? Don't we think often enough in dubious categories, e.g., that it involves a disappearing minority, that the price of a council often consists of small groups splintering off, etc.?<sup>126</sup>

*Summorum pontificum* can synergistically release its reconciliation effects: *outwardly* it makes an offer of reintegration, in that the personal rooting in the old liturgical form no longer has to be a reason to look for it outside the full community of the Church. *Inwardly* with the adherents of the new Missal it leads to a greater obedience to liturgical directives,<sup>127</sup> the violation of which admittedly has contributed

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*Anfragen von heute an eine Disziplin von "gestern,"* eds R. Ahlers, B. Laukemper-Isermann (MKCIC Beiheft 40) (Essen 2004) 1-44.

124 See BIER, "Verhältnis" (as in footnote 123), 17-18.

125 More clearly than KOCH, "Zwei Formen" (as in footnote 121), 423, it is not the differentiation between the two forms but rather the unity of the Roman Rite that is to be understood as the "actual interpretation key" of *Summorum pontificum*.

126 "Einführung in die deutsche Ausgabe," in CONGAR, *Der Fall Lefebvre* (as in footnote 37), 7-15, here 12; original quote in German.

127 The chairman of the DBK in his declaration of 7 July 2007 (as in footnote 3) characterized the *motu proprio* as a good occasion "auch wo kein Bedarf nach liturgischen Feiern nach dem Missale von 1962 besteht... mit neuer Aufmerksamkeit eine würdige Feier der Eucharistie und der anderen Gemeinschaften zu fördern." The head of the German Liturgical Institute, E. Amon, said something similar in an interview in *gd* 41 (2007) 105-107, here 106. The secretary of the Congregation for Divine Worship and the Discipline of the Sacraments, Archbishop M. Ranjith, confirmed

to the consideration of the abuse of liturgical reform as its intended application.<sup>128</sup> The motu proprio thus confirms this as such and in its effects, that “liturgical books are media for staff disciplining of clerics, of social disciplining of parishes and of confessionalization.”<sup>129</sup>

Prognoses for further development are difficult. Any execution of office connected with absolute authority is difficult to predict, and by the same token, there are indications it is a question of a pragmatic step and not a thoroughly conceived final stage. Historically it is liturgically unusual not only to allow within one rite different adaptations of the same<sup>130</sup> but also to permit parallel usage of two consecutive “stages of development.” The fact that this also leads to a parallelization of valid canonical law with a revived old codex law has not been recognizably thought through in its consequences by the Apostolic See and only brought up sporadically in canonical studies.<sup>131</sup>

The separate pastoral care of those who adhere to the old ritual form can only be a transition if integration and harmony are the goal and not coexistence. Possibly the idea of an “*Editio quarta* of the *Missale Romanum*, which unites the characteristics of both stages at a higher

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that the correction of abuses was a partial intention of the motu proprio: G. HORST, “Wie der Konzilsungeist die Liturgie zermürbte,” *Die Tagespost* 1 (3 January 2008).

128 When closely examined, the offer is limited not only to a form of liturgical celebration. Pope John Paul II as early as 1988 announced his wish to make the return easy for all those who feel a connection to earlier forms “in liturgy and discipline” (*Ecclesia Dei*, no. 5, emphasis mine) of the Latin Church. Corresponding to this is the fact that parts of the Codex applicable are not usable with the old liturgical books, or that old common law is applied. Thus the laity are excluded as extraordinary ministers of holy Communion. Women are forbidden to serve as ministers of the altar, according to the old Missal on the basis of 1917 CIC 813 §2. A woman may not approach the altar, but if no man is present she can only give responses from a distance. Whenever the old ordination rite is used, the tonsure and lower consecrations are revived. There cannot be permanent deacons who are married. For all of this see SCHEULEN, “Rechtsstellung” (as in footnote 19), 19, 58-85.

129 M. KLÖCKENER, B. KRANEMANN, “Liturgiereform – Grundzug des christlichen Gottesdienstes. Systematische Auswertung,” in *Liturgiereformen. Historische Studien zu einem bleibenden Grundzug des christlichen Gottesdienstes*, eds Klöckener and Kranemann, vol. 2, *Liturgiereformen seit der Mitte des 19. Jahrhunderts bis zur Gegenwart* (LQF 88/II) (Münster 2002) 1083-1108, here 1089 (original quote in German) with focus on post-Tridentine books; disciplinary measures are considered “companions” even of the postconciliar liturgical renewal (see p. 1102).

130 See, for example, *Die neue Messritus im Zaire. Ein Beispiel kontextueller Liturgie*, ed. L. Bertsch (Theologie der Dritten Welt 18) (Freiburg 1993).

131 See SCHEULEN, “Rechtsstellung” (as in footnote 19).

level”<sup>132</sup> is not so remote. The method of reflection of the present Pope already as a theologian has been aptly designated as “‘positive’ surpassing” in the sense of a synthesization and relativization of opposing theses.<sup>133</sup> As early as 2003 he had responded to an advocate of the old form of liturgy:

I believe... that in the long run the Roman Church must still once again have a single Roman rite. The existence of two official rites is a difficult one in practice for bishops and priests to “manage.” The Roman Rite of the future should be a single rite celebrated in Latin or the vernacular but being completely in the tradition of the rite that has been handed down. It could take on some new elements which have proved their value, such as new feasts, some new [prefaces] in the Mass, an extended order of readings, a larger selection than previously, but not too many, an “Oratio fidelium,” i.e., an established litany of petitions after the Oremus, before the Consecration, where it formerly had its place.<sup>134</sup>

Whether such thoughts are actually elements of a papal master plan remains to be seen.

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132 GERHARDS, “Sorge” (as in footnote 2), 401; original quote in German.

133 See C. BARTHE, “Papst Benedikt XVI. und die Stunde der Reformer,” UVK 36 (2006) 341-50, here 349. He unjustly anticipates only the relativization of the side characterized by him as “progressive.” An impression is offered by Cardinal Ratzinger’s discussion and recommendation of ALCUIN REID, *The Organic Development of the Liturgy: The Principles of Liturgical Reform and their Relation to the Twentieth Century Liturgical Movement Prior to the Second Vatican Council* (Farnborough UK: St Michael’s Abbey, 2004) under the title: *Die organische Entwicklung der Liturgie. Zwischen den radikalen Reformern und embitterten Gegnern ist eine rechte Entwicklung der Theologie nur im sorgenden Achten auf die inneren Baugesetze dieses “Organismus” möglich*; <[www.30giorni.it/te/articolo\\_stampato.asp?id=7323](http://www.30giorni.it/te/articolo_stampato.asp?id=7323)> (accessed 2 January 2008).

134 Letter of 23 June 2003 to Dr Heinz-Lothar Barth, Bonn, in BARTH, “Messe” (as in footnote 6), 17-18; original quote in German.

**ABBREVIATIONS**

ABl. Köln	Amtsblatt des Erzbistums Köln
AKathKR	Archiv für katholisches Kirchenrecht
ALw	Archiv für Liturgiewissenschaft
Conc(D)	Concilium. Internationale Zeitschrift für Theologie
DMC	Dictionarium morale et canonicum, 4 vols, ed. P. Palazzini. Rome: Officium Libri Catholici, 1962-1968
FoKTh	Forum Katholische Theologie. Vierteljahresschrift für das Gesamtgebiet der katholischen Theologie
FzK	Forschungen zur Kirchenrechtswissenschaft
gd	Gottesdienst. Information und Handreichung der Liturgischen Institute Deutschlands, Österreichs und der Schweiz
HerKorr	Herder-Korrespondenz. Monatshefte für Gesellschaft und Religion
IKZ Communio	Internationale katholische Zeitschrift "Communio"
JBTh	Jahrbuch für biblische Theologie
Klerusblatt	Klerusblatt. Zeitschrift der katholischen Geistlichen in Bayern und der Pfalz. Organ des Klerusverbandes e.V.
LKRStKR	Lexikon für Kirchenrecht und Staatskirchenrecht, eds A. Freiherr von Campenhausen et al. Paderborn: Schöningh, 2000-2004
LQF	Liturgiegeschichtliche Quellen und Forschungen
MKCIC	Münsterischer Kommentar zum Codex Iuris Canonici unter besonderer Berücksichtigung der Rechtslage in Deutschland, Österreich und der Schweiz, ed. K. Lüdicke. Essen since 1984 (Loose-leaf book; State: 44th supplementary delivery February 2009)
TrThZ	Trierer Theologische Zeitschrift
UVK	Una Voce-Korrespondenz
VAS	Verlautbarungen des Apostolischen Stuhls