

Problems in Canon Law
Replies to Questions
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2.—YOUNG PRIESTS' EXAMINATION

Is a young priest who is studying for a degree at a civil university exempt from the annual examination which young priests have normally to undergo for a period of three years after their ordination?

VENERABLE.

The answer to the question is that priests who are studying at secular universities are not exempt from the examination. Moreover, although the Code gives local Ordinaries the power to grant exemption in particular cases for a just cause,¹ it has been officially indicated that the fact that the priest is studying at a secular university is not, in itself, a just cause within the meaning of the law. A decree of the S. Consistorial Congregation published soon after the promulgation of the Code dealt at some length with the whole question of clerics at secular universities and referred to their obligations under canon 130 in the following terms:

Priests . . . who are assigned to attend lay universities, if they are newly-ordained, are by no means exempt from the examinations prescribed in canons 130 and 590; rather their obligation to undergo them is all the more strict, lest, absorbed in the study of the profane sciences, they neglect their ecclesiastical studies, contrary to canon 129.²

It is a clear inference from this that the mere fact that a young priest is a student at a secular university does not, in itself, constitute a sufficient cause for exemption; in fact it may be inferred from the decree that a graver cause would be required for exemption in such cases than would be necessary in others.

At the same time the rule should be interpreted in a reasonable way, and if other sufficiently grave causes exist then total or partial exemption could be given. A young priest who has read an above-average course in theology, for example, might have in that fact a reasonable cause for exemption from at least some of the annual examinations. Moreover, the Code leaves the actual form of the examination to the local Ordinary and in particular cases it may be found that a less extensive examination than usual might suffice. But the warning of the decree, that those whose life at a secular university removes them from both the practice and the study of the sacred sciences have the

¹ Cf. canon 130. The obligation from the Code for secular priests is for three years and, for religious, for five years (cf. canon 590). Local law, in Ireland for example, sometimes extends the obligation for secular priests to five years.

² S. C. Consist., *Decretus*, 30th April, 1918, *A.A.S.*, x (1918), 27.

greater need to undergo the examinations, will always be a relevant consideration.

3.—CLERICS AND WATER-DIVINING

Is there any prohibition in canon law against a priest acting as a water-diviner? I am not, of course, concerned with cases where water-divining is undertaken as a general practice or for reward. But is a priest who believes he is gifted in this way forbidden to attempt to find water by divining, at the request of a friend, for example? Is it true that there has been a recent reply on this subject?

T. S. T.

There is no specific prohibition of water-divining either in the Code or in any subsequent legislation by the Holy See. What is true is that a decree was issued in 1942 which specified certain other forms of divining as 'unbecoming' and 'alien' to the clerical state and therefore as coming under the general prohibitions of canons 138 and 139.

Canons 138 and 139 enunciate in general terms the principle that clerics must avoid all practices which, even though licit in themselves, are unbecoming or alien to the clerical state. A number of examples of such practices are given but 'divining' is not amongst them. In 1942, however, the Holy Office issued a decree which said, in effect, that consultations with the object of divining '*personal circumstances and events*' were in fact unbecoming and alien to the clerical state and it directed local Ordinaries and religious superiors to forbid such practices to their subjects. 'Recidivi' in this matter were to be delated to the Holy Office.¹

The general purport of this decree is clear. It refers to practices such as those in which 'psychically gifted' persons seek to divine information concerning absent persons by concentrating on a map or, sometimes, on a photograph of the person concerned. The scientific value of such consultations

¹ *Suprema S. Congregatio S. Officii, incommodis mature perpensis, quae in religiosis veraeque pietatis detrimentum credunt ex Radiotelevisivis consultationibus a clericis perarari circa personarum circumstantias et eventus divinando . . . etc.*

² *Excellentissimi nempe locorum Ordinarii et Religiosorum Superioribus mandati, ut suis clericis et religiosis districta ratione prohiberent quominus ad illos Radiotelevisivae consultationes unquam procedant, quae superdicte consultationes recipiant.*

S. S. C. S. Officii, *Decretus*, 25 Mart., 1942, *A.A.S.*, xxxiv (1942), p. 148.

is certainly far from being established, but the phenomena themselves are at least judged worthy of investigation by researchers. The decree of the Holy Office, in fact, explicitly disclaims any intention of pronouncing on the scientific questions involved.¹ It will be noted that the decree appeared in the middle of the last war and it is probable that at that time the anxiety of relatives about soldiers at the front led to a growth of the practices concerned and that priests, believed to be gifted in this way, were sometimes asked to help.

It is easy to see that practices of this kind, when engaged in by priests, could give rise to serious difficulties. Apart from other considerations, the mere fact that the person consulted was a priest would complicate the issue and could give rise to misunderstanding and superstition as to the exact nature of the powers the priest was purporting to exercise. Even if the decree had not been issued, therefore, these practices might easily have been identified as coming under the general terms of canons 138 and 139.

What the decree forbids, however, is consultations concerning 'personal circumstances and events.' There is some doubt as to the exact meaning of this phrase and particularly as to whether the word 'personal' qualifies 'events' as well as 'circumstances.' But, whatever about this question, it seems clear that the decree does not cover water-divining. The presence of water beneath the surface of the earth is neither a personal circumstance nor an event; it is a 'fact' and the decree does not forbid all attempts to divine facts. Father Creusen, S.J., himself a consultant of the Holy Office, is quite explicit in stating that the decree was not intended to cover water-divining or the divining of metals or other substances.

The decree is not concerned with experiments or consultations which are concerned with facts, as opposed to events, and which are not immediately connected with a person. That there are metals in such a place, or flowing water, . . . etc., are facts rather than events and they have not a determinate person as their object.²

If in a particular case the practice of water-divining by a priest is undertaken in a way or to an extent that makes it objectionable, then, of course, it is within the competence of the local Ordinary to take whatever steps are necessary. But as far as the general law is concerned there is no prohibition.

¹ . . . quoniam tamen quaestiones scientificas de Radiesthesia hoc Decreto attingere vult.

² *Periodico*, xxxi (1942), 267-8.

4.—PRIEST AS A WITNESS IN CRIMINAL CASE

What is the position in canon law with regard to priests giving evidence as witnesses in cases before the civil courts? The type of case I have in mind is one in which a person is being prosecuted, say for manslaughter, as a result of an accident. The priest was a witness of the accident. May he give evidence in such a case? May his local Ordinary authorize him to give evidence?

INVOLVED.

At the outset it is well to segregate this type of case from cases where the priest's knowledge has been acquired by him as a priest, v.g. in the confessional, or from confidential communications made to him in virtue of his sacred character. Knowledge covered by the seal of confession may never, of course, be revealed in any circumstances, and other confidential knowledge acquired by the priest acting in his sacred capacity is governed by the natural law on official secrets.¹

Our correspondent's query is concerned rather with cases where the knowledge has been acquired in the ordinary course of events, as when the priest has been a witness of a car accident or of an assault. Here the rule of canon law is given in canon 139, § 3: it is that a cleric may not, except in case of necessity, give evidence in criminal trials where a grave personal punishment may be inflicted, unless he has the permission of his Ordinary.²

A 'personal' punishment is one which affects the person, rather than the goods or property, of the individual (v.g. imprisonment, as opposed to a fine); a 'grave' personal punishment is held to signify a sentence of death or a lengthy term of imprisonment. In cases where the accused is liable to a punishment of this kind, therefore, a cleric is *per se* forbidden to give evidence.

The law says, however, that 'in case of necessity' the prohibition lapses. This phrase has been generally interpreted by the commentators to cover two contingencies: (a) cases where there may be an obligation in charity on the cleric to testify, v.g. if the cleric is in a position to give valuable evidence tending to show that the accused is not guilty³ and (b) cases where it is

¹ Cf. canon 1757, § 3, 2°.

² Canon 139, § 3: 'Sine licentia sui Ordinarii . . . in laicali iudicio criminali, gravem personalem poenam prosequente, nullam partem habeant, ne testimonium quidem sine necessitate ferentes.'

³ Regatillo, *Indicaciones sobre Casos*, vol. i, ed. 4, Santander, 1951, p. 194; Eichmann-Morsdorf, *Kirchenrecht*, vol. 1, Paderborn, 1949, p. 257.

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