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LAY PREACHING AT EUCHARISTIC LITURGIES

The Law and Its Critiques

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Evangelization is an integral part of the Christian faith. As an aspect of the prophetic vocation in which all the faithful share through their regeneration in Christ, this work has the character of a general obligation,[1] and it takes on specific forms under the direction of ecclesiastical authority and in accordance with the state and abilities of the individual persons concerned.[2] At the most basic level, all the Christian faithful must always be ready to make their defense to anyone who demands from them an account of the hope that is in them.[3] Some, having a more developed knowledge of Christian doctrine, may be tasked to share in the teaching office of the Church as catechists, missionaries, educators, or through the use and regulation of the instruments of social communication,[4] while others

[1]Second Vatican Council, Dogmatic Constitution *Lumen Gentium* (November 21, 1964), §12, in *AAS* 57 (1965): 16–17. Hereafter abbreviated as LG.

[2]Lk. 12:48; 1 Cor. 12:27–30; *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (Vatican City: Libreria Editrice Vaticana, 1983), cc. 228–229. Hereafter abbreviated as CIC 1983.

[3]1 Pet. 3:15.

[4]CIC 1983, c. 761.

may be "called upon to cooperate with the bishop and presbyters in the exercise of the ministry of the word," as through their admission to the ministry of lector or their performance of its duties on a temporary or even *ad hoc* basis.[5] And still others, drawn mainly from the ranks of the clergy, may be admitted to the office of preaching, which is the foremost means of proclaiming Christian doctrine.[6]

The complexity of the canon law on preaching reflects its long legislative history, one that passes through some of the bitterest disputes in the life of the Church in which the laws themselves became the objects of controversy.[7] This is as true today as in the time of Savonarola and Luther—to take one example, although canon and liturgical law restrict the lay faithful from preaching homilies, the practice of permitting them to do so has taken hold in certain places.[8] Some bishops have tried to curtail this practice, citing both the letter of the relevant canon and liturgical laws as well as the theological values these laws were intended to serve. They are often met, however, with considerable resistance and outcry, and occasionally with the counter-argument that not only does the law of the Church permit lay preaching even in the context of Eucharistic liturgies, but that this practice is an authentic means for advancing the laity in accordance with the teachings of the Second Vatican Council.[9] Who, then, is mistaken?

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[5]CIC 1983, cc. 230, 759.

[6]CIC 1983, c. 761.

[7]Council of Trent, Session 5, *Decretum de Reformatione* (June 17, 1546), cap. 2; Session 23, *Doctrina de Sacramento Ordinis* (July 15, 1563), cap. 1; *Decretum de Reformatione*, cap. 1.

[8]Maria Wiering, "Directive from Archbishop Flynn Ends Lay Preaching at Mass," *National Catholic Reporter* (May 13, 2008), http://ncronline.org/news/directive-archbishop-flynn-ends-lay-preaching-mass (accessed June 1, 2015).

[9]David Andreatta, "Catholic Diocese Upends Custom on Homilies," *Democrat & Chronicle* (July 19, 2014), http://www.democratandchronicle.com/story/news/2014/07/19/catholic-diocese-upends-custom-homilies/12863357/ (accessed June 2, 2015).

Finding an answer requires an examination of the laws on preaching, and one that is much more complex than simply quoting from the 1983 Code of Canon Law: the possibilities for lay preaching are determined not only by the 1983 Code but also by additional universal legislation issued by Roman dicasteries as well as particular legislation issued by national conferences of bishops.[10] Synthesizing these sources reveals that while the law prohibits lay preaching in certain cases (such as by reserving the homily for an ordained minister), it permits it in others, even within the context of Eucharistic liturgies. This analysis, however, is essentially legalistic inasmuch as it takes no account of the theological values the laws were meant to serve, such as the maintenance of proper distinctions between the lay and clerical states, and the character of liturgical preaching as an act of worship. It is also one-sided, suggesting a hesitancy to reckon seriously with the objections of those favoring expanded opportunities for lay preaching.

To offer a more holistic perspective on the *status quaestionis* of lay preaching in the context of Eucharistic liturgies, we shall survey the relevant legislation and two of its critiques. We begin by tracing the development of the *ius vigens*, examining the 1917 Code of Canon Law and its allied legislation, including the teachings of the Second Vatican Council and the reformed liturgical legislation introduced in its wake. We shall then explore the provisions of the 1983 Code of Canon Law and its allied legislation, directing our focus mainly to dicasterial documents and the particular legislation enacted by the national conferences of bishops in the Philippines and the United States. Having provided this foundation, we shall then consider objections to the legislation, which may be termed "nominal" and "functional," and explain their central theses. We will then end with counter-arguments that suggest canonical and theological deficiencies of these objections.

[10]Diocesan bishops are also qualified to enact particular legislation on the subject of lay preaching. We have opted not to discuss such legislation here due to the difficulty of finding and collating it, as well as the fact that bishops do not always enact additional legislation beyond that issued by their national conferences of bishops.

I. STATEMENT OF THE LAW

§1. The 1917 Code of Canon Law and Allied Legislation

While the 1917 Code of Canon Law permitted laypersons to deliver catechetical instructions, it strictly forbade them from preaching in churches, even if they were religious.[11] It was the Second Vatican Council that signaled a new and appreciably more positive attitude toward lay preaching in its various documents, notably in the Dogmatic Constitution *Lumen Gentium* which articulated the right and, indeed, the obligation of all the Christian faithful to proclaim the Gospel by virtue of their baptismal vocation.[12] Other documents, such as the Decree *Apostolicam Actuositatem* and Constitution *Sacrosanctum Concilium*, actuated this teaching by creating both general and specific possibilities for lay preaching: "The hierarchy may entrust lay people with certain functions closely connected with their own pastoral office, as in teaching Christian doctrine, certain liturgical actions and care of souls,"[13] and

> [t]he worshipping celebration of the word of God is to be encouraged … through all-night vigils on the night before more special feasts, on some days of Advent or Lent, or on Sundays and feast days, especially where there is no priest. In this case, a deacon or some other person chosen by the bishop should lead the celebration.[14]

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[11]*Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus* (Rome: Typis Polyglottis Vaticanis, 1917), c. 1342, §2: "Concionari in ecclesia vetantur laici omnes, etsi religiosi."

[12]LG §31 (*AAS* 57: 37–38); Robert J. Kaslyn, "Title I: The Obligations and Rights of the Christian Faithful [cc. 204–329]," in John P. Beal, James A. Coriden, & Thomas J. Green, eds., *New Commentary on the Code of Canon Law* (Mahwah, NJ: Paulist Press, 2000), 256, 262.

[13]Second Vatican Council, Decree *Apostolicam actuositatem* (November 18, 1965), §24, in *AAS* 58 (1966): 856–857.

[14]Second Vatican Council, Constitution *Sacrosanctum Concilium* (December 4, 1963), §35, in *AAS* 56 (1964): 109.

These and other conciliar prescriptions found further application in the various liturgical reform documents issued in the Council's wake. The regulations on lay preaching found therein dealt mainly with non-Eucharistic liturgical services held in the absence of a priest, such as services of the Word, the baptisms of children, funerals, and celebrations of the Liturgy of the Hours (the latter seems to leave open the possibility of a layperson preaching even in the presence of a priest or deacon).[15] In most of these cases, it was necessary for laypersons to have permission from the diocesan bishop to preach licitly, although the rubrics of the Liturgy of the Hours did not mention the need for authorization.[16] Such permissions generally allowed laypersons to read only the text of a sermon prepared or selected by the diocesan bishop or pastor, although in some cases it was possible for them to receive an additional authorization to preach in their own words.[17]

Taken together, these regulations left no doubt about the general possibility of lay liturgical preaching. It remained uncertain, however, whether laypersons could preach at Eucharistic liturgies in particular. Regulations on lay preaching at Eucharistic liturgies were less extensive, more ambiguous, and hence more vigorously controverted than those found in the foregoing documents. In particular, the provision of the

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[15]John Chrysostom Kozlowski, "The Laity and Liturgical Preaching: What are the Necessary Theological and Canonical Requirements?" *Jurist* 72:1 (2012): 245–247; Sacred Congregation for Divine Worship, "General Instruction of the Liturgy of the Hours," §§27, 47, in *Liturgy of the Hours*, 4 vols., trans. International Commission on English in the Liturgy (New York: Catholic Book Publishing, 1975), 36, 45.

[16]James A. Coriden, "Title I: The Ministry of the Divine Word [cc. 756–780]," in John P. Beal, James A. Coriden, & Thomas J. Green, eds., *New Commentary on the Code of Canon Law* (Mahwah, NJ: Paulist Press, 2000), 927–928; José A. Fuentes, "Title I: The Ministry of the Divine Word," in Ángel Marzoa, Jorge Miras, & Rafael Rodriguez-Ocaña, eds., *Exegetical Commentary on the Code of Canon Law* Vol. III/1 (Montreal: Wilson & Lafleur, 2004), 86–87; Kozlowski, "The Laity and Liturgical Preaching: What Are the Necessary Theological and Canonical Requirements?," 245–247, 251, 257–260.

[17]Kozlowski, "The Laity and Liturgical Preaching: What Are the Necessary Theological and Canonical Requirements?," 246–247, 269.

1970 *General Instruction of the Roman Missal* with respect to the homily was a source of much debate: "The homily should ordinarily be given by the celebrant himself."[18] While the *General Instruction* made no specific authorizations of lay preaching elsewhere, and while it did specifically authorize concelebrating bishops or priests to deliver the homily in lieu of the principal celebrant, some argued that this provision could be interpreted so as to permit laypersons to deliver the homily in lieu of an ordained minister.[19] Nevertheless, the Pontifical Commission for the Interpretation of the Decrees of the Second Vatican Council rejected this argument in a response dated January 11, 1971.[20] Despite this ruling, however, other possibilities for expanding lay preaching soon opened.

On November 1, 1973, the Congregation for Divine Worship issued the *Directory for Masses with Children*. Noting the need to "take great care that children do not feel neglected because of their inability to participate or to understand what happens and what is proclaimed" in the celebration of the Mass, the Congregation allowed that, "with the consent of the pastor or rector of the church, one of the adults may speak to the children after the gospel, especially if the priest finds it difficult to adapt himself to the mentality of children. In this matter the norms to be issued by the Congregation for the Clergy are to be observed."[21]

These norms were issued shortly thereafter in the form of a rescript for use in West Germany, dated November 20, 1973, providing that laypersons with a canonical mission or delegation from the diocesan

[18]Kozlowski, "The Laity and Liturgical Preaching: What Are the Necessary Theological and Canonical Requirements?," 248–249.

[19]Coriden, "Title I: The Ministry of the Divine Word [cc. 756–780]," 929–930.

[20]Pontifical Commission for the Interpretation of the Decrees of the Second Vatican Council, *Responsa ad proposita dubia* (January 11, 1971), in *AAS* 63 (1971): 329.

[21]Congregation for Divine Worship, *Directorium de Missis cum Pueris* (November 1, 1973), §§17, 24, in *AAS* 66 (1974): 35, 37–38.

bishop could preach not only at celebrations of the Word of God but also at Eucharistic liturgies under two circumstances: first,

> if the celebrant is physically or morally impeded in the discharge of his office, and if no other priest and no deacon is available, with the result that the faithful would be deprived of the spiritual nourishment derived from the word of God, the bishops, because of cogent or persuasive necessity, may grant to laypersons the faculty to preach also during Mass,

and second, on such special occasions as those connected with the promotion of family life, works of charity, and the missions, bishops could permit specially qualified laypersons to preach if they judged their remarks to be very opportune.[22] As John Chrysostom Kozlowski notes,

> this rescript was initially valid for four years, but the Congregation for Clergy granted permission for this indult to be used for an additional four years such that it would expire on November 21, 1981 …. Thus, the rescript permitting lay preaching during Eucharistic liturgies under specific circumstances was not in force when the 1983 Code [of Canon Law] was promulgated.[23]

§2. The 1983 Code of Canon Law and Allied Legislation

A. The 1983 Code of Canon Law

Apart from the liturgical reform documents mentioned above, the 1983 Code of Canon Law enacted new legislation on the subject of lay preaching, both generally and particularly with reference to the context of Eucharistic liturgies. Regarding the former, canon 766 definitively reversed the prohibition on lay preaching in churches found in the 1917 Code of Canon Law, and confirmed the possibilities envisaged in the reform documents, stating that "lay persons can be admitted to

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[22]Sacred Congregation for the Clergy, Private Rescript (November 20, 1973), in *Canon Law Digest* 8: 941–944.

[23]Kozlowski, "The Laity and Liturgical Preaching: What Are the Necessary Theological and Canonical Requirements?," 250, 252.

preach in a church or oratory if it is necessary in certain circumstances or if it is useful in particular cases according to the prescriptions of the conference of bishops and with regard for canon 767, §1." This latter canon reaffirmed the statements of the Constitution *Sacrosanctum Concilium* about the preeminence of the homily among the other forms of preaching and its position as a part of the Eucharistic liturgy itself, while at the same time identifying its function as an instrument in service to the exposition of the mysteries of faith and the norms of Christian living.[24] It also stated clearly that the homily is "reserved to a priest or to a deacon" (and *a fortiori*, a bishop). In accordance with the norm of canon 6, §1, 2°,[25] canon 767, §1 also abrogated the provisions in the *Directory for Masses with Children*, which had allowed laypersons to deliver homilies adapted to the mentality of children within the context of such liturgies, thereby eliminating the last possibility for lay preaching at Eucharistic celebrations.[26]

Although seemingly inoffensive and unambiguous, the explicit reservation of the homily to clerics found in canon 767, §1 in fact occasioned considerable resistance and debate among certain members of the Christian faithful, especially those engaged in liturgical experimentation and those who viewed preaching as a suitable vehicle for the promotion of the laity. As a result, curial officials felt compelled to issue several subsequent clarifications and reaffirmations of the canon's provisions. On May 27, 1987, the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law gave its terse response to the *dubium*, "Whether the diocesan bishop can dispense from the norm of canon 767, §1, which reserves the homily to a priest or deacon?"—"No."[27] On August 15, 1997, several dicasteries of the

[24] *Sacrosanctum Concilium* §52 (*AAS* 56: 114).

[25] "When this Code takes force, the following are abrogated: other universal or particular laws contrary to the prescripts of this Code unless other provision is expressly made for particular laws."

[26] Fuentes, "Title I: The Ministry of the Divine Word," 91.

[27] Pontifical Commission for the Authentic Interpretation of the Code of Canon Law, *Responsa ad proposita dubia* (June 20, 1987), in *AAS* 79 (1987): 1249.

Roman Curia jointly issued the instruction *Ecclesiae de mysterio*, "On Certain Questions Regarding the Cooperation of the Non-Ordained Faithful in the Sacred Ministry of the Priest." On the subject of lay preaching at Eucharistic liturgies, the instruction reiterated that

> [the] homily … during the celebration of the Holy Eucharist, must be reserved to the sacred minister, Priest or Deacon, to the exclusion of the non-ordained faithful, even if these should have responsibilities as "pastoral assistants" or catechists in whatever type of community or group. This exclusion is not based on the preaching ability of sacred ministers nor their theological preparation, but on that function which is reserved to them in virtue of having received the Sacrament of Holy Orders. For the same reason the diocesan Bishop cannot validly dispense from the canonical norm since this is not merely a disciplinary law but one which touches upon the closely connected functions of teaching and sanctifying …. All previous norms which may have admitted the non-ordained faithful to preaching the homily during the Holy Eucharist are to be considered abrogated by canon 767, §1.[28]

However, even as it repeated the prohibition on lay preaching at the part of the Mass reserved for the homily, the instruction also made it clear that lay preaching in the context of other liturgies remained possible, according to the norm of law or liturgical norms and subject to the conditions contained therein.[29]

B. Particular Legislation—The Philippines

As indicated above, canon 766 foresaw the possibility of particular adaptations to its universal norm through the legislative activity of conferences of bishops. The Catholic Bishops' Conference of the Philippines enacted such an adaptation shortly after the canon entered into force.[30] It authorized diocesan bishops to deputize duly qualified

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[28]Congregation for the Clergy, et al., Interdicasterial Instruction *Ecclesiae de Mysterio* (August 15, 1997), art. 3, §1, in *AAS* 89 (1997): 864–865.

[29]*Ecclesiae de Mysterio* art. 3, §4 (*AAS* 89: 865).

[30]The complementary legislation was granted *recognitio* by the Sacred Congregation for Bishops in a decree dated September 27, 1985, and entered into force on January 1, 1986; see Catholic Bishops' Conference of the Philippines,

laypersons to preach outside of Mass only, but restricted this permission to situations of necessity occasioned by the scarcity or physical inability of sacred ministers in cases such as those of large parishes,[31] remote barrios and islets, and other places where transportation is difficult,[32] especially during inclement weather.[33] Moreover, commentary on the legislation published in the *Canon Law Digest of the Philippine Catholic Church* offered that preaching by lay member of a pastoral team[34] or

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Decree (Prot. N. 21/1985), quoted in Florencio I. Testera, *Canon Law Digest of the Philippine Catholic Church*, 3rd ed. (Manila: University of Santo Tomas, 1995), 9.

[31]It is unclear whether "large parish" refers to its area or its population, although it seems safe to conclude that both are meant, owing to the serious difficulties of ministering to both.

[32]By what standard is the difficulty of transportation to be judged? The law is unclear, though it seems to be more than a question of distance. From my personal experience, one can reach remote villages in Rizal or Laguna provinces in two to three hours from Quezon City by car, while a taxi ride from Ninoy Aquino International Airport to Cubao can take up to five and a half hours.

[33]See Florencio I. Testera, *Canon Law Digest of the Philippine Catholic Church*, 3rd ed. (Manila: University of Santo Tomas, 1995), 82–83: "The diocesan bishop may deputize lay persons to preach outside the Mass, in accordance with the following norms:

1. Whenever there is a need because of scarcity or physical inability of sacred ministers, in cases such as those in large parishes, in remote barrios and islets, and in other places where there is difficulty in the means of transportation and during inclement weather;
2. They must be Catholics of good moral character;
3. They must be well prepared through formation in Christian doctrine and in Sacred Scriptures;
4. They must be distinguished by their loyalty to the hierarchy and fidelity to the Magisterium of the Church;

They are deputized for one year, renewable."

[34]See CIC 1983, c. 517, §2.

layperson authorized to witness marriage[35] also satisfied the criterion of necessity and was therefore permissible.[36]

While this is a reasonable interpretation, the additional claim that the legislation authorizes lay preaching in particular cases where it is useful, such as retreats or missions, is erroneous.[37] Here it is important to recall that, though canon 766 foresees the possibility of permitting lay preaching in cases of both necessity and advantage, it also states that permission is to be granted in accordance with the prescripts of the conference of bishops. In accordance with this provision, and following the interpretive principle *lex specialis derogat legi generali* ("a special law derogates from general laws"),[38] it is not canon 766 which determines the possibilities for lay preaching in the Philippines, but the complementary legislation enacted by the local bishops' conference.

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[35]See CIC 1983, c. 1112.

[36]See Testera, *Canon Law Digest of the Philippine Catholic Church*, 83–84: "Lay preaching may be lawfully allowed:

1. If it is necessary in certain circumstances. Preaching by a lay person, member of a pastoral team (c. 517, §2), or by one acting as an official witness at marriage (c. 1112), … could be considered as cases of necessity;

2. If it is useful in particular cases, vgr. retreats, missions and other[s] made by special request.

The person in charge of the ministry of the Word within the territory of churches and oratories may or may not admit the laity to preach. Who can, then, grant permission? Obviously the bishop can do so as moderator of the ministry of the Word within his diocese (c. 756, §2). Pastors and rectors can also give their approval as it is their duty to have the Christian message in their churches or parishes (cc. 528, §1; 561).

The local episcopal conference must issue norms on the matter. To this effect, the CBCP has empowered the diocesan bishop to deputize duly qualified lay persons to preach outside the Mass only."

[37]See note 24, supra.

[38]See CIC 1983, c. 20.

Such complementary legislation provides that lay preaching may be permitted in cases of necessity, but is silent as to whether this permission may be granted in cases of mere advantage. What, then, are we to make of this silence? The only legitimate option is to interpret it as a restriction placed by the particular legislator on the broader possibilities for lay preaching foreseen in universal law—that is, in the Philippines, lay preaching in cases of mere advantage is tacitly prohibited because it is not explicitly permitted.

Similar reasoning casts doubt upon another contention made in the commentary on the complementary legislation, namely, that pastors and rectors of churches are competent to permit lay preaching.[39] Once again, the complementary legislation has vested such competence in the diocesan bishop. While it would not be unreasonable to suppose that those equivalent to the diocesan bishop in law—such as military ordinaries, personal prelates and ordinaries, vicars and prefects apostolic, and permanent apostolic administrators—are also qualified to permit lay preaching, the silence of the complementary legislation as to whether pastors and rectors may grant the necessary permission provides absolutely no basis for concluding that they can. On the other hand, the power of granting the faculty to preach is an ordinary executive power, which the diocesan bishop can delegate to his clergy for single acts or for all cases.[40] Such delegation is not automatic, but must be communicated through a written decree in the absence of which pastors and rectors are not competent to permit lay preaching.[41]

Before proceeding, brief mention should also be made of the Second Plenary Council of the Philippines held in 1991. Though the Council did not enact any new legislation on the subject, some of its decrees have implications for the practice of lay preaching. These include the stated aim of the Catholic Bishops' Conference of the

[39]See note 24, supra.

[40]CIC 1983, cc. 131, §1; 135, §1; 137, §1.

[41]CIC 1983, cc. 48; 51; 131, §3.

Philippines to foster a more active role for the laity in the Church;[42] the obligation incumbent upon the lay faithful and particularly lay leaders to acquire the knowledge and skills necessary to explain the Catholic faith to others;[43] and the obligation of the clergy and lay ministers to be trained in the art of communication and the use of symbols to make liturgical celebrations more meaningful for the people.[44] However, while seeming to offer the possibility of gradually expanding opportunities for lay preaching in the Philippines, these decrees in fact lack the legal force to overcome the restrictions placed by earlier particular legislation. This is because they do not expressly state an intention to abrogate or derogate from the earlier legislation, nor do they contradict it directly or completely reorder the matters they address.[45]

C. Particular Legislation—The United States

On November 27, 2001, the Congregation for Bishops granted *recognitio* to a similar adaptation to canon 766 proposed by the United States Conference of Catholic Bishops, which then promulgated the same as law in a decree dated December 13, 2001.[46] Repeating the text of the canon itself, the complementary norm offered an illustrative (but not necessarily exhaustive) list of certain circumstances and cases in which lay preaching was permissible in the context of non-Eucharistic liturgies, such as "the absence or shortage of clergy, particular language requirements, or the demonstrated expertise or experience of the lay faithful concerned." It also established criteria to judge the suitability

[42]Second Plenary Council of the Philippines (1991), art. 41, 2°; cf. art. 42, 2°.

[43]Second Plenary Council of the Philippines, art. 44, 3°.

[44]Second Plenary Council of the Philippines, art. 5.

[45]CIC 1983, c. 20.

[46]United States Conference of Catholic Bishops, "Complementary Norm for Canon 766" (December 13, 2001), http://www.usccb.org/beliefs-and-teachings/what-we-believe/canon-law/complementary-norms/canon-766-lay-preaching.cfm (accessed January 2, 2016).

of laypersons for preaching, stating that such individuals must be "orthodox in faith and well-qualified, both by the witness of their lives as Christians and by a preparation for preaching appropriate to their circumstances." With respect to Eucharistic liturgies, however, the complementary norm stated that "in providing for preaching by the lay faithful the diocesan bishop may never dispense from the norm which reserves the homily to the sacred ministers. Preaching by the lay faithful may not take place within the Celebration of the Eucharist at the moment reserved for the homily."

D. Instruction Redemptionis Sacramentum

While not a daring innovation, the complementary norm of the American bishops seems quite permissive when placed alongside the provisions of the 2004 instruction *Redemptionis Sacramentum*. Issued by the Congregation for Divine Worship and the Discipline of the Sacraments with the intention of correcting various abuses in the celebration of the Mass, the instruction dealt particularly with lay preaching in two places:

> If the need arises for the gathered faithful to be given instruction or testimony by a layperson in a Church concerning the Christian life, it is altogether preferable that this be done outside Mass. Nevertheless, for serious reasons it is permissible that this type of instruction or testimony be given after the Priest has proclaimed the Prayer after Communion. This should not become a regular practice, however. Furthermore, these instructions and testimony should not be of such a nature that they could be confused with the homily, nor is it permissible to dispense with the homily on their account.[47]

> … the homily on account of its importance and its nature is reserved to the Priest or Deacon during Mass. As regards other forms of preaching, if necessity demands it in particular circumstances, or if usefulness suggests it in special cases, lay members of Christ's faithful may be allowed to preach in a church or in an oratory outside Mass in accordance with the norm of law. This may be done only on account of a scarcity of sacred ministers in certain places, in order to meet the

[47]Congregation for Divine Worship and the Discipline of the Sacraments, Instruction *Redemptionis Sacramentum* (March 25, 2004), §74, in *AAS* 96 (2004): 572.

> need, and it may not be transformed from an exceptional measure into an ordinary practice, nor may it be understood as an authentic form of the advancement of the laity. All must remember besides that the faculty for giving such permission belongs to the local Ordinary, and this as regards individual instances; this permission is not the competence of anyone else, even if they are Priests or Deacons.[48]

Remarking on the more restrictive provisions of *Redemptionis Sacramentum*, it is important also to be mindful of the authority invested in them: being issued in the form of an instruction, these provisions serve to "clarify the prescripts of laws and elaborate on and determine the methods to be observed in fulfilling them," and since instructions are acts of executive or administrative authority, "the ordinances of instructions do not derogate from laws. If these ordinances cannot be reconciled with the prescripts of laws, they lack all force."[49] This means that the narrower constraints upon lay preaching foreseen in *Redemptionis Sacramentum* do not obtain where universal or particular law permits a wider range of possibilities. Therefore, since the complementary norm on lay preaching in the United States has received the *recognitio* and in fact been promulgated as law, its provisions—and not those of the instruction—determine the conditions under which laypersons may be allowed to preach at liturgies in the United States. Nor do the provisions of *Redemptionis Sacramentum* derogate from the particular legislation of the Philippines, which, although more stringent than its American counterpart, still permits a wider range of possibilities than the instruction. In the absence of more permissive particular legislation, however, it would still be at least debatable whether the provisions of the instruction could determine more narrowly the conditions under which laypersons could be permitted to preach, as for example by identifying the acute necessity arising from the scarcity of sacred ministers as the only circumstance warranting permission for laypersons to preach—a problematic stipulation inasmuch as it implicitly excludes the other

[48] *Redemptionis Sacramentum* §161 (*AAS* 96: 593).

[49] CIC 1983, c. 34, §§1–2.

circumstances foreseen in canon 766, where lay preaching might be allowed because it is advantageous.

We may thus conclude the following from what has been said thus far: first, liturgical and canon law allow laypersons to preach in liturgical contexts, provided they possess certain requisite qualifications and permissions; second, it is for the diocesan bishop to grant these permissions and to assess the qualifications of those seeking them, as well as the necessity or advantage of permitting them to preach; and third, subject to these various conditions, the law also allows laypersons to preach in the context of Eucharistic liturgies but does not allow them to preach at the part reserved for the homily, which is itself reserved to a cleric.

II. CRITIQUES OF THE LAW

We have already noted that the laws on lay preaching at Eucharistic liturgies have provoked no small amount of controversy. After expounding on the provisions of these laws, we can now explore some of the objections raised against them in the interest of illustrating alleged discrepancies between the values the law purports to serve and those its critics say it actually promotes. Two objections, which we may term "nominal" and "functional," merit special attention.

§1. The Nominal Objection

Raised by prominent canonists such as James Provost and John Huels shortly after the authentic interpretation of canon 767, §1 was given, the nominal objection tries to understand why the diocesan bishop may not dispense from the norm of said canon which reserves the homily to a priest or deacon. Certainly the norm is neither a procedural nor a penal law, nor does it seem that the terse negative response of the Code Commission has, in a single word, specially reserved dispensation from this law to the Apostolic See or some other authority.[50] According to the objection, this norm appears to be

[50]CIC 1983, c. 87, §2.

disciplinary in nature, hence it should admit of dispensation by the diocesan bishop whenever he judges that doing so contributes to the spiritual good of his subjects.[51]

The other remaining possibility is that the reservation of the homily to a cleric belongs to the category of constitutive law: "Laws are not subject to dispensation to the extent that they define those things which are essentially constitutive of juridic institutes or acts."[52] In a word, this argument holds that the constitutive principles of a homily *qua* homily are, first, the context of a Eucharistic liturgy in which it is given and, second, the identity or canonical status of the one giving it. Thus, runs the argument, if a cleric preaches at the part of the Mass reserved for the homily, then it is a homily. But if a layperson preaches at the part of the Mass reserved for the homily, then it is not a (forbidden) homily but rather a (permitted) reflection, exhortation, explanation, or some other form of preaching.[53]

Such an argument is, in the words of James Coriden, "unpersuasive and unlikely."[54] Admittedly, the documents of the Second Vatican Council as well as the reform documents responsible for actuating its teachings identify the homily as a part of the liturgy itself, in that the explanation of the Word of God cannot be separated from its proclamation in a liturgical context.[55] Moreover, the stated preference in both canon and liturgical law is for the principal celebrant of a given Mass to deliver the homily, since it is altogether fitting that the one presiding over the Liturgy of the Word and the Liturgy of the Altar should also be the one who opens the sacred texts to reveal the mysteries of faith and expound on the norms of Christian life by

[51]CIC 1983, c. 87, §1.

[52]CIC 1983, c. 86.

[53]Fuentes, "Title I: The Ministry of the Divine Word," 90–91.

[54]Coriden, "Title I: The Ministry of the Divine Word [cc. 756–780]," 929.

[55]Fuentes, "Title I: The Ministry of the Divine Word," 90.

means of homiletic preaching.[56] But neither of these facts means that the nature of the homily *qua* homily depends upon the status of the one preaching it; to hold the contrary, says Coriden, is to descend into "sheer nominalism."[57] Nor, he argues, should it be so readily concluded that the norm of canon 767, §1 belongs to the category of constitutive rather than disciplinary law, since none of the conciliar or postconciliar source documents define the homily in terms of who preaches it, the Code of Canon Law does not normally define liturgical rites, and the Code of Canons of the Eastern Churches separates its description of the homily from its provision reserving the homily to clerics.[58] Thus, concludes Coriden, "[The] commission's restrictive response, denying the bishop's ability to dispense, was simply its way of reserving the dispensation to the Apostolic See, without giving any reason for it."

§2. The Functional Objection

The functional objection revolves around the obligations and rights of all the Christian faithful enumerated in Book II of the 1983 Code of Canon Law (on the People of God). At its heart lies an outwardly simple yet surprisingly complex question concerning the correct interpretation of these canons, namely: are they mere statements of theological principle, devoid of consequences in the practical order, or are they invested with legal relevance? Some have argued for the former interpretation. The Flemish canonist Marcel Diet, for example, remarked that the equality of all the Christian faithful in dignity and action described in canon 208 should be read as a theological statement since the canon employs the indicative *viget*—a realis mood, suggesting that such equality has already been achieved—rather than the subjunctive *vigeat*—an irrealis mood, which would suggest that the

[56]Second Vatican Council, Decree *Presbyterorum Ordinis* (December 7, 1965), §4, in *AAS* 58 (1966): 995–997.

[57]Coriden, "Title I: The Ministry of the Divine Word [cc. 756–780]," 929.

[58]Coriden, "Title I: The Ministry of the Divine Word [cc. 756–780]," 929–930; cf. CIC 1983, c. 2; *Codex Canonum Ecclesiarum Orientalium auctoritate Ioannis Paulis PP. promulgatus* (Vatican City: Typis Polyglottis Vaticanis, 1990), c. 614, §§1, 4.

achievement of this equality is marked out by the canonical legislator as a goal.[59]

Rik Torfs, currently the rector of the Catholic University of Leuven, rejects Diet's analysis, noting that following it "leads to an interpretation by which the principle of equality is simply a decoration, devoid of all significance in the system of law."[60] Torfs bases his preference for an alternative, juridical interpretation of canon 208 and others that articulates the obligations and rights of all the Christian faithful on two grounds: first, their insertion into the Code of Canon Law favors the assumption that the canonical legislator intended them for a useful purpose;[61] and second, if they were intended for a useful purpose, then they ought to be interpreted in a way which safeguards rather than undercuts their effectiveness as legal norms, according to the venerable maxim *actus interpretandus potius ut valeat quam ut pereat* ("acts are to be interpreted so that they stand rather than fall").[62] Concretely, such an interpretation would entail that these canons enjoy a formal superiority over the other canons of the 1983 Code and its allied legislation. In a word, it would mean that the duties and rights of all the Christian faithful stated in canons 208 through 223 constitute a fundamental law for the canonical legal system and, accordingly, that all other norms are to be interpreted in their light. To do otherwise—whether directly, as by outrightly denying their legal relevance, or indirectly, as by introducing particular laws with the intent of restricting their application[63]—would violate a basic principle of legal interpretation.[64]

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[59]Rik Torfs, *A Healthy Rivalry: Human Rights in the Church*, Louvain Pastoral & Theological Monographs 20 (Leuven: Peeters, 1995), 50–51.

[60]Torfs, *A Healthy Rivalry: Human Rights in the Church*, 51.

[61]See *Summa Theologica* I-II, 90, iv; 92, ii.

[62]Torfs, *A Healthy Rivalry: Human Rights in the Church*, 52–53.

[63]See however CIC 1983, c. 20, codifying the ancient interpretive principle *lex specialis derogat legi generali* ("a special law derogates from general laws").

[64]Torfs, *A Healthy Rivalry: Human Rights in the Church*, 73–77.

An analysis constructed along these lines of reasoning leads to certain conclusions in the context of a discussion on lay preaching at Eucharistic liturgies. First, it must be noted that rights and duties are jural correlates.[65] To speak of one person's right is to impose a duty upon another—at a minimum, to passively permit the exercise of the right without unwarranted interference; at a higher level, to actively protect and promote its exercise. Thus, if all the Christian faithful have the right "to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the Word of God and the sacraments," then it is incumbent upon the diocesan bishop to provide the highest quality preaching possible, in consequence of his role as the principal teacher and sanctifier of the particular church entrusted to him.[66] Second, the duty and right to "work so that the divine message of salvation more and more reaches all people in every age and in every land," common to all the Christian faithful in consequence of their baptism, provides a basis upon which the diocesan bishop could permit laypersons to preach in churches or oratories under the circumstances envisaged in canon 766. Third, if given full effect, the principle of equality would require that diocesan bishops prescind from consideration of a person's state in life when making determinations as to his or her suitability for preaching, and consider only the necessity to be served or the advantages to be gained from admitting him or her to this function. Such an approach is meritocratic. It presupposes that a homily is no more or less edifying simply because it is given by a cleric or a layperson, and that the rhetorical abilities of the homilist are the principal determinants of its effectiveness. As such, it presupposes a functional equivalence between clerics and laypersons in respect of preaching such that, if it comes down to a choice between a less qualified cleric and a more qualified layperson, the layperson should be allowed to preach in view of his or her erudition and eloquence. Conversely, if the choice is between a more qualified cleric and a less qualified layperson, the cleric should be shown preference not by

[65]Wesley Newcomb Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning," *Yale Law Journal* 23:1 (1913–1914): 16–59.

[66]CIC 1983, cc. 213; 386, §1; 387.

virtue of his clerical status but because he is better suited to preach the Word of God.

A further point may be added: the condition established in the particular law for the United States, according to which laypersons may only be given permission to preach after they have demonstrated their orthodoxy and moral rectitude, violates the principle of equality stated in canon 208. Clerics are not required to make a similar manifestation before they are admitted to preach, since they possess the faculty of preaching everywhere unless the law explicitly provides otherwise.[67] A cynic might thus say that the law is premised on the assumption that clerics are trustworthy because they are clerics and laics are untrustworthy because they are laics.[68] If so, the premise is faulty and can be criticized for overlooking both negative and positive features in the life of the Church, such as the tendency of heresies and schisms to originate from the ranks of the clergy, on the one hand, and the promotion of the universal vocation to holiness and the lay apostolate undertaken notably by the Second Vatican Council and Pope John Paul II, on the other.[69] As a result of these latter developments, it increasingly happens that laypersons are equal to or, in some cases, even exceed their pastors in theological knowledge, piety, and loyalty to ecclesiastical authority, including the sacred Magisterium. Empowering such qualified and committed lay faithful to preach in the context of Eucharistic liturgies could prove greatly beneficial to the Church, especially by assisting the diocesan bishop in his mission to promote the handing on of the whole Christian doctrine, protect the integrity and unity of the faith, and foster common discipline.[70]

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[67]CIC 1983, cc. 763–765.

[68]If this is so, then the special obligation of clerics to show reverence and obedience to their own ordinary (CIC 1983, c. 273) or the prescribed philosophical, theological, and pastoral formation for clerics (CIC 1983, cc. 248–258) are most likely contributing factors.

[69]John Paul II, Apostolic Exhortation *Christifideles Laici* (December 30, 1988), in *AAS* 81 (1989): 393–521; *Apostolicam actuositatem* (*AAS* 58: 837–864).

[70]CIC 1983, cc. 386, 392.

To be clear, however, allowing just anyone to mount the pulpit would not serve this noble purpose, and therefore could not be considered seriously as a remedy for the double standard introduced by particular law. Far better would it be to restore certain provisions on preaching from the 1917 Code of Canon Law, such as those stating that:

> §1. Gravely burdened in their consciences, the local Ordinary or religious Superior shall not grant to anyone the faculty or permission for preaching, unless there is first established good morals and sufficient learning by an examination according to the norm of canon 877, §1.
>
> §2. If, the fact or permission having been granted, they find that necessary qualities are lacking in the preacher, they must revoke them; if in doubt about learning, they must eliminate such doubts by various arguments, even by a new examination, if this is needed.[71]

The functional objection is appealing, though even its proponents admit that such an application of the canons on the obligations and rights of the Christian faithful was probably outside the intention of the canonical legislator.[72] Nevertheless, it should be said that the chief weakness of the functional objection is theological and not canonical in nature. Liturgy may be defined as "the public exercise of the priestly function of Jesus by His Church," or as public worship offered to God in the name of the Church, as opposed to private devotions.[73] Since the Eucharistic liturgy is an exercise of the high priestly office of Christ, and since homilies take place within the context of the Eucharistic liturgy, homilies are primarily acts of worship.[74] As canon 834, §2 states, "such worship takes place when it is carried out in the name of the Church by persons legitimately designated and through

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[71]Translation taken from Edward N. Peters, *The 1917 or Pio-Benedictine Code of Canon Law* (San Francisco, CA: Ignatius Press, 2001), 451.

[72]Torfs, *A Healthy Rivalry: Human Rights in the Church*, 52.

[73]Kozlowski, "The Laity and Liturgical Preaching: What Are the Necessary Theological and Canonical Requirements?," 261.

[74]Kozlowski, "The Laity and Liturgical Preaching: What Are the Necessary Theological and Canonical Requirements?," 261.

acts approved by the authority of the Church." Clerics are thus legally capacitated to preach as a consequence of their sacred ordination, through which is effected an ontological configuration to a leadership role in the Church.[75] Following the sacramental and ecclesiological principles enunciated in *Lumen Gentium*, their ordination builds upon the more fundamental ontological configuration received by all the Christian faithful in baptism and sealed in confirmation to the priestly, prophetic, and royal ministries of Christ.[76] This basic configuration is necessary but nevertheless insufficient in itself to allow laypersons to preach at a liturgy; indeed, they require a further authorization from the diocesan bishop in order to carry out this function.[77]

Such a theological rationale accounts for the qualification to the equality principle, also found in canon 208: all the Christian faithful cooperate in the building up of the Body of Christ "according to each one's own condition and function." In a word, the ontological distinctions arising from sacred ordination (not considerations of competence or ability) determine which functions may be exercised by clerics or laypersons.[78] As long as this theological perspective enjoys currency, it will remain difficult to invoke the functional argument on behalf of an expanded role for laypersons in homiletic preaching.

CONCLUSION

Inspired by the teaching of the Second Vatican Council, liturgical and canon law permit laypersons to preach under a range of circumstances, including in the context of liturgical worship. They, however, require an additional authorization by the diocesan bishop

[75]Kozlowski, "The Laity and Liturgical Preaching: What Are the Necessary Theological and Canonical Requirements?," 261–262.

[76]LG §10 (*AAS* 57: 14–15).

[77]Kozlowski, "The Laity and Liturgical Preaching: What Are the Necessary Theological and Canonical Requirements?," 265–266, 268–269.

[78]LG §31 (*AAS* 57: 38–39).

to preach in churches or oratories, configured though they may be in baptism for the priestly, prophetic, and kingly ministries. This stands in contrast to the authorization for preaching possessed by clerics, who are by their ordination configured to leadership roles in the Church.

Permission for laypersons to preach in liturgical contexts may also depend upon considerations of necessity, such as that arising from a scarcity of ordained ministers, or advantage, such as that arising from the personal qualifications of the lay faithful, with the precise requirements often being marked out in universal or particular law. While certain possibilities for lay preaching in the context of Eucharistic liturgies are foreseen, even in restrictive documents such as the instruction *Redemptionis Sacramentum*, it is nevertheless not permitted for laypersons to preach at the part of the Mass reserved for the homily. This restriction has occasioned considerable debate among the Christian faithful, and arguments have been raised against it. Two of these—the nominal and the functional objections—have their merits but are untenable in view of the canonical and theological counter-arguments detailed above.

Their deficiencies notwithstanding, however, it would be rash to reject these objections out of hand. This is especially true of the functional objection, which raises serious questions about the relevance of fundamental rights in the life of the Church. The canons marking out these rights have their origins in the teachings of the Second Vatican Council, and constitute an important part of the conciliar legacy.[79] Does this mean they are to have a legal effect, and if so, what is its nature and extent? What is their formal authority relative to other legal norms? If greater than these latter, what consequences does this entail for the canonical order and pastoral practice? If lesser, what is their actual purpose?

It is perhaps fair to ask whether the failure to reckon seriously with these rights is indicative of a broader ambivalence among the sacred pastors about the rule of law and its place in ecclesial life. This is a

[79]John Paul II, Apostolic Constitution *Sacrae disciplinae leges* (January 25, 1983), in *AAS* 75-II (1983): VII–VIII, XI–XIII.

troubling prospect, not least of all because it raises questions about the sincerity with which these men pronounce on matters concerning the social order, especially when calling secular authorities to account for violations of their citizens' basic rights. If the Church is truly to be a "mirror of justice" for these authorities, she must practice in her own sphere what she preaches to them.[80] If she does not, then her empty affirmations of the "rights of the Christian faithful" will become nothing more than a convenient cudgel with which her enemies may strike her whenever they take exception to her reproofs.

To conclude this article, I would offer one recommendation. While I am not qualified to pass upon the merits of expanding the practice of lay preaching, I submit that the particular legislation of the Catholic Bishops' Conference of the Philippines on this matter may be more restrictive than the bishops themselves may realize. Whether or not it is too restrictive to respond adequately to the present and future exigencies of Philippine dioceses, many of which suffer from shortages of clergy even as they are blessed with an abundance of competent and loyal laypersons, is a question worthy of their consideration.

[80]John Paul II, Allocution "Ad Decanum Sacrae Romanae Rotae ad eiusdemque Tribunalis Praelatos Auditores, ineunte anno iudiciali" (February 17, 1979), in *AAS* 71 (1979): 423, 426.