

How Cum ex is retained in the Code

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We have seen that Cum ex indeed is an infallible Bull and have offered proofs that it is retained in several places in the 1917 Code of Canon Law. Now we will take each incidence of its retention in the Code and show readers how it compares to Cum ex itself.

First we repeat what Rev. Neuberger says about the conditions of retention: "The old legislation...is destitute of legal value unless the Code has embodied it in Canons." He then lists three different ways a law may be retained in the Code.

- 1.) The old law is retained by either stating it verbatim;
- 2.) Mentioning the subject matter followed by the phrase *ad normam Constitutionis* (referring one to the specific Constitution) or
- 3.) By expressing the enactment in different terminology.

So now we must examine each Canon to see how it is expressed in the Code.

Canon 167§3 deals specifically with the qualification of electors participating in the various elections, from that of cathedral chapters to religious superiors. The Canon states: "The following persons may not cast a vote: (3) Persons suffering from censure or infamy of law, if such censure or infamy has been previously inflicted by a declaratory or condemnatory sentence; (4) persons who have joined an heretical or schismatical sect (5) persons deprived of the active vote either through legitimate sentence of the ecclesiastical judge or by the common or particular law.

"If anyone of the aforesaid persons is admitted to the election, the vote is invalid but the election is valid unless it is certain that the elected would not have had the required number of votes without the illegal vote; and the election is invalid if a person excommunicated by a condemnatory or declaratory sentence has knowingly been admitted to vote."

Concerning article (3) and (5) Cum ex states:

5. "Further, whoever knowingly presumes in any way to receive anew the persons so apprehended, confessed or convicted, **or to favor them, believe them, or teach their doctrines** shall *ipso facto* incur excommunication, and, become **infamous. They shall not and cannot be admitted orally, in person, in writing, through any spokesman or procurator to offices public or private, or deliberations or a Synod or general, or provincial Council, or a Conclave of Cardinals, or any congregation of the faithful, or anyone's election, or to give testimony.**"

Concerning article (4), see Can. 188§4, section 6, below. The above excerpt from Cum ex seems to imply that even those cooperating in heresy in any way are deprived of their vote, even in a Conclave. (A good example of this is Roncalli's and Montini's cooperation with avowed Communists, both before and after their "elections.") In this Canon, we see that Neuberger's third condition above for retaining the old law applies, as the law has stated these principles in different terminology.

Canon 188§4 states: "All offices shall be vacant *ipso facto*, by tacit resignation in the following cases... (4) If a cleric has publicly lapsed from the Catholic Faith." We read from Cum ex:

6. "Further, if ever at any time it becomes clear that any Bishop, even one conducting himself as an Archbishop, Patriarch, or primate; or any Cardinal of the aforesaid Roman Church, even as mentioned, a Legate; or likewise any Roman Pontiff before his promotion or elevation as a Cardinal or Roman Pontiff, [has strayed from the Catholic Faith or] fallen into some heresy, [or has incurred schism] ... **The persons themselves so promoted and elevated shall, *ipso facto* and without need for any further declaration**, be deprived of any dignity, position, honor, title, authority, office and power, [without any exception as regards those who might have been promoted or elevated before they deviated from the faith, became heretics, incurred schism, or committed or encouraged any or all of these.] ... Every one of their statements, deeds, enactments, and administrative acts, of any kind, and any result thereof whatsoever, shall be without force and shall confer no legality or right on anyone."

Canon law has stated this principle in different terminology, according to Neuberger's third condition. The important difference between Cum ex and current Canon Law that is contested as pertaining to the present situation by Traditionalists is the need for a declaration to make sure that heresy or schism has actually taken place. In using Can. 6§4 to consult the old law in cases of doubt, **we see that the act itself is sufficient, and that no further declaration is needed.**

Canon 2264: "Acts of jurisdiction of both the internal and external forum by an excommunicated person are illicit, and, if a condemnatory or declaratory sentence of excommunication has been issued against him, his acts of jurisdiction are invalid, without prejudice to the rule of Can. 2261§2."

The part of Cum ex that seems to underlie this law is the following:

"Through the fullness of Our Apostolic power...all and sundry, (Bishops, Archbishops, Cardinals, emperors; with or without the care of souls, whether secular or regular of any Order whatever which they may have obtained in any way, etc,...) [who] have strayed or fallen into heresy or have been apprehended, have confessed or been convicted of incurring, inciting or committing schism or who, in the future, shall stray or fall into heresy or shall incur, incite or commit schism or

shall be apprehended, confess or be convicted of straying or falling into heresy or of incurring, inciting or committing schism, being less excusable than others in such matters, in addition to the sentences, censures and penalties mentioned above, (all these persons) are also automatically and without any recourse to law or action, completely and entirely, forever deprived of, and furthermore disqualified from and incapacitated for their rank..."

Here Can. 2264 takes its rule for excommunication partly from Cum ex. It does not specify that such excommunication is for heresy or schism, for many other censures can result in excommunication. It does not consider other censures these clerics may have incurred, such as suspension for receiving orders from a bishop lacking a papal mandate, (Can. 2372), or infamy incurred by publicly adhering to a non-Catholic sect, (Can. 2314§3). While it is true that Canon Law states that the Sacraments of a *toleratus* are valid and licit when the people request them, what Traditionalists miss here is that the Church legislates for what usually happens. It is presumed that the *toleratus* considered in this canon a) already possesses jurisdiction, which has not been withdrawn or b) can assume that the Church will supply it if the faithful ask him to provide the Sacraments. But in our situation, this presumption must yield to truth. In the case of Traditionalists, the Church cannot supply because, as Pope Pius XII infallibly explained in Mystici Corporis, the "Church" is not a pneumatological or invisible entity; without a visible head, She cannot exist, so therefore She cannot supply. Many Trad "priests" are not rightly ordained because the one ordaining them had no papal mandate. None of them today, to the best of my knowledge, possess jurisdiction granted by a Bishop under Pope Pius XII. Even if they possessed it, they have not remained in the territory it was designated for and hence they cannot exercise it. We must remember that, "If anyone says that...those who have neither been rightly ordained nor sent by ecclesiastical authority, but come from a different source, are the **lawful ministers** of the Word AND OF THE SACRAMENTS, let him be anathema." (The Council of Trent, Sess. 23, July 15, 1563; DZ 967, 424)

While certain Sacraments may be administered by the *toleratus*, Woywod and Smith comment that the only time that Mass can be offered by them is when their excommunication is occult. The excommunication of these priests for setting up schismatic sects has not been occult since the mid-1980s when the need for jurisdiction was first made known. This excommunication automatically results in juridical infamy and irregularity, which forbids all sacred functions and renders any attempts to minister to the faithful illicit. So whether they possessed jurisdiction or not, they could not exercise it. Furthermore, the fact that the faithful request the Sacraments from them does not lift the irregularity forbidding them to perform sacred functions, and this irregularity can be absolved only by dispensation from the Holy See.

Canon 2314: "All apostates from the Christian faith and each and every heretic or schismatic incur the following penalties:

(1) *ipso facto* excommunication.

(2) If they have been admonished and do not repent, they shall be deprived of any benefice, dignity, pension, office or other position which they may hold in the Church; they shall be declared infamous and, if they are clerics, they shall, after renewed admonition, be deposed.

(3) If they have joined a non-Catholic sect or have publicly adhered to it, they incur infamy *ipso facto*, and, if they are clerics and the admonition to repent has been fruitless, they shall be degraded," (and here is made reference to Can. 188§4).

This canon is basically a restatement of Can. 188§4 and includes Pope Paul IV's sections five and six as presented above. The only difference in what is stated above and what is stated in Cum ex is that these heretics, etc., are described in Cum ex as having:

3. "...**strayed or fallen into heresy or have been apprehended, have confessed or been convicted of incurring**, inciting or committing schism or who, in the future, shall stray or fall into heresy or shall incur, incite or commit schism or shall be apprehended, confess or be convicted of straying or falling into heresy or of incurring, inciting or committing schism, being less excusable than others in such matters, in addition to the sentences, censures and penalties mentioned above, (all these persons) are also automatically and without any recourse to law or action."

Notice that Paul IV first states the crime **separate from any formal condemnation of the act**, then also includes any formal condemnation by the Church or confession of the deed itself. So Can. 2314 merely lists the admonition, declaration, and degradation if the subject fails to repent. The opportunity to repent is mentioned by Paul IV in section three, paragraph four.

"By the kindness and clemency of this See, having shown signs of true repentance and fruits of worthy penance, they shall be confined in some Monastery or other religious house, to do perpetual penance in the bread of sorrow and water of sadness."

Rev. Neuberger states that this particular penal law is still retained in the Code under Can. 2298§8. "A quasi-imprisonment for unruly clerics still exists. It is a mitigation of former incarcerations. The Monastery is the prison whither clerics are sent to do penance."

Can 2316: "A person who of his own accord and knowingly helps in any manner to propagate heresy or who communicates in sacred rites (*in divinas*) with heretics in violation of the prohibition of Can. 1258 incurs suspicion of heresy," and after six months falls under the prescriptions of Can. 2200§2. Here the Code wishes to exclude all possibility of force or fear in such cooperation. This Canon refers to the first few sentences of section five in Cum ex, above. Here we see that any cooperation must be committed *knowingly*. Article six of Cum ex above, which deprives apostates, heretics and schismatics of all office and power and also states that this deprivation occurs "[without any exception as regards those who might have been promoted or elevated *before* they deviated from the faith, became heretics, incurred schism, **or committed or encouraged any or all of these.**]

“ In this respect it also seems to be referenced in this canon.

Briton's Catholic Library claims in their commentary on the Bull that there is no provision in the Code for punishing those who lead others into heresy. But one would effectively lead another into heresy by helping to propagate heresy as stated in Can. 2316, which says such individuals then are suspect of heresy themselves. If there is any question as to how they should be punished for such deviations, we return to the old law, which Revs. Woywod-Smith identify as Pope Pius IX's Apostolica Sedis. "Some of the offenses of Canons 2315-2316 were punished with the same penalties as the crime of heresy itself," they wrote. So if we have any doubts about the penalty for this crime, the old law tells us what those penalties were.

Also in Woywod-Smith, Can. 2316 is specifically linked to Pope Pius IX's 1864 condemnation of the Anglican Reunionists, the forerunner of modern-day ecumenism. This same ecumenical wind first began to blow during Pope Paul IV's reign, which occurred during the Protestant Reformation. The Protestant's misinterpretation of Holy Scripture explains the first sentences of the Bull. Paul IV experienced the beginning of the Great Apostasy; we see it in the fullness of its completion. It is no wonder that there are so many similarities.

Pope Paul IV distinguishes between those who are craven heretics, apostates and schismatics and those who have been deceived by them. He holds blameless those duped by one usurping the Holy See, or posing as Cardinals or Bishops, etc., but who are later discovered to be heretics. Here Cum ex states:

“It shall be lawful for all and sundry who would have been subject to persons so promoted and elevated, had these not first strayed from the Faith or been heretics, or incurred or incited or committed schism; for clerics, secular or regular, and for laymen; even if obliged and beholden to said promoted or elevated persons by homage, oath or bond, to depart with impunity at any time from obedience and, allegiance to said promoted and elevated persons and to shun them. Nor shall they be liable to reprisal through any censure or penalty, as renders of the Lord's robe, for departing, for the reasons set forth above, from fealty and obedience to said promoted and elevated persons.”

This explains the word *knowingly*. It is acknowledged here that those following one they believed in all good faith to be a true pope could not easily know for themselves how to determine that such a person was no pope at all. Such a realization may come to some sooner than others, therefore no time limit is set on the *discovery* of the heresy committed by such a false pope. But it does not envision a situation where these same people actually follow the heresy of such a usurper; only the recognition of the existence of the heresy itself.

Can. 2317: Persons who stubbornly teach or defend, either publicly or privately, a doctrine which has been condemned by the Roman Pontiff or by an Ecumenical Council, not

however as formally heretical, shall be barred from the ministry of preaching the word of God and of hearing sacramental confessions, and from every office of teaching, without prejudice to other penalties which the sentence of condemnation of the doctrine may perhaps have decreed, or the penalties which the Ordinary, after admonition, may judge necessary to impose for the reparation of the scandal.” We see here the intention of Paul IV to do anything possible to remove the scandal of heresy or its forerunners from the Church. Section three, paragraph two of the Bull states:

“...(All these persons) are also automatically and without any recourse to law or action, completely and entirely, forever deprived of, and furthermore disqualified from and incapacitated for their rank; their Cathedrals, even Metropolitan and Patriarchal ones; Primatial Churches; honor as Cardinals; position as any sort of Legate; active or passive voice and all authority; and Monasteries, benefices and Church offices, with or without the care of souls, whether secular or regular of any Order whatever which they may have obtained in any way...”

This Canon also may have reference to the censures and prohibitions of Pope Paul IV concerning heresy and whatever was proximate to it, renewed by Pope St. Pius V in his Intermultiplices. Another connection to this Canon may possibly be found in Canons 2331-34.