

CAN A CLERIC BE A JUDGE IN A CIVIL COURT?

INTRODUCTION

Clerics stand in a special relation not only to God but also to the laity. Thus it is that no single act performed by a cleric remains an isolated or insignificant act. This is doubly true if the act is invested with any publicity at all. It has repercussions either for good or for evil. One of the three offices of clerics is to preach or teach the Word of God. But what is of greater importance is, that they are to preach them by their lives. Pope Pius XI said that priests are to be not merely guides for the laity, but models of Christian life and of Apostolic virtue. *Qui lux est, luceat.*¹

Book II Part I, Title III, Chapter III deals with the obligations and rights of clerics. In seventeen canons there are set forth legislative aids for the safeguarding of clerical dignity. The last five canons (Canons 285 to 289) in Chapter III are concerned with what are often termed as “negative clerical obligations” in general with some exceptions. These canons deal with professions or activities that the ecclesiastical legislator expressly enumerates as unbecoming or at least foreign to clerical state. These are forbidden not because they are intrinsically evil, but because they are unbecoming or at least foreign to clerics precisely as clerics, that is as persons dedicated to God’s service. Having these few introductory remarks we will look into the subject matter of our discussion today.

HISTORY OF THESE CANONS

Already in the New Testament we find some references as to the conduct of God’s ministers. St. Paul writing to the Corinthians in his second letter tells: *We give no offense to anyone, that our ministry may not be blamed. On the contrary, let us conduct ourselves in all circumstances as God’s ministers..*(2Cor. 6:3 & 4). Again to Timothy St. Paul writes: *No man being a soldier to God entangles himself with secular business* (2 Tim 2:4).

Christians in the beginning were advised to avoid civil offices because of the implications for idolatry (Emperor worship being required, as a sort of loyalty test) and the temptations to immorality that were so common to office holders². For clergy there was in addition the Scriptural reason as cited above to keep them from such offices. One dedicated to the Lord should focus on spiritual matters and not become ensnared in the cares of the world. Under Constantine civil offices became

¹ J.T. DONOVAN, *The Clerical Obligations of Canons 138 & 140*, Washington, Catholic University of America, 1948, p.xi.

² Cf. Tertullian, “De Corona”, in *Patrologiae Latina*, 2, Cols 91-93.

open to Christians and early canons even provided for letters of recommendation to be given by bishops for those who were taking high office within the Empire³. This resolved the general question of Christian participation in public office; the condition of clergy and, later, monks, however, began to receive special attention. Laws concerning the prohibitions to clerics are found in the Apostolic Canons⁴ and in such early councils as Carthage, Elvira and Chalcedon. These early prohibitions were imposed on the grounds either that the cleric could not at the same time perform adequately both his ecclesiastical function and the secular office⁵, or that the clergy and monks were leaving their vocations and entering into public life full time. All Christian emperors whose laws are found in the Teodosian Code – from Constantine to Valentinian- granted many immunities to clerics and in general enforced the details of ecclesiastical legislation. Such provisions are also found in the Novels of Justinian⁶.

The Second Council of Nicaea in 787 enacted a canon on the conduct of monks and clerics as follows:

*... it is not permitted for clerics to assume worldly and secular responsibilities, since they are forbidden to do so by the sacred canons; and if someone is misled into occupying himself with the responsibility of the so called high stewards, he is to desist or be suspended. Rather let him busy himself with the teaching of the children and servants, lecturing them on the divine scriptures because it is for such activity that he received the priesthood.*⁷

Gratian expressed concern over clerical avarice and combined prohibitions from the past concerning business activities and public offices. Yet he also admits of exceptions. Clerics were permitted to serve as guardians or protectors for minors. They could engage in litigation if this was directed by the bishop in order to safeguard church concerns, to care for defenseless orphans or widows, or for other persons who needed the help of the Church. Clerics could serve as judges in civil courts provided no death penalty would be involved.

The third Lateran Council reversed the permission given by the Council of Toledo to clerics to serve as civil judges in Spain, and also prohibited clerics all over the world

³ "Synod of Arles (314) c.7" in J.D. MANSI, *Sacrorum Conciliorum Nova et Amplissima Collectio*, Tomus II, 1759, COLS 471 & 472.

⁴ "Apostolic Canons (341 to 381)", in J.D. MANSI, *op.cit*, Tomus III, 1759, Col.6, 80, 82.

⁵ "Council of Sardica (347) c.8", in J.D. MANSI, *op.cit*, Tomus III, 1759, Col. 11.

⁶ "Council of Chalcedon 451) cc.3 & 7", in J.D. MANSI, *op.cit*, Tomus VII, 1761, Col. 359.

⁷ "Second Council of Nicaea (787), c.10", in N.P. TANNER (ed.), *Decrees of the Ecumenical Councils*, Vol, Washington D.C., Georgetown University Press, 1990, p.156.

from serving as secular judges⁸, and the Fourth Lateran Council enjoined clerics not to hold secular offices. Religious were subjected to more severe penalties than secular clergy if they violated the law⁹. The Decretals of Gregory IX and Boniface VIII collected these and other sources to reinforce the position that “clergy and monks were not to mix themselves in the business of the world.”

The council of Trent dealt with this in the twenty second and twenty fourth sessions. The Congregation for the Propagation of Faith instructed the missionaries not to become involved in secular and especially political affairs. Pope Leo XIII permitted clerical involvement in politics in Hungary for the sake of safeguarding religion or promoting the common good.¹⁰ Pope Pius X allowed priests in France in 1906 to run for the Chamber of Deputies provided they obtain the permission of their own ordinary and the ordinary of the place where they were running for office.¹¹ Finally, the 1917 Code in canons 138 - 142 prohibited priests not only all that is said as prohibited to clerics in the 1983 Code but also some other occupations such as medical practitioner (doctors), nurses, public notaries, bartenders, jailors, taxi drivers, clerics and religious practicing psychoanalysis. Canon 130 forbade the clergy to attend certain entertainments. Moreover, those which entail sharing in the exercise of civil power in its full sense and, therefore, includes legislative, executive, and judicial power (to be a member of Parliament; minister, judge or to hold any other office endowed with civil authority) and those attached to financial responsibilities (such as the post of treasurer or administrator of goods belonging to laypeople, acting as trustee, signing promissory notes etc.,) unless permission from the Ordinary has been obtained.¹²

CODE OF CANON LAW 1983

The present Code of Canon Law states in canons 285 to 289 actions inappropriate to clerics. When one looks at the sources of these canons most of them are from the 1917 code with some omissions and some the pre-vatican documents of the Popes ordicasteries, cfr. Last page for the sources), there is not much from the Second

⁸ “Concilium Lateanense III (1179), c.12” in *Conciliorum Oecumenicorum Decreta*, Basileae-Bariconone-Friburgi-Roimae-Vindobonae, France, Herder, 1962, p.194

⁹ “Lateran IV (1215), cc.16 & 18), in *Ibid*, pp.219 * & 220.

¹⁰ *Constanti Hungarorum*, Encyclical Letter of Leo XIII 2 Sept. 1893, ASS 26 (1894), pp.124-135.

¹¹ *Ex.S.C.A. Negotiis. Eccl. Extrordinarieis* in ASS 39 (1906), p.192.

¹² *Code of Canon Law Annotated*, E. CAPARROS, M. THÉRTAULT, T.J. THORN (Eds.), Wilson & Lafleur Limitée, Montréal, p.237.

Vatican council documents except for canon 287 §1 which is based on the Decree on the Ministry and Life of Priests (PO) No.6 and Pastoral Constitution on the Church in the Modern World (GS) Nos.91-93.¹³ However, in *Lumen Gentium* 31 separates the roles of the laity from those in Holy Orders: A secular quality is proper and special to laymen. It is true that those in holy orders can at times engage in secular activities, and even have a secular profession. But by reason of their particular vocation they are chiefly and professedly ordained to the sacred ministry. Similarly, by their state in life, religious give splendid and striking testimony that the world cannot be transfigured and offered to God without the spirit of the beatitudes.

These canons (285 – 289) enlist explicitly the following activities as unbecoming or forbidden or foreign to clerics:

1. Prohibitions in canon 285 §§1 & 2 are very general. §1 prohibits the clerics to refrain from unbecoming activities and §2 not only from unbecoming activities but also foreign to clerical state.
2. Public office which entails participation in the exercise of civil power (c.285 §3).
3. Agents for goods belonging to laypersons or assume secular offices without the permission of their ordinary which entail an obligation of rendering accounts (c.285 § 4).
4. To act as surety, even on behalf of their own goods, without consultation with their proper ordinary (c.285 § 4).
5. Sign promissory notes whereby they undertake the obligation to pay an amount of money without any determined reason (c.285 § 4).
6. To conduct business or trade personally or through others for their benefit or that of others without the permission of legitimate ecclesiastical authority (c.286).
7. Not be a cause for disunity among all persons. (c.287 §1).
8. Not to have an active role in political parties and in direction of labour unions unless the need to protect the rights of the Church or to promote the common good requires it in the judgment of the competent ecclesiastical authority (c.287 §2).

¹³ *Codes Iuris Canonici – Fontium Annotatione et Indice Analytico-Alphabetico Auctus*, Libreria Editrice Vaticana, 1989, p.81. Cfr. Appendix for sources used for Canons 185 - 159.

9. Not to volunteer for military service without the permission of their own ordinary (candidates for sacred orders included) (c.289 §1).
10. Exercising duties and public civil offices alien to the clerical state which laws, agreements or customs grant in their favour, unless in particular cases their own proper ordinary has decided otherwise (c.289 §2).

However, permanent deacons are not bound by the prescriptions of Canons 285 §§3 & 4, 286, 287 §2 unless particular law determines otherwise (Cfr. c.288).

PROFESSIONS / ACTIONS NOT COVERED IN THESE CANONS

Besides what has been stated in the above canons, are there other professions, or actions which are unbecoming or at least foreign to clerical life? Canon 285 §3 states that clerics are forbidden to assume public offices which entail a participation in the exercise of civil power. But canon 289 §2 states that clerics are to make use of those exceptions from exercising duties and public civil offices foreign to the clerical state which laws, agreements or customs grant in favour, unless in particular cases their own proper ordinary has decided otherwise. This is not included in the exceptions listed in canon 288 for permanent deacons. Therefore, permanent deacons are also to make use of those exceptions from exercising duties and public civil offices foreign to clerical state. This means while canon 288 does not prohibit the permanent deacons from assuming public offices, canon 289§2 includes permanent deacons to take advantage of those exceptions from exercising duties and public civil offices foreign to the clerical state. Hence the paradox.

We know nowadays more and more clerics tend to take civil law decrees and some of them practice in the civil law courts for the good of the Church and for the good of the poor. Can they practice? The Kerala High Court in 2006 ruled in favour of the priests and nuns. The Bar Council of India appealed to the Supreme Court of India and cited rules that those gainfully engaged in any trade, business or profession cannot be enrolled as lawyers. It said that priests and nuns cannot become lawyers as they are already professed members of another profession and get paid by the Church. The Sept.15 verdict of country's top court ended a clash that began in 2004 when a Catholic priest and two nuns were not allowed to enroll in the Kerala unit of the Bar Council of India. The priest and nuns said that a religious vocation cannot be equated to a profession while the Bar Council of India said its rules do not permit people in other professions to practice law. The core issue was interpretation of the word profession, said Sister Mary Scaria, a Supreme Court lawyer. The court clarified

that profession of a religious has nothing to do with professional engagement. Thus Supreme Court of India ends the dispute over status of priests and nuns to practise as lawyers in the civil courts.

CAN A CLERIC BE A JUDGE IN A CIVIL COURT?

Now we come to the heart of the matter: Can a cleric be a judge in a civil court? Or is it unbecoming or foreign to his clerical state? It is evident from canon 285 §2 that there are some public offices which are not only unbecoming but also foreign to clerical state. The canon does not specify what those public offices are. However, since there are already a clear prohibition in paragraph 3 of canon 285, to assume public offices which entail a participation in the exercise of civil power we may understand from the circumstances of the law, those public civil offices which do not entail a participation in the exercise of civil power as 'foreign'. What are these public offices which do not entail a participation in the exercise of civil power?

The term 'foreign' expresses really something relative. Something that is foreign to clerics in a given particular situation and background may not be so in another situation and background. What was considered very negative yesterday can become very positive and recommendable today, or vice versa. Even the motive or scope of an activity or profession can change completely its character. Thus, in order to judge whether some activity or profession is foreign or not, we have to consider the concrete situation where they are being exercised, the concrete period of time in which they are being practiced. It varies from place to place, from time to time and from culture to culture. Hence popular estimation must be taken into account. The code does not expect any particular legislation enacted in this regard. May be customary law can play a role here. The application of the law is not only a matter of official interpretation, but also of custom, which is the best interpreter of law (c. 27).

A Judge in the civil court cannot deliver a judgment based on what he knows. He has to deliver the judgment based on the facts, evidences produced in the court, the arguments of the advocates and the laws pertaining to the case. However, the judge can set aside the judgment to an indefinite date or pass it on to another judge if he cannot consciously deliver the judgment. Judges also manipulate the cases to their advantage. In the present scenario in India, we need to have advocates and judges who are above corruption and who will stand for justice and truth. Priest Judge can make a difference and can be an Evangelizer in the Judiciary. However, there may be some strictures imposed by the competent ecclesiastical authority on the priest as we find in the following paragraph.

Rev. Fr. Joseph AduOwusuAgydman, a Catholic priest incardinated into the Catholic Archdiocese of Kumasi, on 16, 2020 was sworn in as High Court Judge by His Excellency Nana AddoAkuffoAddo, president of the Republic of Ghana. However he is limited to offering private Masses himself, for God's people and His Church. He will exercise his priestly ministry in private, e.g. he will not celebrate sacraments publicly but privately. (Taken from Google)

MEMBERS OF THE INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE

I have been so far, saying the so called 'negative obligations' of the clerics. The question now is: are the members of the Institutes of Consecrated Life and Societies of Apostolic Life are bound by these canons? Canon 672 states, "Religious are bound the prescriptions of canons 277, 285, 286, 287 and 289, and, moreover religious clerics are bound by the prescriptions of canon 279 §2; in lay institutes of pontifical right, the permission mentioned in canon 285 §4 can be granted by the proper major superior." By definition, lay members of the secular institutes are not bound by these restrictions (cc. 710 & 713), although they are to lead a life of witness to their Christian life and fidelity toward their consecration (c.713 §3). The members of the Societies of Apostolic Life are bound by canon 739 which states, "In addition to the obligation to which members as members are subject according to the constitutions, they are bound by the common obligations of clerics unless it is otherwise evident from the nature of the thing or the context." Therefore, whatever is prohibited to clerics is prohibited to the members of the religious institutes, clerical members of the secular institutes and the members of the Societies of Apostolic Life. They are also to avoid whatever is not only unbecoming but also foreign to their life. However, they can also be judges in the civil courts for reasons stated above.

CONCLUSION

There is a clear distinction between a Priest as Judge and the priestly office. One is profession and the other is vocation. The two offices are not conflicted. In the essence of our baptism is the tri-munera function of a priestly, kingly-judge and prophetic-teaching. Indeed Christ himself came to us as a GENTLE JUDGE. (Taken from Google). Finally, let us pray for those priests and religious who aspire to become judges in the civil court to make a difference and be Evangelizers in the Judiciary.

Sources for Canons 285 to 289

Canon 285 §1: Canon 140; Sacra Congregatio Concilii. Litterae Circulares 1 jul. 1926 (AAS 18 [1926], 312-313); Sacra Congregatio Sancti Officii: Decretum *Suprema Sacra Congregatio* 26 mar 1942 (AAS 34 [1942] 148)

Canon 285 §2: 139 §1

Canon 285 §3: Canon 139 §2; Sacra Congregatio Concilii, Resp, 15 mar 1927 (AAS 19 [1927] 138); Sacra Congregatio Concilii, Decree: *cum Activa*, 16 juli 1957 (AAS 49 [1957] 635); Sacra Congregatio Concilii, Notificatio, 15 feb. 1958 (AAS 50 [1958] 116); Synodus Episcoporum: *Ultimistemporibus*: passim; Joannes Paulus PP. II, Epistula: *Magnus dies*, 8 apr. 1979, 7 (AAS 71 [1979] 404).

Canon 285 §4: C.139 §3.

Canon 286: C.142; Sacra Congregatio Concilii., Decr. *Plurimis ex documentis*, 22 mar. 1950 (AAS 42 [1950] 330-331)

Canon 287 §1: **P.O.6;GS91-93**; Synodus Episcoporum: *Ultimistemporibus* 912-913; SE *Conveniens ex universe*, 30 nov. 1971 (AAS 63 [197] 932-937)

Canon 287 §2: CI Resp. I 2-3 juni 1918 (AAS 10 [1918] 344); Benedictus PP. XV, Ep. 12 mar. 1919 (AAS 11 [1919] 122-123); Sec Ep., 2 Oct. 1922; SCR Lit. Circ, 10 feb. 1924; Sacra Congregatio Concilii., Resp., 15 mar. 1927 (AAS 19 [1927] 138); Synodus Episcoporum: *Ultimistemporibus* 912-913

Canon 288: Paulus PP VI: *Motu Proprio: Sacrum diaconatus ordinem* 17,31.

Canon 289 §1: cc121,141, Sacra Congregatio Concistorialis Decr. *Redeumtibus e minilari*, 25 oct. 1918 (AAS 10 [1918] 481-486); Sacra Congregatio Concistorialis Decl. 21 dec 1918 (AAS 11 [1919] 6-7); Sacra Congregatio Concistorialis Resp. 28 mar 1919 (AAS 11 [1919] 177-178); Sacra Congregatio de Religiosis Decr. *Ut sevitium*, 30 jul 1957 (AAS 49 [1957] 871-874)

289 §2: c.123.